

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

STATE OF OHIO, ex rel.)	CASE NO. 2018-CV-02780
DAVE YOST)	
)	JUDGE ANTHONY M D'APOLITO
Plaintiff,)	
)	
-vs-)	
)	<u>CONSENT JUDGMENT AND</u>
ENERGY WISE HOME)	<u>FINAL AGREED ENTRY AND ORDER</u>
IMPROVEMENTS, INC., et al.,)	<u>BETWEEN PLAINTIFF AND</u>
)	<u>DEFENDANT SCOTT CROSS</u>
Defendants.)	

This matter came upon the filing of a complaint by Plaintiff, the Attorney General of Ohio, on November 20, 2018 charging Defendants Energy Wise Home Improvements, Inc., ("Energy Wise") Anthony Porrazzo, Jr. ("Porrazzo") and Scott T. Cross ("Cross") (collectively, "Defendants") with violations of the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 *et seq.*, and its Substantive Rules, Ohio Administrative Code ("O.A.C.") 109:4-3-01 *et seq.* Defendant Cross filed an answer to the Complaint.

This Consent Judgment and Final Agreed Entry and Order is between Plaintiff and Defendant Scott Cross. Plaintiff and Defendant Cross have agreed to settle and resolve all remaining matters contained herein and all claims alleged against Defendant Cross. By signing this Consent Judgment and Final Agreed Entry and Order ("Consent Judgment"), Defendant Cross hereby submits to the personal jurisdiction of the Court, consents to the entry of this Consent Judgment pursuant to R.C. 1345.07 and to the imposition of this Consent Judgment and the rights of Plaintiff to enforce same. Any service of process issues or other defects are hereby waived.

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The Parties have voluntarily entered into this Consent Judgment and agreed to settle and resolve the matters contained herein in order to avoid protracted and costly litigation and to bring about a prompt resolution to this controversy.

FINDINGS OF FACT

1. Defendant Energy Wise Home Improvements, Inc. ("Energy Wise") is an Ohio corporation, registered with the Ohio Secretary of State, with its last principal place of business having been located on 5164 Youngstown-Poland Road, Youngstown, OH 44514.
2. Defendant Scott Cross ("Cross") was an Officer and Shareholder of Energy Wise, and also directed, supervised, approved, controlled, formulated, authorized, ratified, caused, personally participated in, benefitted from and/or otherwise participated in the day-to-day activities and practices of Defendant Energy Wise, including the conduct described in the Complaint.
3. Defendant Cross solicited consumers for home improvement services in Mahoning County and other counties in the State of Ohio.
4. In some instances, Defendant Cross accepted payments for home improvement contracts which Energy Wise later failed to deliver any goods or services pursuant thereto.
5. In some instances, Defendant Cross accepted payments for home improvement contracts and Energy Wise only partially performed the work before abandoning the worksite.
6. In some instances, Defendant Cross represented to consumers that the consumer transaction involved a warranty which Defendant Energy Wise then either failed to fulfill or failed to pay the warranty company for, to the detriment of those consumers.

7. In some instances, shoddy and substandard home services were provided to consumers which Defendants failed to adequately correct.
8. In October 2018, Defendant Energy Wise abruptly shuttered its home improvement business and ceased providing goods and services to consumers and failed to give refunds to consumers.
9. The abrupt shuttering of the business resulted in harm to consumers and required some consumers to incur additional expenses to have contracted work completed and/or corrected.
10. Since the commencement of this action, Defendant Cross, along with the other Defendants in this matter, filed a Chapter 7 bankruptcy case in the U.S. Bankruptcy Court, Northern District of Ohio.
11. Defendant Cross's bankruptcy was case number 22-41065 in the U.S. Bankruptcy Court, Northern District of Ohio. Defendant Cross received a discharge on February 24, 2023, and the case terminated March 2, 2023.
12. Over 200 consumers damaged by all Defendants' unfair and deceptive acts and practices filed complaints with the Ohio Attorney General's Office and claimed losses of over \$1,000,000.00.
13. As any monetary distributions had to be approved by the bankruptcy court, consumers damaged by Defendants' unfair and deceptive acts and practices had the opportunity to file Proofs of Claim or otherwise pursue their individual monetary claims in the bankruptcy cases.
14. In March 2020, the Parties hereto entered into an Agreed Entry and Order in the within action, which temporarily enjoined the Defendants from certain acts and practices in

violation of the CSPA, and enjoined Defendant Cross from operating as a supplier in the state of Ohio. Per this Order, the temporary injunction would continue until such time as the relevant bankruptcy determinations were concluded and the state court litigation was reactivated.

