

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO ex rel.)	
ATTORNEY GENERAL)	
MICHAEL DEWINE)	Case No: 16 CV 010204
)	
)	Judge: LYNCH
Plaintiff,)	RECEIVED
)	ATTORNEY GENERAL OF OHIO
v.)	
)	
)	MAY 14 2019
AFFORDABLE FENCE AND)	
CONSTRUCTION, LLC et al.)	CONSUMER PROTECTION SECTION
)	<u>AMENDED FINAL</u> PUBLIC INSPECTION FILE
)	<u>JUDGMENT ENTRY</u>
)	<u>AND ORDER (NUNC PRO TUNC)</u>
Defendants.)	

The Plaintiff, State of Ohio, commenced this action on October 27, 2016 by filing its Complaint and Request for Declaratory Judgment, Injunctive Relief, Consumer Restitution, and Civil Penalties against Defendants Affordable Fence and Construction, LLC, Thomas Carr individually and dba Affordable Fence and Construction, LLC and Juanita Carr individually and dba Affordable Fence and Construction, LLC. The Complaint alleged violations of the Consumer Sales Practices Act ("CSPA"), R.C. 1345.41 et seq. Defendants were served via publication as of July 12, 2017. The Defendants failed to respond within twenty-eight days allotted under the rules. Defendants have also failed to make any appearance in this action.

Plaintiff filed a Motion for Default Judgment on August 10, 2017. On August 11, 2017 the Court issued a Judgment and Entry Granting Default. The Order included an order for the Defendants to pay civil penalties and restitution to all consumers injured by Defendants' conduct, in an amount to be determined at a later date via affidavits. On September 13, 2017,

Plaintiff filed a Memorandum in Support of Damages and Civil Penalties, in which Plaintiff submitted evidence supporting the amount of civil penalties and consumer damages that Plaintiff was requesting.

In support of its request for consumer damages, Plaintiff attached to its Damages Memo the affidavits of five consumers which attested to the damages suffered by those consumers. The affidavits established that each of the consumers sustained monetary damages in connection with Defendants' home repair and remodeling business. The Court finds that each consumer sustained individual damages in the amounts set forth in the Consumer Damages List (Attached as Exhibit 2 to Plaintiff's Memorandum in Support of Damages and Civil Penalties).

In its Memo, the Plaintiff also explained the basis for the amount of civil penalties requested. Plaintiff's request was made pursuant to R.C. 1345.07(D). Plaintiff provided evidence of Defendants' violations of the CSPA which, pursuant to R.C. 1345.07(D), which support the Plaintiff's request for a civil penalty in the amount of \$25,000.00. The Court finds the Plaintiff's request well-taken.

Based on the above, the Court renders the following FINAL JUDGMENT ENTRY AND ORDER against the Defendants.

FINDINGS OF FACT

1. Defendant Juanita Carr and Defendant Thomas Carr are natural people who are the owners and operators of Defendant Affordable Fence and Construction, LLC ('Defendants').
2. Defendants engaged in the business of effecting "consumer transactions" primarily for a personal, family, or household use within the meaning of R.C. 1345.01(A), to wit by

soliciting consumers either directly or indirectly for home repair and remodeling goods and services within the meaning of R.C. 1345.01(A).

3. Defendants Juanita and Thomas Carr, at all times pertinent hereto, controlled and directed the business activities and sales conduct of Defendant Affordable Fence including the conduct giving rise to the violations described herein.
4. Defendants accepted monetary deposits from consumers for home repair and remodeling goods and services and then failed to deliver the goods and services within eight weeks.
5. Defendants have refused to refund consumers' deposits or payments despite consumers' requests for refunds.
6. Defendants provided shoddy and substandard home repair services to consumers and then failed to correct such services.
7. Defendants represented to consumers that they had sponsorship, approval, or affiliation with Home Depot when that was not true.
8. Defendants' contracts/proposals for home improvement remodeling and repair services do not contain the proper provisions advising consumers of their right to cancel.
9. At the time of these transactions, Defendants had an outstanding judgment in the Lorain County Court of Common Pleas arising from a previous consumer transaction.

CONCLUSIONS OF LAW

10. The actions of Defendants, described above, have occurred in the State of Ohio, in Franklin County and other counties in Ohio, and, as set forth below, are in violation of the CSPA, R.C. 1345.01 et seq. and its substantive rules, specifically, the Failure to Deliver Rule, O.A.C. 109:4-3-09(A).

11. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
12. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(2) and (3), in that Franklin County, Ohio is where the Defendants' principal place of business is/was located and where Defendants conducted some of the transactions described herein.
13. The Ohio Attorney General, acting on behalf of the State of Ohio and in the public interest, is the proper party to this action by virtue of authority vested in him by R.C.1345.07.
14. Defendants are "suppliers," as that term is defined in R.C. 1345.01(C), as they engaged in the business of effecting "consumer transactions" primarily for personal, family, or household use within the meaning of R.C. 1345.01(A) to wit by soliciting consumers either directly or indirectly for home repair and remodeling goods and services for a fee.
15. Defendants committed unfair and deceptive acts and practices in violation of the Failure to Deliver Rule, O.A.C 109:4-3-09(A) and the CSPA, R.C. 1345.02(A), by accepting money from consumers for goods or services and then permitting eight weeks to elapse without delivering the home repair and remodeling goods and services, making full refunds, advising the consumer of the duration of an extended delay and offering to send a refund within two weeks if so requested, or furnishing similar goods or services of equal or greater value as a good faith substitute.
16. Defendants committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by performing shoddy and substandard work and then failing to correct such work.

17. Defendants committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(B)(9) by representing that they had a sponsorship, approval, or affiliation that they did not have.
18. Defendants violated the HSSA, R.C. 1345.23(B), by failing to give proper notice to consumers of their right to cancel their contract by a specific date and by failing to give consumers a cancellation form.
19. Defendants committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by engaging in consumer transactions while having an unsatisfied judgment and legal obligation owed to a consumer arising out of a previous consumer transaction.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

- A. Plaintiff's request for a Declaratory Judgment is GRANTED, and it is therefore DECLARED that each act or practice set forth above violates the CSPA in the manner described.
- B. Plaintiff's request for a Permanent Injunction is GRANTED. Defendants are PERMANENTLY ENJOINED from, directly or indirectly through any corporate device, partnership, or other association, under these or any other names, soliciting consumers to enter into contracts for home improvement goods and services for a fee.
- C. Defendants are ORDERED to pay consumer damages to consumers identified in affidavits provided to the court who were injured by the conduct of the Defendants as set forth herein in the amount of \$14,706.00. Such payment shall

be made to the Attorney General via certified check or money order payable to the
 “Ohio Attorney General” and delivered to:

Compliance Officer
 Consumer Protection Section
 Office of the Ohio Attorney General
 30 East Broad Street, 14th Floor
 Columbus, Ohio 43215

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

Last Name	First Name	City	State	Amount
Perry	Laurel	Dublin	OH	\$2100.00
Fehrman	Normy	Pataskala	OH	\$4000.00
Graham	Alana	Reynoldsburg	OH	\$6000.00
Holman	Jeremiah	Canal Winchester	OH	\$800.00
Jackson	Rita	Newark	OH	\$1806.00
TOTAL				\$14,706.00

- D. Based on the above findings that Defendants committed unfair and deceptive acts
 and practices in violation of the CSPA, Defendants are ORDERED to pay a civil

penalty in the amount of \$25,000.00, pursuant to R.C. 1345.07(D). Such payment shall be made to the Attorney General via a certified check or money order payable to the "Ohio Attorney General" and delivered to:

Compliance Officer
Consumer Protection Section
Office of the Ohio Attorney General
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

E. Defendants are ORDERED to pay all court costs.

IT IS SO ORDERED.

(signature page attached)

JUDGE JULIE M. LYNCH

Prepared by:

/s/ Jennifer L. Mildren

JENNIFER L. MILDREN (0087564)
Assistant Attorney General
Counsel for Plaintiff, State of Ohio
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
614-466-8235
TO THE CLERK:

PLEASE SERVE ON THE FOLLOWING:

Jennifer Mildren
Assistant Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
614-466-8235
Counsel for Plaintiff

Juanita Carr
2282 Gerbert Rd.
Columbus, OH 43211

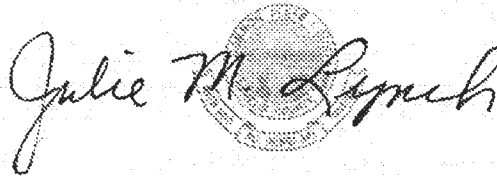
Thomas Carr
2282 Gerbert Rd.
Columbus, OH 43211

Affordable Fence and
Construction, LLC
2561 Edencreek Lane
Columbus, OH 43207

Franklin County Court of Common Pleas

Date: 09-20-2017
Case Title: OHIO STATE ATTORNEY GENERAL -VS- AFFORDABLE FENCE
& CONSTRUCTION LLC ET AL
Case Number: 16CV010204
Type: JUDGMENT ENTRY

It Is So Ordered.

A handwritten signature in cursive script, reading "Julie M. Lynch", is written over a circular embossed seal. The seal features a central emblem surrounded by text, likely the official seal of the Franklin County Court of Common Pleas.

/s/ Judge Julie M. Lynch