

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, *ex rel.*
MICHAEL DEWINE
ATTORNEY GENERAL OF OHIO

Plaintiff,

v.

THOMAS HUBER JR.

Defendant.

CASE NO. 13 CV 012762

JUDGE FAIS

RECEIVED
ATTORNEY GENERAL OF OHIO

MAY 16 2019

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

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

This Court held a damages hearing on October 24, 2014, to determine the appropriate damages to assign the Defendant after this Court entered Default Judgment against him on June 17. Magistrate Thompson conducted the hearing. Magistrate Thompson issued his decision on damages on November 12, 2014. The Defendant did not oppose the Magistrate's Decision, nor has the Defendant ever appeared in this case. Therefore, after careful consideration, this Court agrees with Magistrate Thompson, adopts his decision in full, and issues the following Findings of Fact, Conclusions of Law, and Order as this Court's Final Judgment Entry and Order.

FINDINGS OF FACT

1. Defendant, Thomas Huber Jr., is a resident of the State of Ohio whose last known address was 845 Moon Road, Columbus, OH 43224. His current whereabouts and address are unknown.
2. Huber personally solicited, offered, and sold landscaping services, a form of home improvement services, to residents in Franklin County, Ohio, for primarily personal, family, or household purposes.

3. Huber solicited, offered, and sold these landscaping services in person at consumers' residences, sometimes after having left a flyer at the residence and having received a call from the resident consumer.
4. Huber called his landscaping service different names, including "Huber's Tree Care," "Capital Tree Service," "Tree Doctor," and "Word of Mouth," but did not register any of them as businesses with the Ohio Secretary of State.
5. Huber represented to consumers that he was a professional, full-service, certified arborist.
6. Huber offered pesticide application services to consumers. For example, he told consumers that he could save their ash trees with his "special formula" pesticide. Mr. Huber is not a licensed pesticide applicator in the State of Ohio.
7. As a result of Huber's representations, consumers believed Huber was properly licensed to use pesticides and relied upon that belief when they decided to contract with and pay Huber to provide landscaping services using pesticides.
8. The State of Ohio prohibits the unlicensed application of pesticides for a pesticide business without direct supervision of someone who is properly licensed. R.C. 921.06(A)(1)(a). Ohio also prohibits someone from owning or operating a pesticide business without obtaining a license from the director of agriculture. R.C. 921.09. A "pesticide business" includes any person "who performs pesticide business activities." R.C. 921.01(LL).
9. It is unknown whether Huber is truly a certified arborist. The Ohio Chapter of the International Society of Arboriculture (ISA) does not recognize Huber as an ISA-certified arborist.
10. Huber demanded consumers pay for his landscaping services in advance of service.

11. Consumers paid in advance for Huber's service. These deposits exceeded \$25, were typically several hundred dollars, and sometimes exceeded \$1,000 in total.
12. Huber documented consumers' deposits with handwritten receipts that included the services the consumer ordered, the consumer's name, sometimes the consumer's signature, and a note that the consumer "Paid in Full."
13. Consumers paid Huber in cash or by check.
14. Huber failed, at the time of the initial face-to-face contact, and prior to the commencement of any services, to provide consumers a written disclosure of the consumer's right to receive an estimate and choose the form of that estimate, written or oral.
15. Huber did not evidence his sales by a written agreement or offer to purchase in the same language as he used in the oral sales presentations and containing his name and address.
16. Huber failed to obtain buyers' signatures to written agreements, failed to state on written agreements the date on which the buyer actually signed, and failed to leave with buyers a copy of the written agreement that he signed.
17. Huber did not leave with the consumers a copy of any written agreement with the notice of the consumer's right to cancel within three days.
18. Huber also did not provide to consumers a completed Notice of Cancellation form.
19. Huber failed to wait three business days before commencing services.
20. On numerous occasions, Huber failed to deliver the landscaping services in the same quantity and quality that consumers paid him in advance to deliver.
21. On some occasions, Huber delivered some but not all of the services represented and paid for, such as pruning and trimming far less than what he represented, failing to return each

month to monitor the results of his insect-control treatments, and failing to cut tree and bush stumps level with the ground.

22. On several occasions, Huber failed to deliver any of the services that he was paid in advance to deliver. Examples of services that Huber totally failed to deliver included: Fertilization, fertilization-boosting, trimming, pesticide application, insect control, brush removal, garden-bed cleaning, and wood removal.
23. By failing to fully deliver the services as he promised, Huber also failed to honor the “guarantees” that he noted on several consumer-buyers’ receipts.
24. Huber did not return to complete the pre-paid services as promised to the consumers.
25. Consumers made repeated attempts to contact Huber but failed to reach him. Consumers called the number he provided to them and left messages, but Huber did not respond.
26. Having failed to deliver or finish delivering services already paid for by consumers, having failed to respond to customers phone calls, and maintaining no fixed business address for consumers to file their complaints, Huber has also failed to provide consumers with a post-service, written, itemized receipt listing the services he delivered.
27. More than eight weeks have elapsed since the consumers paid, and Huber accepted, money for services. To date, Huber has not fully delivered those services ordered, made a full refund, advised the consumer of the duration of any extended delay, offered to send the consumer a refund within two weeks of a consumer-buyer request, or furnished similar services of equal or greater value as a good-faith substitute.

