

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

STATE OF OHIO <i>ex rel.</i>	:	
ATTORNEY GENERAL	:	
DAVE YOST	:	Case No. 2018 CV 02923
	:	
Plaintiff,	:	
v.	:	
	:	Judge Krumholtz
DANIEL WILLIAM WELLS	:	
	:	
	:	<u>FINAL JUDGMENT</u>
Defendant.	:	<u>ENTRY AND ORDER</u>
	:	
	:	

Plaintiff commenced this action with the filing of its Complaint on June 27, 2018 alleging four causes of action under the Consumer Sales Practices Act ("CSPA") against Defendant Daniel Williams Wells dba Kelly Heating & Air Conditioning, dba Regan Same Day Heating and Cooling and dba Kelly's Plumbing & Heating ("Defendant"). On August 31, 2018, a default judgment was entered against Defendant on all claims and the Court granted Plaintiff's request to submit evidence of consumer damages by affidavit. Plaintiff filed its damages memorandum on March 29, 2019, attaching twenty-two affidavits from consumers attesting to the damages each suffered.

The Court finds that each consumer sustained individual damages in the amounts set forth in their respective affidavits and as summarized in the Consumer Damages Summary (attached as Exhibit 2 to Plaintiff's Damages Memo).

In its Damages Memo, Plaintiff also explained the basis for the amount of civil penalty requested. Plaintiff made the request pursuant to the CSPA, R.C. 1345.07(D) and provided

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evidence of the Defendant's on-going violations of the CSPA. The Court finds Plaintiff's request well-taken and orders a civil penalty of \$100,000 to be imposed upon Defendant.

In support of this Final Judgment Entry and Order, the Court makes the following Findings of Fact and Conclusions of Law.

FINDING OF FACTS

1. Defendant is an individual who did business in Ohio as Kelly Heating & Air Conditioning.
2. Defendant is an individual who did business in Ohio as Reagan Same Day Heating & Cooling.
3. Defendant is an individual who did business in Ohio as Kelly's Plumbing & Heating.
4. Defendant registered the business name "Kelly Heating and Air" with the Secretary of State on June 1, 2011.
5. Defendant's business name registration was cancelled by operation of law on June 9, 2016.
6. Defendant at all times pertinent hereto directed and controlled all business activities of Kelly Heating & Air Conditioning, including the solicitation for sale and sale of home improvement services.
7. Defendant controlled and directed the business activities and sales conduct of Kelly Heating & Air Conditioning, causing, personally participating in, or ratifying the acts and practices of it.
8. Defendant solicited consumers and accepted payments for home improvement goods and services within multiple counties in Ohio, including Montgomery County.

9. Defendant solicited and sold home improvement goods and services at the residences of buyers.
10. Defendant does not have a retail business establishment having a fixed permanent location where goods are exhibited or services are offered for sale on a continuing basis.
11. Defendant did not notify consumers of their cancellation rights nor did he provide consumers with a notice of cancellation.
12. Defendant accepted monetary deposits from consumers for the purchase of home improvement goods and services and failed to deliver those goods and services and has refused to refund consumers' deposits or payments.
13. Defendant performed substandard, shoddy, and incomplete work when he did provide home improvement services.
14. After receiving payment, Defendant would sometimes begin to provide contracted services, but often failed to complete the work.
15. Defendant's failure to perform contracted services in a proper manner has resulted in harm to consumers and required the consumers to pay additional money to have the Defendant's work corrected and/or to complete the work Defendant was supposed to perform.
16. On April 5, 2017, this Court awarded judgment against Defendant, including an award of consumer damages and a civil penalty, arising out of previous consumer transactions.

CONCLUSIONS OF LAW

17. The actions of the Defendant are in violation of the CSPA, R.C. 1345.01 *et seq.*, and the Home Solicitation Sales Act ("HSSA"), R.C. 1345.21 *et seq.*

18. 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 *et seq.*
19. Venue is proper with this Court, pursuant to Ohio Civ. R. 3(C)(1)-(3), because Defendant resided in, operated his business from, and engaged in the transactions complained of herein in Montgomery County.
20. Defendant is a “supplier,” as that term is defined in R.C. 1345.01(C), as he engaged in the business of effecting “consumer transactions” by soliciting consumers for home repair, construction, assembly and/or treatment products for a fee, within the meaning of R.C. 1345.01(A).
21. Defendant is a “seller” engaged in the business of effecting home solicitation sales by soliciting and selling home improvements to “buyers” at the buyers’ personal residences in the State of Ohio for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.21(A) and (E).
22. Defendant committed unfair and deceptive acts or 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 making shipment or delivery of the goods or services ordered, making a full refund, advising the consumers 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.
23. Defendant committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by performing substandard work and then failing to correct such work.

