

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

STATE OF OHIO ex rel. )  
ATTORNEY GENERAL )  
DAVE YOST ) CASE NO. 2022 CV 00908  
)  
) Judge: David C. Young  
Plaintiff, )  
) **CONSENT JUDGMENT AND**  
v. ) **AGREED FINAL ENTRY**  
) **AND ORDER**  
TRI COUNTY ASPHALT, LLC )  
)  
Defendant. )

CONSUMER PROTECTION SECTION  
PUBLIC INSPECTION FILE

SEP 24 2024

RECEIVED  
ATTORNEY GENERAL OF OHIO

This matter came upon the filing of a Complaint on December 29, 2022, by Plaintiff, the State of Ohio, charging Defendant Tri County Asphalt, LLC ("Defendant") with 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.* Plaintiff and Defendant 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 submits to the personal jurisdiction of this Court, waives any claims it has or may have regarding service of process of the summons and Complaint, and/or any defects therein, and 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 Tri County Asphalt LLC ("Tri County") is an Ohio Limited Liability Corporation whose Article of Organization were filed and recorded with the Ohio Secretary of State on February 23, 2018.

2. Defendant is, and was at all times relevant hereto, engaged in the business of advertising, soliciting, offering for sale and/or selling home improvement goods and services, including but not limited to, installation of asphalt and pavement and driveway and pavement repair.
3. Defendant engaged in the business of providing goods and services to consumers, including installation of asphalt and pavement and driveway and pavement repair, and failed to deliver some of those goods and services within eight weeks.
4. 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.
5. Defendant accepted substantial payments from consumers, but failed to begin work for which it was paid.
6. Defendant has refused to refund consumers' deposits or payments despite consumers' requests for refunds.
7. After receiving payment, Defendant sometimes began work but failed to complete the work.
8. Defendant represented to consumers that it would provide the ordered goods and services within an estimated time and then failed to provide such goods and services in the time promised.
9. Defendant provided shoddy and substandard installation of asphalt and pavement, driveway and pavement repair, and other services to consumers and then failed to correct such work. In some instances, Defendant's shoddy workmanship caused additional damage to consumers' properties.
10. Defendant failed to honor the workmanship warranty on the consumers' contracts.

11. 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**

12. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
13. 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 Franklin County and Franklin County is the county in which all or part of the claims for relief arose.
14. Defendant is a “supplier,” as that term is defined in R.C. 1345.01(C), as it engaged in the business of effecting “consumer transactions,” either directly or indirectly, by soliciting or selling home improvement goods or 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).
15. As defined in R.C. 1345.21(A), (C) and (D), the Defendant is a “seller” as it engaged in the business of effecting “home solicitation sales” by soliciting “buyers” at their residences where it sold home improvement services which were primarily for the buyers’ personal, family or household use.
16. 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.

17. Defendant committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by performing services in an incomplete, substandard, shoddy, and/or unworkmanlike manner and failing to correct such work.
18. Defendant violated the CSPA, R.C. 1345.02(A), by accepting partial payment from consumers and beginning work at consumers' residences, but abandoning the work site and refusing to complete performance of the contracted work.
19. Defendant committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.02(B)(10), by representing that a consumer transaction involved a warranty when that representation was false.
20. Defendant committed unfair or deceptive acts or practices in violation of the Direct Solicitation Rule, O.A.C. 109:4-3-11(A)(5), and the CSPA, R.C. 1345.02(A), by failing to conform to the requirements of R.C. 1345.21 to 1345.27 and 1345.99 of the Revised Code relative to home solicitation sales in direct solicitations.
21. Defendant violated the HSSA, R.C. 1345.23 and the CSPA, R.C. 1345.02(A), by failing to evidence sales with written agreements that provide proper notice to consumers of their rights to cancel their transactions, including providing seller signed and dated detachable notice of cancellation forms.