CONCLUSIONS OF LAW

1. This Court has personal jurisdiction over the Defendant, pursuant to R.C. 2307.382, because this cause of action arises from the Defendant's business transactions with residents of Franklin County, Ohio.
2. This Court has subject matter jurisdiction over this action, pursuant to R.C. 1345.04, because the claims in this Complaint arise from consumer transactions subject to R.C. 1345.01 to 1345.13.
3. Venue is proper with this Court, pursuant to Ohio Civ. R. 3(B)(1) or, alternately, Ohio Civ. R. 3(B)(3), because the Defendant resides in Franklin County, Ohio, and the actions giving rise to this Complaint occurred in Franklin County, Ohio.
4. Huber is a "supplier," as defined in R.C. 1345.01(C) because he engaged in the business of effecting consumer transactions by soliciting, offering for sale, and selling home improvement services, specifically landscaping services, to individuals in Franklin County for purposes that were primarily personal, family, or household within the meaning specified in R.C. 1345.01(A) and (D).
5. Huber is a "seller," as defined in R.C. 1345.21(C), because he engaged in the business of effecting home solicitation sales, as defined in R.C. 1345.21(A), by soliciting, offering for sale, and selling home improvement services, including landscaping services, to "buyers" in the State of Ohio for purposes that are primarily personal, family, or household, within the meaning of R.C. 1345.21(E).

VIOLATIONS OF CONSUMER SALES PRACTICES ACT

FAILURE TO DELIVER GOODS OR SERVICES, OR PROVIDE REFUNDS

6. Huber committed unfair and deceptive acts and practices in violation of R.C. 1345.02(A) and O.A.C. 109:4-3-09(A)(2) by failing to fully deliver those services ordered by consumers, failing to fully refund the consumers, failing to advise consumers of the duration of an extended delay, and failing to furnish similar services of equal or greater value within eight weeks of accepting payment for those services.
7. By the time Huber committed these acts and practices, such acts and practices had already been determined deceptive by rule adopted by the Attorney General pursuant to R.C. 1345.05(B)(2).

VIOLATIONS OF THE REPAIRS OR SERVICES RULE

8. Huber committed unfair and deceptive acts or practices in violation of R.C. 1345.02(A) and O.A.C. 109:4-3-05(A)(1) by failing to provide to consumers, at the time of the initial face-to-face contact and prior to the commencement of any services, a written disclosure of the consumer's right to receive an estimate and choose the form of that estimate, written or oral.
9. Huber committed unfair and deceptive acts and practices in violation of R.C. 1345.02(A) and O.A.C. 109:4-3-05(D)(12) by failing to provide consumers with a written itemized list of repairs performed or services rendered that included a list of parts or materials and a statement of whether they were used, remanufactured, or rebuilt, if not new, and the cost thereof to the consumer, the amount charged for labor, and the identity of the individual performing the repair or service.

10. By the time Huber committed these acts and practices, such acts and practices had already been declared deceptive by rule adopted by the Attorney General pursuant to R.C. 1345.05(B)(2).

VIOLATIONS OF THE DEPOSITS RULE

11. Huber committed unfair and deceptive acts or practices in violation of R.C. 1345.02(A) and O.A.C. 109:4-3-07(B)(5) by failing to provide to consumers, at the time of the initial deposit, a dated written receipt stating clearly and conspicuously whether the deposit was refundable and under what conditions it was refundable.
12. By the time Huber committed these acts and practices, such acts and practices had already been declared deceptive by rule adopted by the Attorney General pursuant to R.C. 1345.05(B)(2).

UNFAIR AND DECEPTIVE ACTS AND PRACTICES

13. Huber committed unfair and deceptive acts or practices in violation of R.C. 1345.02(A) by owning and operating a pesticide business, advertising that business, and applying pesticide without a pesticide license required by R.C. 921.09 or R.C. 921.06(A)(1)(a).
14. Huber committed unfair and deceptive acts and practices in violation of R.C. 1345.02(B)(6) by representing that the subject of a consumer transaction would be supplied in greater quantity than Huber intended.
15. Huber committed unfair and deceptive acts and practices in violation of R.C. 1345.02(B)(10) by representing that consumer transactions involved a warranty, or other obligations when the representation was false.

16. Huber committed unfair and deceptive acts and practices in violation of R.C. 1345.02(B)(1) by representing that the subject of the consumer transactions had performance characteristics, uses, or benefits that they did not.

