

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, <i>ex rel.</i>)	CASE NO. 17 CV 008059
OHIO ATTORNEY GENERAL)	
MICHAEL DEWINE)	JUDGE LAUREL BEATTY BLUNT
)	RECEIVED
Plaintiff,)	ATTORNEY GENERAL OF OHIO
)	
v.)	MAY 23 2018
)	
DISABILITY OHIO ASSISTANCE, LLC., et al.)	
)	CONSUMER PROTECTION SECTION
Defendants.)	PUBLIC INSPECTION FILE

ENTRY ADOPTING MAGISTRATE'S DECISION ON DAMAGES
AND FINAL JUDGMENT ENTRY AND ORDER

BEATTY BLUNT, JUDGE.

This cause came to be heard upon the Court's granting of default judgment on December 6, 2017 against Defendants Disability Ohio Assistance, LLC. and Kelly McElravey ("Defendants") pursuant to Civ. R. 55(A). This Court's Decision of December 6, 2017 also included Findings of Fact, Conclusions of Law and granted a declaratory judgment and a permanent injunction and found the Defendants liable for consumer restitution and civil penalties in amounts to be determined by the Court.

On February 21, 2018, a hearing on damages was held before Magistrate Skeens. Plaintiff State of Ohio appeared through counsel to introduce evidence in support of requested relief. The Defendants failed to appear. Plaintiff submitted the sworn affidavits of sixteen consumers, all of whom have suffered monetary damages due to the Defendants' unfair, deceptive and unconscionable acts or practices.

Upon consideration of the evidence submitted at the hearing and the Plaintiff's Memorandum in Support of Requested Damages filed on March 19, 2018, Magistrate Skeens issued his decision on Damages. Magistrate Skeens found the Plaintiff's evidence to be sufficient and found the Defendants liable to pay restitution in the amount of Twenty-Seven Thousand Five Hundred Fifty Dollars and Zero Cents (\$27,550.00), a civil penalty in the amount of Fifteen Thousand Dollars (\$15,000) to the Ohio Attorney General and ordered the Defendants to return consumers' personal records. To date, no objections have been filed to the Magistrate's Decision.

Upon review of the findings of fact and conclusions of law, the Court hereby ADOPTS the Magistrate's Decision in its entirety pursuant to Civ.R. 53(D)(4)(c). This Court finds Magistrate Skeen's Decision on Damages to be supported by the evidence. The Court hereby adopts the Magistrate's Decision on Damages, restates the Findings of Fact, Conclusions of Law and the Order from the Default Judgment and renders the following FINAL JUDGMENT ENTRY AND ORDER:

FINDINGS OF FACT

1. Defendant Disability Ohio Assistance, LLC. ("DOA") is a domestic, for-profit limited liability company, organized under the laws of Ohio and registered with the Ohio Secretary of State on February 6, 2016. Its principal place of business is 2668 Shelly Drive, Columbus, Ohio 43207, which is located in Franklin County. Defendant McElravey is the registered agent, the responsible party who filed the Articles of Organization and believed to be the sole employee.

2. Defendant Kelly S. McElravey is an individual who resides and conducts business at 2668 Shelly Drive, Columbus, Ohio 43207. McElravey also periodically conducted business using the names: Disability Assistance and Ohio Disability.
3. Defendants represented to consumers who were members of public employee retirement systems that Defendants would provide comprehensive consulting services to assist consumers with obtaining disability benefits.
4. Defendants offered consulting services to consumers who were members of the Ohio Police and Fire Pension Fund, the State Teachers Retirement System, the State Employees Retirement System, or the Ohio Public Employee Retirement System.
5. From early 2011, Defendant McElravey, using several business names, engaged in the practice of soliciting and selling consulting services to consumers seeking disability retirement benefits.
6. Defendant McElravey began providing consulting services when she was employed by Disability Assistance, Inc. Disability Assistance, Inc. was a limited liability company registered with the Ohio Secretary of State in 2010 and is not a party to this action. The business was located at 8000 Walton Parkway, Suite 212, New Albany, Ohio 43125, which is situated in Franklin County. McElravey was the sole employee and worked directly with consumers under the supervision of the founding member.
7. In May of 2013, Disability Assistance, LLC. entered into an asset purchase agreement with JLC Disability Services, LLC. JLC Disability Services, LLC was registered as a limited liability company with the Ohio Secretary of State in May of 2013 and is not a party to this action. Now employed by JLC Disability Services, LLC. as a “senior

pension specialist,” Defendant McElravey continued to provide consulting services from the same office space. Other than the founding member, who lived in and worked from Akron, Ohio, McElravey was the sole employee.

