

SANDRA KURT

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SUMMIT COUNTY
CLERK OF COURT

THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

STATE OF OHIO, ex rel.
MICHAEL DeWINE,

Plaintiff,

-vs.-

MAC CONTRACTING, INC.
et al.,

Defendants

05
CASE NO. CV-2015-2806

JUDGE THOMAS PARKER

FINAL JUDGMENT ENTRY AND
ORDER OF THE COURT GRANTING
DEFAULT JUDGMENT

Plaintiff, the State of Ohio, commenced this action on May 15, 2015 by filing its Complaint and Request for Declaratory Judgment, Injunctive Relief, Consumer Restitution and Civil Penalties against Defendants Mac Contracting, Inc. and Brett McClafferty, individually ("Defendants"). The Complaint was amended in accordance with the Rules of Civil Procedure six days later, on May 21, 2015 and 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 service was perfected upon both Defendants by regular mail on June 25, 2015, in accordance with the Rules of Civil Procedure.

Rather than filing a responsive pleading, Defendant McClafferty filed a Suggestion of Bankruptcy on June 12, 2015, and a Stay was initially granted by the Court on June 30, 2015. On July 13, 2015 Plaintiff filed a Motion for Reconsideration of the Stay, which was unopposed. The Court granted the Motion for Reconsideration on July 31, 2015 and the case was placed back on the active docket.

Plaintiff filed a Motion for Default Judgment on September 14, 2015. The next day, on September 15, 2015, Defendants' counsel, Ashraf Abbas, filed a Notice of Appearance and Leave to Plead for 21 days. The Court granted the Leave to Plead until October 5, 2015. Defendants did not timely Answer or otherwise plead by October 5, 2015; rather, Defendants' moved the Court for a second leave to plead on October 19, 2015 which was opposed by Plaintiff on October 21, 2015. More than 35 days later, Defendants' filed a joint Answer. That Answer was stricken from the record and Plaintiff's Motion for Default Judgment was granted in this Court's Order of December 10, 2015. That Order also directed Plaintiff to submit consumer affidavits on the issue of damages within two weeks (i.e., by December 24, 2015). On December 22, 2015 Plaintiff filed affidavits of ten Ohio consumers, claiming damages in the amount of Seventy-nine Thousand, Four Hundred Ninety-six dollars and seventy-seven cents (\$79,496.77). On that same date, Plaintiff also submitted the Affidavit of Monica Gregory, Investigator for the State of Ohio Attorney General's Consumer Protection Section, setting forth a spreadsheet summarizing the consumer restitution claims, for the Court's convenience.

The Court finds Plaintiff's Motion for Default Judgment to be well-taken, and in light of the evidence presented herein, hereby grants the State's Motion for Default Judgment against Defendants, jointly and severally, and finds the following facts and conclusions of law and orders the following relief, including consumer damages and civil penalties:

FINDING OF FACTS

The Court finds the following facts:

1. Defendant Brett McClafferty is a natural person whose last known address is 8261 Diagonal Road, Streetsboro, OH 44241.

2. Defendant Mac Contracting, Inc. is an Ohio corporation, registered with the Secretary of State, with its principal place of business located at 8261 Diagonal Road, Streetsboro, OH 44241.

3. Defendant Brett McClafferty is the Director, Sole Organizer and Statutory Agent of Mac Contracting, Inc., and directed, supervised, approved, controlled, formulated, authorized, ratified, caused, personally participated in, benefitted from and/or otherwise participated in the day to day activities and practices of the business entity herein described as Defendant Mac Contracting, Inc.

4. Defendants solicited consumers for roof repair and related home improvement services in Summit County, Ohio as well as other counties in the State of Ohio.

5. Defendants primarily solicited and sold home improvement goods and services at the residences of buyers.

6. Defendants advertised their business which included signage which claimed they were "BBB Accredited," despite Mac Contracting, Inc. never having had such accreditation.

7. Defendants solicited home improvement services from Ohio consumers, including consumers residing within the City of Macedonia, without registering as a contractor, as Macedonia requires.

8. Defendants accepted payments for roof repair, failed to provide those ordered repairs, and failed to provide timely refunds to all consumers.

9. In many instances, Defendants took the consumers' insurance claim checks as initial payment for the project. Defendants then failed to complete the project or timely refund the payments to the consumers.

10. Defendants executed contracts with consumers for roofing projects, and permitted

more than eight weeks to elapse without providing the services contracted for, 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.

