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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO, EX REL. MICHAEL DEWINE
Plaintiff

Case No: CV-18-892005

Judge: CAROLYN B FRIEDLAND

MATTHEW MCMILLAN, DBA BUDGET 1 FENCE, ET
AL.
Defendant

JOURNAL ENTRY

89 DIS. W/PREJ - FINAL

PLAINTIFF'S RENEWED MOTION FOR DEFAULT JUDGMENT AGAINST DEFAULT HEARING HELD 10/25/18.
PLAINTIFF APPEARED. DEFENDANTS FAILED TO APPEAR. DEFENDANTS AND REQUEST TO SUBMIT CONSUMER
AFFIDAVITS IN LIEU OF LIVE TESTIMONY ON THE ISSUE OF DAMAGES, FILED 09/19/2018, IS GRANTED.

O.S.J.

COURT COST ASSESSED TO THE DEFENDANT(S).
PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER
PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL
PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.


Judge Signature

Date

RECEIVED
ATTORNEY GENERAL OF OHIO

JAN 14 2019

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

FILED
2018 NOV - 1 P 3:15
CLERK OF COURTS
CUYAHOGA COUNTY

1. Defendant Matthew McMillen is a natural person whose last known address is 8219 Almira Ave., Rear, Cleveland, OH 44102. Budget 1 Fence is a tradename registered to Defendant Matthew McMillen.

2. Defendant Stephanie Reed is the current wife of Defendant Matthew McMillen and also conducted business on behalf of Budget 1 Fence; Defendant Reed's last known address is 236 Forest Park Drive, Lagrange, OH 44050.

3. Defendant McMillen directed, supervised, approved, controlled, formulated, authorized, ratified, caused, personally participated in, benefitted from and/or otherwise participated in the day to day activities and practices of Budget 1 Fence.

4. Defendant Reed directed, supervised, approved, controlled, formulated, authorized, ratified, caused, personally participated in, benefitted from and/or otherwise participated in the day to day activities and practices of Budget 1 Fence.

5. Defendant Matthew McMillen has used or been associated with multiple business names all of which perform substantially similar fence services, including dba Budget 1 Fence, Budget One Fence, Affordable Fence, Empire Fence, Fence Solutions, Fence Company, Landmark Fence, Budget Fence Company and King Fence. Aside from Budget 1 Fence, his most recent affiliation is with an entity calling itself Lake Erie Fence, LLC which has used the same motor vehicles registered to Budget 1 Fence, the same telephone number as Budget 1 Fence and is located at the same location as Budget 1 Fence, i.e., 8219 Almira Ave., Rear, Cleveland, OH 44102.

6. The Statutory Agent for Lake Erie Fence, LLC operating at 8219 Almira Ave., Rear, Cleveland, OH 44102 is McMillen's wife, Defendant Stephanie Reed.

7. Defendants solicited consumers at their personal residences for home

improvement services in Cuyahoga County as well as other counties in Ohio.

8. Defendants accepted payments for home improvement contracts, failed to perform the contracted services and failed to refund the payments made by those consumers.

9. In some cases, the work done for Ohio consumers by Defendants was substandard and shoddy.

10. In some cases, Defendants permitted eight weeks to lapse without delivering the contracted goods or services, refunding the consumers, or advising consumers of the anticipated delay in the delivery of the goods and services and permitting them to cancel.

11. Defendants failed to provide consumers with a separate, appropriately worded notice of their cancellation rights as required by R.C. 1345.23.

12. In some cases, Defendants failed to refund consumers even after they received consumers' timely notice of cancellation.

13. In some cases, Defendants McMillen failed to secure the requisite permits or licenses to perform the contracted work prior to performing the work upon the consumer's property, in violation of the CSPA, R.C. 1345.02(A).

14. Defendant McMillen dba Budget 1 Fence continued to solicit new consumer transactions without satisfying unpaid consumer judgments rendered against him/them by various courts around Northeast Ohio, including but not limited to the judgment from Cuyahoga County Court of Common Pleas Case No. CV-16-868199 styled *Steven Siudowski v. Budget 1 Fence LLC, et al* which enjoined McMillen from engaging in any consumer transactions until full compliance with the CSPA and obligations in that Order were fulfilled. No satisfaction of judgment has been filed in the *Siudowski* matter.

15. In some cases, Defendants failed to register as contractors as required by the

municipality or township in which the consumer(s) resided before performing the contracted work in violation of the CSPA, R.C. 1345.05(A)(3).

CONCLUSIONS OF LAW

16. The Court has personal jurisdiction over Defendants pursuant to Ohio Civ. R. 3(B)(1) – (3) in that Defendants reside in, have their principal place of business in, and some of the transactions complained of herein and out of which this action arose occurred in Cuyahoga County, Ohio.

17. The Court has subject matter jurisdiction over this action pursuant to R.C. 1345.04 of the Consumer Sales Practices Act.

