

JAN 20 2022

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

STATE OF OHIO, ex rel.
DAVE YOST,

2022 JAN 18 P 3:40

CASE NO. 19-CV-200003

Plaintiff,

COURT OF COMMON PLEAS
LORAIN COUNTY

JUDGE RAYMOND EWERS

-vs-

THOMAS CUTURA, et al,
Defendants

CONSENT JUDGMENT AND
AGREED FINAL ENTRY AND ORDER
AS TO DEFENDANT THOMAS
CUTURA, ONLY

This matter came upon the filing of a Complaint on December 4, 2019, by Plaintiff, the State of Ohio, charging Defendants Thomas Cutura ("Cutura" or "Defendant") and Assurance Roofing and More, LLC ("Assurance Roofing") with violations of the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 *et seq.* Defendant Assurance Roofing was served, but failed to make an appearance or otherwise defend, and Plaintiff's September 10, 2021 Motion for Default Judgment against Assurance Roofing and More LLC, only, remains pending with the Court.

Plaintiff and Defendant Thomas Cutura have agreed to settle and resolve all matters alleged in the Complaint. By signing this Consent Judgment and Agreed Final Entry and Order ("Consent Judgment"), Defendant Cutura waives any claims he has or may have regarding service of process of the summons and Complaint, and/or any defects therein, submits to the personal jurisdiction of this Court, consents to the entry of this Consent Judgment pursuant to R.C. 1345.07(F), and to the rights of Plaintiff to enforce this Consent Judgment.

FINDING OF FACTS

1. Defendant Thomas Cutura is a natural person and supplier as defined in R.C. 1345.01(C) who controlled, directed, supervised, approved, formulated, authorized, ratified, operated,

personally participated in and benefitted from conducting home improvement services to consumers under various business names.

2. Defendant Thomas Cutura dominated, controlled and directed the business activities and sales conduct of Assurance Roofing and More, LLC and exercised the authority to establish, implement or alter the policies of Assurance Roofing and More, LLC, and committed, allowed, directed, ratified or otherwise caused the following unlawful acts to occur.
3. Defendant Thomas Cutura has also contracted with Ohio consumers for home improvement services under different business names, some of which are fictitious entities not registered with the Ohio Secretary of State.
4. Defendant Cutura has used various other business names in soliciting consumer contracts for home improvement and repair services including, but not limited to:
 - Mid Ohio Cabinets, LLC
 - Midwest Cabinets Direct
 - Midwest Cabinets
 - Avon Cabinets Direct, LLC
 - Ohio Capital Cabinets
 - Avon Cabinets Direct
 - Avon Wholesale Cabinets, LLC
 - Family Capital Cabinets
 - Family Capital, LLC
 - Family Capital

5. Defendant Cutura sometimes misrepresented his name to be "Thomas Southard" or "Thomas John" and/or sometimes misrepresented the business name to consumers in an attempt to impede consumers' abilities to check his background or the company's background.
6. Defendant Cutura used social media sites such as Facebook to solicit new consumer business, and misrepresented his name and/or his business name on those sites in order to impede consumers' abilities to research his name or business name on the internet.
7. Defendant Cutura took money deposits from consumers for home improvement and repair services and failed to provide the contracted services, or provide refunds for services within a reasonable time.
8. In cases in which Defendant provided some home improvement or repair services, consumers complained that the work was substandard.
9. In some instances, Defendant did home improvement or repair services without first obtaining the necessary permits required by local, county or state laws.
10. Defendant failed to perform the contracted home improvement and repair duties in a timely manner to Ohio consumers.
11. In some cases, Defendant accepted partial payment for the home improvement and repair services, started performing the work, and thereafter failed to complete the work.
12. Defendant has maintained a pattern of inefficiency, incompetence and/or continuous tactics to stall and evade his legal obligations to consumers.
13. Some contracts with consumers exceeded \$25,000 in cost, yet Defendant required deposits greater than ten percent of the contract price, and failed to include certain information on the contract as required by R.C. Chapter 4722 including, but not limited

to, the Defendants' mailing address, taxpayer identification number, the consumer's address and telephone number, the address or location of the property where the home construction service was to be performed, the anticipated start and completion dates, a copy of Defendants' certificate of sufficient general liability coverage, and the dated signatures of Defendants and home owners.

