

IN THE COURT OF COMMON PLEAS
BELMONT COUNTY, OHIO

STATE OF OHIO, ex rel.
ATTORNEY GENERAL
MICHAEL DEWINE

Plaintiff,

v.

SCARLET & GREY
CONTRACTING, LTD., et al.

Defendants.

FILED
2015 MAR 5 AM 10 20
Case No: 14 CV 295

Judge Fregiato

FINAL JUDGMENT
ENTRY AND ORDER

The Plaintiff commenced this action on September 30, 2014 by filing its Complaint and Request for Declaratory Judgment, Injunctive Relief, Consumer Restitution, and Civil Penalties against Defendant Kelson Hess individually, and Defendants Scarlet & Grey Contracting, Ltd. and Scarlet & Gray Builders, Ltd. The Complaint alleged violations of the Consumer Sales Practices Act ("CSPA"), R.C. 1345.41 et seq. Defendants Scarlet & Grey Contracting, Ltd. and Scarlet & Gray Builders, Ltd. were served via certified mail on October 6, 2014. Defendant Kelson Hess was served via certified mail on November 6, 2014. All Defendants failed to respond within the twenty-eight days allotted under the rules. Defendants have also failed to make any appearance in this action.

Plaintiff filed a Motion for Default Judgment on December 11, 2014. This Court issued a Default Judgment Entry and Order against the Defendants on December 16, 2014. The Default Judgment included an order for the Defendants to pay civil penalties and restitution to all consumers injured by Defendants' conduct, in an amount to be determined at a later date via affidavits. A damages hearing was scheduled for this case for February 23, 2015 but was later rescheduled for March 5, 2015. On February 20, 2015, Plaintiff filed a Memorandum in Support

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of Damages and Civil Penalties ("Damages Memo"), in which Plaintiff submitted evidence supporting the amount of civil penalties and consumer damages that Plaintiff was requesting. Plaintiff then filed a Supplemental Memorandum in Support of Damages and Civil Penalties ("Supplemental Memo"). The damages hearing was held before the Court on March 5, 2015 at 10:00 a.m. Plaintiff's counsel appeared before the Court and presented evidence to support the Plaintiff's request for consumer damages and civil penalties. Neither the Defendants nor counsel on their behalf appeared.

In support of its request for consumer damages, Plaintiff attached to its Damages Memo and Supplemental Memo the affidavits of 30 consumers, which attested to the damages suffered by those consumers. The affidavits established that each of the consumers sustained monetary damages in connection with Defendants' home improvement business. The Court finds that each consumer sustained individual damages in the amounts set forth in the Consumer Damages List (attached as Exhibit 2 to Plaintiff's Supplemental Memo).

In its Damages Memo, the Plaintiff also explained the basis for the amount of civil penalties requested. Plaintiff's request was made pursuant to R.C. 1345.07(D). Plaintiff provided evidence of the Defendants' violations of the CSPA which, pursuant to R.C. 1345.07(D), permit the imposition of a civil penalty in the amount of \$50,000.00. The Court finds the Plaintiff's request well-taken.

Based on the above, the Court renders the following FINAL JUDGMENT ENTRY AND ORDER against the Defendants.

FINDINGS OF FACT

1. Defendant Hess is a natural person who is the owner and operator of Defendants Scarlet & Grey Contracting, Ltd. and Scarlet & Gray Builders, Ltd.

2. Defendants engaged in the business of effecting "consumer transactions" by soliciting consumers either directly or indirectly for the repair, construction, assembly and/or installation of various home improvement goods or services for a fee, that were primarily for personal, family, or household use, within the meaning of R.C. 1345.01(A).
3. Defendant Hess at all times pertinent hereto controlled and directed the business activities and sales conduct of Defendants Scarlet & Grey Contracting, Ltd. and Scarlet & Gray Builders, Ltd. Consumers reported having direct contact with Defendant Hess and, in some instances, at the direction of Defendant Hess, made personal checks for goods and services out to Defendant Hess instead of Defendant Scarlet & Grey Contracting, Ltd. or Defendant Scarlet & Gray Builders, Ltd.
4. Defendants accepted monetary deposits from consumers for the purchase of home improvement goods and services and failed to deliver some of those goods and services within eight weeks.
5. Defendants have refused to refund consumers' deposits or payments despite consumers' requests for refunds.
6. After receiving payment, Defendants sometimes began work but failed to complete the work.
7. Defendants performed substandard and shoddy work in the construction and repair of home improvement goods and services.
8. Defendants' failure to perform contracted home improvement services in a proper manner has resulted in harm to consumers and required the consumers to pay additional money to have the Defendants' work corrected and/or completed.

9. Defendants collected deposits for half of the contract price with the balance to be paid upon completion, but Defendants did not finish the work or demanded more money before finishing the work. Defendants performed shoddy work and consumers had to hire new contractors to fix the substandard work.

CONCLUSIONS OF LAW

10. The actions of Defendants, described above, have occurred in the State of Ohio, in Belmont county and other counties in Ohio, and, as set forth below, are in violation of the Consumer Sales Practices Act, R.C. 1345.01 et seq. ("CSPA") and its substantive rules, specifically, the Failure to Deliver Rule, O.A.C. 109:4-3-09(A).
11. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
12. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(2) and (3), in that Belmont County, Ohio is where the Defendant's principal place of business is/was located and where Defendant conducted some of the transactions described herein.
13. The Ohio 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 him by R.C. 1345.07.
14. Defendants are "suppliers," as that term is defined in R.C. 1345.01(C), as they engaged in the business of effecting "consumer transactions" by soliciting consumers either directly or indirectly for the repair, constructions, assembly and/or installation of various home improvement goods or services for a fee, that were primarily for personal, family, or household use, within the meaning of R.C. 1345.01(A).

