

JUL 28 2015

DANIEL M. HERRIGAN

2015 JUL 24 AM 11:43 IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

CONSUMER PROTECTION SECTION  
PUBLIC INSPECTION FILE

SUMMIT COUNTY  
CLERK OF COURTS

STATE OF OHIO, <i>ex rel.</i>	)	CASE NO. <u>CV-2014-12-5365</u>
MICHAEL DeWINE,	)	
Plaintiff,	)	JUDGE CHRISTINE CROCE
	)	
-vs-	)	
	)	<u>FINAL JUDGMENT ENTRY</u>
JOSEPH M. ALLEN, et al.,	)	<u>AND ORDER OF THE COURT</u>
Defendants	)	

The Plaintiff commenced this action on December 3, 2014 by filing its Complaint and Request for Declaratory Judgment, Injunctive Relief, Consumer Restitution and Civil Penalties against Defendants Joseph M. Allen and A Ki Restoration, LLC. The Complaint alleged violations of the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq. and its Substantive Rules, OAC 109:4-3-01 et seq. and the Home Solicitation Sales Act ("HSSA"), R.C. 1345.21 et seq. Defendants were properly served in accordance with the Rules of Civil Procedure. On May 14, 2015 Plaintiff filed a Motion for Default Judgment and this Court issued a Default Judgment Entry and Order against the Defendants on May 29, 2015. The Default Judgment included an order permanently enjoining Defendants from engaging in the acts and practices found to be violative of the CSPA and HSSA, and from further violations of the CSPA and HSSA, and included an order for Defendants to pay civil penalties and restitution to all consumers damaged from the CSPA and HSSA, in amounts to be determined by way of the submission of consumer affidavits and testimony presented at a damages hearing.

This matter came on for hearing July 22, 2015 on the issue of damages. Present at the damages hearing on behalf of the Plaintiff, the State of Ohio, was Assistant Attorney General Rebecca F. Schlag and Investigator John Hathaway from the Ohio Attorney General's office, Consumer Protection section. Defendants did not appear even though duly noticed of the hearing.

Testimony was presented by Investigator John Hathaway, and evidence was submitted in the form of nineteen (19) consumer affidavits on the issue of consumer restitution. Plaintiff also requested civil penalties in the amount of Fifty Thousand Dollars (\$50,000.00) be imposed upon Defendants in light of the large number of affected consumers and high dollar amount of restitution.

The Court finds Plaintiff's testimony, evidence and requests to be well-taken and as such, the Court re-states below the Findings of Facts and Conclusions of Law originally included in the Court's Default Judgment Order of May 29, 2015, and includes herein an order specifying the consumer damages and civil penalties Defendants must pay.

### **FINDING OF FACTS**

The Court finds the following facts:

1. Defendant Joseph Allen is an individual doing business in Ohio, and the Statutory Agent of A Ki Restoration, LLC.
2. A Ki Restoration, LLC is the name of a business entity registered to do business with the Ohio Secretary of State.

3. Defendant Joseph Allen at all times pertinent hereto, directed and controlled all business activities of A Ki Restoration, LLC, including the solicitation of home improvement repair and remodel work.
4. Defendants solicited consumers and accepted payments for home remodel and repair work within Ohio, including Summit County.
5. After accepting money from consumers, Defendants failed to provide and complete the contracted work or provide timely refunds to the consumers.
6. In many cases, Defendants received payment by way of insurance claims filed on behalf of the consumers, taking the claim checks as the initial payment for the roofing repair project which Defendants then failed to complete and failed to refund the money.
7. After receiving payment, Defendants would sometimes commence the home improvement project, but then fail to complete the contracted work.
8. Defendants did not properly notify consumers of their cancellation rights nor did they provide consumers with an appropriate notice of cancellation.
9. Defendants' failure to perform the contracted roofing repair services in an appropriate manner has resulted in harm to consumers, in some cases required leaving consumers' residences vulnerable to the elements of weather.
10. Defendants failed to give proper notice to consumers of their right to cancel their contract by a specific date and failed to give consumers an appropriate cancellation form.

### CONCLUSIONS OF LAW

1. This Court has personal jurisdiction over the Defendants pursuant to R.C. 2307.382 because this cause of action arises from Defendants' business transactions with residents of Ohio.
2. This Court has subject matter jurisdiction over this action pursuant to R.C. 1345.04 of the Consumer Sales Practices Act.
3. Venue is proper with this Court, pursuant to Ohio Civ. R. 3(B)(3) because Summit County, Ohio, is a county in which Defendants conducted activity which gave rise to the State's claim for relief.
4. Defendants are "suppliers" as that term is defined in R.C. 1345.01(C) as Defendants engaged in the business of effecting "consumer transactions" which were primarily personal, family or household by soliciting and performing the service of home improvement repair and remodel work for individuals within Summit and other counties in the State of Ohio, within the meaning specified in R.C. 1345.01(A) and (D).
5. Defendants are "sellers" engaged in the business of selling home improvement services to "buyers" at their personal residences for purposes which were primarily personal, family or household within the meaning specified in R.C. 1345.21(A) and (E).
6. Defendants committed unfair and deceptive acts and practices in violation of the Failure to Deliver Rule, O.A.C. 109:4-3-09 and the Consumer Sales Practices Act

("CSPA"), R.C. 1345.02 by accepting money from consumers for goods or services and then permitting eight weeks to elapse without making delivery of the goods or services as 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.

