

IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, OHIO

STATE OF OHIO, ex rel.
ATTORNEY GENERAL
MICHAEL DEWINE

PLAINTIFF,

V.

WELLNESS LASER AND MED
SPA, et al.

DEFENDANTS.

CASE NO. 14-CVH-08-0602

JUDGE GORMLEY

RECEIVED

ATTORNEY GENERAL OF OHIO

AUG 11 2015

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

JAN ANTONOPLOS
CLERK

2015 MAY 21 AM 10:27

COMMON PLEAS COURT
DELAWARE COUNTY, OHIO
FILED

ORDER AND ENTRY GRANTING PLAINTIFF'S MOTION FOR DEFAULT
JUDGMENT AS A SANCTION AGAINST DEFENDANTS FOR FAILURE TO OBEY
AN ORDER OF THIS COURT

Plaintiff State of Ohio's Motion for Default Judgment as a Sanction Against Defendants for Failure to Obey an Order of This Court, filed on April 6, 2015 is hereby GRANTED. The Court finds the motion well taken and hereby grants and sustains Plaintiff's Motion for Default Judgment as a Sanction Against Defendants for Failure to Obey an Order of This Court under Civ. R. 37. The Court hereby renders the following Default Judgment Entry and Order.

FINDING OF FACTS

1. Defendant Wellness Laser and Med Spa, LLC, doing business as Wellness Laser Center and Med Spa ("Wellness Laser"), is an Ohio limited liability company with its principal place of business located at 470 Olde Worthington Road, Suite 200, Westerville, Ohio 43082.
2. Wellness Laser also did business at 3401 Enterprise Parkway, Suite 340, Beachwood, Ohio 44122.

3. Wellness Laser is registered to do business in Ohio with the Ohio Secretary of State.
4. Defendant Martina Robinson, aka Martina Flemings (“Flemings”), is a resident of the State of Ohio and is the owner, officer, and operator of Wellness Laser.
5. Defendants were, and have been at all times relevant to this action, engaged in the business of advertising, soliciting, offering for sale and selling LipoLaser and other health, dietary, and weight loss goods and services in the State of Ohio, including Delaware County and various other counties.
6. Defendants advertised their LipoLaser and other health, dietary, and weight loss goods and services via their website www.columbuslipolaser.com.
7. Defendants’ website included claims that they could not substantiate.
8. Defendants’ website stated that consumers could expect to lose “3 to 7 inches in just 3 weeks!”
9. Defendants’ website stated that consumers could “receive a no-obligation consultation for just \$25 (a \$95 value).”
10. Defendants’ website stated that “Patients can walk out of our treatment center right after they finish a 30-minute procedure without feeling any pain. In fact, you might even experience temporary relief of previously existing pain such as arthritis or muscle aches. LipoLaser has been approved as a temporary reliever for minor health issues such as these.”
11. Defendants’ website included numerous testimonials that they could not substantiate.
12. Defendants’ website contained a testimonial from Grammy Winner Roberta Flack: “Like everyone else, I was interested in losing inches, but was not interested in trying invasive procedures. Even with diet and exercise those stubborn areas were difficult to reduce. Although somewhat skeptical, I was excited to try out this new laser that was designed for

body contouring and fat reduction. The LipoLaser treatments are not only pain-free and non-invasive, they are relaxing and most importantly, they work!”

