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COMMON PLEAS COURT
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ORIGINAL

IN THE COURT OF COMMON PLEAS LUCAS COUNTY, OHIO

STATE OF OHIO, ex rel.
ATTORNEY GENERAL
MICHAEL DEWINE

PLAINTIFF,

v.

ROGER SUTHERLAND
dba TOLEDO APPLIANCE REPAIR, et al.

DEFENDANTS.

CASE NO. CI0201305353

JUDGE MCDONALD

FINAL JUDGMENT
ENTRY AND ORDER

The Plaintiff commenced this action on November 21, 2013 by filing its Complaint and Request for a Declaratory Judgment, Injunctive Relief, Consumer Restitution, and Civil Penalties against Defendant Roger Sutherland ("Sutherland") and Defendant Shawn Wheeler ("Wheeler"). The Complaint alleged violations of the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq. and Ohio Administrative Code ("O.A.C.") 109:4-3-05 et seq. Service was perfected on Defendant Sutherland and Defendant Wheeler pursuant to Civ. R. 4.1(B). Defendants failed to answer and Plaintiff filed a Motion for Default Judgment against each Defendant. The Court issued a Default Judgment against Defendant Sutherland, which was e-journalized on March 14, 2014, and a Default Judgment against Defendant Wheeler, which was e-journalized on June 11, 2014. The Default Judgment for each Defendant included an order for Defendants to pay civil penalties and restitution to all consumers injured by Defendants' conduct, in amounts to be determined at a later date via affidavits.

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Plaintiff filed a Memorandum in Support of Damages and Other Requested Relief ("Damages Memo"), in which it submitted evidence supporting the amount of civil penalties, investigative costs, and consumer damages that Plaintiff was requesting.

In support of its request for consumer damages, Plaintiff attached the affidavits of nine (9) consumers to its Damages Memo, which attest to the damages they suffered. The evidence established that each of the consumers sustained monetary damages in connection with the Defendants' home improvement and repair services. Plaintiff also submitted the affidavit of its investigator, who attested to her costs associated with this matter. These requests were made pursuant to R.C. 1345.07(B).

Plaintiff also explained the basis for the amount of civil penalties requested. This request was made pursuant to the CSPA, R.C. 1345.07(D). Plaintiff provided evidence of the Defendants' violations of the CSPA which, pursuant to R.C. 1345.07(D), permit the imposition of a civil penalty. Therefore, the Court finds Plaintiff's request for civil penalties, consumer damages, and investigative costs well-taken.

Based on the above, the Court completely reinstates below the Findings of Facts, Conclusions of Law, and Orders that were originally included in the Court's Default Judgment, and also issues new Orders based on the evidence presented via the Plaintiff's Damages Memo and at the Damages Hearing:

FINDINGS OF FACT

1. The actions of Defendants, hereinafter described, have occurred in Lucas County, Ohio and other counties in Ohio.
2. Defendants are engaged in the business of providing home appliance repair services and selling parts to consumers.

3. Defendants' principal place of business is located at 541 St. Louis Street, Toledo, Ohio 43605.
4. Defendants have used the fictitious name "Toledo Appliance Repair" while conducting business in Ohio, including Lucas County, and all references to Defendants throughout this Complaint include any actions taken by others on behalf of Toledo Appliance Repair.
5. Defendants have also used the fictitious names "Toledo Appliance Guys" and "Brothers Appliance".
6. Defendants are, and have been at all relevant times, engaged in the business of selling, advertising, and performing appliance repair services at consumers' homes in the State of Ohio, including Lucas County.
7. Defendants advertise their appliance repair service on Craigslist.
8. Defendants advertise that they accept credit card payments, but upon arriving at consumers' homes, they tell consumers they only accept cash.
9. Defendants failed to give consumers proper estimates for work, materials, or services.
10. Defendants failed to provide estimates of the anticipated cost of the repair or service to consumers, even when asked to do so.
11. Defendants performed repairs on consumers' appliances and then demanded payment without first getting authorization from the consumers to make the repairs.
12. Defendants provided shoddy or unworkmanlike services to consumers by performing repairs on consumers' appliances that quickly broke again, often within hours or days of the repair.
13. Defendants informed consumers that their repair services were covered by a one-year warranty.

14. When the equipment broke shortly after repair or within the one-year warranty period, Defendants informed consumers that they would return to perform additional repairs on the appliances, but Defendants never returned.
15. At least two consumers paid Defendants a substantial sum of money for parts needed on a repair, but Defendants failed to deliver the items that consumers paid for and did not provide refunds of consumers' money.
16. Defendants conducted business in the State of Ohio, including Lucas County, without registering their business or trade name with the Ohio Secretary of State.

