

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

ENTERED

FEB 26 2024

STATE OF OHIO ex rel.
ATTORNEY GENERAL
DAVE YOST

Plaintiff,

v.

JOSEPH MERRILL INDIVIDUALLY
AND DBA MERRILL COMPLETE
CONSTRUCTION LLC

Defendant.

Case No: A2203554

Judge: Tom Heekin



D140825335

COURT OF COMMON PLEAS
ENTER

HON. TOM HECKIN

THE CLERK SHALL SERVE NOTICE
TO PARTIES PURSUANT TO CIVIL
RULES WHICH SHALL BE TAXED
AS COSTS HEREIN.

Final Judgment Entry

Plaintiff, the State of Ohio, ex rel. Attorney General Dave Yost ("Plaintiff") commenced this action on September 30, 2022, filing its Complaint against Defendant Joseph Merrill individually and dba Merrill Complete Construction, LLC ("Defendant"). The Complaint alleged violations of the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 *et seq.*, its Substantive Rules, O.A.C. 109:4-3-01 *et seq.*, and the Home Solicitation Sales Act ("HSSA"), R.C. 1345.21 *et seq.* and sought declaratory relief, injunctive relief, restitution to injured consumers, and civil penalties.

On February 13, 2023, this Court rendered default judgment in favor of the Plaintiff. Default Judgment included an order for Defendant to pay civil penalties and restitution to all consumers injured by Defendant's conduct, in an amount to be determined at a later date via affidavits. Plaintiff filed its Memorandum in Support of Damages and Civil Penalties Against

RECEIVED
ATTORNEY GENERAL OF OHIO

MAR 01 2024

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

Defendant Joseph Merrill ("Damages Memo") on September 13, 2023 in which Plaintiff submitted evidence supporting the amount of civil penalties and consumer damages requested.

Plaintiff submitted evidence, including the affidavits of four consumers, supporting its request for consumer damages and civil penalties. The consumers attested to the damages they suffered. The evidence established that each of the consumers sustained monetary damages in connection with Defendant's home improvement business. The court finds that consumer sustained damages in the total amount of \$45,570.

In its Damages Memo, Plaintiff also justified the basis for the amount of civil penalties requested pursuant to R.C. 1345.07(D). Plaintiff provided evidence of Defendant's violations of the CSPA which, pursuant to R.C. 1345.07(D), permit the imposition of a civil penalty in the amount of at least \$50,000. The Court finds Plaintiff's request well-taken.

Based on the above, the Court restates below the Findings of Fact, Conclusions of Law, and Orders that were originally included in the Court's February 13, 2023 Order and Entry Granting Default Judgment Entry, and orders additional relief based on the evidence present in the Plaintiff's Damages Memo.

FINDINGS OF FACT

1. Defendant Joseph Merrill is an individual residing at 77 Achates Dr., Florence, KY 41042.
2. Merrill Complete Construction LLC was a limited liability company registered in Kentucky with a principal place of business in Campbell County, Kentucky, but which served consumers in Hamilton County and other locations in Ohio. It was dissolved by the Kentucky Secretary of State on October 19, 2021.

3. Defendant Joseph Merrill, at all times relevant to this action, controlled and directed the business activities and sales conduct of Merrill Construction, causing, personally participating in, or ratifying the acts and practices of the same, including the conduct giving rise to the violations described herein.
4. Defendant solicited and sold home improvement goods and services, specifically concrete pouring services, at the residences of buyers.
5. Defendant did not have a retail business establishment having a fixed permanent location where the goods were exhibited or the services are offered for sale on a continuing basis.
6. When Defendant provided contracted home improvement goods and services, specifically concrete pouring services, he did so in a substandard, shoddy, and incomplete manner in a way that often caused damage to consumers' properties.
7. In some cases, Defendant would perform home improvement services without first obtaining necessary permits from local city officials or registers to work as a contractor as was required by local city codes.
8. In some cases, Defendant's work failed inspections required by local municipal codes, and Defendant refused to correct errors in his work so that it would pass inspection.
9. Defendant's performance of contracted home improvement good and services, specifically concrete pouring services, in a substandard, shoddy, or incomplete manner has resulted in harm to consumers and required the consumers to pay additional money to have Defendant's work corrected and/or to complete the work Defendant was supposed to do.
10. Defendant did not notify consumers of their cancellation rights nor did he provide consumers with a notice of cancellation form.