8. In March of 2015, while employed by JLC Disability Service, LLC., but without the knowledge of the founding member/owner, Defendant McElravey began depositing consumers’ personal checks for consulting services into her personal checking account rather than to the JLC Disability Service business bank account.
9. Throughout 2015, Defendant McElravey deposited to her personal account, or otherwise negotiated, personal checks from at least 13 customers of JLC Disability Assistance, LLC. The misdirected funds totaled more than \$22,000.
10. In December of 2015, the owner of JLC Disability Service, under the impression that the company was not as profitable as hoped, agreed to sell the assets and liabilities of the company to Defendant McElravey.
11. On December 30, 2015, Defendant McElravey, using the fictitious name Ohio Disability, entered into an agreement with JLC Disability Service to purchase its assets and liabilities, including assuming the responsibilities for all transactions with past and present clients.
12. On February 1, 2016, Defendant McElravey filed Articles of Organization for Defendant Disability Ohio Assistance, LLC. Defendants continued to operate from the same office location at 8000 Walton Parkway in New Albany, Ohio and Defendant McElravey continued to be the sole employee.

13. Defendant McElravey, as the sole member and/or employee of Defendant DOA, had full dominion and control of Defendant DOA, at all times relevant herein, by controlling the policies, procedures, and activities. Defendant McElravey committed, allowed, directed, ratified, participated in, or otherwise caused the unlawful acts and practices set forth herein to occur.
14. In March of 2016, Defendants received a demand notice for rent, which was overdue rent for the office location in New Albany. The rental rate of \$300 per month was three months past due. Defendants failed to pay the past due rent and left the office space.
15. Upon vacating the office location, Defendants abandoned business records that included consumers' medical records and application files containing highly sensitive personal and financial information.
16. After leaving the office space, Defendants continued to operate throughout 2016 from McElravey's personal residence at 4054 Walnut Crossing Drive, Groveport, Ohio 43125 and later from her personal residence at 2668 Shelly Drive, Columbus, Ohio 43207. Both business locations are situated in Franklin County.
17. Defendants verbally represented to consumers, in-person and on their website at www.disabilityohio.com, that benefits of their services included, *inter alia*, coordinating medical exams with specialized physicians, collecting and analyzing medical records to include those with the application providing the strongest support, representing members in communications and hearings with the retirement system, maintaining application records and filing renewal applications or other documents necessary to retain benefits.

18. Defendants claimed to possess expertise and extensive experience assisting consumers with obtaining disability benefits from Ohio public pension systems.
19. Defendants falsely represented they had a 98% success rate in obtaining disability benefits for their clients.
20. Defendants falsely represented that they had “lost only one case in ten years.”
21. At times, Defendants falsely informed consumers that the consulting services were provided at the direction of, or while working with, an attorney.
22. Defendants referred to the fee charged for their consulting service as a “retainer” which led consumers to believe they were paying for services provided at the direction of, or with the oversight of, an attorney.
23. Defendants charged fees to consumers for representation in the initial application process for disability benefits, for annual service fees to maintain representation, or both.
24. Defendants included a provision in their service agreements, which required that consumers agree “not to contact the pension fund directly or indirectly for any reason whatsoever unless you have received the prior approval of the company.”
25. Defendants continued to enter into contracts with consumers and continued to accept money from consumers for services despite knowing of their financially precarious situation.
26. Defendants ceased operating from the retail office location known to consumers and failed to notify consumers of new contact information where they could be reached related to services still owed to consumers.

