

IN THE COURT OF COMMON PLEAS, DELAWARE COUNTY, OHIO

STATE OF OHIO EX REL  
ATTORNEY GENERAL DAVE  
YOST,

Plaintiff,

vs.

CLEARVIEW CONSTRUCTION  
LLC, et al.,

Defendants.

Case No. 22 CV H 10 0518

JAMES P. SCHUCK, JUDGE

**RECEIVED**  
ATTORNEY GENERAL OF OHIO

**MAY 01 2024**

CONSUMER PROTECTION SECTION  
PUBLIC INSPECTION FILE

**FINAL JUDGMENT**

**AWARDING ADDITIONAL DAMAGES ON DEFAULT JUDGMENT**

On December 20, 2023, the Court granted default judgment in favor of Plaintiff State of Ohio by and through its counsel, Attorney General Dave Yost, and against Defendants Clearview Construction LLC and its owner, Ryan C. Needels.

On February 23, 2024, the Court filed an entry awarding damages to seven consumers who suffered financial loss due to Defendants' deceptive acts and practices in violation of the Consumer Sales Practices Act, R.C. Chapter 1345.

At that time, Plaintiff had identified 23 additional consumers who claimed damages, but the only evidence of their loss was an affidavit by Sheila Laverty, a consumer protection investigation supervisor for the Office of the Ohio Attorney General. The Court determined that Ms. Laverty's affidavit was hearsay evidence that was not admissible to prove the damages of the 23 consumers.

Therefore, the Court scheduled a damages hearing to allow those consumers to present direct evidence. In the alternative, the Court allowed those consumers to submit to Plaintiff's counsel for filing their own sworn affidavits proving their claimed damages.

On April 25, 2024, Plaintiff filed a supplemental memorandum in support of damages that attached affidavits by 22 of the remaining 23 consumers. Their names and the amount of damages claimed are as follows:

NAME	AMOUNT OF LOSS
Julie Baughn	\$17,500
Gregory Bean-Deflumer	\$16,300
Travis Bidwell	\$23,400
William Biles	\$13,100
Sterling Boggs	\$15,000
Rachel Brittain	\$37,800
Jerry Brooks	\$93,000
Paul Browning	\$16,300
Jeffery Tyler Cole	\$7,900
Jamie Gaines	\$14,300
Shaun Holmes	\$18,400
Mike Kilmurry	\$16,300
Rick Munday	\$13,000
Zachary Myers	\$29,000
Jerry Nye	\$20,900

Brandon Petry	\$15,400
Jennifer Posten	\$22,700
Cheryl Roberts	\$22,300
James Chad Roby	\$11,400
Zachary Scott	\$15,500
Robert Seely	\$15,200
John Verde	\$23,200
<b>TOTAL</b>	<b>\$477,900.00</b>

The Court has reviewed the submitted affidavits and finds that Defendants are liable to pay consumers Baughn, Bean-Deflumer, Bidwell, Biles, Boggs, Brittain, Brooks, Browning, Cole, Gaines, Holmes, Kilmurry, Munday, Myers, Nye, Petry, Posten, Roberts, Roby, Scott, Seely, and Verde a total of \$477,900 in addition to the damages already awarded in the Court's February 23, 2024 Judgment Entry.

The Court having having granted default judgment for Plaintiff and awarded damages, this matter is now concluded.

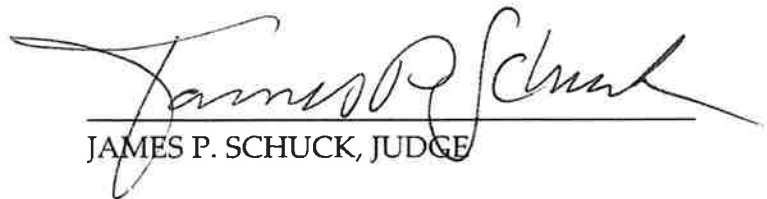
Costs to be paid by Defendants.

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

IT IS SO ORDERED.

The Clerk of this Court is hereby ordered to serve a copy of this Judgment Entry upon all parties or their counsel through the Clerk's e-filing system, by regular mail, or by facsimile.