13. Defendants’ website contained a testimonial from “Dave” who says, “I lost (4) four inches in my stomach on my first Lipo Laser session! I have gone down (2) two pant sizes since starting.”
14. Defendants’ website stated that it employs “licensed laser technicians.”
15. Despite website representations, Defendants did not have any employees.
16. Defendants advertised and sold goods and services through various discount websites such as Groupon, Giviton, GroupSavings, and Living Social.
17. Defendants contracted with these discount websites to offer specific numbers of various product and service vouchers at a particular discount price for a set period of time.
18. Defendants’ voucher advertisements included claims that they could not substantiate.
19. Defendants advertised that the vouchers for three LipoLaser or Cellulite Treatments sold for \$139 on Groupon had a value of \$794.
20. Defendants advertised that their “LipoLaser treatments use a hand piece that emits a cold, low-level laser designed to target fat cells.”
21. Defendants advertised that “The whole-body vibration sessions are designed to help patrons burn fat, increase strength, and decrease cellulite, while reducing chronic aches and fatigue. Clients step onto a vibration machine for three or five low-impact, 10 minutes sessions, which are considered a full workout and can help to noninvasively tone the body.”
22. Defendants advertised that “the vibration platform causes the body to experience hundreds of muscular contracts each minute in order to produce similar effects to a workout.”
23. Defendants advertised that “certified techs help break down fat cells during non invasive, FDA-approved procedures.”

24. Defendants advertised that “technicians bring to bear the LipoLaser’s light energy for 40 minutes...”
25. Despite voucher representations, Defendants did not employ certified technicians.
26. On January 9, 2014, the Attorney General issued a Request for Substantiation pursuant to O.A.C. 109:4-3-10 to Defendants regarding their advertising claims and Defendants failed to provide substantiating information.
27. Based upon the representations on the Wellness Laser website and on the discount websites, consumers purchased vouchers for LipoLaser and other health, dietary, and weight loss goods and services from Wellness Laser from these discount websites.
28. Prices for the LipoLaser and other services ranged from \$19 to several hundred dollars.
29. Pursuant to their contracts, Wellness Laser and the discount websites split the proceeds from the consumer voucher purchases.
30. Defendants made tens of thousands of dollars from sales on discount websites.
31. When consumers attempted to schedule appointments for the LipoLaser and other services they purchased, Defendants were often unresponsive. Consumers would call and leave messages, but they received no response.
32. When Defendants answered consumers’ calls to schedule appointments for the LipoLaser and other services they purchased, Defendants would indicate that they did not have available appointments for several months.
33. Some consumers were never able to reach Wellness Laser or to schedule appointments to redeem the vouchers for the LipoLaser or other services they purchased prior to the expiration of the voucher.

34. Many consumers who were never able to schedule appointments to redeem the vouchers they purchased were unable to get a refund for the purchase.
35. For those consumers who were able to schedule their first appointment, Defendants often upsold the consumers to purchase additional sessions beyond those already purchased through the discount website.
36. Defendants convinced consumers that they could not get the desired results with the limited sessions already purchased. At this point, many consumers had not even used the goods or services that they had initially purchased via the discount websites.
37. Defendants also represented that they would have to consult with the “doctor” regarding questions a consumer would have or when a consumer questioned the fact that he or she was not seeing results.
38. Defendants did not employ a doctor.
39. Consumers who were able to use the products and services purchased from Defendants allege that they never saw any weight loss or reduction of inches on their waistlines as promised.
40. Contrary to their representations on the website, Defendants did not actually use the LipoLaser machine.
41. Consumers who did not see results in weight loss or inches requested, but did not receive, refunds.
42. Defendant Flemings, at all relevant times, authorized, directed, ratified, and personally committed or participated in the acts and practices of Wellness Laser.

CONCLUSIONS OF LAW

43. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the Consumer Sales Practices Act (CSPA).
44. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3), in that some of the transactions complained of herein, and out of which this action arose, occurred in Delaware County in the State of Ohio.
45. Defendants are “suppliers” as that term is defined in R.C. 1345.01(C), as Defendants were, at all times relevant herein, engaged in the business of effecting consumer transactions by soliciting and selling LipoLaser and other health, dietary, and weight loss goods and services to “individuals” in the State of Ohio, Delaware County and various other counties, for purposes that were primarily personal, family, or household within the meaning specified in R.C. 1345.01(A) and (D).
46. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.02(B)(1), by representing that the subject of a consumer transaction had sponsorship, approval, performance characteristics, accessories, uses, or benefits that it did not have.
47. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.02(B)(8), by representing that a specific price advantage existed, when it did not.
48. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by engaging in inadequate and unfair customer service.
49. Defendants have committed unconscionable acts or practices in violation of the CSPA, R.C. 1345.03(A), as set forth in R.C. 1345.03(B)(3), by entering into consumer transactions when

Defendants knew, at the time the consumer transactions were entered into, of the inability of the consumers to receive substantial benefits from the subject of the consumer transaction.