24. Defendant committed unfair and deceptive acts or practices in violation of R.C. 1345.02(A) of the CSPA, by engaging in consumer transactions while having an unsatisfied judgment and legal obligation owed to a consumer arising out of a previous consumer transaction.
25. Defendant 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.
26. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

ORDER

It is therefore **ORDERED, ADJUDGED, AND DECREED** that:

- A. Plaintiff's request for a Declaratory Judgment is hereby granted as each act or practice of the Defendant violated the CSPA and HSSA as described in the Complaint and in this Order.
- B. Defendant, and all persons acting on behalf of him, directly or indirectly, through any corporate or private device, partnership or association, is permanently enjoined from engaging in the acts or practices found by this Court to violate the CSPA and HSSA and from further violating the CSPA and HSSA.
- C. Defendant is liable for consumer damages in the amount of \$21,671.77; to be paid to and distributed by the Ohio Attorney General's Office to the following consumers:

First Name	Last Name	City	Amount
Joy	Andrews	Camden	\$800.00
Rick	Clark	Troy	\$990.00
Sandy	Fetters	Edgewood	\$125.00
Scottie	Frantom	Sidney	\$950.00
Nancy	Hardy	Frazeysburg	\$500.00
David	Jackson	Blanchester	\$850.00
Thomas	Kraska	Piqua	\$329.00
Dave	Lemke	Dayton	\$350.00
Janan	Morris	Dayton	\$257.00
Kathleen	Naylor	Dayton	\$322.50
Floyd	Nill	Union	\$2,125.00
Judith	Nunley	Dayton	\$514.00
Patricia	Rice	Dayton	\$700.00
Constance	Robinson	Kettering	\$1,350.00
Joshua	Scarborough	Englewood	\$805.00
Debbie	Serrer	Dayton	\$725.62
Sandra	Stidam	Urbana	\$1,000.00
Kimberley	Stultz	New Lebanon	\$800.00
Curtis	Sumner	Huber Heights	\$4,188.65
Sherry	Tripp	Dayton	\$400.00
Frank	Warren	Springfield	\$3,000.00
Beverly	Warren	Dayton	\$590.00

- D. Defendant shall pay a civil penalty of \$100,000, pursuant to R.C. 1345.07(D).
- E. All contracts entered into between Defendant and Ohio consumers by unfair or deceptive acts or practices in violation of the HSAA are hereby rescinded with full restitution to be paid to the consumers
- F. The Defendant is enjoined from engaging in any consumer transaction as a Supplier in the State of Ohio until he has satisfied all monetary obligations hereunder and the previous Court judgment against Defendant.
- F. Defendant shall pay all court costs associated with this matter.

IT IS SO ORDERED.

HON. JUDGE KRUMHOLTZ

Prepared by:

DAVE YOST
Ohio Attorney General

/s/ Brandon C. Duck
Brandon C. Duck (0076725)
Assistant Attorney General
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Brandon.Duck@ohioattorneygeneral.gov

Certificate of Service

I hereby certify that on April 15, 2019, I electronically filed this document and will serve this document in accordance with Civ. R. 5 on the following once it is signed and executed by the Court:

Daniel William Wells
8720 Meeker Road
Dayton, OH 45414

Daniel William Wells
6989 Serene Place
Dayton, Ohio 45424

Defendant

Brandon C. Duck
BRANDON C. DUCK (0076725)
Assistant Attorney General



General Divison
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Case Number:
2018 CV 02923

Case Title:
STATE OF OHIO EX REL. ATTORNEY GENERAL vs
DANIEL WILLIAM WELLS

Type:

Final Judgment Entry

So Ordered,

A handwritten signature in black ink, reading "Michael V. Krumholz". The signature is written in a cursive style with a large, stylized 'M' and 'K'.