

IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

STATE OF OHIO, ex rel.  
MICHAEL DEWINE,

Plaintiff,

-vs-

MR. ROOTER OF YOUNGSTOWN,  
et al.,

Defendants

CASE NO. 15CV2856

JUDGE JOHN M. DURKIN

JOINT CONSENT JUDGMENT  
AND FINAL AGREED ENTRY  
AND ORDER OF PARTIES

PREAMBLE

This matter came upon the filing of a complaint and subsequent pleadings by Plaintiff, the Attorney General of Ohio, on October 29, 2015, charging Defendants Mr. Rooter of Youngstown and Joseph Kijowski (hereinafter "Defendants") with violations of the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., and its Substantive Rules, Ohio Adm. Code ("O.A.C.") 109:4-3-01 et seq. Defendants filed an Answer to the Complaint, and since that time the Plaintiff and Defendants have discussed the issues set forth in the Complaint and have agreed to settle and resolve all remaining matters contained herein and all claims alleged against Defendants. By signing this Consent Judgment and Agreed Entry and Order ("Consent Judgment"), Defendants hereby submit to the personal jurisdiction of the Court, consent to the entry of this Consent Judgment pursuant to R.C. 1345.07 and to the imposition of this Consent Judgment and the rights of Plaintiff to enforce same. Any service of process issues or other defects are hereby waived.

**RECEIVED**  
ATTORNEY GENERAL OF OHIO

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CONSUMER PROTECTION SECTION  
PUBLIC INSPECTION FILE

### FINDINGS OF FACT

1. Defendant Mr. Rooter of Youngstown is the business operated by JP Mcal, LLC, which holds the franchise agreement with Mr. Rooter Corporation, an Ohio corporation registered with the Ohio Secretary of State and located at 97 Karago Ave., Unit 1, Boardman, Ohio 44512.
2. Defendant Joseph Kijowski is the Operations Manager of Defendant Mr. Rooter of Youngstown.
3. Defendants solicited and sold plumbing and home improvement services at the residences of Ohio consumers in Mahoning County as well as other counties in the State of Ohio.
4. Defendants accepted payments for plumbing and home improvement services which were, at times, unsatisfactory to Ohio consumers.
5. Defendants failed to give sufficient, separate notice to consumers of their right to/how to cancel the contracts.
6. Defendants commenced home improvement services within the three-day period afforded to consumers to cancel the contract.
7. Defendants failed to inform consumers of their right to receive an oral or written estimate of the anticipated cost of the repair or service.
8. Defendants at times represented that repairs or services were necessary when such was not the fact.

### CONCLUSIONS OF LAW

1. Plaintiff is the proper party to commence these proceedings under the authority vested in him by R.C. 1345.07 and by virtue of his statutory and common law authority to protect the interests of the citizens of Ohio.

2. The actions of Defendants, as described above, occurred in Mahoning County and other counties in the State of Ohio, and are in violation of the CSPA, R.C. 1345.01 et seq., its Substantive Rules, and the Home Solicitation Sales Act ("HSSA"), R.C. 1345.21 et seq.
3. Jurisdiction over the subject matter of this action lies with this Court pursuant to the CSPA, R.C. 1345.04.
4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3) in that Defendants' business is located in Mahoning County.
5. Defendants are "suppliers" as that term is defined in R.C. 1345.01(C).
6. Defendants are "sellers" engaged in the business of effecting home solicitation sales by soliciting and selling home improvements to "buyers" at the buyers' personal residences in Mahoning County and other counties for purposes which were primarily personal, family or household within the meaning specified in R.C. 1345.21(A) and (E) of the HSSA.
7. Defendants commenced home improvement services within the three-day period afforded to consumers to cancel the contract, contrary to and in violation of Ohio and Federal law; R.C. 1345.22(A) and (B) and 16 C.F.R. 429.1, respectively.
8. Defendants committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02 and O.A.C. 109:4-3-05(D)(12) by failing to provide consumers with the identity of the individual performing the repair or service.
9. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02 and O.A.C. 109:4-3-05(C)(1), by failing, upon initial contact with the consumer, to inform the consumer of the consumer's right to receive an oral or written estimate of the anticipated cost of the repair or service.

10. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02 and O.A.C. 109:4-3-05(D)(8), by representing that repairs or services were necessary when such was not the fact.
11. Defendants have committed deceptive acts or practices by failing to give proper notice to consumers of their right to cancel the contract by a specific date and by failing to give consumers a separate cancellation form in violation of R.C. 1345.23(B).

### ORDER

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

- A. The Court hereby **DECLARES** that the acts and practices described in the Findings of Fact and Conclusions of Law violate the CSPA, its Substantive Rules and the HSSA in the manner set forth in this Consent Judgment.
- B. Defendants Mr. Rooter of Youngstown and Joseph Kijowski, their agents, partners, representatives, salespersons, employees, successors and assigns, and all persons acting in concert and participation with them, directly or indirectly, through any corporate device, partnership or association, and in connection with any consumer transaction, are hereby **PERMANENTLY ENJOINED** from violating the CSPA, R.C. 1345.01 et seq., its Substantive Rules; and the HSSA, R.C. 1345.21 et seq., unless Defendants meet any of the exceptions to a "home solicitation sale" as set forth in R.C. 1345.21(A).
- C. Pursuant to R.C. 1345.07(B), Defendants are **ORDERED**, jointly and severally, to pay \$45,000.00 to the State to be used for consumer restitution, the distribution of which will be made by the State in accordance with Addendum A, attached hereto and fully

incorporated herein. Payment of this monetary amount shall be submitted to Plaintiff as follows:

- 1) \$10,000.00 shall be submitted within sixty (60) days of the execution of this Consent Order by the parties.
- 2) \$35,000.00 shall be submitted in equal monthly payments of \$1,000.00/month for thirty-five months; the first monthly payment shall be due on the fifteenth (15<sup>th</sup>) of the month, no sooner than ninety (90) days after the execution of this Consent Order by the parties, and the subsequent payments shall be due on the 15<sup>th</sup> of each successive month, continuing until the full restitution amount has been paid.
- 3) Defendants acknowledge these monthly payments represent the *minimum* obligation they must meet for the repayment of restitution; they are free to make accelerated payments without penalty.

D. Defendants are hereby **ORDERED**, jointly and severally, to pay a civil penalty in the amount of Fifty Thousand Dollars (\$50,000.00), pursuant to R.C. 1345.07(D). Thirty-five thousand dollars (\$35,000.00) of this penalty shall be suspended so long as the Defendants remain in full and timely compliance with all provisions of this Consent Judgment Entry, including the payment schedule as set forth herein. Payment of the non-suspended civil penalty amount of \$15,000.00 shall be submitted to Plaintiff as follows:

- 1) Commencing on the fifteenth (15<sup>th</sup>) day of the month following the last payment made pursuant to Paragraph C above, Defendants shall submit to Plaintiff monthly payments of \$1,250.00/month, on the fifteenth day of each month, until the full non-suspended civil penalty of \$15,000.00 has been paid.

E. Defendants hereby agree that the consumer restitution ordered above in Paragraph C is not dischargeable under 11 USC §523(a)(2) in any current or any future bankruptcy proceedings. Defendants further agree that if any Bankruptcy Court determines that the consumer restitution described in Paragraph C is indeed dischargeable, then the suspended portion of the civil penalty described in Paragraph D will no longer be given effect, and payment of the full civil penalty of \$50,000.00 shall be immediately due and owing within thirty days of the Bankruptcy Court's determination, without need for any further petition to this Court.

F. All payments contemplated herein shall be made via delivery of a certified check or money order, payable to "Ohio Attorney General's Office," and 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, OH 43215

G. It is further **ORDERED** that if the Defendants fail to timely deliver any payment (whether restitution or civil penalty) due hereunder in accordance with the payment schedule herein, all remaining payments shall immediately become due and payable hereunder, without need for any further petition to this Court.

H. It is further **ORDERED** that the acceptance of any payment by the Plaintiff subsequent to the time it is due herein, 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 G of this Consent

Judgment) shall not be construed as a waiver of any of the obligations created by this Consent Judgment.

- I. It is further **ORDERED** that in the event Plaintiff must initiate legal action or incur any costs to compel the Defendants to abide by this Consent Judgment, Defendants shall be liable to the Plaintiff should he prevail, for all related enforcement costs, including, but not limited to, a reasonable sum for attorneys' fees and investigatory costs.
- J. It is hereby **ORDERED** that this Consent Judgment does not resolve or preclude any investigation or enforcement action against Defendants for occurrences which are not the subject matter of this Consent Judgment, or which may transpire after the filing of this Consent Judgment, under any authority granted to the Ohio Attorney General. This Consent Judgment resolves only the issues relating to the allegations brought forth in the civil complaint filed by the Plaintiff in this matter.
- K. Defendants shall not represent, directly or indirectly, that the Court or the Plaintiff has sanctioned, condoned, or approved any part or aspect of the Defendants' business operations.
- L. Defendants are **ORDERED** to pay all court costs.
- M. This Court shall retain jurisdiction to enforce compliance with this Consent Judgment.

IT IS SO ORDERED

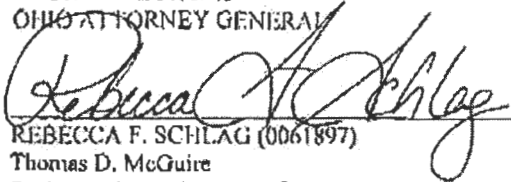
THE CLERK SHALL SERVE NOTICE  
OF THIS ORDER UPON ALL PARTIES  
WITHIN THREE (3) DAYS PER CIVIL RULE 6

JUDGE JOHN DURKIN

DATE

PREPARED, APPROVED AND AGREED TO BY:

MICHAEL DeWINE  
OHIO ATTORNEY GENERAL



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Trial counsel for Plaintiff State of Ohio

December 28, 2017  
DATE



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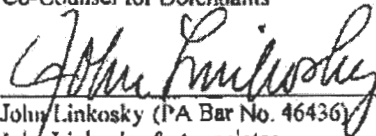
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Co-Counsel for Defendants

December 27, 2017  
DATE



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Co-Counsel for Defendants

12/19/17  
DATE



## **ADDENDUM A**

Virginia Allen  
Joan Benninger  
Nancy Campana  
Ronald Charlier  
Victoria Dangerfield  
Nicholas Depizzio  
Joseph Diorio  
Gwendolyn Dricken  
Gary Farrant  
Brenda Golec  
Ruth Hogue  
Vince Julian  
Bonnie Kelecava  
Peter Kuhn  
Michael Malarcik  
Nichole Morse  
James Murphy  
Sandra Peebles  
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