11. Defendants' failure to perform contracted home improvement services in a proper manner has resulted in harm to consumers who have had to wait an exceptionally long time for the project work to be completed or for their payments to be refunded.

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 activities which gave rise to the State's claims for relief.
4. Defendants are "suppliers" as that term is defined in R.C. 1345.01(C) as Defendants at all times relevant herein, engaged in the business of effecting "consumer transactions" which were primarily personal, family or household, by soliciting services and performing the services of roofing and repair work for consumers from Summit County and other counties within the State of Ohio, within the meaning specified in R.C. 1345.01(A) and 1345.01(D).
5. Defendants have committed unfair and deceptive acts or practices in violation of the

CSPA, R.C. 1345.02 and O.A.C. 109:4-3-09, by selling roof repair services to consumers, receiving insurance payments for these services, and then failing to deliver the contracted services or to refund the insurance payments to consumers within eight weeks.

6. Defendants failed to register as contractors with the City of Macedonia, despite having contracted with a consumer residing within the Macedonia city limits.
7. Defendants accepted money on multiple projects in 2013 without having duly registered with the City of Macedonia as required before the work contracted for could be performed, in violation of the Ohio CSPA, R.C. 1345.02(A). Defendants' violations of law in this regard occurred after State ex rel. Brown v. Martz, Tri-County Landscaping was placed in the Attorney General's Consumer Protection Public Inspection File, pursuant to R.C. 1345.05(A)(3).
8. Defendants advertised their business by way of signage which indicated that Mac Contracting, Inc. is a "BBB Accredited Business" when in fact Mac Contracting, Inc. has never been accredited by the Better Business Bureau. Claiming sponsorship, approval or affiliation that the supplier does not have is an unfair act or practice pursuant to R.C. 1345.02(B)(9).
9. Defendants continued to solicit new consumer transactions without first satisfying outstanding court judgments also based upon consumer transactions, in violation of R.C. 1345.02. Such acts and practices have been previously determined by Ohio Courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

ORDER

It is therefore **ORDERED, ADJUDGED, AND DECREED:**

1. Plaintiff's request for a Declaratory Judgment is hereby **GRANTED** as Defendants' violations of the CSPA occurred as described in the Complaint and in this Order.
2. Defendant Mac Contracting, Inc., 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 from further violating the CSPA.
3. Defendant Brett McClafferty, under his own name 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 from further violating the CSPA.
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., and its Substantive Rules, O.A.C. 109:4-3-01 et seq.

6. It is **DECLARED** that Defendants are jointly and severally liable to all consumers found to be damaged by their violations of the CSPA.
7. Defendants are **ORDERED**, jointly and severally, to pay consumer damages in the total amount of Seventy-nine Thousand, Four Hundred Ninety-six dollars and seventy-seven cents (\$79,496.77).
8. 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., 14th floor
Columbus, OH 43215

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

Rick Bergman	Hilliard, Ohio	\$ 5,243.08
Tom Chumita	Hilliard, Ohio	\$11,304.15
Richard Davis	Columbus, Ohio	\$ 5,928.64
Mike Hendershot	Columbus, Ohio	\$ 6,690.57
Thomas Lally	Hudson, Ohio	\$ 6,062.60
Stanley Plante	Chagrin Falls, Ohio	\$11,705.60
Joe Powers	Hudson, Ohio	\$13,206.21
Darci Skidmore	Hudson, Ohio	\$ 5,730.62
Hillary Taylor	Twinsburg, Ohio	\$ 7,704.97
Traci Taylor	Hilliard, Ohio	\$ 5,920.33

9. Based upon 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 in the amount of Seventy-five Thousand Dollars (\$75,000.00) 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:

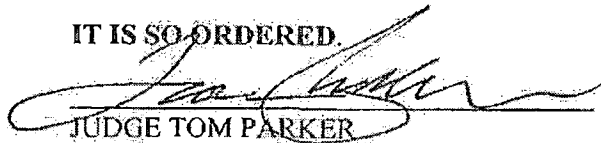
Compliance Officer
Consumer Protection Section
Office of the Ohio Attorney General
30 East Broad St., 14th floor
Columbus, OH 43215

10. Defendants are **ORDERED**, jointly and severally, to pay all court costs associated with
this matter.

11. 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.



JUDGE TOM PARKER

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.

cc: Plaintiff
Defendants

Prepared by:
/s/ Rebecca F. Schlag
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