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.

  
JAMES P. SCHUCK, JUDGE



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**JUDGMENT ENTRY**  
**ADDRESSING DAMAGES ON DEFAULT JUDGMENT**  
**AND**  
**SCHEDULING HEARING ON APRIL 12, 2024**

This matter is before the Court in order to determine the measure of damages to be awarded in favor of Plaintiff and against Defendants Clearview Construction LLC and its owner, Ryan C. Needels.

**I. BACKGROUND**

On October 11, 2022, Plaintiff State of Ohio, by and through Attorney General Dave Yost and on behalf of the public interest, filed a complaint against Defendants, raising causes of action for violations of the Consumer Sales Practices Act ("CSPA"), the Home Solicitation Sales Act ("HSSA"), and the Home Construction Service Suppliers Act ("HCSSA").

On November 30, 2023, Plaintiff moved for default judgment. The Court granted default judgment on December 20, 2023. The judgment did not address damages but granted Plaintiff leave to submit evidence of damages by affidavit.

On January 30, 2024, Plaintiff filed a memorandum in support of damages, supported by the affidavit of Sheila Lavery, who is identified as a consumer protection investigation supervisor for the Office of the Ohio Attorney General.

Lavery averred that she interviewed 30 consumers who filed complaints with the attorney general related to their contracts with Defendants for construction work. According to Lavery, these complaints included allegations of shoddy and incomplete workmanship, failure to perform repairs or correct problems, failure to return to the work site, and failure to properly notify consumers of their right to cancel the contract within three days. Lavery's affidavit attached a list of 30 consumers who claimed losses ranging from \$4,350 to \$93,000, for a total of \$560,103.15. However, Lavery's affidavit was accompanied by affidavits from only seven of the 30 consumers, specifically John Garwood, Ty Sonagere, Eric Schoppelrei, Tim Hinton, Jack Moreno, Chase Reida, and Matt Enderle.

## **II. LAW AND ANALYSIS**

### **A. Default Judgment**

In a default judgment proceeding, damages must be proven the same as in a case assigned for regular trial. *Bd. of Trumbull Twp. Trustees v. Rickard*, 11th Dist. Ashtabula Nos. 2016-A-0044, 2016-A-0045, 2017-Ohio-8143, 98 N.E.3d 800, ¶ 70. Although proof of

damages is not necessary to support a liquidated damages claim based upon an account, a plaintiff seeking unliquidated damages must present proof. *Heckman v. Porter*, 5th Dist. Stark Nos. 2002CA00380, 2002CA00381, 2003-Ohio-3135, ¶ 13, citations omitted; *Brooks v. RKUK, Inc.*, 5th Dist. Stark No. 2021 CA 00048, 2022-Ohio-266, ¶ 54.

## **B. Economic Damages Under the CSPA and HSSA**

### *1. Damages Asserted by Seven Consumers*

With regard to consumers Garwood, Sonagere, Schoppelrei, Hinton, Moreno, Reida, and Enderle, Plaintiff seeks an award of \$78,285.15 in actual damages based on Defendants' violation of the CSPA and HSSA.

R.C. 1345.09(G) defines actual economic damages as including "damages for direct, incidental, or consequential pecuniary losses resulting from a violation" of Chapter 1345.

These seven consumers have documented their losses as follows:

NAME	AMOUNT
John Garwood	\$6,800.00
Ty Sonagere	\$25,100.00
Eric Schoppelrei	\$4,350.00
Tim Hinton	\$11,000.00
Jack Moreno	\$4,580.15
Chase Reida	\$7,055.00
Matt Enderle	\$19,400.00
<b>TOTAL</b>	<b>\$78,285.15</b>

The Court orders Defendants to pay \$78,285.15 in consumer damages to be distributed to the seven consumers who have suffered actual financial loss from the Defendants' deceptive acts and practices.

2. *Damages for the Remaining 23 Consumers*

Plaintiff attempts to present damage evidence by affidavit of Plaintiff's investigator as to the remaining 23 consumers.