50. Defendants have committed unconscionable acts or practices in violation of the CSPA, R.C. 1345.03(A), as set forth in R.C. 1345.03(B)(6), by entering into consumer transactions when the Defendants knowingly made misleading statements of opinion on which the consumers were likely to rely to the consumers' detriment.
51. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and O.A.C.109:4-3-09(A), by accepting payments from consumers for LipoLaser and other health, dietary, and weight loss goods and services and failing to deliver the goods and services contracted and paid for, and failing to return the payments to the consumers.
52. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and O.A.C. 109:4-3-10(A), by making representations, claims, and assertions of fact that would cause a reasonable consumer to believe such statements were true, without possessing or relying upon a reasonable basis in fact.
53. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and O.A.C 109:4-3-10(B), by failing, upon the written request of the Attorney General, to produce within the reasonable time period specified, written substantiating documentation, tests, studies, reports, or other data in the possession of the Defendants at or prior to the time that representations, claims, or assertions are made about the Defendants' goods or services.

ORDER

- A. Plaintiff's request for Declaratory Judgment is GRANTED, and it is therefore DECLARED that the acts and practices set forth above violate the CSPA, R.C. 1345.01 et seq., in the manner set forth herein.
- B. Defendants Wellness Laser and Med Spa, LLC, dba Wellness Laser Center and Med Spa, and Martina Flemings, aka Martina Robinson, under their own names or any other names, their agents, representatives, salespeople, employees, successors and assigns, and all persons acting on behalf of Defendants directly or indirectly, through any corporate or private device, partnership or association, is PERMANENTLY ENJOINED from engaging in the acts or practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 et seq.
- C. Defendants are jointly and severally liable for consumer restitution in an amount to be determined.
- D. Plaintiff is hereby permitted to submit by June 22, 2015, evidence of consumer damages via consumer affidavits in lieu of live testimony.
- E. Defendants are jointly and severally liable for all costs associated with bringing this action.

IT IS SO ORDERED.

Dated: 5-20-15


DAVID M. GORMLEY
JUDGE

The Clerk of this Court is hereby Ordered to serve a copy of this Judgment Entry upon the following by ☒ Regular Mail, ☐ Mailbox at the Delaware County Courthouse, ☐ Facsimile transmission

TERESA A. HEFFERNAN, ATTORNEY FOR PLAINTIFF, 30 E. BROAD STREET, 14TH FLOOR,
COLUMBUS, OH 43215

ROGER L. WEAVER, FORMER ATTORNEY FOR DEFENDANTS-FOR PURPOSES OF SERVING
DEFENDANTS ONLY, 3 SOUTH HIGH STREET, CANAL WINCHESTER, OH 43110

IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, OHIO

STATE OF OHIO, ex rel.
ATTORNEY GENERAL
MICHAEL DEWINE

PLAINTIFF,

V.

WELLNESS LASER AND MED
SPA, et al.

DEFENDANTS.

CASE NO. 14-CVH-08-0602

JUDGE GORMLEY

RECEIVED
ATTORNEY GENERAL OF OHIO

AUG 11 2015

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

JAN ANTONOPLOS
CLERK

2015 AUG -4 AM 9:03

COMMON PLEAS COURT
DELAWARE COUNTY, OHIO
FILED

DECISION ON CONSUMER DAMAGES AND CIVIL PENALTIES

GORMLEY, JUDGE

The Court referred this case for a damages hearing. This Court renders the following
Decision.