CONCLUSIONS OF LAW

1. The actions of Defendant, as described herein, have occurred in the State of Ohio, in Hamilton County, involved residents of the State of Ohio, and, as set forth herein, are in violation of the Consumer Sales Practices Act (“CSPA”), R.C. 1345.01 *et seq.* and the Home Solicitation Sales Act (“HSSA”), R.C. 1345.21.
2. The Attorney General, acting on behalf of the State of Ohio, and in the public interest, is the proper party to bring this action by virtue of the authority vested in the Attorney General by R.C. 1345.07.
3. Jurisdiction over the subject matter of this action lies with this Court pursuant to the CSPA, R.C. 1345.04.
4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(C)(3) in that Hamilton County is one of the counties in which Defendant conducted activity that gave rise to the claims for relief.
5. 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 home improvement goods and services for a fee, specifically concrete pouring services, to “consumers” for purposes that were primarily for personal, family, or household use as those terms are defined in R.C. 1345.01(A), (C), and (D).
6. Defendant engaged in “home solicitation sales” as a “seller” as that term is defined in R.C. 1345.21, as he made personal solicitations and sales of their goods and services at the residences of “buyers,” within the meaning of R.C. 1345.21(A), (C) and (D).

7. Defendant engaged in unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by performing home improvement goods and services, specifically concrete pouring services, in an incomplete, substandard, shoddy, and/or unworkmanlike manner.
8. Defendant engaged in unfair and deceptive acts and practices in violation of the HSSA, R.C. 1345.23, and CSPA, R.C. 1345.02(A), by failing to include appropriate cancellation language in the contracts entered into with consumers, 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).
9. The acts or practices described in Conclusions of Law Paragraphs 7-8 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. Defendant, doing business under his own name, the name Merrill Complete Construction LLC, or any other names, his agents, representatives, salespeople, employees, successors, or assigns, and all persons acting in concert or participating with him, directly or indirectly, is PERMANENTLY ENJOINED from engaging in the acts and practices described in this order and from further violating the CSPA, R.C. 1345.01 *et seq.*, its Substantive Rules, O.A.C. 109:4-3-01 *et seq.*, and the HSSA, R.C. 1345.21 *et seq.*

- B. It is DECLARED that the acts and practices committed by Defendant, as set forth above, violate the CSPA, R.C. 1345.01 *et seq.*, its Substantive Rules, O.A.C. 109:4-3-01 *et seq.*, and the HSSA, R.C. 1345.21 *et seq.*, in the manner set forth herein.
- C. Pursuant to 1345.07(B), Defendant is ORDERED to pay damages to all consumers injured by his conduct in the amount of \$45,570 to be paid to and distributed by the Attorney General to the consumers as specified on the attached Addendum A.
- 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 a civil penalty to the Attorney General, pursuant to R.C. 1345.07(D), in the amount of \$50,000.
- E. The \$95,570 due to the Attorney General under this Judgment shall be made upon entry of Judgment by delivering a certified check or money order payable to the "Ohio Attorney General's Office" and delivered to:
- Finance Specialist
Consumer Protection Section
Office of the Ohio Attorney General
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
- F. Defendant is ENJOINED from engaging in business as a supplier in any consumer transactions with Ohio consumers until he has satisfied all financial liabilities arising from this Order as well as any other outstanding consumer protection judgments in the State of Ohio.
- G. Defendant is ORDERED to pay all costs in bringing this action, including, but not limited to, the costs of collecting on this judgment.
- H. Defendant is ORDERED to pay all court costs.

IT IS SO ORDERED

02/26/2024
DATE


JUDGE HEEKIN

Submitted by:
DAVE YOST
Ohio Attorney General

/s/ Christopher Ramdeen
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Christopher.Ramdeen@OhioAGO.gov
Counsel for Plaintiff, State of Ohio

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MAGISTRATE
FEB 21 2024
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ADDENDUM A: CONSUMER DAMAGES SUMMARY

Last Name	First Name	City	County	State	Amount
Medecke	Lois	Centerville	Montgomery	OH	\$6,500.00
Rosen	Tiffany	Cincinnati	Hamilton	OH	\$7,000
Sansbury	Theresa	Cincinnati	Hamilton	OH	\$22,070.00
Vu	Coung	Fort Thomas	Campbell	KY	\$10,000.00

TOTAL: \$45,570.00