**ORDER**

- 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.*, and the HSSA, R.C. 1345.21 *et seq.*, in the manner set forth in the Complaint.
- B. Defendant, under its name, or by any other names, as well as its agents, employees, sales persons, successors or assigns, and all persons acting in concert and participation with it, directly or indirectly, is 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.*, and the HSSA, R.C. 1345.21 *et seq.*
- C. Defendant is ORDERED to pay consumer damages to the Ohio Attorney General's Office in the total amount of \$47,329.25.
- D. Defendant is ORDERED to pay a civil penalty to the Ohio Attorney General's Office in the total amount of \$25,000.00.
- E. The amounts ordered in Paragraphs C and D shall be paid to the Attorney General's Office according to the following payment schedule: Defendant shall make an initial payment of \$12,329.25 within seven days of execution of this Consent Judgment. Following the initial payment, Defendant shall pay \$2,000.00 every month for 30 months. Monthly payments shall be due the first day of each month, starting the month after the Consent Judgment is executed by all parties. Unless otherwise directed by Plaintiff, all payments shall be made to the Ohio Attorney General's Office via certified check or money order, made payable to the "Ohio Attorney General's Office" and delivered to:

**Financial Specialist  
Consumer Protection Section  
Office of the Ohio Attorney General  
30 East Broad Street, 14<sup>th</sup> Floor**

**Columbus, Ohio 43215**

- F. It is further ORDERED that if Defendant fails to make any payment due in accordance with the payment schedule set forth in Paragraph E above, all remaining payments shall immediately become due and payable.
- G. It is further ORDERED that the acceptance of any payment by the Plaintiff subsequent to the time it is due or the failure of the Plaintiff to insist on strict performance of any order contained within this Consent Judgment, including, but not limited to, the acceleration in Paragraph F above of the civil penalty amount, shall not be construed as a waiver of any of the obligations created by this Consent Judgment.
- H. Failure to pay any amounts under this Consent Judgment when due may result in any balance being referred to the Ohio Attorney General's Collection Enforcement Section for collection. Should this occur, the Collections Enforcement Section will assess additional collection costs and interest on the unpaid balance pursuant to Ohio law, including, but not limited to R.C. 131.02, 109.08, and 109.081.
- I. It is further ORDERED that in the event the Ohio Attorney General must initiate legal action or incur any costs to compel Defendant to abide by this Consent Judgment, the Defendant shall be liable to the Ohio Attorney General, should it prevail, for all related enforcement costs, including, but not limited to, a reasonable sum for attorneys' fees, investigative costs, and interest and collection costs as permitted by statute.
- J. 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.

- K. 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's business operations.
- L. Defendant shall be prohibited from engaging in consumer transactions as a supplier in the State of Ohio if they are not in compliance with all the applicable provisions of this Consent Judgment, including, but not limited to, those with monetary payment obligations.
- M. Defendant shall pay all court costs associated with this matter.
- N. This Court shall retain jurisdiction to enforce compliance with this Consent Judgment.

**IT IS SO ORDERED.**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**JUDGE DAVID C. YOUNG**

APPROVED AND AGREED TO BY:

DAVE YOST  
Ohio Attorney General

/s/ Brandon C. Duck

9.18.2024

\_\_\_\_\_  
Brandon C. Duck (0076725)  
Assistant Attorney General  
Office of the Ohio Attorney General  
Consumer Protection Section  
30 E. Broad Street, 14<sup>th</sup> Floor  
Columbus, Ohio 43215  
Phone: (614) 466-1031  
[Brandon.Duck@ohioAGO.gov](mailto:Brandon.Duck@ohioAGO.gov)

\_\_\_\_\_  
Date

DEFENDANT

/s/ Michael Wanko, per written authorization,  
by Brandon C. Duck

9.18.2024

\_\_\_\_\_  
Michael Wanko  
Owner/Operator  
Tri County Asphalt, LLC

\_\_\_\_\_  
Date

COUNSEL FOR DEFENDANT

/s/ Erica A. Probst, per written authorization,  
by Brandon C. Duck

9.18.2024

\_\_\_\_\_  
Erica A. Probst  
Kemp, Schaeffer & Rowe Co., L.P.A.  
88 W. Mound Street  
Columbus, Ohio 43215  
Office: (614) 224-2678  
Direct: (614) 232-8692  
Cell: (614) 746-1934  
[Erica@ksrlegal.com](mailto:Erica@ksrlegal.com)

\_\_\_\_\_  
Date



Franklin County Court of Common Pleas

**Date:** 09-23-2024  
**Case Title:** STATE OF OHIO -VS- TRI COUNTY ASPHALT LLC  
**Case Number:** 22CV009081  
**Type:** CONSENT JUDGMENT

It Is So Ordered.

A handwritten signature in black ink, appearing to read 'D. C. Young', with a stylized flourish at the end.

/s/ Judge David C. Young

Court Disposition

Case Number: 22CV009081

Case Style: STATE OF OHIO -VS- TRI COUNTY ASPHALT LLC

Case Terminated: 18 - Other Terminations