

SANDUSKY COUNTY
COMMON PLEAS COURT
FILED

2016 JUN 14 AM 8:41

TRACY M. OVERMYER
CLERK

SANDUSKY COUNTY
COMMON PLEAS COURT
FILED

2016 MAY 23 AM 10:40

TRACY M. OVERMYER
CLERK

IN THE COURT OF COMMON PLEAS OF SANDUSKY COUNTY, OHIO

STATE OF OHIO, ex rel.
ATTORNEY GENERAL
MICHAEL DEWINE

Plaintiff,

vs.

NATHANIEL BIBB,
d/b/a Nate Bibb Construction

Defendant.

) Case No. 15CV1197

) Judge Barbara J. Ansted

) **OPINION AND JUDGMENT ENTRY**

State of Ohio, Sandusky County SS:
I hereby certify that this is a true copy of
the original document now on file in my
office this 23 day of June,
2016.

TRACY M. OVERMYER
Sandusky County Clerk of Courts

By Christy McWhorter
Deputy Clerk

This cause came to be heard upon the Plaintiff's Motion for Default Judgment against Nathaniel Bibb pursuant to Civ. R. 55(A). Plaintiff commenced this action with the filing of its Complaint on December 3, 2015 for violations of the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., its Substantive Rules, and the Home Solicitation Sales Act ("HSSA"), R.C. 1345.21 et seq. Service was obtained on the Defendant on January 21, 2016 when the Sandusky County Clerk mailed a copy of the complaint and summons by regular U.S. mail to Defendant's residential address after service by certified mail was unsuccessful. This regular mail was not returned, thus evidencing proper service pursuant to Civ. R. 4.6(D). More than twenty-eight (28) days after such service, Defendant has failed to answer or otherwise defend or appear in any manner during this action. Therefore, Plaintiff is entitled to a default judgment pursuant to Civ. R. 55(A).

The Court finds the Plaintiff's Motion for Default Judgment to be well taken and hereby GRANTS same. The Court makes the following Findings of Fact and Conclusions of Law:

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ATTORNEY GENERAL OF OHIO

JUN 30 2016

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

FINDINGS OF FACT

1. The actions of Defendant, hereinafter described, occurred in Sandusky County, Ohio.
2. Defendant is a natural person whose last known personal address is 6752 County Road 205, Bellevue, Ohio 44811.
3. Defendant has been at all times relevant to this action engaged in the business of selling home improvement services in the State of Ohio, including in Sandusky County.
4. Defendant sold home improvement services to consumers at a place other than the seller's place of business. These transactions took place at individual consumers' homes.
5. Defendant engaged in consumer transactions using the trade name Nate Bibb Construction, which was not registered with the Ohio Secretary of State.
6. Defendant performed residential home improvement services for consumers that included roofing, siding, insulation, porch and window replacement, drywall and ceiling repair.
7. Defendant performed home improvement services for consumers in a shoddy or unworkmanlike manner.
8. Defendant accepted substantial payments from consumers but failed to complete the work for which he was paid.
9. Defendant accepted substantial payments from consumers but failed to give refunds.
10. Defendant failed to include a proper Notice of Cancellation with the written agreement or offer to purchase that was given to consumers.

CONCLUSIONS OF LAW

11. This Court has jurisdiction over the subject matter of this action pursuant to R.C. 1345.04.

12. Venue is proper with this Court pursuant to Civ. R. 3(B)(1)-(3) in that Defendant resides in, has his principle place of business in, and some of the transactions complained of herein, and from which this action arose, occurred in Sandusky County.
13. Defendant is a "supplier" as that term is defined in R.C. 1345.01(C), as Defendant was, at all times relevant to this action, engaged in the business of effecting consumer transactions by selling home improvement services to individuals in Ohio, including in Sandusky County, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
14. Defendant is a "seller" as that term is defined in R.C. 1345.21(C) as Defendant, at all relevant times to this action, engaged in home solicitations of sales at a place other than the seller's place of business.
15. Defendant committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and O.A.C. 109:4-3-09 by accepting money from consumers for home improvement services and materials and permitting eight weeks to elapse without delivering the promised goods or services or issuing full refunds.
16. Defendant committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) by performing home improvement services in an incomplete, shoddy, or unworkmanlike manner.
17. Defendant committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1329.01 by failing to register with or report the trade name Nate Bibb Construction to the Ohio Secretary of State.

18. Defendant committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), and the HSSA, R.C. 1345.23(B), as set forth in R.C. 1345.28, by failing to include a proper Notice of Cancellation with the written agreement or offer to purchase.

ORDER

In its Motion, Plaintiff requested that consumer damages be awarded and a civil penalty be assessed against Defendant. After being duly advised on the matter, the Court finds Plaintiff's requests to be well-taken and hereby GRANTS same. Therefore, it is hereby ORDERED, ADJUDGED, and DECREED that:

19. The Plaintiff's request for a Declaratory Judgment that the types of acts and practices set forth above in the Conclusions of Law and Findings of Fact violate the CSPA, the O.A.C., and the HSSA is hereby GRANTED.
20. Defendant Nathaniel Bibb, doing business as Nate Bibb Construction or any other names, his officers, partners, agents, servants, representatives, salespersons, employees, successors or assigns, and all persons acting in concert and participation with him directly or indirectly through any corporate device, partnership or association, in connection with any consumer transactions, is PERMANENTLY ENJOINED from engaging in any unfair or deceptive acts or practices that violate the CSPA, R.C. 1345.01 et seq., and the HSSA, R.C. 1345.21, et seq., including, without limitation, the conduct described in the Conclusions of Law paragraphs 15 – 18.
21. Pursuant to R.C. 1345.07(B), Defendant is ordered to pay consumer damages in the total amount of Seventeen Thousand, Nine Hundred, Seventy-Nine Dollars and Seven Cents (\$17,979.07). 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 Services
Office of the Ohio Attorney General
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

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

Robert Gardner - \$3,811.00

Adair Kincer - \$8,500.00

Meredith Sender - \$1,387.50

Dianna Spoerr - \$4,280.57

22. Based on the above findings that Defendant committed unfair and deceptive acts and practices in violation of the CSPA and the HSSA, Defendant is ordered to pay civil penalties in the amount of Forty Thousand Dollars (\$40,000.00), 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 Services
Office of the Ohio Attorney General
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215

23. Defendant is ordered to pay all court costs.

6/13/16
Date


Judge