14. Defendant continued to solicit new consumer transactions without satisfying existing judgments against him which stemmed from consumer transactions.
15. Defendant Cutura filed a voluntary Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Northern District of Ohio, Case number 20-10197, shortly after the commencement of this action, on January 12, 2020. Defendant Cutura received a discharge pursuant to 11 U.S.C. 727 on April 29, 2020 and the case closed on September 20, 2021.
16. Consumers who have made claims for refunds or damages against Defendant include, but are not limited to:

- | | |
|---|---|
| a. Joyce and Larry Orenrich
14309 South Boone Road
Columbia Station, OH 44028 | Transaction date 4/2/2018
Claimed refund/damage amount \$80,000 |
| b. Nancy Williams
13069 Green Road
Wakeman, OH 44889 | Transaction date 7/27/2018
Claimed refund/damage amount \$10,000 |
| c. Ronald Stitchick
36910 Orchard Avenue
Avon, OH 44011 | Transaction date 8/4/2018
Claimed refund/damage amount \$6,500 |
| d. Robert Gross
8655 Avon Belden Rd.
North Ridgeville, OH 44039 | Transaction date 11/19/2018
Claimed refund/damage amount \$1,200 |

- | | |
|---|--|
| e. Melissa Burns
338 Lakeside Avenue
Wellington, OH 44090 | Transaction date 1/27/2019
Claimed refund/damage amount \$2,000 |
| f. Regina Gussie
4318 Venice Road
Sandusky, OH 44870 | Transaction date 3/1/2019
Claimed refund/damage amount \$2,000 |
| g. Mollie Smale
594 Washington Ave.
Elyria, OH 44035 | Transaction date 4/4/2019
Claimed refund/damage amount \$500 |

POST PETITION CONSUMERS:

- | | |
|---|--|
| h. Ashley McCartney
2559 Chadwell Circle
Canton, OH 44720 | Transaction date 7/17/2020
Claimed refund/damage amount \$2,800 |
| i. Zoltan Laslo
27554 Butternut Ridge Rd.
North Olmsted, OH 44070 | Transaction date 9/1/2020
Claimed refund/damage amount \$12,500 |
| j. Preston Reid
14228 Cranwood Park Blvd.
Garfield Hts., OH 44125 | Transaction date 8/9/2021
Claimed refund/damage amount \$3,810 |

17. The consumer names, addresses, transaction dates and amounts claimed as identified in paragraph 16 total One Hundred Twenty-one Thousand Three Hundred Ten Dollars (\$121,310) and are included herein as a means of calculating the agreed upon amount of civil penalties.

18. As a result of Defendant's bankruptcy discharge, Plaintiff is not seeking payment of consumer damages for the consumers listed in paragraph 16, (a) through (g).

19. The consumers listed in paragraph 16, (h) through (j), however, are post-petition consumers whose claims for damages arose after the filing of Defendant's bankruptcy (on

1/12/2020) and therefore their claims are not extinguished as a result of Defendant's bankruptcy discharge. The total amounts owed to the post-petition consumers is \$19,110.

CONCLUSIONS OF LAW

20. This Court has personal jurisdiction over Defendant pursuant to R.C. 2307.382 because this cause of action arises from Defendant's business transactions with residents of Ohio.
21. The Court has subject matter jurisdiction over this action pursuant to R.C. 1345.04 of the CSPA.
22. Venue is proper with this Court, pursuant to Ohio Civ. R. 3(C)(2) and (3) because Defendant operated his principal place of business from, and conducted the activities which give rise to the State's claim for relief in, Lorain County, Ohio.
23. Despite Defendant Cutura's bankruptcy discharge, Plaintiff is entitled to continue with these proceedings and enter into this Consent Judgment pursuant to Plaintiff's police and regulatory powers.
24. 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 and services and then permitting eight weeks to elapse without either making shipment or delivery of the goods or services ordered, making a full refund, advising the consumer of the duration of an extended delay and offering to send a refund within two weeks if requested, or furnishing similar goods or services of equal or greater value as a good faith substitute.
25. Defendant committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by performing shoddy and substandard work and then failing to correct such work.

26. Defendant committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) by accepting payments from consumers and commencing work at consumer residences without first securing the requisite permits or licenses to perform the contracted work.
27. Defendant committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) by commencing work at consumer residences, and then abandoning the work site and failing to complete performance of the contracted work.
28. Defendant committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) by maintaining a pattern of inefficiency and incompetence in performing the contracted work, and in continually stalling and evading their legal obligations to consumers.
29. Defendant committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) by soliciting new consumer transactions without satisfying prior consumer-related judgments rendered against him.
30. Defendant violated the Direct Solicitations Rule, O.A.C. 109:4-3-11(A)(5), the CSPA, R.C. 1345.02(A), and the HSSA, R.C. 1345.23(B) by failing to include appropriate cancellation language in the contracts with consumers, and/or giving consumers a separate, appropriately worded "notice of cancellation" required by R.C. 1345.23(B)(2) or otherwise informing consumers of how and when to give notice of cancellation as required by R.C. 1345.23(B)(3).
31. Defendant violated the HCSSA, R.C. 4722.02, by entering into home construction services contracts with consumers without including all of the required information in the contracts, including the supplier's mailing address and taxpayer identification number,

the owner's address and telephone number and/or the location of the property where the work was to be performed, the anticipated start date and completion date for the project, the dated signatures of the contracting parties, and failing to provide to the consumer a copy of supplier's certificate of sufficient general liability coverage.