7. Defendants committed unfair and deceptive acts and practices by violating the Home Solicitation Sales Act ("HSSA"), R.C. 1345.23(B), by failing to give proper notice to consumers of their right to cancel their contract by a specific date and by failing to give consumers a cancellation form.
8. These acts and practices described above have previously been determined by Ohio courts to violate CSPA. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(B)(2).

**FURTHER**, upon the credible testimony and evidence presented at the damages hearing, it is hereby

**ORDERED, ADJUDGED, AND DECREED:**

1. Plaintiff's request for a Default Judgment is hereby **GRANTED** as Defendants' violations of the CSPA and HSSA occurred as described in the Complaint and in this Order.
2. Defendant Joseph Allen, under his own name, "A Ki Restoration, LLC" or any other name, and all persons acting on behalf of him, directly or indirectly, through any

corporate or private device, partnership or association, is **PERMANENTLY ENJOINED** from engaging in the acts and practices found by this Court to violate the CSPA and HSSA, and from further violating the CSPA and HSSA.

3. Defendant A Ki Restoration, LLC by this or any other name, and all persons acting on behalf of it, directly or indirectly, through any corporate or private device, partnership or association, is **PERMANENTLY ENJOINED** from engaging in the acts and practices found by this Court to violate the CSPA and HSSA, and from further violating the CSPA and HSSA.
4. Defendants are **PERMANENTLY ENJOINED** from acting or serving as Suppliers in the home improvement services business, including roof repair, and from soliciting or engaging in home improvement/roof repair or consumer remodel transactions in the State of Ohio as Suppliers until the final ordered resolution of this matter is satisfied in its entirety.
5. It is **DECLARED** that the acts and practices committed by the 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., and the HSSA, R.C. 1345.23(B).
6. Defendants Joseph M. Allen and A Ki Restoration, LLC are **ORDERED**, jointly and severally, to pay consumer damages in the total amount of Eighty-five Thousand, One Hundred Forty-eight Dollars and seventeen cents (\$85,148.17). Such payment shall be made to the Attorney General via a certified check or money order payable to "Ohio Attorney General" and delivered to:

Compliance Officer  
Consumer Protection Section  
Office of the Ohio Attorney General  
30 East Broad St., 14<sup>th</sup> fl.  
Columbus, OH 43215

The consumer damages will be distributed by the Attorney General to nineteen (19)  
consumers in the amounts set forth below:

Kathy Anthony	Medina, OH	\$1,000.00
Arvind Balakrishnan	Alpharetta, GA	\$1,867.17
Linda Bladek	Wickliffe, OH	\$1,693.37
Sonya Dudley	Twinsburg, OH	\$8,351.36
Subrahmanya Duvvuri	Twinsburg, OH	\$6,118.87
Muhammad Ejaz	Twinsburg, OH	\$6,617.94
Steve Ledford	Olmsted Falls, OH	\$3,000.00
Anton Reisig	Olmsted Falls, OH	\$3,816.02
Joseph Schwarten	Olmsted Falls, OH	\$3,770.73
Tristan Stanley	Olmsted Falls, OH	\$7,380.47
Kim Stertzbach	Canton, OH	\$5,685.86
Karen Taylor	Twinsburg, OH	\$6,041.58
David Todoroff	Painesville, OH	\$2,808.57

Ingo Toney	Canton, OH	\$3,714.46
David Trubisky	Canton, OH	\$3,566.21
Kirby Tullos	Canton, OH	\$5,388.52
Valerie Urankar	Willoughby, OH	\$3,778.82
Bernard Wolak	Medina, OH	\$4,782.76
Debra Yokosuk	Highland Hts., OH	\$5,765.46

7. Based on the above findings that Defendants committed unfair and deceptive acts and practices in violation of the CSPA and HSSA, 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) and in accordance with R.C. 1345.07(G). Such payment shall be made to the Attorney General via a certified check or money order payable to "Ohio Attorney General" and delivered to:

Compliance Officer  
 Consumer Protection Section  
 Office of the Ohio Attorney General  
 30 East Broad St., 14<sup>th</sup> fl.  
 Columbus, OH 43215

8. Defendants are **ORDERED**, jointly and severally, to pay all court costs associated with this matter.
9. Defendants are **ENJOINED** from engaging in business as suppliers in any consumer transaction in the State of Ohio until such time as they have satisfied all monetary obligations due hereunder.



**THIS IS A FINAL APPEALABLE ORDER. NO JUST CAUSE FOR DELAY.**

**IT IS SO ORDERED.**

7/24/15  
Date

Christine Croce  
JUDGE CHRISTINE CROCE

The Clerk of Courts is directed to serve this judgment in a manner prescribed by Civ. R. 58(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.

Prepared by:

/s/ Rebecca F. Schlag  
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