

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STATE OF OHIO ex rel. OHIO
ATTORNEY GENERAL MICHAEL
DEWINE

Plaintiff,

v.

DAVID M. NELSON, et al.

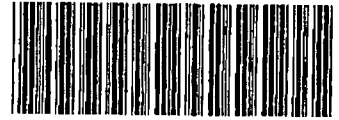
Defendants

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Case No. A 1602945

Judge Winkler

FINAL JUDGMENT ENTRY AND
ORDER



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ENTERED

APR 26 2017

Plaintiff commenced this action with the filing of its Complaint on May 19, 2016. The Complaint alleged causes of action under the Consumer Sales Practices Act ("CSPA") and Home Solicitation Sales Act ("HSSA") against Defendants David M. Nelson and American Property Claims Specialist LLC ("Defendants"). The Defendants were served via process server.

Defendants failed to respond within the twenty-eight days allotted under the rules. A Default Judgment and Damages hearing was held by Magistrate Bachman. Plaintiff's counsel appeared before the Court and consumer affidavits were admitted into evidence. The Defendants did not appear at the hearing. On March 29, 2017, the Magistrate issued a Magistrate's Decision granting Plaintiff's Motion for Default Judgment. No objections have been made to the Magistrate's Decision.

Based on the above, the Court affirms the Magistrate's Decision granting Plaintiff's Motion for Default Judgment and renders the following Final Judgment Entry and Order against the Defendants.

FINDING OF FACTS

The Court finds the following facts:

1. Defendant Nelson is the owner of American Property Claims Specialists LLC.

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ATTORNEY GENERAL OF OHIO

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CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

2. Defendant Nelson controlled and directed the business activities and sales conduct of American Property Claims Specialists, causing, personally participating in, or ratifying the acts and practices of it as described in the Complaint.
3. Defendants solicited consumers and accepted payments for home improvement goods and services within multiple counties in Ohio, including Hamilton County.
4. Defendants solicited and sold home improvement goods and services at the residences of buyers.
5. Defendants did not notify consumers of their cancellation rights.
6. Defendants did not provide consumers with a notice of cancellation.
7. Consumers attempted to cancel their contracts with the Defendants.
8. The Defendants refused to honor consumers' cancellation requests.
9. Defendants accepted monetary deposits from consumers for the purchase of home improvement goods and services and failed to deliver those goods and services and have refused to refund consumers' deposits or payments.
10. Defendants performed substandard, shoddy, and incomplete work and have failed to fix or complete the substandard, shoddy, and incomplete work.
11. Defendants' failure to perform contracted services in a proper manner has resulted in harm to consumers and required the consumers to pay additional money to have the Defendants' work corrected and/or to complete the work Defendants were supposed to do.

CONCLUSIONS OF LAW

1. The actions of Defendants are in violation of the Consumer Sales Practices Act, R.C. 1345.01 *et seq.*, and the Home Solicitation Sales Act, R.C. 1345.21 *et seq.*

2. This Court has subject matter jurisdiction over this action pursuant to R.C. 1345.04 because the claims in this Complaint arise from consumer transactions subject to R.C. 1345.01 *et seq.*
3. Venue is proper with this Court, pursuant to Ohio Civ. R. 3(B)(1)-(3), because Defendants resided in, operated their business from, and engaged in the transactions complained of herein in Hamilton County.
4. Defendants are “suppliers” as that term is defined in R.C. 1345.01(C), as they were engaged in the business of effecting consumer transactions by soliciting and providing goods to individuals for purposes that were primarily personal, family, or household within the meaning specified in R.C. 1345.01(A) and (D).
5. Defendants were at all relevant times “sellers” engaged in the business of effecting home solicitation sales by soliciting and selling home improvements to “buyers” at the buyers’ personal residences in the State of Ohio, Hamilton County and various other counties, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.21(A) and (E).
6. Defendants engaged in “consumer transactions” by offering for sale and selling motor vehicles for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
7. Defendants committed unfair and deceptive acts and practices in violation of the Failure to Deliver Rule, O.A.C. 109:4-3-09(A) and the CSPA, R.C. 1345.02(A), by accepting money from consumers for goods or services and then permitting eight weeks to elapse without making shipment or delivery of the goods or services ordered, 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.

8. Defendants committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by performing substandard, shoddy, and incomplete work and then failing to correct such work.
9. Defendants violated the CSPA, R.C. 1345.02 and the HSSA, R.C. 1345.23, by failing to give proper notice to consumers of their right to cancel their contract by a specific date and by failing to give consumers a cancellation form.
10. Such acts or practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 *et seq.* The Defendants committed the 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** that:

1. Plaintiff's request for a Declaratory Judgment is hereby granted as each act or practice of the Defendants violated the CSPA as described in the Complaint and in this Order.
2. Defendants, and all persons acting on behalf of them, directly or indirectly, through any corporate or private device, partnership or association, are permanently enjoined from further violating the CSPA.
3. Defendants are liable for consumer restitution in the amount of \$48,279.65, to be paid to and distributed by the Ohio Attorney General's Office to the following consumers:

Last Name	First Name	City	Amount
Brown	Doug	Cincinnati	\$4,776.34

Dutton	Timotthy	Cincinnati	\$7,100.30
Flesher	Allison	Cincinnati	\$6,259.17
Howard	Karen	Milford	\$3,835.14
James	Christine	Cincinnati	\$1,220.00
Kennedy-Johnson	Angela	Cincinnati	\$3,389.86
Madaris	Maurice	Cincinnati	\$2,524.91
Norrick	Nancy	West Chester	\$10,348.42
Noyes	Michael	Cincinnati	\$1,584.40
Odle	Michelle	Cincinnati	\$3,400.05
Pfaltzgraff	Mark	Cincinnati	\$2,437.41
Ruberg	Kenneth	Cincinnati	\$1,403.65

4. Defendants shall pay a civil penalty of \$50,000, pursuant to R.C. 1345.07(D).
5. Defendants are enjoined from engaging in any consumer transaction as a Supplier in the home improvement business in the State of Ohio until they have satisfied all monetary obligations hereunder.
6. Defendants shall pay all court costs associated with this matter (currently \$341.00).

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<p>IT IS SO ORDERED</p> <p>COURT OF COMMON PLEAS ENTER</p> <p><i>Winkler</i></p> <p>HON. ROBERT C. WINKLER</p> <p>THE CLERK SHALL SERVE NOTICE TO PARTIES PURSUANT TO CIVIL RULE 58 WHICH SHALL BE TAXED AS COSTS HEREIN.</p> <p>JUDGE WINKLER</p>
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MAGISTRATE

APR 24 2017

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