

FILED
Common Pleas Court

SEP 13 2019
3:00 PM
Clinton County
Clerk of Courts

**IN THE COURT OF COMMON PLEAS
CLINTON COUNTY, OHIO**

STATE OF OHIO, *ex rel.*
DAVE YOST
ATTORNEY GENERAL OF OHIO

PLAINTIFF,

v.

PHILLIP R. SHOLLER, JR., ET AL.,
DEFENDANTS.

CASE NO. CVH18000277

JUDGE JOHN W. RUDDUCK

FINAL JUDGMENT
ENTRY AND ORDER

The Plaintiff commenced this action on August 6, 2018, by filing its Complaint and Request for a Declaratory Judgment, Injunctive Relief, Civil Penalties, and Other Appropriate Relief against Defendants Phillip R. Sholler, Jr., and Sholler's Fence, LLC ("Defendants"). The Complaint alleged violations of the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 *et seq.*, its Substantive Rules, Ohio Administrative Code ("O.A.C.") 109:4-3-01 *et seq.*, and the Home Solicitation Sales Act ("HSSA"), R.C. 1345.21 *et seq.*

Defendants were successfully served by certified mail on December 21, 2018. Plaintiff moved for default judgment on February 28, 2019, and the Court entered a Default Judgment Entry and Order against Defendants on August 20, 2019.

On July 26, 2019, Plaintiff filed a Memorandum in Support of Damages and Other Requested Relief ("Damages Memo"), in which Plaintiff submitted evidence, including consumer affidavits, supporting the amount of consumer damages and civil penalties that Plaintiff was requesting. On August 15, 2019, Plaintiff filed an additional consumer affidavit in support of the Damages Memo. In their affidavits the consumers attested to the damages each of them suffered. The evidence established that the consumers sustained monetary damages after

RECEIVED
ATTORNEY GENERAL OF OHIO

DEC 02 2019

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

JR 85, p. 703-708

Defendants failed to provide the services for which Defendants accepted the consumers' payments.

The Court finds that the consumers sustained damages in the amount of \$44,805.

In its Damages Memo, Plaintiff also explained the basis for a \$50,000 civil penalty. Plaintiff requested the civil penalty pursuant to R.C. 1345.07(D) and provided evidence of the Defendants' violations of the CSPA sufficient to warrant imposing a civil penalty. The Court finds Plaintiff's request for a civil penalty in the amount of \$50,000 well-taken.

Based on the above, the Court restates below the Findings of Fact, Conclusions of Law, and ordered relief included in the Court's August 20, 2019 Default Judgment Entry and Order, and orders additional relief based on the evidence presented in the Plaintiff's Damages Memo.

FINDINGS OF FACT

1. Defendant Phillip R. Sholler, Jr. ("Sholler") is a natural person whose address is Chillicothe Correctional Institution, 15802 State Route North 104, Chillicothe, OH 45601.
2. Defendant Sholler's Fence, LLC is a domestic limited liability company that has been registered with the Ohio Secretary of State since January 31, 2013.
3. The principal place of business for Defendants was 8877 S. State Route 73, Wilmington, Ohio 45177.
4. Defendants were served with the summons and Complaint by certified mail on December 21, 2018.
5. Defendant Sholler at all times pertinent hereto controlled and directed the business activities and sales conduct of Defendant Sholler's Fence, LLC, causing, personally

participating in, or ratifying the acts and practices of Defendant Sholler's Fence, LLC, including the conduct giving rise to the violations described herein.

6. Defendants engaged in the business of providing goods and services to consumers, including installation of fencing, and failed to deliver some of the goods and services within eight weeks.
7. Defendants have refused to refund consumers' deposits or payments despite consumers' requests for refunds.
8. After receiving payments, Defendants sometimes began work but failed to complete the work.
9. Defendants represented to consumers that Defendants would provide the ordered goods and services within an estimated time and then failed to provide such goods and services in the time promised.
10. Defendants provided shoddy and substandard home repair services to consumers and then failed to correct such services.
11. In at least once instance, Defendants failed to honor their maintenance warranty when asked to repair a fence.
12. At the time of the transactions, Defendants failed to provide consumers notice of their rights to cancel the transactions, or provide consumers with proper Notice of Cancellation forms describing the consumers' rights to cancel the transactions.

CONCLUSIONS OF LAW

13. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.

14. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(C)(3), in that some of the transactions complained of herein, and out of which this action arose, occurred in Clinton County.
15. The Attorney General is the proper party to commence these proceedings under the authority provided him under R.C. 1345.01 *et seq.* and by virtue of his statutory and common law authority to protect the interests of the citizens of Ohio.
16. Defendants are “supplier(s)” as that term is defined in R.C. 1345.01(C), since Defendants engaged in the business of effecting “consumer transactions” with “consumers,” either directly or indirectly, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A), (C), and (D) of the CSPA.
17. Defendants committed unfair and deceptive acts and practices in violation of the Failure to Deliver Rule, O.A.C. 109:4-3-09, and CSPA, R.C. 1345.02(A), by accepting money from consumers for goods or services ordered and then permitting eight weeks to elapse without delivering the promised goods or services, issuing 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.
18. Defendants committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) by performing repairs and services on household goods in an incomplete, shoddy, or unworkmanlike manner, and failing to correct the work.
19. Defendants committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(B)(10) by representing that a transaction involved a warranty when such representation was false

20. Defendants violated the HSSA, R.C. 1345.23 and R.C. 1345.02(A), by failing to give proper notice to consumers of their rights to cancel their transactions by a specific date.

THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED THAT:

- A. The Plaintiff's request for a Declaratory Judgment that the acts and practices set forth above are in violation of the CSPA is hereby GRANTED.
- B. Defendants, under any other names, and their officers, partners, agents, 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, or unconscionable acts and practices that violate the CSPA, R.C. 1345.01 *et seq.*, including, without limitation, the conduct described in the Conclusions of Law Paragraphs 17-20.
- C. Defendant Phillip R. Sholler, Jr., individually and doing business as Sholler's Fence, LLC, or any other names, is hereby PERMANENTLY ENJOINED, as a means of insuring compliance with this Court's Order and with the consumer protection laws of Ohio, from engaging in consumer transactions in this state as a Supplier until such time as he has satisfied all monetary obligations ordered pursuant to this litigation.
- D. The Court ORDERS that all contracts entered into by Defendants and Ohio consumers by unfair or deceptive acts or practices and in violation of the HSSA are rescinded with full restitution to be paid to the consumers.

- E. Defendants are ORDERED to pay consumer damages to the Ohio Attorney General in the total amount of \$44,805 to be distributed by the Attorney General to the consumers identified in Exhibit 1 to Plaintiff's Damages Memo.
- F. Pursuant to 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 to the Ohio Attorney General in the amount of \$50,000.
- G. Defendants are liable for all court costs associated with this matter.

IT IS SO ORDERED.

09-13-19
DATE


JUDGE JOHN W. RUDDUCK

Prepared by:

Brandon C. Duck (0076725)
Assistant Attorney General
Office of the Ohio Attorney General
Consumer Protection Section
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215
Phone: (614) 466-1031
Fax: (866) 848-1068
Brandon.Duck@ohioattorneygeneral.gov

INSTRUCTIONS TO THE CLERK
For Final Appealable Order

Please provide notice of the foregoing Judgment and its date of entry upon the journal, per the provisions of Civ.R.58(B).