

IN THE COURT OF COMMON PLEAS
MUSKINGUM COUNTY, OHIO

FILED
COMMON PLEAS COURT
MUSKINGUM CO., OHIO

2015 MAR -1 AM 10: 51

STATE OF OHIO, *ex rel.*
MICHAEL DEWINE
ATTORNEY GENERAL OF OHIO

PLAINTIFF,

v.

ALAN VOHS

DEFENDANT.

CASE NO. CH2015-0044

JUDGE KELLY COTTRILL

FINAL JUDGMENT
ENTRY AND ORDER

TODD A. BICKLE
CLERK

The Plaintiff commenced this action on January 29, 2015 by filing its Complaint and Request for a Declaratory Judgment, Injunctive Relief, Consumer Restitution, and Civil Penalties against Defendant Alan Vohs ("Defendant"). The Complaint alleged violations of the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq. and its Substantive Rules, the Ohio Administrative Code ("O.A.C.") 109:4-3-01 et seq.

Service by certified mail was issued to Defendant at 982 Linden Avenue, Zanesville, OH 43701 and returned as unclaimed. On March 5, 2015, the Clerk of Courts issued service to the Defendant by ordinary mail. Plaintiff moved for default judgment on April 7, 2015, which the Court granted on April 8, 2015, and the Court entered a Final Judgment against Defendant on June 5, 2015. On June 23, 2015, Plaintiff requested and the Court approved a certificate of judgment. However, on August 6, 2015, five months after service was issued, a notice of failure of service by ordinary mail was returned to the Court. Therefore, on August 21, 2015, this case was re-opened and the final judgment vacated. On September 10, 2015, service by certified mail was re-issued to the Defendant at 2040 Ridge Rd., Zanesville, OH 43701. On September 16,

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CONSUMER PROTECTION SECTION
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2015, a receipt for certified mail was filed indicating Defendant received service at this address on September 14, 2015.

On November 6, 2016, Plaintiff filed a Renewed Motion for Default Judgment, and this Court issued a Default Judgment Entry and Order against Defendant on November 9, 2015. The Default Judgment included an order for Defendant to pay civil penalties and restitution to consumers that suffered damages as a result of Defendant's conduct.

On January 15, 2016, 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 that Plaintiff was requesting.

In support of its request for consumer damages, Plaintiff attached to its Damages Memo nine consumer affidavits, which attest to the damages each suffered. The evidence established that the consumers sustained monetary damages after Defendant failed to provide the services for which Defendant accepted the consumers' payments.

The Court finds that the consumers sustained damages in the amount of \$7,912.66.

In its Damages Memo, Plaintiff also explained the basis for the amount of civil penalty requested. Plaintiff made the request pursuant to the CSPA, R.C. 1345.07(D) and provided evidence of the Defendant's violations of the CSPA which permit the imposition of a civil penalty. The Court finds Plaintiff's request for a civil penalty in the amount of \$10,000 well-taken.

Based on the above, the Court completely reinstates below the Findings of Facts, Conclusions of Law, and Orders that were originally included in the Court's Default Judgment, and also issues new orders based on the evidence presented via the Plaintiff's Damages Memo.

FINDINGS OF FACT

1. Defendant Alan Vohs is a natural person who resides at 2040 Ridge Rd., Zanesville, Ohio 43701.
2. Defendant was served with the summons and Complaint by certified mail on September 14, 2015.
3. At all times relevant to this action, Defendant Vohs used the fictitious name Alan Able Heating and Cooling.
4. Defendant Vohs registered Alan Able Heating and Cooling as a trade name with the Ohio Secretary of State in 1997.
5. Defendant Vohs failed to renew Alan Able Heating and Cooling as a trade name in 2007, which resulted in the Secretary of State of Ohio canceling Vohs' recording of the trade name.
6. At all times relevant to this action, Defendant engaged in the business of offering and providing repairs and services as Alan Able Heating and Cooling.
7. Defendant provided services ranging from the installation of new furnaces to repairs to refrigeration units.
8. In some instances, Defendant accepted payment for parts and services, but failed to install the parts and complete the services for which he was paid.
9. Despite promises to return and numerous calls from consumers, Defendant never returned to complete the services.
10. In some instances, Defendant performed repairs to heating and cooling units, but the units were still not operational after Defendant completed the repairs.
11. When consumers contacted the Defendant to complain about the shoddy work, Defendant promised to return to fix the issues.

12. Despite the repeated promises and subsequent calls from consumers, Defendant failed to correct the shoddy work.
13. To date, Defendant has failed to complete or correct the services for which he was paid and has failed to issue refunds to these consumers.
14. Defendant has conducted business in Ohio using a fictitious business name since 2007 that was not registered with the Ohio Secretary of State.

CONCLUSIONS OF LAW

15. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
16. 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 Muskingum County.
17. The Attorney General is the proper party to commence these proceedings under the authority provided him under R.C. 1345.01 *et seq.* and by virtue of his statutory and common law authority to protect the interests of the citizens of Ohio.
18. Defendant Vohs is a “supplier” as that term is defined in R.C. 1345.01(C), since Defendant engaged in the business of effecting “consumer transactions,” either directly or indirectly, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A), (C), and (D) of the CSPA.
19. Defendant committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) and Ohio Adm. Code 109:4-3-09, by accepting money from consumers for repairs and services on household goods and permitting eight weeks to elapse without delivering the promised services or issuing a full refund.

20. Defendant committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) by performing repairs and services on household goods in an incomplete, shoddy, or unworkmanlike manner, and failing to correct the work.

21. Defendant committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by failing to register with the Ohio Secretary of State his use of a fictitious business name, as required by R.C. 1329.01.

THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED THAT:

- 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., and the O.A.C. 109:4-3-01 et seq. in the manner set forth therein.
- B. Defendant, under his own name or any other name, his agents, representatives, salespeople, employees, successors, and assigns, and all persons acting on behalf of Defendant directly or indirectly, through any corporate or private device, partnership or association, are 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., and the O.A.C. 109:4-3-01 et seq.,
- C. Defendant is PERMANENTLY ENJOINED from engaging in business in the State of Ohio as a supplier until all judgment ordered remuneration is paid, including any outstanding unsatisfied judgments arising out of a prior consumer transaction.
- D. Defendant is ORDERED to maintain in his possession and control for a period of five (5) years all business records relating to Defendant's solicitation or effectuation of business in Ohio and to permit the Ohio Attorney General or his representative, upon reasonable, twenty-four (24) hour notice, to inspect and/or copy any and all of said records, however

stored, and further is ORDERED that copies of such records be provided at Defendant's expense to the Ohio Attorney General upon request of the Ohio Attorney General or his representatives;

E. Defendant is ORDERED to pay consumer damages to the Ohio Attorney General in the total amount of \$7,912.66 to be distributed by the Attorney General to the consumers identified in Exhibit 10 to Plaintiff's Damages Memo.

F. Pursuant to the above finding that Defendant committed unfair and deceptive acts and practices in violation of the CSPA, Defendant is ORDERED to pay a civil penalty to the Ohio Attorney General in the amount of \$10,000.00.

G. Defendant is ORDERED to pay court costs.

IT IS SO ORDERED.

3/1/16
DATE


JUDGE KELLY COTTRILL

Prepared by:

MICHAEL DEWINE
ATTORNEY GENERAL



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To Muskingum County Clerk of Court:

Please serve signed copies of the FINAL JUDGMENT ENTRY AND ORDER to:

Brandon C. Duck
Assistant Attorney General
Consumer Protection Section
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215

Alan Vohs
2040 Ridge Rd
Zanesville, OH 43701