27. Defendants failed to return to consumers their medical records and application files containing highly sensitive personal information.
28. Defendants ceased consulting services for some consumers without informing consumers of that fact and without refunding monies to those consumers for partial or incomplete services.
29. Defendants missed significant filing deadlines that resulted in delays, denials, or termination of disability benefits.
30. Defendants failed to apprise consumers of their application status, significant deadlines, or actions taken on applications by the retirement systems.
31. In April of 2016, the Ohio Police and Fire Pension Fund ("OP&F") notified Defendants that they were no longer permitted to represent members in any dealings with OP&F. The ban resulted from an OP&F finding that Defendants violated OP&F's Agent Standards of Conduct. Upon investigating a complaint from a member who was represented by Defendants, OP&F determined that it had received benefit forms, emails and signatures of their disability panel, staff, and the Chair of OP&F's Board of Trustees which were altered or forged.
32. Defendants failed to adequately respond to verbal and written communications from consumers seeking information about the status of their representation, the return of their medical and application records, or refunds of fees paid.
33. Defendants comingled business funds and personal funds and failed to maintain adequate business accounting records for Defendant DOA.

CONCLUSIONS OF LAW

34. Plaintiff, State of Ohio, by and through Attorney General Michael DeWine, is a proper party to bring this action in the public interest and on behalf of the State of Ohio under the authority vested in him by 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.
35. This Court has jurisdiction over the subject matter of this action pursuant to the CSPA, R.C. 1345.04.
36. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1-3) in that Defendant McElravey resides in Franklin County, Defendant Disability Ohio Assistance, LLC., has its principal place of business in Franklin County and both Defendants conducted activity which gave rise to the claims for relief in Franklin County.
37. Defendants are “suppliers” as they were, at all times relevant herein, engaged in the business of effecting “consumer transactions” either directly or indirectly by soliciting and selling services to consumers in the State of Ohio, for purposes that were primarily personal, family or household in nature, as those terms are defined in the CSPA, R.C. 1345.01(A), (C), and (D).
38. Defendants committed unconscionable acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.03(A), by making false and misleading statements of fact or opinion to the detriment of consumers.

39. Defendants committed unfair or deceptive acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02(B)(1), by representing that their service had approval, performance characteristics, uses, or benefits that it did not.
40. Defendants committed unfair or deceptive acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02(B)(2), by representing that their service would be provided with a particular standard or quality when it was not.
41. Defendants committed unfair or deceptive acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02(B)(9), by representing that their company had approval or affiliation that it did not. Defendants committed said violation after such decisions were available for public inspection pursuant to CSPA, R.C. 1345.05(A)(3).
42. Defendants committed unfair or deceptive acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02(A) and O.A.C. 109:4-3-09, by accepting money from consumers for services and then permitting eight weeks to elapse without (a) delivering services as promised; (b) making full refunds; or (c) advising consumers of the duration of an extended delay and offering to send refunds within two weeks, if the consumers so request. Defendants committed said violations after such acts or practices were declared to be deceptive, by a rule adopted pursuant to CSPA, R.C. 1345.05(B)(2).
43. Defendants committed unfair or deceptive acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02 by signing contracts and accepting money from consumers for services without disclosing to the consumers the substantial

likelihood that the supplier's financial condition would limit or otherwise adversely affect their ability to provide services as represented. Such acts and practices were previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violation after such decisions were available for public inspection pursuant to CSPA, R.C. 1345.05(A)(3).

44. Defendants committed unconscionable acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.03(A) by knowingly taking advantage of consumers' inability to protect their interests by failing to inform the consumers of the suppliers' precarious financial condition and of the substantial likelihood that services would not be completed. Such acts and practices were previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violation after such decisions were available for public inspection pursuant to CSPA, R.C. 1345.05(A)(3).
45. Defendants committed unfair or deceptive acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02, by repeatedly stalling and evading their contractual obligations. Such acts and practices were previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to CSPA, R.C. 1345.05(A)(3).
46. Defendants committed unfair or deceptive, acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02 by failing to properly respond to valid consumer complaints and by failing to provide adequate customer service. Such

acts and practices were previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to CSPA, R.C. 1345.05(A)(3).

47. Defendants committed unfair or deceptive acts or practices in connection with consumer transactions in violation of CSPA, R.C. 1345.02(A) by abandoning the customer and consumer information as those terms are defined in the federal laws designed to protect personal financial information from improper disclosure and prevent identity theft under the Fair and Accurate Credit Transaction Act and the Gramm-Leach-Bliley Act and the rules promulgated thereunder. Such acts or practices were previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violation after such decisions were available for public inspection pursuant to CSPA, R.C. 1345.05(A)(3).

