

IN THE COURT OF COMMON PLEAS
FAYETTE COUNTY, OHIO

2017 NOV 30 PM 3:39

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

Plaintiff,

v.

JAMES M. DAY,
DBA M&D Construction and
DBA M&D Improvements

Defendant.

CASE NO. CVH 20170031

JUDGE BEATHARD

FINAL JUDGMENT
ENTRY AND ORDER

RECEIVED
ATTORNEY GENERAL OF OHIO

DEC 11 2017

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

Plaintiff commenced this action with the filing of its Complaint on February 3, 2017. The Complaint and Court summons were served upon Defendant on February 10, 2017 by certified mail and signed for by the Defendant. On March 31, 2017 Defendant filed an Answer to Plaintiff's Complaint. On August 11, 2017, Plaintiff filed a motion for summary judgment, to which Defendant did not respond. The Court sustained Plaintiff's motion on November 1, 2017. Based upon the evidence of record, the Court hereby makes the following Findings of Facts and Conclusions of Law.

FINDINGS OF FACT

1. Defendant James M. Day is a natural person residing at 13812 State Route 41, Jeffersonville, Ohio 43128.
2. At all times relevant to this action, Defendant used the fictitious names M & D Construction and M & D Improvements.

3. Defendant engaged in the business of offering and providing home improvement goods and services under the fictitious names M & D Construction and M & D Improvements.
4. Defendant failed to register the fictitious names "M & D Construction" and "M & D Improvements" with the Ohio Secretary of State.
5. Defendant engaged in the business of providing goods and services to consumers, including remodeling and demolition services, and failed to deliver some of those goods and services within eight weeks.
6. Defendant has refused to refund 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 provided shoddy and substandard home repair services to consumers and then failed to correct such services.
9. Defendant represented to consumers that he would provide the ordered goods and services within an estimated time and then failed to provide such goods and services in the time promised.
10. At the time of the transactions, Defendant failed to notify consumers of their rights to cancel the transaction, or to provide consumers with notices of cancellation forms describing the consumers' right to cancel the transactions.

CONCLUSIONS OF LAW

11. The Court has jurisdiction over the subject matter, issues and parties to this Judgment and venue is proper.
12. Plaintiff, State of Ohio, by and through its counsel, the Attorney General of Ohio, Michael DeWine, brought this action in the public interest and on behalf of the State of Ohio under the authority vested in him by R.C. 1345.01 *et seq.*
13. The actions of Defendant, hereinafter described, have occurred in the State of Ohio, in Fayette and Clinton Counties and, as set forth below, are in violation of the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01, *et seq.* and the Home Solicitation Sales Act ("HSSA"), R.C. 1345.21.
14. Defendant is a "supplier," as that term is defined in R.C. 1345.01(C), as he engaged in the business of effecting "consumer transactions" by soliciting consumers either directly or indirectly for home remodeling and repair goods and services for a fee, within the meaning of R.C. 1345.01(A).
15. Defendant committed unfair and deceptive acts or practices in violation of R.C. 1345.02 and O.A.C. 109:4-3-09 by accepting money from consumers for goods and services and failing to make full delivery of said service or providing a refund.
16. Defendant committed unfair and deceptive acts or practices in violation of R.C. 1345.02 by performing his work in a shoddy, substandard, and unworkmanlike manner.

17. Defendant committed unfair and deceptive acts or practices in violation of R.C. 1345.02(A) and R.C. 1345.21 *et seq.* by failing to provide consumers with oral or written notices of the consumers' right to cancel their transactions.

18. Defendant committed the above violations after decisions determining that such conduct was in violation the Consumer Sales Practices Act, R.C. 1345.01 *et seq.* were available for public inspection pursuant to R.C. 1345.05(A)(3).

ORDER

THEREFORE, IT IS ORDERED, ADJUDGED, and DECREED that:

- A. Declaratory Judgment is hereby made that each act or practice complained of in the four counts of Plaintiff's Complaint violate the CSPA, its Substantive Rules, and the HSSA, in the manner set forth in the Complaint.
- B. Defendant James M. Day, his agents, servants, employees, successors or assigns, and all persons acting in concert and participation with him, directly or indirectly, through any corporate device, partnership, or other association, under these or any other names, is hereby permanently enjoined from engaging in the acts and practices of which Plaintiff complains 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 M. Day is hereby ordered to pay, pursuant to R.C. 1345.07(B), consumer damages in the amount of \$18,200. Defendant shall make his payment to the Consumer Protection Section of the Office of the Ohio Attorney General and such shall be distributed to the consumers, consistent with Exhibit 4 to the Motion for Summary

Judgment, as follows: \$8,250 to Consumer David Evans, \$7,800 to Consumer Angel Navarette, and \$2,150 to Consumer Mark Wical.

D. Defendant James M. Day is hereby assessed a civil penalty in the amount of Ten Thousand Dollars (\$10,000) for the violations described herein, pursuant to R.C. 1345.07(D).

E. Defendant James M. Day is assessed all costs in this action.

SO ORDERED.

DATE

11/30/17



JUDGE BEATHARD