

IN THE COURT OF COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, EX REL.
MICHAEL DEWINE,

Plaintiff,

v.

MICHAEL EVILSIZER, ET AL.,

Defendants.

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Case No. 14-CV-833

Judge Cocroft

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ATTORNEY GENERAL OF OHIO

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CONSUMER PROTECTION SECTION
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DECISION AND ENTRY GRANTING PLAINTIFF'S RENEWED MOTION
FOR SUMMARY JUDGMENT
FILED MAY 7, 2015

This matter is before the Court on the plaintiff's renewed motion for summary judgment against the defendants, Michael Evilsizer and Buckeye Exteriors. The defendants failed to file an opposition and the motion is now ripe for the Court's review.

On April 13, 2015, the Court granted the plaintiff's first motion for summary judgment and found the defendants accepted down payments from consumers for windows or other home improvement services, but permitted eight weeks to lapse without delivering the goods or services or refunding the consumers' money. Thus, the defendants violated R.C. 1345.02(A) and Ohio Adm.Code 109:4-3-09(A)(2). Likewise, the Court found that the plaintiff violated the CSPA by performing work in an incomplete, shoddy, or unworkmanlike manner in violation of R.C. 1345.02(A). Finally, the Court found defendants failed to comply with Ohio Adm.Code 109:4-3-05(A) by providing the consumers with reasonably anticipated completion dates. Similarly, the defendants violated Ohio Adm.Code 109:4-3-05(D) by failing to provide the consumers with a written itemized list of repairs performed including a list of parts and materials and their

cost, the amount charged for labor and the identity of the individuals performing the repair or service.

In its renewed motion for summary judgment, the plaintiff now addresses the issues of damages and seeks restitution for the harmed consumers. Attached to the motion are affidavits from the consumers averring the amount of damages each suffered. Based on this evidence, the Court finds that no genuine issue of material fact remains and the plaintiff is entitled to the order of restitution it seeks in the total amount of \$18,003.64.¹

The plaintiff also seeks a civil penalty in the amount of \$25,000 under R.C. 1345.07(D), which states in relevant part:

In addition to the other remedies provided in this section, if the violation is an act or practice that was declared to be unfair, deceptive, or unconscionable by rule adopted pursuant to division (B)(2) of section 1345.05 of the Revised Code before the consumer transaction on which the action is based occurred * * * the attorney general may request and the court may impose a civil penalty of not more than twenty-five thousand dollars against the supplier. The civil penalties shall be paid as provided in division (G) of this section.

The Court has already found that the defendants violated R.C. 1345.02(A), Ohio Adm.Code 109:4-3-09(A)(2) and Ohio Adm.Code 109:4-3-05(A) and (D). The Court also finds that these acts to be unfair, deceptive or conscionable. Thus, the requested civil penalty is appropriate.

Based on the foregoing, the Court hereby GRANTS the plaintiff's renewed motion for summary judgment and a civil penalty is hereby imposed on the defendants in the amount of the \$25,000. In addition, the Court orders the defendants to pay restitution in the amount of \$18,003.64 to reimburse the consumers' for their damages.

¹ On August 14, 2015, the plaintiff filed a notice of satisfaction of restitution as to consumer Stauffer and amended the restitution amount sought to \$18,003.64.

IT IS SO ORDERED.

Copies to all parties.

Franklin County Court of Common Pleas

Date: 09-02-2015
Case Title: OHIO STATE ATTORNEY GENERAL MICHAEL DEWI -VS-
MICHAEL EVILSIZER ET AL
Case Number: 14CV000833
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink is written over a circular, faded court seal. The signature is stylized and appears to be 'K. Cocroft'.

/s/ Judge Kimberly Cocroft