15. Defendants committed unfair and deceptive acts or 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 making shipment or delivery of the goods or services ordered, making a full refund, advising the consumer of the duration of an extended delay and offering to send a refund within two weeks if so requested, or furnishing similar goods or services of equal or greater value as a good faith substitute.

16. Defendants committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by performing shoddy and substandard work and then failing to correct such work.

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

A. Plaintiff's request for a Declaratory Judgment is **GRANTED**, and it is therefore **DECLARED** that the acts or practices described above violate the CSPA in the manner set forth herein.

B. Defendants, their agents, employees, successors or assigns, and all persons acting in concert and participation with them, directly or indirectly, through any corporate device, partnership, or other association, under these or any other names, are **PERMANENTLY ENJOINED** from engaging in the acts and practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 et seq.

C. Pursuant to R.C. 1345.07(B), Defendants are **ORDERED**, jointly and severally, to pay consumer damages in the total amount of \$821,432.65. Such payment shall be made to the Attorney General via a certified check or money order payable to the "Ohio Attorney General" and delivered to:

Compliance Officer
Consumer Protection Section
Office of the Ohio Attorney General
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

The consumer damages will be distributed by the Attorney General to the following consumers in the amounts set forth below:

Last Name	First Name	City	State	Amount
Schramm	Lynne	Moundsville	WV	\$34,650.00
Underwood	Rodney	Bellaire	OH	\$24,375.00
Lehman	Renee	Powhatan Point	OH	\$81,430.00
Villers	Joseph	Proctor	WV	\$8,750.00
Shaver	Ray	Clarington	OH	\$6,000.00
Clark	Dan & Erica	Beallsville	OH	\$125,050.00
Matthews	Steve	Paden City	WV	\$11,250.00
Singo	Thomas	Clarington	OH	\$43,750.00
Rockwell	Joel	Barnsville	OH	\$12,750.00
Moore	Michael	Woodsfield	OH	\$87,140.00
Moore	Bill & Cindy	Jacobsburg	OH	\$65,850.00
Meckely	Rebecca & Gerald	Sistersville	WV	\$68,200.00
Kercher	Connie	Triadelphia	WV	\$1,000.00

Smith	Harry	Woodsfield	OH	\$5,000.00
Demattio	Louis	Steubenville	OH	\$18,250.00
Kanner	Tammy	Clarington	OH	\$9,600.00
Davis	Barbara	Wintersville	OH	\$9,750.00
Kemp	Billi	Bethesda	OH	\$31,550.00
Fox/Nolte	Scott	Wheeling	WV	\$58,900.00
Fodor	Carolyn	Follansbee	WV	\$19,000.00
Blake	Liz & Jim	Moundsville	WV	\$7,500.00
Voytecek	Joseph	Martins Ferry	OH	\$25,725.00
Piatt	Betty	Bethesda	OH	\$10,000.00
Goodwin	Becky & Donald	Jewett	OH	\$10,000.00
Byers	Peter	Jacobsburg	OH	\$8,750.00
Morris	Carren	Paden City	WV	\$9,000.00
Gordon	Jessica	Wheeling	WV	\$10,400.00
Haught	Shirley	Reader	WV	\$2,375.00
Fonner	Rodney/Carrie	Moundsville	WV	\$4,825.00
Davidson	Sherri	Shadyside	OH	\$7,662.21
TOTAL				\$821,432.65

D. Based on the above findings that Defendants committed unfair and deceptive acts and practices in violation of the CSPA, Defendants are **ORDERED**, jointly and severally, to pay a civil penalty of Fifty-Thousand Dollars (\$50,000.00), pursuant to R.C. 1345.07(D). Such payment shall be made to the Attorney General via a certified check or money order payable to the "Ohio Attorney General" and delivered to:

Compliance Officer
Consumer Protection Section
Office of the Ohio Attorney General
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

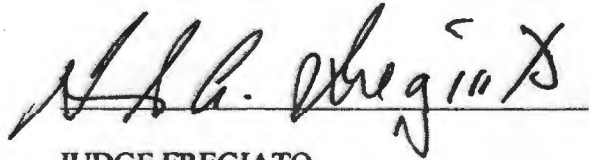
E. Defendants are ENJOINED from engaging in business as a supplier in any consumer transactions in the State of Ohio until such time as they have satisfied all monetary obligations due hereunder.

F. Defendants are ORDERED to pay all court costs.

IT IS SO ORDERED.

DATE

3/5/15.


JUDGE FREGIATO

Prepared by:

JENNIFER L. MILDREN (0087564)

Assistant Attorney General

Consumer Protection Section

30 East Broad Street, 14th Floor

Columbus, Ohio 43215

614-466-8235

Counsel for Plaintiff, State of Ohio

TO THE CLERK,

PLEASE SERVE ON THE FOLLOWING:

Jennifer L. Mildren

Tracy Morrison Dickens

Assistant Attorney General

Consumer Protection Section

30 East Broad Street, 14th Floor

Columbus, Ohio 43215

Scarlet & Grey Contracting, Ltd.

51710 National Rd. E.

Saint Clairsville, OH 43950

Scarlet & Gray Builders, Ltd.

51710 National Rd. E.

Saint Clairsville, OH 43950

Kelson Hess

43128 Ohio Ave.

Beallsville, OH 43716