

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO ex rel.)	
OHIO ATTORNEY GENERAL)	CASE NO.
MICHAEL DEWINE)	
30 E. Broad Street, 14th Floor)	
Columbus, Ohio 43215)	JUDGE:
)	
Plaintiff,)	
v.)	<u>COMPLAINT AND REQUEST FOR</u>
)	<u>DECLARATORY JUDGMENT,</u>
JAMES DINKINS, individually)	<u>INJUNCTIVE RELIEF, CIVIL</u>
and dba DINKINS MASONRY)	<u>PENALTIES, AND OTHER</u>
131 W. 2 nd Street)	<u>APPROPRIATE RELIEF</u>
Logan, OH 43138)	
)	
Defendant.)	

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through Attorney General Michael DeWine, having reasonable cause to believe that violations of Ohio’s consumer protection laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by the Ohio Consumer Sales Practices Act, R.C. 1345.01 et seq.
2. The actions of James Dinkins (“Defendant”), hereinafter described, have occurred in Franklin County and other counties in the State of Ohio, and as set forth below are in violation of the Consumer Sales Practices Act (“CSPA”), R.C. 1345.01 et seq., its Substantive Rules, and the Home Solicitation Sales Act (“HSSA”), R.C. 1345.21 et seq.
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(B)(1-3) in that many of the transactions complained of herein, and out of which this action arose, occurred in Franklin County, Ohio.

DEFENDANT

5. Defendant is a natural person residing at 131 W. 2nd Street, Logan, Ohio 43138.
6. At all times relevant to this action, Defendant was the sole owner and operator of Dinkins Masonry, a business located at 131 W. 2nd Street, Logan, Ohio 43138.
7. Defendant's business, Dinkins Masonry, is not registered with the Ohio Secretary of State.
8. Defendant is a "supplier" as that term is defined in R.C. 1345.01(C), as he engaged in the business of effecting or soliciting consumer transactions for purposes that are primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
9. Defendant, as described below, was at all times relevant herein, engaged in "home solicitation sales" as that term is defined in the HSSA, R.C. 1345.21(A), as he engaged in personal solicitations at the residences of consumers, including solicitations in response to or following invitations by consumers.

STATEMENT OF FACTS

10. Defendant accepted monetary deposits or full payment from consumers for the purchase of masonry services, including concrete and asphalt paving, and failed to deliver some of those services within eight weeks.
11. On at least one occasion, Defendant began to provide the contracted services after receiving initial payment from the consumer, but failed to complete the work.

12. On at least one occasion, Defendant began to provide the contracted services but did not complete the contract and performed the work in a shoddy and substandard manner, resulting in additional repair costs for the consumer.
13. After accepting consumers' payments and failing to deliver the services, Defendant failed to refund consumers' payments or deposits.
14. At the time of the transactions, Defendant failed to provide consumers with proper notice of cancellation forms describing the consumers' right to cancel the transactions.
15. On January 15, 2017, Defendant signed an Assurance of Voluntary Compliance ("AVC") with the Consumer Protection Section of the Ohio Attorney General's Office, which included an agreement that Defendant would make monthly restitution payments to the Attorney General to be distributed to consumers affected by Defendant's conduct. (AVC is attached as Exhibit A).
16. Defendant has violated the terms of the AVC that was agreed upon with the Consumer Protection Section of the Ohio Attorney General's Office and deemed effective on January 20, 2017.

PLAINTIFF'S FIRST CAUSE OF ACTION:

VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT

COUNT ONE
FAILURE TO DELIVER

17. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Sixteen (1-16) of this Complaint.
18. 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 or services ordered, making a full refund, advising the consumer of the duration of an extended delay and offering to send a refund within two weeks if so requested, or furnishing goods or services of equal or greater value as a good faith substitute.

COUNT TWO
SHODDY, INCOMPLETE, OR SUBSTANDARD WORK

19. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Sixteen (1-16) of this Complaint.
20. Defendant has committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by performing home improvement services in an incomplete, shoddy, or substandard manner, and then failing to correct or complete such work.
21. Such acts or practices 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).

COUNT THREE
FAILURE TO REGISTER OR REPORT A FICTICIOUS BUSINESS NAME

22. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Sixteen (1-16) of this Complaint.
23. Defendant committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by failing to register or report his use of a fictitious business name to the Ohio Secretary of State, as required under R.C. 1329.01.

24. Such acts or practices 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).

COUNT FOUR
VIOLATIONS OF THE TERMS OF AN AVC

25. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Sixteen (1-16) of this Complaint.
26. Defendant has committed unfair, deceptive, or unconscionable acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A), by violating the terms of an AVC, including the agreement that Defendant would make monthly restitution payments to the Attorney General to be distributed to consumers affected by Defendant's conduct.
27. Pursuant to R.C. 1345.06(F), evidence of a violation of an AVC is prima-facie evidence of an act or practice in violation of the CSPA, R.C. 1345.01 et seq., if presented after the violation in an action brought under the CSPA, R.C. 1345.01 et seq.

PLAINTIFF'S SECOND CAUSE OF ACTION:

VIOLATIONS OF THE HOME SOLICITATION SALES ACT

COUNT ONE

FAILURE TO PROVIDE PROPER NOTICE OF THREE DAY RIGHT OF RECISSION

28. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Sixteen (1-16) of this Complaint.
29. Defendant violated the HSSA, R.C. 1345.23 and R.C. 1345.02(A), by failing to give a proper notice to consumers of their right to cancel their contract by a specific date.

30. Such acts or practices 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).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. ISSUE A DECLARATORY JUDGMENT declaring that the acts or practices described herein violate the CSPA, its Substantive Rules, and the HSSA in the manner set forth in this Complaint.
- B. ISSUE PERMANENT INJUNCTIVE RELIEF, pursuant to R.C. 1345.07, enjoining Defendant under his own name or any other name, and all persons acting on behalf of Defendant directly or indirectly, through any corporate or private device, partnership or association, jointly and severally, from engaging in the acts or practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 et seq., its Substantive Rules, and the HSSA, R.C. 1345.21 et seq.
- C. ISSUE AN INJUNCTION prohibiting Defendant from acting as a “supplier” as that term is defined in R.C. 1345.01(C) by engaging in any consumer transactions in the State of Ohio until such a time as they have satisfied all monetary obligations due hereunder.
- D. ORDER Defendant, pursuant to R.C. 1345.07(B), to pay restitution to all consumers damaged by Defendant’s unlawful acts or practices.
- E. ASSESS, FINE AND IMPOSE upon Defendant a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein, pursuant to R.C. 1345.07(D).
- F. GRANT the Ohio Attorney General his costs in bringing this action.

- G. ORDER Defendant to pay all court costs.
- H. GRANT such other relief as the Court deems to be just, equitable and appropriate.

Respectfully submitted,

MICHAEL DEWINE
Attorney General



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