FINDINGS OF FACT

On August 13, 2014, Plaintiff State of Ohio filed the Complaint against Wellness Laser and Med Spa, LLC, doing business as Wellness Laser Center and Med Spa, and Martina Robinson, aka Martina Flemings ("Defendants"). The Complaint asserts claims under the Consumer Sales Practices Act ("CSPA") and sought a declaratory judgment, injunctive relief, consumer restitution, and civil penalties.

On May 21, 2015, the Court entered a default judgment against Defendants and awarded declaratory and injunctive relief. The Court found that Defendants are liable for consumer restitution and civil penalties in amounts to be determined.

TERMINATION CODE

18

On June 4, 2015, Plaintiff filed a Memorandum in Support of Damages and Other Requested Relief ("Damages Memo"), in which Plaintiff submitted evidence supporting the amount of civil penalties and consumer damages it was requesting that the Court assess.

Via its Damages Memo, Plaintiff's counsel presented evidence to support Plaintiff's request for consumer damages and civil penalties. The affidavits set forth damages incurred by consumers as follows:

	Last Name	First Name	Amount
1	Guzik	Cynthia	\$907.00
2	Hewston	Connie	\$159.00
			\$1,066.00

The affidavits reflect that the two consumers purchased vouchers for LipoLaser and other health, dietary, and weight loss goods and services from Defendants. Each of the consumers paid for the goods or services purchased, but Defendants failed to deliver the purchased goods or perform the services purchased, or make a refund.

Neither Defendants, nor counsel on their behalf, appeared or submitted any evidence to refute Plaintiff's request for consumer damages and civil penalties.

CONCLUSIONS OF LAW

A. RESTITUTION

R.C. 1345.07(B) provides as follows:

On motion of the attorney general and without bond, in the attorney general's action under this section, the court may make appropriate orders, including * * * to reimburse consumers found to have been damaged, * * *, or to grant other appropriate relief.

Plaintiff is entitled to restitution to the consumers in the amounts set forth in the above Findings of Fact.

B. CIVIL PENALTIES

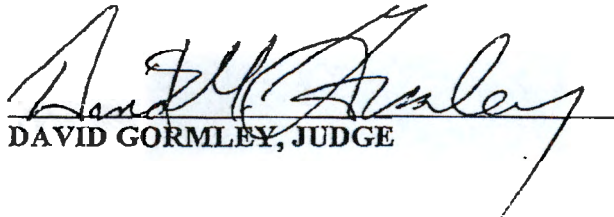
R.C. 1345.07(D) provides as follows:

In addition to the other remedies provided in this section, if the violation is an act or practice that was declared to be unfair, deceptive, or unconscionable by a rule adopted pursuant to Division (B)(2) of Section 1345.05 of the Revised Code before the consumer transaction on which the action is based occurred or an act or practice that was determined by a court of this state to violate section 1345.02 or 1345.03 of the Revised Code was made available for public inspection pursuant to Division (A)(3) of section 1345.05 of the Revised Code, the attorney general may request and the court may impose a civil penalty of not more than twenty-five thousand dollars against the supplier. The civil penalties shall be paid as provided in division (G) of this section.

The Complaint alleges seven violations of the CSPA. Each count alleges that the act or practice at issue has previously been determined by Ohio courts to violate the CSPA. Therefore, each violation warrants the assessment of a civil penalty. This Court concludes that the civil penalty of \$52,500.00 requested by Plaintiff should be imposed.

Based upon the foregoing Findings of Fact and Conclusions of Law, this Court's Decision is that Plaintiff is entitled to an award of consumer restitution in the amount of \$1,066.00 and a civil penalty of \$52,500.00 against Defendants.

7-31-15
DATE


DAVID GORMLEY, JUDGE

Submitted By:
MICHAEL DEWINE
Attorney General

A handwritten signature in black ink, appearing to read "Teresa A. Heffernan", is written over a horizontal line.

TERESA A. HEFFERNAN
Ohio Supreme Court No. 0080732
Senior Assistant Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215-3428
(614) 644-9636
(866) 521-9921 (facsimile)
teresa.heffernan@ohioattorneygeneral.gov