32. Defendant violated the HCSSA, R.C. 4722.03(A) by taking monetary deposits in excess of ten percent (10%) of the contract price.
33. Defendant violated the HCSSA, R.C. 4722.03(A) by entering into home construction services contracts with owners, but failing to deliver services in accordance with the contract and failing to provide a full refund within a reasonable time period.
34. Defendant violated the HCSSA, R.C. 4722.03(A) by entering into home construction services contracts with owners, and failing to perform the services in a workmanlike manner.
35. The acts or practices in Paragraphs 24-34 have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* The Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).
36. Civil penalties assessed for violations of the CSPA are in the nature of a fine, penalty, or forfeiture payable to and for a government unit and, pursuant to 11 U.S.C. 523(a)(7), are excepted from Defendant's bankruptcy discharge.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

- A. The Court hereby **DECLARES** that the acts and practices described above violate the CSPA, R.C. 1345.01 *et seq.* and its Substantive Rules, O.A.C. 109-4-3-01 *et seq.*, the HSSA, R.C. 1345.21 *et seq.* and the HCSSA, R.C. 4722.01 *et seq.* as set forth herein.
- B. Defendant, under his name, or under any derivation of the name Assurance Roofing and More, LLC, or under any of the names reflected in paragraphs 4, 5 or any other paragraph herein, or by any other names, as well as any officers, agents, representatives, salespersons, employees, successors, assigns, and all persons acting in concert or participation with Defendant, directly or indirectly, are **PERMANENTLY ENJOINED** from further violating the CSPA, R.C. 1345.01 *et seq.* and its Substantive Rules, O.A.C. 109-4-3-01 *et seq.*, the HSSA, R.C. 1345.21 *et seq.* and the HCSSA, R.C. 4722.01 *et seq.*
- C. Defendant has committed more than thirteen separate violations of the CSPA, HSSA and HCSSA and is hereby **ASSESSED, FINED AND IMPOSED** a civil penalty of One Hundred Fifty Thousand Dollars (\$150,000.00) pursuant to R.C. 1345.01(D).
- D. Payment of the civil penalties ordered herein shall be made within 7 days of the filing of this Consent Judgment Entry and shall be made by money order or certified bank check made payable to "Ohio Attorney General" and delivered to:

Financial Specialist
Consumer Protection Section
Ohio Attorney General's Office
30 E. Broad St., 14th fl.
Columbus, OH 43215

- E. Defendant is **ORDERED** to pay consumer damages of Nineteen Thousand One Hundred Ten Dollars (\$19,110.00) for the post-petition consumers identified in paragraph 16. Payment of the consumer damages shall be made within 7 days of the filing of this Consent Judgment Entry and shall be made by money order or certified bank check made payable to "Ohio Attorney General" and delivered to Plaintiff for disbursement at the following address:

Financial Specialist
Consumer Protection Section
Ohio Attorney General's Office
30 E. Broad St., 14th fl.
Columbus, OH 43215

- F. Defendant is **ORDERED** to file a Release of Mechanic's Lien upon the Mitchell property located at 1625 W. 20th St., Lorain, Ohio 44052, by filing the appropriate paperwork in the Lorain County Recorder's Office within 7 days of the filing of this Consent Judgment Entry. If Defendant does not comply with this provision, a copy of this Consent Judgment may be filed with the Lorain County Recorder's Office as evidence of the release of this lien.
- G. It is further **ORDERED** that, in the event Plaintiff must initiate legal action or incur any costs to compel the Defendant to abide by this Consent Judgment, Defendant shall be liable to the Plaintiff for all related enforcement costs,

including but not limited to, a reasonable sum for attorneys' fees and investigative costs (should Plaintiff prevail).

- H. It is hereby **ORDERED** that this Consent Judgment does not resolve or preclude any investigation or enforcement action against Defendant for occurrences which are not the subject matter of this Consent Judgment, or which may transpire after the filing of this Consent Judgment, under any authority granted to the Ohio Attorney General. This Consent Judgment resolves only the issues relating to the allegations brought forth in the civil complaint filed by the Plaintiff in this matter.
- I. Defendant shall not represent, directly or indirectly or in any way whatsoever, that the Court or the Plaintiff has sanctioned, condoned, or approved any part or aspect of the Defendant' business operations.
- J. Defendant is **ENJOINED** from engaging in consumer transactions as a supplier in the State of Ohio until he has fully complied with this Consent Judgment Entry, including full payment of civil penalties and consumer damages ordered, and the Mechanic's Lien on the Mitchell property has been released.
- K. Defendant shall pay all court costs associated with this matter.
- L. This Court shall retain jurisdiction to enforce compliance with this Consent Judgment.

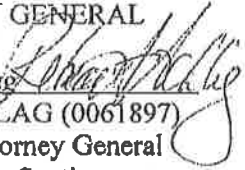
IT IS SO ORDERED.

4/6/2022
DATE/



JUDGE RAYMOND EWERS

APPROVED AND AGREED TO BY:

DAVE YOST
OHIO ATTORNEY GENERAL


/s/ Rebecca F. Schlag
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Jan. 5, 2022
DATE


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Defendant, pro se

1. 5. 22
DATE