15. On January 9, 2024, Plaintiff filed a Notice with the Mahoning County Court of Common Pleas indicating that all relevant bankruptcy matters were concluded, along with a Motion to Reactivate the matter.

CONCLUSIONS OF LAW

16. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
17. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1) and (3).
18. The Attorney General of Ohio is the proper party to commence these proceedings in the public interest and on behalf of the State of Ohio under the authority vested in him by the CSPA.
19. Plaintiff is entitled to continue with these proceedings and enter into this Consent Judgment pursuant to Plaintiff's police and regulatory powers.
20. 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 Cross's bankruptcy discharge.
21. Defendant Cross was a "supplier," as that term is defined in R.C. 1345.01(C), as he engaged in the business of effecting and soliciting "consumer transactions" by soliciting individual consumers either directly or indirectly for goods and services, including home improvement goods and services, within the meaning of R.C. 1345.01(A).

22. Defendant Cross, at many times pertinent to this action, controlled and directed the business activities and sales conduct of Defendant Energy Wise and Defendant Cross personally participated in, or ratified the acts and practices of the same, including the conduct giving rise to the violations described in this action.
23. Defendant Cross 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, specifically home improvement goods and services, and then permitting more than eight weeks to elapse without providing the goods ordered, making a full refund, advising 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 equal or greater value as a good faith substitute.
24. Defendant Cross committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by performing substandard work and then failing to correct such work.
25. Defendant Cross committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by representing to consumers that the consumer transaction involved a warranty and then either failed to fulfill their obligations pursuant to the warranty or failed to pay the warranty company.

ORDER

- A. Plaintiff's request for the issuance of a declaratory judgment finding that each act or practice set forth above violates the CSPA, R.C. 1345.01 *et seq.*, and its Substantive Rules, O.A.C. 109:4-3-01 *et seq.*, is hereby **GRANTED**.

- B. Defendant Cross, doing business under his own name or any other names, together with any officer, 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 or unconscionable acts and practices that violate the CSPA, R.C. 1345.01 *et seq.*, or its Substantive Rules, O.A.C. 109:4-3-01 *et seq.*, including, without limitation, violations of the specific statutes and rules described in this Consent Judgment.
- C. Defendant Cross is hereby **PERMANENTLY ENJOINED** from having any ownership interest or position of control in any business related to the solicitation or sale or provision of home improvement goods and/or services to consumers in the state of Ohio. Nothing in this paragraph shall prohibit Defendant from engaging in the solicitation and sale of home improvement goods and/or services for another entity, or supervising or managing those who do, provided that Defendant does not own, operate or assume any position that affords Defendant the authority or ability to set consumer-related policies and procedures, control and/or direct the consumer-related sales conduct of the entity.
- D. Based upon the above findings that Defendant Cross committed unfair and deceptive acts and practices in violation of the CSPA, Cross is hereby **ORDERED** to pay a civil penalty pursuant to R.C. 1345.07(D), in the amount of \$25,000.00. This \$25,000.00 civil penalty is suspended as long as Defendant complies with all provisions of this Consent Judgment. Failure to comply with this Consent Judgment shall make the full civil penalty

immediately due and payable to the Ohio Attorney General's Office Consumer Protection Section.

- E. 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, Defendant shall be liable to the Ohio Attorney General, should he 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 Ohio law including, but not limited to R.C. 131.02, 109.08 and 109.081.
- F. Defendant shall not represent, directly or indirectly, that the Ohio Attorney General has sanctioned, condoned, or approved any part or aspect of their business operations.
- G. Defendants are jointly and severally liable for and shall pay all court costs associated with this action.

IT IS SO ORDERED.

DATE

JUDGE D'APOLITO

JOINTLY APPROVED FOR ENTRY AND SUBMITTED BY:

DAVE YOST
OHIO ATTORNEY GENERAL

/s/ Rebecca F. Schlag
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9/25/2024
Date

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Counsel for Defendant Scott T. Cross

Date: 9/25/2024

cc: Plaintiff State of Ohio
Defendant Anthony Porrazzo
Defendant Energy Wise Home Improvements, Inc.
Defendant Scott Cross



Case Title: STATE OF OHIO, EX REL -vs- ENERGY WISE HOME
IMPROVEMENTS INC et al AMD
Case Number: 2018 CV 02780
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So Ordered

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Electronically signed on 2024-09-26 page 9 of 9

