

IN THE COURT OF COMMON PLEAS  
DELAWARE COUNTY, OHIO

RECEIVED  
ATTORNEY GENERAL OF OHIO

MAR 01 2021

STATE OF OHIO ex rel.  
ATTORNEY GENERAL  
DAVE YOST,

Plaintiff,

v.

BRIAN WATKINS, et al.,

Defendants.

CONSUMER PROTECTION SECTION  
Case No: 20 CV II 05 0230 PUBLIC INSPECTION FILE

JUDGE JAMES P. SCHUCK

FINAL JUDGMENT  
ENTRY AND ORDER

2021 FEB 19 AM 10:47

CLERK OF COURTS  
DELAWARE COUNTY, OHIO  
COMMON PLEAS COURT  
FILED

This matter initially came to be heard upon the filing of a Default Judgment Motion on December 11, 2020 by Plaintiff, State of Ohio. On December 15, 2020, the Court entered a *Default Judgment Entry and Order* ("Default Judgment Order") against Brian Watkins, individually and doing business as Dig it Deep and Tough Nickel Excavating LLC; Iron Horse Excavating, LLC; and Black River Farms & Contracting, LLC (collectively, "Defendants"). In addition to granting the other relief Plaintiff requested, the Court ordered Defendants to pay civil penalties and consumer damages in amounts to be determined at a later date. The Court also granted Plaintiff's request to present evidence of consumer damages via the submission of affidavits.

On February 16, 2021, Plaintiff filed its Memorandum in Support of Consumer Damages and Civil Penalties ("Damages Memo"). Plaintiff attached to its Damages Memo as evidence the sworn affidavits of eight consumers, all of whom suffered monetary damages due to Defendants' unfair and deceptive acts and practices. Plaintiff's Damages Memo provided evidence in support of its requests for \$45,750.00 in consumer damages and \$50,000.00 in civil penalties.

including pond installations and residential excavating services, and failed to deliver some of those goods and services within eight weeks.

7. Defendants did not have a retail business establishment having a fixed permanent location where goods were exhibited or services were offered for sale on a continuing basis.
8. Defendants accepted monetary deposits from consumers for the purchase of home improvement goods and services, but failed to deliver those goods and services and also refused to refund the consumers' deposits.
9. At the time of the transactions, Defendants failed to provide consumers with notice of their right to cancel their transactions, or to provide consumers with notice of cancellation forms describing the consumers' rights to cancel the transactions.

#### **CONCLUSIONS OF LAW**

10. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the Consumer Sales Practices Act, R.C. 1345.01, *et seq.* ("CSPA").
11. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(C)(1), (2), and (3), in that Defendants reside and/or have their principal place of business in Delaware County, Ohio and Defendants conducted activity giving rise to the claims for relief in Delaware County, Ohio.
12. The Attorney General is the proper party to commence these proceedings in the public interest and on behalf of the State of Ohio under the authority vested in him by the CSPA.
13. Defendants are each a "supplier," as that term is defined in R.C. 1345.01(C), as they engaged in the business of effecting "consumer transactions" by soliciting and selling to consumers goods and services for a fee, including pond installations and residential

excavating services, within the meaning of R.C. 1345.01(A).

14. Defendants engaged in "home solicitation sales" as "seller(s)" as that term is defined in R.C. 1345.21, as they made personal solicitations of sales at the residences of buyers, within the meaning of R.C. 1345.21(A).
15. Defendants 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 and services and then permitting more than eight weeks to elapse without making shipment or delivery of the goods and 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.
16. Defendant Brian Watkins committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by failing to register fictitious trade names with the Ohio Secretary of State as required by R.C. 1329.01(D).
17. Defendants violated the Home Solicitation Sales Act ("HSSA"), R.C. 1345.23 and R.C. 1345.02(A), by failing to provide consumers with notice of their right to cancel their transactions within three business days.

#### **ORDER**

Therefore, it is hereby **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, its Substantive Rules, and the HSSA, in the manner set forth herein.
- B. Defendants, together with their agents, representatives, employees, independent

contractors, successors and assigns, and all persons acting in concert or participation with them, directly or indirectly, through any corporate device, partnership, association, or affiliation, 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.*, its Substantive Rules, and the HSSA, R.C. 1345.21 *et seq.*, including, without limitation, the conduct described in the Conclusions of Law Paragraphs 15-17.

- C. Pursuant to 1345.07(B), Defendants are ORDERED, jointly and severally, to pay \$45,750.00 in consumer damages. Such payment shall be made to the Attorney General via a certified check or money order, made payable to the "Ohio Attorney General" and delivered within seven days to:

Financial Specialist  
Consumer Protection Section  
Office of the Ohio Attorney General  
30 East Broad Street, 14th Floor  
Columbus, Ohio 43215

The consumer damages will be distributed to the following eight consumers in the amounts set forth below:

Last Name	First Name	City	State	Amount
Hensley	Darryl	South Vienna	OH	\$11,500.00
Randall	Dustin	Newark	OH	\$3,500.00
Straub	Theodore	Delaware	OH	\$5,000.00
Crouse	Micah	Mansfield	OH	\$10,500.00
Roberson	John	Ashley	OH	\$2,250.00
Schott	James	Orient	OH	\$5,000.00
Batross	Brian	Delaware	OH	\$5,000.00
Clark	Joshua	Alvada	OH	\$3,000.00
			<b>TOTAL</b>	<b>\$45,750.00</b>

D. Based on the above findings that Defendants committed unfair and deceptive acts and practices in violation of the CSPA, Defendants are ORDERED, jointly and severally, pursuant to R.C. 1345.07(D), to pay a civil penalty of \$25,000.00. Such payment shall be made to the Attorney General via a certified check or money order, made payable to the "Ohio Attorney General" and delivered within seven days to:

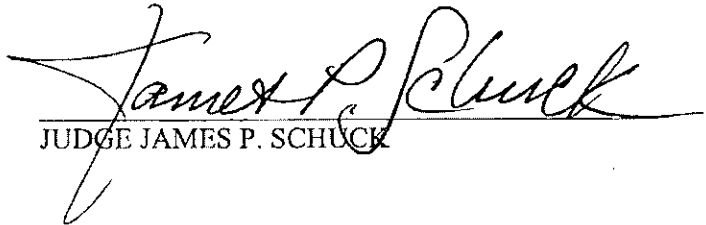
Financial Specialist  
Consumer Protection Section  
Office of the Ohio Attorney General  
30 E. Broad Street, 14th Floor  
Columbus, Ohio 43215

E. Defendants are liable for Plaintiff's costs of collecting on this judgment as permitted by statute.

F. Defendants are ORDERED to pay all court costs.

**IT IS SO ORDERED.**

THIS IS A FINAL APPEALABLE ORDER.  
THERE IS NO JUST CAUSE FOR DELAY

  
JUDGE JAMES P. SCHUCK

Submitted by:

DAVE YOST  
Ohio Attorney General

/s/ W. Travis Garrison

W. Travis Garrison (0076757)  
Assistant Attorney General  
Consumer Protection Section  
30 E. Broad Street, 14<sup>th</sup> Floor  
Columbus, Ohio 43215  
(614) 728-1172 / (844) 243-0045 (fax)  
Travis.Garrison@ohioattorneygeneral.gov

The Clerk is ordered to serve upon all parties not in default to appear, notice of the judgment and date of entry upon the journal within three days of journalization.

This document sent to each attorney/party by:	
<input checked="checked" type="checkbox"/>	ordinary mail
<input type="checkbox"/>	fax
<input type="checkbox"/>	attorney mailbox
<input type="checkbox"/>	certified mail