Were this a case being tried, testimony of an investigator as to someone else's damages would be inadmissible. A plaintiff seeking an unliquidated damage award must present proof. *See Twymon v. Eagle Auto Parts, Inc.*, 8th Dist. Cuyahoga No. 110993, 2022-Ohio-2360, ¶¶ 40, 43 (the default of the defendant does not admit the amount of the damages, which plaintiff must prove; trial court may not award damages following a default that are not supported in the record); *Johnny Automatic Transmission v. Greathouse Transp.*, 8th Dist. Cuyahoga No. 112273, 2023-Ohio-2184, ¶ 23 (Ohio law requires the presentation of proof of damages for an unliquidated claim).

Because Lavery's affidavit identifies the names of 23 consumers without affidavits from those 23 consumers, the Court cannot accept her affidavit as proof of their damages.

The investigator's statements – although sworn – are inadmissible hearsay as defined by Evid.R. 801(C) and prohibited by Evid.R. 802. They are not subject to any exceptions under Evid.R. 803 or Evid.R. 804.

In asking to submit proof of damages for these 23 consumers by affidavit, Plaintiff stated only that the consumers would be inconvenienced and incur expense from having to testify at a damages hearing. Inconvenience and expense are not mentioned as reasons for a declarant's unavailability, and do not qualify her statements about those witnesses as an exception to the hearsay rule.

The Court cannot award damages to those 23 consumers who have not submitted evidence supporting their claim. The Court schedules a damages hearing on FRIDAY, APRIL 12, 2024 at 2:00 p.m. in Hearing Room 7 of the Delaware County Courthouse, 117 N. Union St., 5th Level, Delaware, Ohio 43015. In lieu of appearing in person, on or before that date these 23 consumers may submit to Plaintiff's counsel for filing their own sworn affidavits proving their claimed damages.

On or after April 12, 2024, the Court will issue a final order awarding damages to all consumers who have submitted proof.

### **C. Civil Penalty Under the CSPA and HSSA**

In addition, Plaintiff seeks a statutory civil penalty of at least \$200,000 assessed against each of the two Defendants for their violations of the CSPA and HSSA, as permitted by R.C. 1345.07(D). That section provides:

In addition to the other remedies provided in this section, if the violation is an act or practice that was declared to be unfair, deceptive, or unconscionable by rule adopted pursuant to division (B)(2) of section 1345.05 of the Revised Code before the consumer transaction on which the action is based occurred or an act or practice that was determined by a court of this state to violate section 1345.02, 1345.03, or 1345.031 of the Revised Code and committed after the decision containing the court's

determination was made available for public inspection pursuant to division (A)(3) of section 1345.05 of the Revised Code, the attorney general may request and the court may impose a civil penalty of not more than twenty-five thousand dollars against the supplier. The civil penalties shall be paid as provided in division (G) of this section.

In addition, R.C. 1345.07(H) states that the remedies available to the attorney general are “cumulative and concurrent,” with the exercise of one remedy not precluding or requiring the attorney general to exercise any other remedy.

For each of these violations, Plaintiff asserts Defendants are subject to a \$25,000 civil penalty. Each allegation of a violation is supported by a citation to an Ohio Administrative Code section or case law in which similar conduct has been declared a CSPA and/or HSSA violation.

Specifically, Plaintiff charges that Defendants committed five violations of R.C. 1345.02(A) by:

- Accepting payment from consumers for goods while failing to make full delivery of the promised goods or providing a refund;
- Providing home improvement services in an incomplete, shoddy, substandard, and unworkmanlike manner, and then failing to correct their work;
- Making various misrepresentations to consumers;
- Accepting payment from consumers and beginning work at consumers' residences, but abandoning the worksite and refusing to complete performance of the contracted work;

- Soliciting home improvement projects from consumers at their personal residences while failing to offer the proper notice of a consumer's right to cancel within three business days.

For these violations, Plaintiff asserts each of the two Defendants is subject to a civil penalty totaling at least \$200,000.

Due to the large number of complaints, the amount of consumer harm resulting from Defendants' conduct, and the need to punish Defendants and deter future conduct, the Court imposes a civil penalty against Defendants.

