

IN THE COURT OF COMMON PLEAS
MUSKINGUM COUNTY, OHIO

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

PLAINTIFF,

v.

ALAN VOHS

DEFENDANT.

CASE NO. CH2017-0170

JUDGE KELLY COTTRILL

FINAL JUDGMENT
ENTRY AND ORDER

The Plaintiff commenced this action on May 15, 2017, by filing its Complaint and Request for a Declaratory Judgment, Injunctive Relief, Consumer Restitution, and Civil Penalties against Defendant Alan Vohs ("Defendant"). The Complaint alleged violations of the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq. and its Substantive Rules, Ohio Administrative Code ("O.A.C.") 109:4-3-01 et seq.

Service was issued to Defendant by certified mail on May 15, 2017 and returned as unclaimed on June 5, 2017. Defendant was served with the summons and Complaint by ordinary mail on July 5, 2017, pursuant to Civ. R. 4.6(D). Plaintiff moved for default judgment on September 25, 2017, and the Court entered a Default Judgment Entry and Order against Defendant on December 28, 2017.

The Default Judgment included an order for Defendant to pay civil penalties and restitution to consumers that suffered damages as a result of Defendant's conduct. On January 12, 2018, Plaintiff filed a Memorandum in Support of Damages and Other Requested Relief ("Damages Memo"), in which Plaintiff submitted evidence supporting the amount of civil penalties and consumer damages that Plaintiff was requesting.

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ATTORNEY GENERAL OF OHIO

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CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

In support of its request for consumer damages, Plaintiff attached to its Damages Memo three consumer affidavits which attest to the damages each suffered. The evidence established that the consumers sustained monetary damages after Defendant failed to provide the services for which Defendant accepted the consumers' payments.

The Court finds that the consumers sustained damages in the amount of \$1,563.00.

In its Damages Memo, Plaintiff also explained the basis for a \$25,000 civil penalty. Plaintiff requested the civil penalty pursuant to R.C. 1345.07(D) and provided evidence of the Defendant's violations of the CSPA sufficient to warrant imposing a civil penalty. The Court finds Plaintiff's request for a civil penalty in the amount of \$25,000 well-taken.

Based on the above, the Court completely reinstates below the Findings of Facts, Conclusions of Law, and Orders that were originally included in the Court's Default Judgment, and also issues new orders based on the evidence presented via the Plaintiff's Damages Memo.

FINDINGS OF FACT

1. Defendant Alan Vohs is a natural person whose address is 2040 Ridge Rd., Zanesville, Ohio 43701.
2. At all times relevant to this action, Defendant Vohs used the fictitious name Alan Able Heating and Cooling.
3. Defendant Vohs registered Alan Able Heating and Cooling as a trade name with the Ohio Secretary of State in 1997.
4. Defendant Vohs failed to renew Alan Able Heating and Cooling as a trade name in 2007, which resulted in the Secretary of State of Ohio canceling Vohs's recording of the trade name.

5. At all times relevant to this action, Defendant engaged in the business of offering and providing repairs and services as Alan Able Heating and Cooling.
6. Defendant provided goods and services, including the repair of furnaces and a stove.
7. In at least one instance, Defendant promised the consumer that a ten year maintenance plan was included with the cost of a new heating unit, but then charged the consumer for maintenance.
8. Defendant accepted money in return for providing repair services and, despite numerous requests from consumers, never provided the repair services.
9. When consumers contacted the Defendant to complain about shoddy work, Defendant promised to return to fix the issues.
10. Despite the repeated promises and subsequent calls from consumers, Defendant failed to correct the shoddy work.
11. To date, Defendant has failed to complete or correct the services for which he was paid and has failed to issue refunds to consumers.
12. Since 2007, Defendant has conducted business in Ohio using a fictitious business name that was not registered with the Ohio Secretary of State.
13. All facts above have occurred in the last two years prior to this lawsuit.
14. On March 1, 2016, this Court entered a Final Judgment Entry and Order ("2016 Judgment") against Defendant for violations of the CSPA that are identical to the first three Counts in this Complaint.
15. The 2016 Judgment included an award of consumer damages of \$7,912.66 to nine consumers and a civil penalty of \$10,000.
16. The 2016 Judgment permanently enjoined Defendant from committing further violations of the CSPA.

