

MAR 16 2022

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D134291564

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

PLAINTIFF,

V.

JOSHUA SWANN

DEFENDANT.

CASE NO. A 2001558

JUDGE LESLIE GHIZ

On April 8, 2020, Plaintiff filed its Complaint against Defendant Joshua Swann d/b/a Window City of Cincinnati, d/b/a Custom Window Solutions. ("Defendant"). The Complaint alleged violations of the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., and the Home Solicitation Sales Act ("HSSA"), R.C. 1345.21 et seq. Defendant was served on August 28, 2020, and he failed to answer. On February 25, 2021, Plaintiff filed its Motion for Default Judgment, which included a request for permission to prove consumer damages amounts via the submission of consumer affidavits at a later date.

On March 11, 2021, the Court issued a Decision and Entry Granting Plaintiff's Motion for

Default Judgment against Defendant. The Court referred this matter to the Court's magistrate for a damages hearing. On August 26, 2021, Plaintiff filed its Memorandum in Support of Consumer Damages and Other Requested Relief ("Damages Memo"), providing affidavits from 12 consumers and requesting a total of \$42,443.73 in damages for these consumers. The Damages Memo further set forth Plaintiff's basis for requesting civil penalties, injunctive relief, declaratory relief, and other appropriate relief, all of which Plaintiff had requested in its Complaint.

On November 4, 2021, the damages hearing was held before Magistrate Berding. Plaintiff, the State of Ohio, appeared through counsel to introduce evidence in support of its requested relief. Defendant failed to appear.

On December 16, 2021, upon consideration of the evidence submitted at the hearing and the Plaintiff's Damages Memo, Magistrate Berding issued the Magistrate's Decision. Magistrate Berding found all of Plaintiff's requests in its Damages Memo to be well-taken. The Magistrate held that the evidence establishes that the 12 consumers who submitted affidavits sustained a total of \$42,443.73 in monetary damages as a result of Defendant's violations. The Magistrate also found it appropriate and permitted by R.C. 1345.07(D) for the Court to impose a \$50,000 civil penalty upon Defendant. Finally, the Magistrate found the declaratory, injunctive, and other relief that Plaintiff requested to be appropriate and permitted by statute. To date, no objections have been filed to the Magistrate's Decision.

Upon review of the findings of fact and conclusions of law, the Court hereby ADOPTS the Magistrate's Decision in its entirety pursuant to Civ. R. 53(D)(4)(c). This Court finds Magistrate Berding's Decision to be supported by the evidence. The Court hereby adopts and restates the Findings of Fact, Conclusions of Law, and Decision from the Magistrate's Decision and renders the following FINAL JUDGMENT ENTRY AND ORDER:

FINDINGS OF FACT

1. Defendant Joshua Swann is a natural person residing at 7496 Knights Knoll Ct., West Chester, Ohio 45069.
2. Defendant operated under the names Window City of Cincinnati and Custom Window Solutions, both fictitious business names not registered with the Ohio Secretary of State.
3. Defendant was served with the summons and Complaint via ordinary mail on August 28, 2020.
4. Defendant has been at all times relevant to this action engaged in the business of selling home improvement goods or services in the State of Ohio, including in Hamilton County.
5. Defendant primarily installed windows, siding and gutters for consumers.
6. 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.
7. Defendant accepted substantial payments from consumers but failed to complete the work for which he was paid.
8. Defendant failed to provide the materials and services that consumers paid for, failed to respond to consumers, and failed to issue refunds.
9. Defendant sometimes began work but failed to complete the work.
10. Defendant represented to consumers that he would provide the ordered goods and services within an estimated time and then failed to provide such goods and services in the time promised.
11. Defendant provided shoddy and substandard window replacement and installation and home repair services to consumers and then failed to correct such services. In some instances, Defendant's shoddy workmanship caused additional damage to consumers' properties.

