

IN THE COURT OF COMMON PLEAS  
PERRY COUNTY, OHIO

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PERRY COUNTY

2016 NOV 18 PM 2:28

STATE OF OHIO ex rel.  
ATTORNEY GENERAL  
MICHAEL DEWINE

Plaintiff,  
v.

DAVID LEE MARSH, SR.  
DBA DAVID'S MOBILE HOME &  
WELL SERVICE, DM MOBILE  
HOME TRANSPORT and  
DAVID'S MOBILE HOME  
TRANSPORT AND REPAIR

Defendant.

Case No.: 16 CV 00195

Judge Boyer

CONSENT JUDGMENT AND  
AGREED FINAL ENTRY  
AND ORDER

RECEIVED  
ATTORNEY GENERAL OF OHIO

FEB 01 2017

CONSUMER PROTECTION SECTION  
PUBLIC INSPECTION FILE

PREAMBLE

This matter came to be heard upon the filing of a complaint by the Ohio Attorney General ("Plaintiff") alleging that the Defendant, David Lee Marsh, Sr. dba David's Mobile Home & Well Service, DM Mobile Home Transport, and David's Mobile Home Transport & Repair ("Defendant") violated Ohio's Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., and its Substantive Rules. The parties have agreed to settle and resolve the matters contained herein. By signing this Consent Judgment and Agreed Final Entry and Order (hereinafter "Consent Judgment"), Defendant submits to the personal jurisdiction of this Court, consents to the Court's findings of fact and conclusions of law, consents to the imposition of this Consent Judgment pursuant to R.C. 1345.07(F), and consents to the rights of Plaintiff to enforce this Consent Judgment.

This is a true and certified copy  
of the original on file  
PERRY COUNTY CLERK OF COURTS  
NEW LEXINGTON, OHIO  
By: *Valerie Shortt*  
Date: *November 18 2016*

### FINDINGS OF FACT

1. Defendant is a natural person residing at 3250 West State Route 22, Somerset, Ohio 43783.
2. The principal place of business for David's Mobile Home & Well Service, DM Mobile Home Transport, and David's Mobile Home Transport & Repair ("David's") is 400 West Main Street, Somerset, Ohio 43783.
3. Defendant is the owner and operator of David's and controlled and directed the business activities and sales conduct of David's causing, personally participating in, or ratifying the acts and practices of David's, as described herein and in the Complaint.
4. At all times relevant to this action, Defendant has been engaged in the business of advertising, soliciting, offering for sale, and selling goods and services to consumers.
5. Defendant accepted monetary deposits from consumers for the purchase of mobile home moving goods and services and failed to deliver some or all of those goods and services within eight weeks.
6. Defendant failed to refund some consumers' deposits or payments despite consumers' requests for refunds.
7. After receiving payment, Defendant sometimes began work but failed to complete the work.
8. Defendant's failure to perform contracted mobile home moving services in a proper manner has resulted in harm to consumers.
9. In some instances, Defendant collected full payments and/or deposits from consumers but Defendant did not do any work.

10. In some instances, Defendant performed partial work, did not timely complete the work, and the work he did perform was shoddy in nature and required a new contractor to fix the substandard work.
11. Defendant represented to at least one consumer that repairs were needed when they weren't.
12. Defendant also represented to at least one consumer that repairs were performed when they were not.
13. Defendant sometimes made false or misleading statements of opinion on which consumers relied to their detriment.
14. Defendant also refused to make refunds to consumers without justification.
15. Defendant continued to engage in consumer transactions while having unsatisfied judgments and legal obligations arising out of previous consumer transactions.

#### CONCLUSIONS OF LAW

11. Plaintiff is the proper party to commence these proceedings under the authority vested in him by R.C. 1345.07.
12. The actions of Defendant described above have occurred in Perry County and various other counties and are in violation of the CSPA, R.C. 1345.01 et seq. and its Substantive Rules, O.A.C. 109:4-3-01 et seq.
13. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
14. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1)-(3) in that Perry County, Ohio is the county in which Defendant resides, where he has his principal place

of business, and where he conducted some of the transactions complained of in the Complaint.

15. Defendant is a "supplier" as defined in R.C. 1345.01(C) since Defendant was, at all times relevant hereto, engaged in the business of effecting consumer transactions either directly or indirectly by soliciting and selling goods or services to consumers in the state of Ohio for purposes that were primarily for personal, family, or household use, within the meaning specified in R.C. 1345.01(A).
16. Defendant committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02, and the Failure to Deliver Rule, O.A.C. 109:4-309(A)(2), by accepting money from consumers for goods and services and permitting eight weeks to elapse without delivering the promised goods or services or making a full refund.
17. Defendant committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by performing shoddy and substandard work and then failing to correct such work.
18. Defendant committed unfair or deceptive acts and practices in violation of the Repairs or Services Rule, O.A.C. 109:4-3-05(D)(8) and (9) and the CSPA, R.C. 1345.02(A), by representing that repairs or services were necessary when they were not or by representing that repairs or services have been performed when they have not.
19. Defendant committed unconscionable acts and practices in violation of the CSPA, R.C. 1345.03(A), as set forth in R.C. 1345.03(B)(6), by making false or misleading statements of opinion on which consumers have relied to their detriment, in connection with consumer transactions.

20. Defendant committed unconscionable acts or practices in violation of the CSPA, R.C. 1345.03(A), by refusing to make refunds without justification.
21. Defendant has committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by engaging in consumer transactions while having unsatisfied judgments and legal obligations arising out of previous consumer transactions.