17. The 2016 Judgment permanently enjoined Defendant from engaging in business as a supplier until all judgment ordered remuneration is paid.
18. Defendant has made no payment related to the obligations under the 2016 Judgment.
19. Defendant failed to provide proper notice to consumers of their right to cancel their contracts by a specific date.

CONCLUSIONS OF LAW

20. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
21. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3), in that some of the transactions complained of herein, and out of which this action arose, occurred in Muskingum County.
22. The Attorney General is the proper party to commence these proceedings under the authority provided him under R.C. 1345.01 *et seq.* and by virtue of his statutory and common law authority to protect the interests of the citizens of Ohio.
23. Defendant Vohs is a “supplier” as that term is defined in R.C. 1345.01(C), since Defendant engaged in the business of effecting “consumer transactions” with “consumers,” either directly or indirectly, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A), (C), and (D) of the CSPA.
24. Defendant committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) and O.A.C. 109:4-3-09, by accepting money from consumers for repairs and services on household goods and permitting eight weeks to elapse without delivering the promised services or issuing a full refund.

25. Defendant committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) by performing repairs and services on household goods in an incomplete, shoddy, or unworkmanlike manner, and failing to correct the work.
26. Defendant committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by failing to register with the Ohio Secretary of State his use of a fictitious business name, as required by R.C. 1329.01.
27. Defendant committed unfair or deceptive acts or practices in violation of R.C. 1345.02(A) of the CSPA, by engaging in consumer transactions while having an unsatisfied judgment and legal obligation owed to consumers arising out of previous consumer transactions.
28. Defendant violated the Home Solicitation Sales Act, R.C. 1345.23 and R.C. 1345.02(A), by failing to provide consumers a proper notice of their right to cancel their contracts by a specific date.

THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED THAT:

- A. The Plaintiff's request for a Declaratory Judgment that the acts and practices set forth above are in violation of the CSPA is hereby GRANTED.
- B. Defendant, doing business as Alan Able Heating and Cooling or any other names, his officers, partners, agents, representatives, salespersons, employees, successors or assigns, and all persons acting in concert and participation with him directly or indirectly through any corporate device, partnership or association, in connection with any consumer transaction, are hereby PERMANENTLY ENJOINED from engaging in any unfair, deceptive, and unconscionable acts and practices that violate the CSPA, R.C. 1345.01 *et*

seq., including, without limitation, the conduct described in the Conclusions of Law Paragraphs 24-28.

- C. Defendant is PERMANENTLY ENJOINED from engaging in business in the State of Ohio as a supplier until all judgment ordered remuneration is paid, including any outstanding unsatisfied judgments arising out of a prior consumer transaction.
- D. Defendant is ORDERED to pay consumer damages to the Ohio Attorney General in the total amount of \$1,563.00 to be distributed by the Attorney General to the consumers identified in Exhibit 2 to Plaintiff's Damages Memo.
- E. Pursuant to the above finding that Defendant committed unfair and deceptive acts and practices in violation of the CSPA, Defendant is ORDERED to pay a civil penalty to the Ohio Attorney General in the amount of \$25,000.00.
- F. Defendant is ORDERED to pay all court costs associated with this matter.

IT IS SO ORDERED.

DATE

1/25/18

JUDGE KELLY COTTRILL

Prepared by:

MICHAEL DEWINE
ATTORNEY GENERAL



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To Muskingum County Clerk of Court:

Please serve signed copies of the FINAL JUDGMENT ENTRY AND ORDER to:

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Alan Vohs
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