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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO, EX REL. ATTORNEY GENERAL
DAVE YOST
Plaintiff

Case No: CV-22-967578

Judge: SHANNON M GALLAGHER

FABIANI, LLC, ET AL
Defendant

JOURNAL ENTRY

92 DEFAULT - FINAL

DEFAULT HEARING HELD ON 2/22/2023. PLAINTIFF APPEARED THROUGH COUNSEL. NO APPEARANCES ON BEHALF OF DEFENDANTS. PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT AND REQUEST TO PRESENT AFFIDAVITS IN LIEU OF LIVE CONSUMER TESTIMONY, FILED 01/24/2023, IS GRANTED. O.S.J. COURT COST ASSESSED TO THE DEFENDANT(S).

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

Judge Signature

Date

RECEIVED
ATTORNEY GENERAL OF OHIO

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CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

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CLERK OF COURTS
CUYAHOGA COUNTY

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO, ex rel. DAVE YOST,)	CASE NO. CV-22-967578
)	
Plaintiff,)	JUDGE SHANNON M. GALLAGHER
-vs-)	
)	
FABIAN1, LLC dba CERTAINTY CONSTRUCTION AND HOME SOLUTIONS, et al.,)	FINAL ORDER AND ENTRY GRANTING DEFAULT JUDGMENT AGAINST DEFENDANTS
Defendants)	ERIC FABIAN AND FABIAN1, LLC dba CERTAINTY CONSTRUCTION AND HOME SOLUTIONS
)	

This matter comes on to be heard upon filing of Plaintiff's Motion for Default Judgment on January 24, 2023. Plaintiff filed its Complaint against Defendant Fabian1, LLC, d/b/a Certainty Construction and Home Solutions, and Defendant Eric Fabian on August 18, 2022. Service was perfected on September 17, 2022. Defendants have failed to respond within the twenty-eight days allotted under the Rules of Civil Procedure, nor otherwise made an appearance in this action. Defendant Eric Fabian is not in active military duty, a reservist in active federal service or an active member of the National Guard, as attested to in the Affidavit of Plaintiff's Investigator, Monica Gregory attached to Plaintiff's Memorandum in Support of Damages submitted herein.

Therefore, pursuant to Civ. R. 55(A) the Court hereby **GRANTS** default judgment against Defendants in favor of Plaintiff, and makes the following Findings of Fact and Conclusions of Law:

1. Defendant Certainty Construction & Home Solutions ("Certainty Construction") is a registered trade name of Defendant Fabian1, LLC, a limited liability corporation registered with the Ohio Secretary of State.
2. Defendant Eric Fabian ("Fabian") is a natural person whose last known address is 5324

N. Park Ave., Bristolville, OH 44402.

3. Defendants conducted business in Ohio under the name Certainty Construction and Home Solutions, and contracted for home improvement goods and repair services with Ohio consumers.
4. Defendants accepted payments from consumers for these home improvement services.
5. In some cases, Defendants accepted payment from consumers but failed to commence any goods or services, or provide refunds for the goods and services.
6. In some cases, Defendants provided some services, but failed to provide the full services contracted for, and failed to complete the work in a reasonable time.
7. In some cases, Defendants provided some services, but those services were shoddy and unworkmanlike.
8. In some cases, Defendants accepted partial payment for home improvement and repair services, started performing the work, and then abandoned the work site and failed to complete performance.
9. Defendants failed to respond to consumer complaints and telephone calls.
10. Defendants failed to perform the home improvement and repair duties in a timely manner.
11. Defendants contracted with some consumers for home construction services pursuant to R.C. 4722.02 et seq. for the construction of new residential additions which exceeded \$25,000.
12. Defendants failed to provide all the necessary and required information in the home construction service contracts including, but not limited to, providing the Defendants' taxpayer identification number, the anticipated start and completion dates and a copy

of Defendants' certificate of appropriate general liability coverage.

13. Defendants failed to deliver the work for the home construction services, and failed to provide a refund within a reasonable time.
14. For some home construction services, Defendants failed to perform the work in a workmanlike manner.

CONCLUSIONS OF LAW

15. The Attorney General, acting on behalf of the State of Ohio and in the public interest, is the proper party to bring this action by virtue of the authority vested in the Attorney General by R.C. 1345.07.
16. The actions of Defendants have occurred in Ohio, including Cuyahoga County, and as set forth below, are in violation of the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., and its Substantive Rules, Ohio Administrative Code ("O.A.C."), 109:4-3-01 et seq. the Home Solicitation Sales Act ("HSSA"), R.C. 1345.21 et seq., and the Home Construction Service Suppliers Act ("HCSSA"), R.C. 4722.01 et seq.
17. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
18. Venue in this Court is proper, pursuant to Ohio Civ. R. 3(C)(3), because Cuyahoga County is one of the counties where Defendants conducted the activities that gave rise to this claim for relief.
19. Defendants are "suppliers" as that term is defined in R.C. 1345.01(C) of the CSPA because Defendants have engaged in the business of effecting "consumer transactions" by advertising and selling home improvement services to individuals for purposes that were primarily personal, family or household within the meaning

specified in R.C. 1345.01(A).