### **ORDER**

#### **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

- A. The Court hereby DECLARES that the acts and practices described in Plaintiff's Complaint and as described above in the Findings of Fact and Conclusions of law violate the CSPA, R.C. 1345.01 et seq., in the manner set forth in this Consent Judgment.
- B. Defendant is PERMANENTLY ENJOINED from soliciting consumers either directly or indirectly to enter into contracts for mobile home transport and repair services for a fee or any other injunctive relief as the court deems to be just, equitable, and appropriate.
- C. Defendant is ORDERED to pay \$23,188.26 to the State to be used for payment of the consumer damages enumerated in Addendum A. Payment of this monetary amount shall be made in the following manner:
- 1) Seventeen consecutive monthly installments of \$1,288.24, with the first monthly payment due on January 1, 2017 and the subsequent payments due on the 1st of each successive month, continuing until all seventeen payments are made;

- 2) One final payment of \$1,288.18 due also on the 1<sup>st</sup> of the month.
- 3) Each separate payment shall be made by delivery of a certified check or money order, payable to the "Ohio Attorney General's Office," delivered to the following address:

Finance Assistant  
Consumer Protection Section  
Ohio Attorney General's Office  
30 E. Broad St., 14<sup>th</sup> Floor  
Columbus, Ohio 43215

D. Defendant is ORDERED to pay Thirty Thousand Dollars (\$30,000.00) to the State Consumer Protection Enforcement Fund. Twenty-Five Thousand Dollars shall be suspended upon successful completion of payment of consumer restitution as set forth in Paragraph C. Payment of this monetary amount shall be made in the following manner:

- 1) Eleven consecutive monthly installments is \$416.67, with the first monthly payment due on June 1, 2018 and the subsequent payments due on the 1<sup>st</sup> of each successive month, continuing until all eleven payments are made;
- 2) One final payment of \$416.63 due also on the 1<sup>st</sup> of the month.
- 3) Each separate payment shall be made by delivery of a certified check or money order, payable to the "Ohio Attorney General's Office," delivered to the following address:

Finance Assistant  
Consumer Protection Section  
Ohio Attorney General's Office  
30 E. Broad St., 14<sup>th</sup> Floor  
Columbus, Ohio 43215

- E. It is further ORDERED that if the Defendant fails to deliver any payment due hereunder to Plaintiff in accordance with the payment schedule ordered herein, all remaining payments shall immediately become due and payable hereunder.
- F. It is further ORDERED that the acceptance of any payment by the Plaintiff subsequent to the time it is due pursuant to Paragraphs C and D or the failure of the Plaintiff to insist on strict performance of any order contained within this Consent Judgment including, but not limited to, the obligation created by the acceleration provision in Paragraph E of this Consent Judgment, shall not be construed as a waiver of any of the obligations created by this Consent Judgment.
- G. It is further ORDERED that in the event Plaintiff must initiate legal action or incur any costs to compel the Defendant to abide by this Consent Judgment, Defendant shall be liable to the Plaintiff should he prevail, for all related enforcement costs, including, but not limited to, a reasonable sum for attorney's fees and investigatory costs.
- H. It is hereby ORDERED that this Consent Judgment does not resolve or preclude any investigation or enforcement action against Defendant for occurrences which are not the subject matter of this Consent Judgment, or which may transpire after the filing of the Consent Judgment, under any authority granted to the Ohio Attorney General. This Consent Judgment only resolves the issues relating to the allegations brought forth in the civil complaint filed by the Plaintiff in this matter.
- I. Defendant is ORDERED to pay all court costs.

J. This Court shall retain jurisdiction to enforce compliance with this Consent Judgment.

**IT IS SO ORDERED.**

11/18/16

DATE

Jana M. Boyer

JUDGE BOYER

**APPROVED AND AGREED TO BY:**

**PLAINTIFF**

**MICHAEL DEWINE**

**ATTORNEY GENERAL OF OHIO**

Jennifer Mildren

JENNIFER MILDREN (0087564)

Assistant Attorney General

Consumer Protection Section

30 E. Broad St., 14<sup>th</sup> Floor

Columbus, OH 43215

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[Jennifer.mildren@ohioattorneygeneral.gov](mailto:Jennifer.mildren@ohioattorneygeneral.gov)

11-18-16

DATE

**DEFENDANT**

David Lee Marsh

David Lee Marsh, Sr. dba David's  
Mobile Home & Well Service and  
David's Mobile Home Transport  
& Repair.

3250 West State Route 22

Somerset, OH 43783

Phone- 740-607-9600

11-18-16

DATE



**ADDENDUM A**

**CONSUMER RESTITUTION LIST**

Last Name	First Name	Amount
Crader	Roger	\$456.33 (remaining from prior Consent Judgment)
Randall	Ryan	\$362.59 (remaining from prior Consent Judgment)
Richardson	Mary	\$2,612.34 (remaining from prior Consent Judgment)
Beachy	Nick	\$1,000.00
Blair	Stephan	\$675.00
Kahle	Larry	\$2,060.00
Carrol	Phyllis	\$2,750.00
Reddy	Lorna	\$1,172.00
Ray	Scott	\$1,400.00
Ross	Summer	\$600.00
Michelle	Thomas	\$5,200.00
Estes	Brenda	\$2,500.00
Johnson	Tyler	\$2,400.00
<b>TOTAL</b>		<b>\$23,188.26</b>