

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

STATE OF OHIO ex rel.)	CASE NO. 17 CV 004412
OHIO ATTORNEY GENERAL)	
MICHAEL DEWINE)	JUDGE CHRIS M. BROWN
)	
Plaintiff,)	
)	
v.)	<u>FINAL JUDGMENT ENTRY</u>
)	<u>AND ORDER</u>
JAMES DINKINS, individually)	RECEIVED
and dba DINKINS MASONRY)	ATTORNEY GENERAL OF OHIO
)	
)	SEP 01 2017
)	
Defendant.)	CONSUMER PROTECTION SECTION
		PUBLIC INSPECTION FILE

This cause came to be heard upon Plaintiff State of Ohio, ex rel. Attorney General Michael DeWine's Motion for Default Judgment against Defendant James Dinkins. Defendant James Dinkins, dba Dinkins Masonry ("Defendant"), was properly served in this matter and has failed to plead or file an answer to Plaintiff's Complaint, or defend against this matter in any manner. The Court finds the motion well taken and hereby grants and sustains Plaintiff's Motion for Default Judgment against Defendant James Dinkins. The Court, based upon that motion, Plaintiff's Complaint, Plaintiff's Memorandum in Support of Damages, and the consumer affidavits attached to the Memorandum, hereby renders the following Default Judgment Entry.

FINDINGS OF FACT

1. The actions of Defendant, hereinafter described, have occurred in Franklin County and other counties in Ohio.
2. Defendant is a natural person residing at 131 W. 2nd Street, Logan, Ohio 43138.

3. At all times relevant to this action, Defendant was the sole owner and operator of Dinkins Masonry, a business located at 131 W. 2nd Street, Logan, Ohio 43138.
4. Defendant's business, Dinkins Masonry, is not registered with the Ohio Secretary of State.
5. Defendant accepted monetary deposits or full payment from consumers for the purchase of masonry services, including concrete and asphalt paving, and failed to deliver some of those services within eight weeks.
6. In some instances, Defendant began to provide the contracted services after receiving initial payment from the consumer, but failed to complete the work.
7. In some instances, Defendant began to provide the contracted services but did not complete the contract and performed the work in a shoddy and substandard manner, resulting in additional repair costs for the consumers.
8. After accepting consumers' payments and failing to deliver the services, Defendant failed to refund consumers' payments or deposits.
9. At the time of the transactions, Defendant failed to provide consumers with proper notice of cancellation forms describing their right to cancel the transactions.
10. On January 15, 2017, Defendant signed an Assurance of Voluntary Compliance ("AVC") with the Consumer Protection Section of the Ohio Attorney General's Office, which included an agreement that Defendant would make monthly restitution payments to the Attorney General to be distributed to consumers affected by Defendant's conduct.
11. Defendant has violated the terms of the AVC that was agreed upon with the Consumer Protection Section of the Ohio Attorney General's Office and deemed effective on January 20, 2017.

CONCLUSIONS OF LAW

1. Jurisdiction over the subject matter of this action lies with this Court pursuant to the Consumer Sales Practices Act ("CSPA"), R.C. 1345.04.
2. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3) in that many of the transactions complained of herein, and out of which this action arose, occurred in Franklin County, Ohio.
3. Defendant is a "supplier" as that term is defined in R.C. 1345.01(C), as he engaged in the business of effecting or soliciting consumer transactions for purposes that are primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
4. Defendant was at all times relevant herein, engaged in "home solicitation sales" as that term is defined in the Home Solicitation Sales Act ("HSSA"), R.C. 1345.21(A), as he engaged in personal solicitations at the residences of consumers, including solicitations in response to or following invitations by consumers.
5. Defendant committed unfair and deceptive acts or 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 and 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 goods or services of equal or greater value as a good faith substitute.
6. Defendant has committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by performing home improvement services in an incomplete, shoddy, or substandard manner, and then failing to correct or complete such work.

