

IN THE COURT OF COMMON PLEAS  
BUTLER COUNTY, OHIO

STATE OF OHIO, ex rel. ATTORNEY  
GENERAL MICHAEL DEWINE

Plaintiff

v.

ERIC L. HINES, et al.

Defendants.

Case No. CV 2017 08 1931

JUDGE GREGORY J. HOWARD

**FINAL JUDGMENT ENTRY**  
**AND ORDER**

**Final Appealable Order**

**FILED**  
2018 APR -3 PM 3:23  
MARY L. SWAIN  
BUTLER COUNTY  
CLERK OF COURTS  
**RECEIVED**  
ATTORNEY GENERAL OF OHIO  
APR 11 2018  
CONSUMER PROTECTION SECTION  
PUBLIC INSPECTION FILE

Plaintiff, State of Ohio, commenced this action with the filing of a Complaint on August 25, 2017 against Defendants Hines General Contracting and Eric L. Hines, doing business as Hines General Contracting ("Defendants") which alleged violations of the 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. and the Home Solicitation Sales Act ("HSSA"), R.C. 1345.23.

On November 11, 2017, Plaintiff filed a Motion for Default Judgment based on Defendants' failure to defend or otherwise appear in the lawsuit. On February 13, 2018, a default judgment hearing was held in which the Court granted Plaintiff's Motion for Default Judgment pursuant to Civ. R. 55(A). The Defendants failed to appear.

On March 15, 2018, a hearing on damages was held. Plaintiff State of Ohio appeared through counsel. The Defendants failed to appear. This Court granted Plaintiff's requests for a declaratory judgment, injunction, consumer damages and civil penalties. The Plaintiff is entitled to a declaratory judgment pursuant to Civ. R. 8(D) which provides that that averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage,

I *ms*

are admitted when not denied in the responsive pleading. The effect of an admission is to remove the plaintiff's burden to prove that allegation. *Burdge v. On Guard Security Services, Inc.*, 1st Dist. No. C-050522, 2006 Ohio 2092, at ¶ 7 (citing *J. Miller Express, Inc. v. Pentz* (1995), 107 Ohio App.3d 44, 48). When a defendant fails to contest the allegations raised in the complaint, it is proper to render a default judgment against the defendant, as liability has been admitted or "confessed" by the omission of statements refuting the plaintiff's claims. *Ohio Valley Radiology Associates, Inc. v. Ohio Valley Hospital Assn.* (1986), 28 Ohio St. 3d 118.

Also at the hearing, the Plaintiff properly requested a permanent injunction pursuant to R.C. 1345.07(A)(2). The Court found good cause to grant a permanent injunction enjoining the Defendants from further violating the CSPA and the HSSA. Plaintiff submitted the sworn affidavits of three consumers who paid the Defendants for services which were not delivered. The Court found the evidence sufficient and awarded restitution in the amount of \$4,500.00. Additionally, the Court granted a civil penalty in the amount of \$2,000.00 to the Ohio Attorney General pursuant R.C. 1345.07(D). The Court hereby renders the following FINAL JUDGMENT ENTRY AND ORDER:

#### **FINDINGS OF FACT**

1. Defendant Eric L. Hines is a natural person who resided and operated Defendant Hines General Contracting from his residence at 113 Moore St., Middletown, Ohio 45044.
2. Defendant Hines is the owner and principal representative of Defendant Hines Contracting.
3. Defendants solicited consumers and accepted payments for home improvement goods and services within multiple counties in Ohio, including Butler 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 or provide consumers with a notice of cancellation in the contract for goods and services.
6. 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.

#### **CONCLUSIONS OF LAW**

7. Plaintiff, State of Ohio, by and through the Attorney General of Ohio, Michael DeWine, is a proper party to file this action in the public interest pursuant to the authority vested in him by the CSPA, R.C. 1345.07.
8. This Court is a proper venue to hear this case pursuant to Ohio Civ. R. 3(B)(1-3) in that Defendant Hines resides in Butler County, has his principal place of business in Butler County, and conducted activity which gave rise to the claim for relief in several counties in the State of Ohio, including Butler County.
9. This Court has proper jurisdiction over the subject matter of this action pursuant to the CSPA, R.C. 1345.04.
10. As meanings are specified in R.C. 1345.01(A)(C) and (D), the Defendants acted as "suppliers" as they were, at all times relevant hereto, engaged in the business of effecting "consumer transactions" either directly or indirectly by soliciting and selling goods or services to "consumers" for purposes that were primarily for personal, family, or household use.