12. Defendant failed to register his fictitious business names Window City of Cincinnati and Custom Window Solutions with the Ohio Secretary of State.
13. Defendant failed to honor the workmanship warranty on the consumers' contracts.
14. At the time of the transactions, Defendant failed to provide proper notice to consumers of their rights to cancel the transactions, including providing a detachable notice of cancellation form.

CONCLUSIONS OF LAW

15. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
16. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(C)(3) and (6), in that Defendant conducted activity that gave rise to the claims for relief in Hamilton County and Hamilton County is the county in which all or part of the claims for relief arose.
17. 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.
18. 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 either directly or indirectly for window repair and installation, home repair, and goods and services for a fee, within the meaning of R.C. 1345.01(A).
19. Defendant committed unfair or 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 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.

20. Defendant committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by performing shoddy and substandard work and then failing to correct such work.
21. Defendant committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by failing to register with the Ohio Secretary of State his use of fictitious business names, as required by R.C. 1329.01.
22. Defendant committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345(B)(10), by representing that a consumer transaction involved a warranty when that representation was false.
23. Defendant violated the HSSA, R.C. 1345.23 and R.C. 1345.02(A), by failing to provide proper notice to consumers of their rights to cancel their transactions, including providing detachable notice of cancellation forms.
24. The acts or practices described above 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).

THEREFORE, IT IS 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 and its Substantive Rules, in the manner set forth herein.

B. Defendant, individually, and doing business as Window City of Cincinnati, and doing business as Custom Window Solutions, or any other names, his officers, partners, agents, representatives, salespersons, employees, successors or assigns, and all persons acting in concert and participation with him, directly or indirectly through any corporate device, partnership or association, in connection with any consumer transaction, is hereby PERMANENTLY ENJOINED from engaging in any unfair, deceptive, and unconscionable acts and practices that violate the CSPA, R.C. 1345.01 *et seq.* and its Substantive Rules, including, without limitation, the conduct described in the Conclusions of Law Paragraphs 19-23.

C. Defendant is ORDERED to pay consumer damages to the Ohio Attorney General in the total amount of \$42,443.73 to be distributed by the Attorney General to the 12 consumers who provided affidavits attached to the Plaintiff's Damages Memo as Exhibits 1 – 12. Such payment shall be made by certified check or money order, payable to "Ohio Attorney General," and delivered to:

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

D. Based on the above findings that Defendant committed unfair and deceptive acts and practices in violation of the CSPA, Defendant is ORDERED to pay civil penalties, pursuant to R.C. 1345.07(D), to the Ohio Attorney General, in the amount of \$50,000. Such payment shall be made by certified check or money order, payable to "Ohio Attorney General," and delivered to:

Compliance Officer
Consumer Protection Section

Office of the Ohio Attorney General
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215

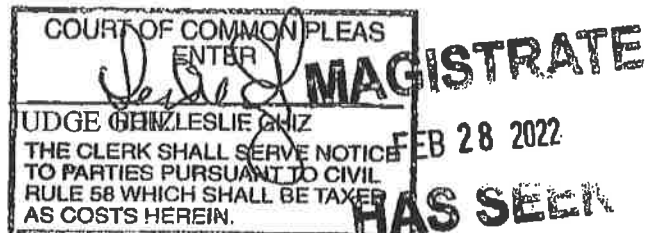
E. Defendant is liable for Plaintiff's costs of collecting on any judgment awarded, as permitted
by statute.

F. Defendant is ORDERED to pay all court costs.

IT IS SO ORDERED.

THIS IS A FINAL APPEALABLE ORDER.

March 1, 2022
DATE



The Clerk of Courts is hereby directed to serve notice of this judgment upon all parties:

TIMOTHY W. EFFLER (0083768)
Associate Assistant Attorney General
Consumer Protection Section
1 Government Center, Suite 1340
Toledo, Ohio 43604
Attorney for Plaintiff

JOSHUA SWANN
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