18. Venue is proper with this Court, pursuant to Ohio Civ. R. 3(B)(2) and (3) because Defendants operate their principal place of business and conduct the activities which give rise to the State's claim for relief in Cuyahoga County, Ohio.

19. Defendants engaged in unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02 and O.A.C. 109:4-3-09, by selling home improvement services to consumers, receiving payments for the services, receiving timely notice of cancellation from the consumer and then failing to refund the consumers within a reasonable time.

20. Defendants engaged in deceptive acts and/or practices in violation of the Home Sales Solicitation Act ("HSSA"), R.C. 1345.23(B) and Direct Solicitations Rule, O.A.C. 109:4-3-11(A)(5), by failing to include appropriate cancellation language in the contracts entered into with consumers, failing to give consumers a separate, appropriate "notice of cancellation" required by R.C. 1345.23(B)(2) or otherwise informing consumers of how and when to give notice of cancellation as required by R.C. 1345.23(B)(3).

21. Defendants committed unfair and deceptive acts or practices in violation of the

CSPA, R.C. 1345.02 and O.A.C. 109:4-3-09, by selling home improvement services to consumers, receiving payment and then failing to perform the work or refund the consumers within eight weeks.

22. Defendants engaged in unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02 and O.A.C. 109:4-3-09 in some cases by performing home improvement work in a substandard and shoddy manner.

23. Defendants engaged in unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02 by failing to register with municipalities before performing the work contracted for.

24. Defendant McMillen engaged in deceptive acts and/or practices in violation of R.C. 1345.02, by continuing to solicit new consumer transactions without first satisfying the numerous judgments rendered against him, stemming from consumer transactions, found in various courts throughout Northeast Ohio.

ORDER

FURTHER, upon the testimony and evidence presented at the hearing, it is hereby

ORDERED, ADJUDGED, and DECREED:

- A. Plaintiff's renewed request for a Default Judgment is hereby **GRANTED** as Defendants have violated the CSPA, R.C. 1345.01 *et seq.* and the HSSA, R.C. 1345.21 *et seq.*
- B. Defendants, under their individual names, dba Budget 1 Fence, Lake Erie Fence, LLC or under any other names, and their officers, agents, servants, representatives, salespersons, employees, successors and assigns and all persons

acting in concert or participation with Defendants, directly or indirectly are **PERMANENTLY ENJOINED** from further violating the CSPA, 1345.01 *et seq.* and the HSSA, R.C. 1345.21 *et seq.*

C. It is hereby **DECLARED** that the acts and practices committed by Defendants, as set forth above, 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 herein.

D. Defendants are **ORDERED**, jointly and severally, to pay consumer damages in the amount of Nineteen Thousand Four Hundred Forty dollars and fifty cents (\$19,440.50). Such payment shall be made to the Attorney General via a certified check or money order payable to "Ohio Attorney General" and delivered within seven (7) days of the journalization of this Entry to:

Compliance Officer
Consumer Protection Section
Office of the Ohio Attorney General
30 East Broad St., 14th floor
Columbus, OH 43215

The consumer damages will be distributed by the Attorney General to eleven consumers in the amounts set forth below:

<u>NAME</u>	<u>AMOUNT</u>
Lipsik, Matthew	\$3,850.00
Cook, Joanne	refunded post-suit
Caslow, Vanessa	\$1,600.50
Casalicchio, Joseph	\$1,700.00

Dubay, Karen	\$4,000.00
Newell, Wade	\$ 800.00
Green, Timothy	\$2,750.00
Snell, David	\$1,770.00
Podany, Margaret	\$1,150.00
Nowakowski, Pauline	\$ 320.00
Pawlicki, Eleanor	\$1,500.00

- E. Based on the above findings that Defendants committed unfair and deceptive acts and practices in violation of the CSPA, Defendants are **ORDERED** to pay civil penalties, pursuant to R.C. 1345.07(D), in the amount of Fifty Thousand Dollars (\$50,000.00). Such payment shall be made to the Attorney General via certified check or money order payable to "Ohio Attorney General" and delivered within seven (7) days of the journalization of this Entry to:

Compliance Officer
Consumer Protection Section
Office of the Ohio Attorney General
30 East Broad St., 14th floor
Columbus, OH 43215

- F. Defendants are **ENJOINED** from engaging in business as suppliers in any consumer transactions in the State of Ohio until such time as they have satisfied all monetary obligations due hereunder.
- G. Defendants are **ORDERED**, jointly and severally, to pay all court costs.

IT IS SO ORDERED.


JUDGE CAROLYN B. FRIEDLAND

Prepared and submitted by:

/s/ Rebecca F. Schlag

Rebecca F. Schlag (#0061897)

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cc: Plaintiff

Defendant McMillen, 8219 Almira Ave., Rear, Cleveland, OH 44102

Defendant Reed, 236 Forest Park Dr., Lagrange, OH 44050