11. As meanings are specified in R.C. 1345.21(A)(C) and (D), the Defendants acted as “sellers” as they were engaged in the business of effecting “home solicitation sales” by soliciting “buyers” at their residences where they sold home improvement services which were primarily for the buyers’ personal, family or household use.
12. The actions of the Defendants occurred in the State of Ohio, in Butler County and other counties in Ohio, and, as set forth below, are in violation of the CSPA, R.C. 1345.01 et seq., the Failure to Deliver Rule, O.A.C. 109:4-3-09(A) and the HSSA, R.C. 1345.23.
13. Defendants committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02, and the Failure to Deliver Rule, O.A.C. 109:4-3-09(A)(2), by accepting money from consumers for goods and services and permitting eight weeks to elapse without delivering the promised goods or services or making a full refund.
14. Defendants violated the CSPA, R.C. 1345.02 and the HSSA, R.C. 1345.23, by engaging in home solicitation sales while failing to give proper verbal notice to consumers of their right to cancel the contracts by specific dates and by failing to give consumers written agreements which included notice of cancellation forms.

### **ORDER**

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

- A. The Court hereby DECLARES that the acts and practices described in Plaintiff’s Complaint and as described above in the Findings of Fact and Conclusions of Law violate the CSPA, R.C. 1345.01 et seq., its Substantive Rules, O.A.C. 109:4-3-01 et seq., and the HSSA, R.C. 1345.21 et seq. in the manner set forth in this Judgment.
- B. Defendants, under their own name or any other names, their agents, representatives, salespeople, employees, successors and assigns, and all persons acting on behalf of them

directly or indirectly, through any corporate or private device, partnership or association, are PERMANENTLY ENJOINED from engaging in the acts or practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 et seq. and the HSSA, R.C. 1345.21 et seq. Defendants are further ENJOINED from engaging in business as “suppliers,” as defined in R.C. 1345.01(C), in any consumer transaction in the State of Ohio until such time as they have satisfied all monetary obligations due hereunder.

- C. Pursuant to CSPA, R.C. 1345.07(B), Defendants are liable to reimburse consumers damaged by their practices and are ORDERED to pay restitution in the amount of \$4,500.00 to the Attorney General for consumer restitution. The restitution paid under this Order shall be distributed by the Attorney General to the consumers listed on Exhibit A.
- D. Pursuant to R.C. 1345.07(D), Defendants are ASSESSED a civil penalty in the amount of \$2,000.00 payable to the Ohio Attorney General.
- E. The total amount of \$6,500 due under paragraphs (C) and (D) herein shall be paid by the Defendants by certified check or money order, payable to the “Ohio Attorney General’s Office,” and delivered to the following address:

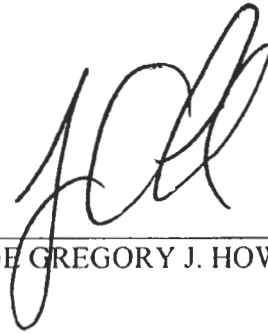
Ohio Attorney General’s Office  
Consumer Protection Section  
Attn: Finance Compliance Unit  
30 E. Broad St., 14<sup>th</sup> Floor  
Columbus, Ohio 43215

- F. Defendants are ORDERED to pay all court costs.
- G. This Court shall retain jurisdiction to enforce compliance with this Final Judgment.

IT IS SO ORDERED

4/3/18

DATE



JUDGE GREGORY J. HOWARD

**TO THE CLERK:**

**PLEASE SERVE ON THE FOLLOWING:**

Erin B. Leahy  
Senior Assistant Attorney General  
Consumer Protection Section  
30 E. Broad St., 14<sup>th</sup> Floor  
Columbus, OH 43215  
*Counsel for Plaintiff*

Eric L. Hines  
Hines General Contracting  
113 Moore Street  
Middletown, OH 45044  
*Defendants*

**Prepared by:**

Erin B. Leahy (0069509)  
Senior Assistant Attorney General  
Consumer Protection Section  
30 E. Broad St., 14<sup>th</sup> Floor  
Columbus, OH 43215  
Phone- 614-752-4730  
Fax- 866-768-2648  
erin.leahy@ohioattorneygeneral.gov  
*Counsel for Plaintiff*

## **EXHIBIT A**

<b>Last Name:</b>	<b>First Name:</b>	<b>City:</b>	<b>State:</b>	<b>Amount Owed:</b>
Abdon	Kenneth	Troy	Ohio	\$1,200.00
Waymire	Brian	Vandalia	Ohio	\$2,300.00
Zink	Jayne	Columbus	Ohio	\$1,000.00

**TOTAL RESTITUTION:**      **\$4,500.00**