VIOLATIONS OF HOME SALES SOLICITATIONS ACT

FAILURE TO EVIDENCE CONTRACT WITH A WRITTEN AGREEMENT

17. Huber engaged in unfair and deceptive acts or practices in violation of R.C. 1345.23(A) by failing to provide each consumer-buyer a written agreement or offer to purchase in the same language as he used in the oral sales presentations and containing the name and address of the seller.
18. Huber committed unfair and deceptive acts or practices in violation of R.C. 1345.23(A) by failing to present a written agreement to each consumer-buyer and by failing to obtain the buyer's signature to it.
19. Huber committed unfair and deceptive acts or practices in violation of R.C. 1345.23(A) by failing to state on each written agreement the date on which the buyer actually signed.
20. Huber committed unfair and deceptive acts or practices in violation of R.C. 1345.23(A) by failing to leave with each consumer-buyer a copy of the written agreement that had been signed by the seller and that complied with R.C. 1345.23(B).
21. Pursuant to R.C. 1345.28, these violations constitute deceptive acts and practices in connection with consumer transactions, in violation of R.C. 1345.02.

FAILURE TO PROVIDE NOTICE OF RIGHT TO CANCEL

22. Huber engaged in unfair and deceptive acts or practices in violation of R.C. 1345.23(B) by failing to provide consumers with a notice of right to cancel within three days of purchase that met the particular requirements of R.C. 1345.23(B)(1).

23. Huber engaged in unfair and deceptive acts or practices in violation of R.C. 1345.23(B) by failing to attach to the contract a “Notice of Cancellation” form that met the particular requirements of R.C. 1345.23(B)(2).
24. Huber engaged in unfair and deceptive acts or practices in violation of R.C. 1345.23(B) by failing to complete both copies of a “Notice of Cancellation” form that met the particular requirements of R.C. 1345.23(B)(3).
25. Pursuant to R.C. 1345.28, these violations constitute deceptive acts and practices in connection with a consumer transaction, in violation of R.C. 1345.02

ORDER

- A. Huber’s violations of the Consumer Sales Practices Act (“CSPA”) and the Home Solicitation Sales Act (“HSSA”) occurred as described in the Complaint and as described in this Order.
- B. Thomas Huber Jr., under that name, “Huber Tree Care,” “Capital Tree Service,” “Tree Doctor,” “Word of Mouth,” or any others, and all persons acting on behalf of Huber directly or indirectly, through any corporate or private device, partnership or association, jointly and severally, are permanently enjoined from engaging in the acts and practices described in this Complaint, and from further violating the CSPA and HSSA.
- C. Huber is permanently enjoined from acting as a supplier and from soliciting or engaging in any consumer transactions in the State of Ohio as a supplier until the final ordered resolution of this matter is satisfied in its entirety.
- D. Huber shall, as a means of ensuring compliance with this Court’s Order and with the consumer protection laws of Ohio, maintain in his possession and control for a period of five (5) years, and in a manner designed to secure the privacy of all consumers’ personal

information, all business records relating to Huber's solicitation, offer, and sale of landscaping and other home improvement services in the State of Ohio.

- E. Huber is liable to all consumer-buyers damaged by his violations of the HSSA and the CSPA. Pursuant to R.C. 1345.23(C), the Court rescinds each of Huber's transactions with the consumers listed in Addendum A and shall pay the Attorney General's Office Twenty Two Thousand Five Hundred Ninety-Three Dollars and Ninety-Four Cents (\$22,593.94) in rescission damages to effect these rescissions.
- F. Pursuant to R.C. 1345.07(D), Huber shall pay the Attorney General's Office Fifty Thousand Dollars (\$50,000) in civil penalties for his violations of the CSPA. Huber shall pay by money order or cashier's check made payable to the "Ohio Attorney General's Office." The money order or cashier's check shall reference "CPS" on the reference or memo line and be mailed to:

**Restitution Compliance Officer
Consumer Protection Section
30 E. Broad Street, Floor 14
Columbus, Ohio 43215**

- G. Huber shall also pay court costs.

IT IS SO ORDERED.

DATE

HON. JUDGE FAIS

Prepared by:

/S/Bradly Turner

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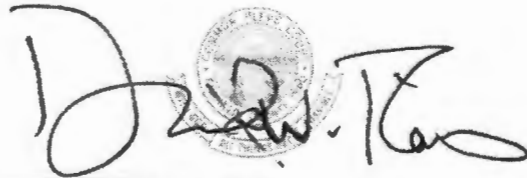
Bradly Turner, 30 E. Broad St., Floor 14, Columbus, OH 43215; *Counsel for Plaintiff; and*

Thomas Huber Jr.: *Location Unknown; Defendant.*

Franklin County Court of Common Pleas

Date: 11-26-2014
Case Title: OHIO STATE ATTORNEY GENERAL -VS- THOMAS HUBER JR
Case Number: 13CV012762
Type: ORDER

It Is So Ordered.

A handwritten signature in black ink, appearing to read "D. W. Fais", is written over a circular official seal. The seal contains the text "JUDGE OF THE COURT OF COMMON PLEAS" and "FRANKLIN COUNTY, OHIO".

/s/ Judge David W. Fais

Court Disposition

Case Number: 13CV012762

Case Style: OHIO STATE ATTORNEY GENERAL -VS- THOMAS
HUBER JR

Case Terminated: 12 - Default

Final Appealable Order: Yes