Because Defendants committed multiple violations of the CSPA and HSSA that meet the criteria necessary for a \$25,000 civil penalty for each separate violation as permitted by R.C. 1345.07(D), each Defendant is liable to pay \$125,000 to the Office of the Attorney General.

#### **D. Civil Penalty Under the HCSSA**

Plaintiffs also seek a statutory civil penalty for Defendants' violations of the HCSSA, as provided by R.C. 4722.07(D):

In addition to the other remedies provided in this section, the attorney general may request and the court may impose a civil penalty of not more than twenty-five thousand dollars against the supplier for each violation of an act or practice described in this chapter. The civil penalties shall be paid as provided in division (G) of this section.

Specifically, Plaintiff charges that Defendants violated R.C. 4722.02 by:

- Failing to include all necessary information in their written home improvement contracts that are in excess of \$25,000 as is required by the

statute, including, but not limited to, the supplier's contact information, anticipated start and completion dates, and a copy of the supplier's certificate of insurance;

- Entering into home construction service contracts with consumers and failing to deliver services in accordance with the terms and conditions of the contract, and failing to provide a refund within a reasonable period;
- Taking a deposit of more than 10 percent on home improvement contracts in excess of \$25,000.

In seeking a civil penalty totaling at least \$200,000 for each of the two Defendants, Plaintiff generally describes conduct prohibited by the HCSSA. However, Plaintiff has not demonstrated that the specific consumers claiming harm due to Defendants' acts and omissions are entitled to HCSSA damages

As defined by R.C. 4722.01(B), the HCSSA expressly applies only to home construction service contracts, which are defined as contracts for construction of a residential building. R.C. 4722.02(A) also expressly limits the HCSSA's application to contracts equal to or in excess of \$25,000.

The contracts described by the seven affiants in this case were for the construction of pole barns, a detached garage, porch supports, and a barn door, not for the construction of a residential building. Plaintiff provides no evidence supporting that any of the consumers contracted with Defendants for the new construction of a residential building.

The HCSSA, in some instances, can apply to a structure that is an accessory incidental to a new construction of residential building. *See, e.g., Beder v. Cerha Kitchen and Bath Design Studio LLC*, 11th Dist. Geauga No. 2022-G-0008, 2022-Ohio-4463, ¶¶ 14-17 (“construction” signifies the creation of a new dwelling; an “accessory” is incidental to that construction). However, the proposed structures described in the seven affidavits do not appear to be an appurtenance to a residence. The contracts for the remaining 23 consumers are not described, so it is not possible to know if the planned construction in those instances was for a residential building.

Regardless, the addition of an outbuilding or other construction to an already-existing home would disqualify these transactions from application of the HCSSA. *See Estate of Tomlinson v. Mega Pool Warehouse, Inc.*, 5th Dist. Delaware No. 22 CAE 03 0020, 2023-Ohio-229, ¶ 22 (“R.C. 4722.01 applies to the [new] construction of a residential building *and* any accessory construction incidental to the construction of that building” [emphasis sic]).

Finally, from the evidence presented, not all of the consumers appear to have had contracts with Defendants for construction projects worth \$25,000 or more. Five of the seven consumers who presented affidavits averred their contracts were worth over \$25,000. Of the remaining 23 consumers, several claimed to be owed restitution in an amount over \$25,000, but this amount does not reflect the full contract amount.

For this reason, the Court denies Plaintiff’s motion for a civil penalty award based on a violation of the HCSSA.

### III. CONCLUSION

The Court finds Defendants are liable to pay consumers Garwood, Sonagere, Schoppelrei, Hinton, Moreno, Reida, and Enderle a total of \$78,285.15 in damages.

The remaining 23 consumers shall appear at a hearing on FRIDAY, APRIL 12, 2024 at 2:00 p.m. to testify as to their damages. Alternately, they may submit proof of damages by providing an affidavit supporting their claims on or before that date.

Defendants are ordered to pay \$125,000 each as a civil penalty for Defendants' violations of the CSPA and HSSA.

IT IS SO ORDERED.

The Clerk of this Court is hereby ordered to serve a copy of this Judgment Entry upon all parties or their counsel through the Clerk's e-filing system, by regular mail, or by facsimile.

  
JAMES P. SCHUCK, JUDGE