7. The acts or practices described in Conclusions of Law ¶6 have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).
8. Defendant committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by failing to register or report his use of a fictitious business name to the Ohio Secretary of State, as required under R.C. 1329.01.
9. The acts or practices described in Conclusions of Law ¶8 have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).
10. Defendant has committed unfair, deceptive, and unconscionable acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A), by violating the terms of an AVC, including the agreement that Defendant would make monthly restitution payments to the Attorney General to be distributed to consumers affected by Defendant's conduct.
11. Pursuant to R.C. 1345.06(F), evidence of a violation of an AVC is prima-facie evidence of an act or practice in violation of the CSPA, R.C. 1345.01 et seq., if presented after the violation in an action brought under the CSPA, R.C. 1345.01 et seq.
12. Defendant violated the HSSA, R.C. 1345.23 and R.C. 1345.02(A), by failing to give a proper notice to consumers of their right to cancel their contract by a specific date.
13. The acts or practices described in Conclusions of Law ¶12 have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendant

committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

ORDER

- A. Plaintiff's request for Declaratory Judgment is Granted, it is therefore DECLARED that the acts and practices set forth above violate the CSPA, its Substantive Rules, and the HSSA in the manner set forth in the Findings of Fact and Conclusions of Law.
- B. Defendant James Dinkins, acting under his own name or any other name, and all persons acting on behalf of Defendant directly or indirectly, through any corporate or private device, partnership or association, jointly and severally, are hereby PERMANENTLY ENJOINED from engaging in the acts or practices listed in Conclusions of Law ¶¶ 5, 6, 8, 10, and 12, and from further violating the CSPA, R.C. 1345.01 et seq., its Substantive Rules, and the HSSA, R.C. 1345.21 et seq.
- C. Defendant James Dinkins is further ENJOINED from acting as a "supplier" as that term is defined in R.C. 1345.01(C) by engaging in any consumer transactions in the State of Ohio until such a time as he has satisfied all monetary obligations due under this Final Judgment Entry and Order.
- D. Defendant James Dinkins is ORDERED to pay consumer restitution to the Ohio Attorney General in the total amount of Four Thousand Seven Hundred Dollars (\$4,700.00) to be distributed by the Attorney General to the following consumers:
 - 1. Scott Adkins, \$400.00
 - 2. Tim Pitmann, \$2,400.00
 - 3. Adam Smith, \$350.00
 - 4. Annette Trembly, \$1,150.00

5. Ryan Vetter, \$400.00

Payment shall be made payable to the "Ohio Attorney General" and sent by certified check or money order within seven (7) day of this order to:

**Financial Assistant
Office of Ohio Attorney General Mike DeWine
Consumer Protection Section
30 E Broad St., 14th Floor
Columbus, Ohio 43215**

E. Defendant James Dinkins is ORDERED to pay civil penalties to the Ohio Attorney General in the total amount of Twenty-Five Thousand Dollars (\$25,000). Payment shall be made payable to the "Ohio Attorney General" and sent by certified check or money order within seven (7) day of this order to:

**Financial Assistant
Office of Ohio Attorney General Mike DeWine
Consumer Protection Section
30 E Broad St., 14th Floor
Columbus, Ohio 43215**

F. Defendant James Dinkins is ORDERED to pay all court costs associated with this matter.

IT IS SO ORDERED

DATE

JUDGE CHRIS BROWN

Franklin County Court of Common Pleas

Date: 08-30-2017
Case Title: OHIO ATTORNEY GENERAL -VS- JAMES DINKINS
Case Number: 17CV004412
Type: DEFAULT JUDGMENT FOR CASE

It Is So Ordered.

A handwritten signature in black ink, appearing to read 'Ch. Brown', is written over a circular official seal. The seal features a central emblem with a scale of justice and a sword, surrounded by the text 'FRANKLIN COUNTY OHIO' and 'CLERK OF COURTS'.

/s/s Judge Christopher M. Brown