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

48. It is hereby DECLARED that the Defendants' acts and practices, as described in the Findings of Fact and Conclusions of Law, violate the CSPA, R.C. 1345.01 et seq. and its Substantive Rules, O.A.C., 109:4-3-01 et seq.
49. Defendants, under their own names or any other names, their agents, partners, representatives, employees, salespersons, successors or assigns, including any person or entity which purchases, acquires, or otherwise receives any interest (whether legal, equitable, contractual or otherwise) in Defendants' business and continues to engage in consumer transactions, are PERMANENTLY ENJOINED from engaging in acts and

practices which violate CSPA, R.C. 1345.01 et seq. or its Substantive Rules, O.A.C., 109:4-3-01 et seq.

50. Defendants are PERMANENTLY ENJOINED from acting as “suppliers,” as that term is defined in R.C. 1345.01(C), in any consumer transactions in the State of Ohio until the restitution and civil penalties ordered in this matter have been satisfied.
51. Pursuant to CSPA, R.C. 1345.07(B), Defendants are LIABLE and are ORDERED to reimburse the consumers identified in Exhibit A in the amount of Twenty-Seven Thousand Five Hundred Fifty Dollars and Zero Cents (\$27,550.00). The monies shall be paid to the Attorney General’s Consumer Protection Section for distribution to the consumers.
52. Pursuant to CSPA, R.C. 1345.07(D), Defendants are hereby ASSESSED civil penalties in the amount of Fifteen Thousand Dollars (\$15,000) payable to the Attorney General’s Consumer Protection Section.
53. Defendants are hereby ORDERED to pay, upon entry of this Final Judgment, a total of Forty-Two Thousand Five Hundred Fifty Dollars and Zero Cents (\$42,550) for the consumer restitution and civil penalties described herein via certified check or money order payable to the “Ohio Attorney General” delivered to Ohio Attorney General’s Office, Consumer Protection Section, Attn: Compliance Officer, 30 East Broad St., 14th Floor, Columbus, Ohio 43215.
54. Defendants are hereby ORDERED to return consumers’ medical records and personal documents in their possession gathered by the Defendants as a part of the service offered.
55. Defendants are jointly and severally liable for all monetary amounts awarded herein.

56. Defendants are ORDERED to pay all court costs associated with this matter.

IT IS SO ORDERED.

THIS IS A FINAL APPEALABLE ORDER.

The Clerk of Courts is hereby directed to serve notice of this judgment upon all parties:

Erin B. Leahy
Assistant Attorney General
Consumer Protection Section
Ohio Attorney General's Office
30 East Broad Street, 14th Floor
Columbus, Ohio 43215-3428

Disability Ohio Assistance, LLC.
Kelly S. McElravey
1491 Polaris Parkway
#20561
Columbus, OH 43240


Exhibit A

<u>Last Name</u>	<u>First Name</u>	<u>City</u>	<u>State</u>	<u>Restitution Owed</u>
Barlow	Darrin	Xenia	OH	\$1,400.00
Burnette	Aaron	Barberton	OH	\$500.00
Claubaugh	Nicole	Amherst	OH	\$500.00
Collins	Mike	Canton	OH	\$1,000.00
Domer	Wendy	Wadsworth	OH	\$2,900.00
Humphries	Aliceson	Lorain	OH	\$500.00
Kroutel	Debora	Athens	OH	\$3,400.00
Lavery	Keith	Sarasota	FL	\$900.00
Lynch	Joe	Wapakoneta	OH	\$500.00
McNea	Neal	Cuyahoga Falls	OH	\$4,600.00
Newman	John	Wadsworth	OH	\$2,000.00
Pritchett	Linda	Lorain	OH	\$4,900.00
Rooks	Shawna	Rossford	OH	\$500.00
Steele	Lyda Ruth	Cincinnati	OH	\$2,000.00
Tackett	Charlotte	Johnstown	OH	\$1,450.00
Volpe	Maria	Girard	OH	\$500.00
TOTAL				\$27,550.00

Franklin County Court of Common Pleas

Date: 05-15-2018
Case Title: OHIO STATE ATTORNEY GENERAL MIKE DEWINE -VS-
DISABILITY OHIO ASSISTANCE LLC ET AL
Case Number: 17CV008059
Type: ORDER

It Is So Ordered.

A handwritten signature in black ink, reading "Laurel Beatty Blunt". The signature is written in a cursive, flowing style.

/s/ Judge Laurel Beatty Blunt