20. Defendants are “sellers” engaged in “home solicitations sales” of “consumer goods or services” as those terms are defined in R.C. 1345.21(A), (C) and (E), as Defendants engaged in personal solicitations at the residences of consumers, and the agreements or offers to purchase were made at a place other than sellers’ place of business.
21. Defendants are “home construction service suppliers” engaged in “home construction services” as those terms are defined in the HCSSA, R.C. 4722.01(B) and (D).
22. Defendants committed unfair and deceptive acts and practices in violation of the Failure to Deliver Rule, O.A.C. 109:4-3-09(A) and the CSPA, R.C. 1345.02(A), by accepting money from consumers for goods or services, and then permitting eight weeks to elapse without delivering the services ordered, making full refunds, advising the consumers of the duration of an extended delay and offering to send a refund within two weeks if requested, or furnishing similar services of equal or greater value as a good faith substitute.
23. Defendants engaged in unfair and deceptive acts and practices in violation of R.C. 1345.23(A) and (B) and R.C. 1345.02 by failing to include a proper Notice of Cancellation with the written agreement or offer to purchase.
24. Defendants committed unfair and deceptive acts and practices in violation of the HCSSA, R.C. 4722.02, by entering into home construction service contracts which failed to include all of the required information, such as Defendants’ business address and taxpayer identification number, R.C. 4722.02(A)(1) the owner’s address and telephone number, R.C. 4722.02(A)(2), the address or location of the property where

the home construction services was to be performed, R.C. 4722.02(A)(3) the anticipated start and completion dates for the project, R.C. 4722.02(A)(5), failing to provide consumers with a copy of Defendants' certificate of general liability coverage in an amount not less than \$250,000, R.C. 4722.02(A)(8), failing to include the dated signatures of the Defendants and owners on the contract, R.C. 4722.02(A)(9), and failing to include a statement pertaining to excess costs in the written contract, R.C. 4722.02(B)(2).

25. Defendants violated the HCSSA, R.C. 4722.03(A)(3)(f), by entering into home construction services contracts with owners, and failing to deliver services in accordance with the terms and conditions of the contract and failing to provide a full refund within a reasonable time period.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

- A. Defendants, doing business under the names Eric Fabian, Fabiant1, LLC, Certainty Construction and Home Solutions, or any other names, their agents, representatives, salespeople, employees, successors, or assigns, and all persons acting in concert or participating with them, directly or indirectly, are **PERMANENTLY ENJOINED** from engaging in the acts and practices described in this order and from further violating the CSPA, R.C. 1345.01 et seq., its Substantive Rules, O.A.C. 109:4-3-01 et seq., the HSSA, R.C. 1345.21 et seq., and the HCSSA, R.C. 4722.01 et seq.
- B. It is **DECLARED** that the acts and practices committed by Defendants, as set forth above, violate the CSPA, R.C. 1345.01 et seq., its Substantive Rules, O.A.C. 109:4-3-01 et seq., the HSSA, R.C. 1345.21 et seq., and the HCSSA, R.C. 4722.01 et seq., in the manner set forth herein.

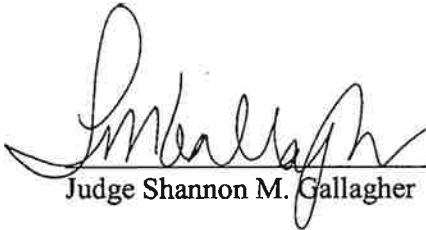
- C. Pursuant to R.C. 1345.07(B), Defendants are **ORDERED**, jointly and severally, to pay consumer damages to the Ohio Attorney General in the total amount of Forty-four Thousand, Seven Hundred Fifty-nine dollars (\$44,750.00) to be distributed by the Attorney General to the consumers identified on the attached Addendum A, in the amounts specified in Addendum A.
- D. Based on the above findings that Defendants committed unfair and deceptive acts and practices in violation of the CSPA, HSSA and HCSSA, and pursuant to R.C. 1345.07(D), Defendants are **ORDERED**, jointly and severally, to pay civil penalties to the Ohio Attorney General in the amount of Fifty Thousand Dollars (\$50,000).
- E. Defendants are **ENJOINED** from engaging in business as suppliers in any consumer transactions with Ohio consumers until they have satisfied all financial liabilities and obligations ordered herein.
- F. Defendants are **ORDERED** to pay the costs of collecting on this judgment.
- G. Defendants are **ORDERED** to pay all court costs.

IT IS SO ORDERED.

2/28/2023

Date

cc: Plaintiff
Defendants


Judge Shannon M. Gallagher

(Addendum A attached)

Addendum A

<i>First Name</i>	<i>Last Name</i>	<i>Address</i>	<i>City</i>	<i>State</i>	<i>Zip</i>	<i>Restitution Amount</i>
Joshua	Hettrick	605 Lafayette Ave.	Niles	OH	44446	\$35,750.00
Sheree	Kowalski	3845 W. 212 St.	Fairview Park	OH	44126	\$9,000.00
						\$44,750.00