CONCLUSIONS OF LAW

17. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
18. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1)-(3), in that Defendants reside in, maintain their principal place of business in, and conduct some of the transactions complained of herein Lucas County.
19. The Ohio Attorney General is the proper party to commence these proceedings under the authority provided him under the CSPA, R.C. 1345.07.
20. Defendants are "suppliers" as the term is defined in the CSPA, R.C. 1345.01(C), as Defendants were, at all times relevant herein, engaged in the business of effecting consumer transactions by selling, advertising, and performing appliance repair services and selling parts to consumers for purposes that were primarily for personal, family, or household use, within the meaning specified in R.C. 1345.01(A) and (D).

21. Defendants committed unfair and deceptive acts or practices in violation of R.C. 1345.02(A) by performing shoddy and unworkmanlike services in connection with consumer transactions and failing to correct such work.
22. Defendants committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.02(B)(1), by representing that the subject of a consumer transaction had sponsorship, approval, performance characteristics, accessories, uses, or benefits that it did not have.
23. Defendants committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.02(B)(10), by representing that consumer transactions involved a warranty, when they did not.
24. Defendants committed deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and the Ohio Adm. Code 109:4-3-05(B), by failing, where the anticipated cost of the repair or service exceeded twenty-five dollars and where the repair or service was to be performed at the consumer's residence, to orally inform the consumer at the time of the initial face to face contact and prior to the commencement of the repair or service, of the consumer's right to receive a written or oral estimate and to provide the consumer with a form which conformed to the requirements of Ohio Adm. Code 109:4-3-05(A)(1).
25. Defendants committed deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and the Ohio Adm. Code 109:4-3-05(D)(6) by charging consumers for repairs and services which has not been authorized by the consumers.
26. Defendants committed deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and Ohio Adm. Code 109:4-3-09, by accepting money from consumers for goods and services and failing to make full delivery or provide refunds.

27. Defendants committed unfair and deceptive acts or practices in violation of R.C. 1345.02(A) by failing to comply with R.C. 1329.01 by not registering the name Toledo Appliance Repair with the Ohio Secretary of State.

ORDER

THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED THAT:

A. Plaintiff's request for Declaratory Judgment is GRANTED, and it is therefore DECLARED that the acts and practices set forth above violate the CSPA, R.C. 1345.01 et seq. and the O.A.C. 109:4-3-05 et seq. in the manner set forth therein.

B. Defendant Roger Sutherland and Defendant Shawn Wheeler, doing business as Toledo Appliance Repair, Toledo Appliance Guys, or Brothers Appliance, under these or any other names, their officers, partners, agents, servants, representatives, salespersons, employees, successors or assigns, and all persons acting in concert and participation with them directly or indirectly through any corporate device, partnership or association, in connection with any consumer transaction, are hereby PERMANENTLY ENJOINED from engaging in any unfair, deceptive, and unconscionable acts and practices that violate the CSPA, R.C. 1345.01 et seq.

C. Defendants are ORDERED, jointly and severally, to pay consumer damages to the Ohio Attorney General in the total amount of Six Thousand Nine Hundred Ninety Four Dollars and Seventy Two Cents (\$6,994.72) to be distributed by the Attorney General to the consumers identified in the affidavts submitted too this Court.. Payment shall be made payable to the "Ohio Attorney General" and sent immediately to:

**Financial Assistant
Office of Ohio Attorney General Mike DeWine
30 E. Broad St., 14th Floor
Columbus, Ohio 43215.**

D. Defendants are ORDERED, jointly and severally, to pay civil penalties to the Ohio Attorney General in the total amount of Twenty-Five Thousand Dollars (\$25,000.00). Payment shall be made payable to the "Ohio Attorney General" and sent immediately to:

**Financial Assistant
Office of Ohio Attorney General Mike DeWine
30 E. Broad St., 14th Floor
Columbus, Ohio 43215.**

E. Defendants are ORDERED, jointly and severally, to pay investigative costs to the Ohio Attorney General in the total amount of One Thousand Sixteen Dollars and 12/100 (\$1,016.12). Payment shall be made payable to the "Ohio Attorney General" and sent immediately to:

**Financial Assistant
Office of Ohio Attorney General Mike DeWine
30 E. Broad St., 14th Floor
Columbus, Ohio 43215.**

F. Defendants are ORDERED, jointly and severally, to pay all court costs associated with this matter.

IT IS SO ORDERED.

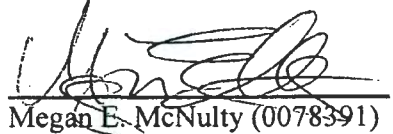
7/21/14
DATE



JUDGE FREDERICK H. MCDONALD

Prepared by:

MICHAEL DEWINE
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read 'Megan E. McNulty', is written over a horizontal line.

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