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Court of Common Pleas

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Confirmation Nbr. 1283012

STATE OF OHIO, EX REL. MICHAEL DEWINE

CV 18 892005

VS.

Judge: CAROLYN B. FRIEDLAND

MATTHEW MCMILLAN, DBA BUDGET 1 FENCE, ET
AL.

Pages Filed: 8

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, ex rel.
MICHAEL DEWINE
Ohio Attorney General
Cleveland Regional Office
615 W. Superior Avenue, 11th Floor
Cleveland, Ohio 44113-1899

Plaintiff,

-vs-

MATTHEW McMILLAN, dba
Budget 1 Fence, et al.,
8219 Almira Ave. Rear
Cleveland, OH 44102

And

STEPHANIE REED, dba
Budget 1 Fence,
8219 Almira Ave., Rear
Cleveland, OH 44102

Defendants

CASE NO.

JUDGE

**COMPLAINT AND REQUEST FOR
INJUNCTIVE AND DECLARATORY
RELIEF, CONSUMER RESTITUTION
AND CIVIL PENALTIES**

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through the Attorney General of Ohio, 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 Defendants, hereinafter described, have occurred in Cuyahoga County as well as other counties around the State of Ohio, and are in violation 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.

3. This Court has jurisdiction over the subject matter of this action pursuant to R.C. 1345.05 of the CSPA.

4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1) and (3), in that Defendants reside in Cuyahoga County, the dba business Budget 1 Fence is located in Cuyahoga County and some of the transactions complained of herein, and out of which this action arises, have occurred within Cuyahoga County, Ohio.

DEFENDANTS

5. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through four (1-4) of this Complaint.

6. Defendant Matthew McMillan is a natural person whose last known address is 6061 Eastview Avenue, North Ridgeville OH 44039-1545. Budget 1 Fence is a tradename registered to Defendant Matthew McMillan.

7. Defendant Stephanie Reed is the current wife of Defendant Matthew McMillan and also does business on behalf of Budget 1 Fence.

8. At all times relevant to this action, Defendant McMillan dba Budget 1 Fence 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 Budget 1 Fence.

9. At all times relevant to this action, Defendant Stephanie Reed 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 Budget 1 Fence.

10. Defendant Matthew McMillan has used other fictitious names in the past to perform substantially similar fence services, including Fence Solutions, Fence Company, Affordable Fence, Empire Fence, Landmark Fence, Budget Fence Company, and King Fence. His most recent affiliation is with Lake Erie Fence, which uses the same motor vehicles registered to Budget 1 Fence and is located at the same location as Budget 1 Fence; 829 Almira Ave., Rear, Cleveland, OH 44102.

11. Defendants are “suppliers” as that term is defined in R.C. 1345.01(C) as Defendants were, at all times relevant herein, engaged in the business of effecting “consumer transactions” by providing services to individuals for purposes which were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).

12. Defendants, as described below, were at all relevant times hereto “sellers” engaged in the business of effecting home solicitation sales by soliciting and selling home improvements to “buyers” at the buyers’ personal residences in Cuyahoga County as well as other counties in the State of Ohio, for purposes which were primarily personal, family or household within the meaning specified in R.C. 1345.21(A) and (E).

STATEMENT OF FACTS

13. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through twelve (1-12) of this Complaint.

14. At all times relevant to this action, Defendants solicited consumers for home improvement services in Cuyahoga County, Ohio as well as other counties within the State of Ohio.

15. Defendants solicited and sold these home improvement goods and services at the residences of Ohio consumers.

16. Defendants accepted payments for home improvement contracts, failed to perform the contracted services, and failed to refund the payments made by those consumers.

17. Defendants did not provide notice to consumers with a separate, appropriately worded form detailing their cancellation rights, as required by R.C. 1345.23.

18. After receiving payment, Defendants would sometimes receive timely notice of cancellation of the contract from the consumers, but would then fail to refund the consumers the money paid.

19. In some instances Defendants permitted eight weeks to lapse without delivering the contracted goods or services, refunding the consumers, or advising consumers of the anticipated delay in the delivery of the goods and services and permitting them to cancel.

20. Defendants' failure to perform contracted home improvement services in a proper manner has resulted in harm to consumers.

21. Defendant Matthew McMillan dba Budget 1 Fence, continued to solicit new consumer transactions without satisfying unpaid consumer judgments rendered against him/them by various courts around Northeast Ohio, in violation of the CSPA, R.C. 1345.01 et seq..

COUNT I
FAILURE TO ISSUE REFUNDS

22. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set

forth in paragraphs one through twenty-one (1-21) of this Complaint.

23. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02 and O.A.C. 109:4-3-09, by selling home improvement services to consumers, receiving payments for these contracted services, receiving timely notice from the consumer cancelling the contract, and then failing to refund the consumers within a reasonable time.

COUNT II
VIOLATIONS OF THE HOME SOLICITATION SALES ACT

24. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through twenty-three (1-23) of this Complaint.

25. Defendants engaged in home solicitation sales pursuant to the HSSA, R.C. 1345.21 et seq., in that Defendants procured the sale of consumer goods or services at the residences of consumers.

26. Defendants violated the HSSA, R.C. 1345.23(B) by failing to include appropriate cancellation language in the contracts entered into with consumers, or to give consumers a separate, appropriate "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).

27. These actions constitute deceptive acts and/or practices in violation of the HSSA and the Direct Solicitations Rule, O.A.C. 109:4-3-11(A)(5), and the Ohio CSPA, R.C. 1345.02(A).

27. The acts and practices described above have been previously determined by Ohio Courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after

such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT III
FAILURE TO GAIN PERMITS OR LICENSES

28. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through twenty-seven (1-27) of this Complaint.

29. Defendants accepted payments from consumers and began work at consumer residences without securing the requisite permits or licenses to perform the contracted work, in violation of the CSPA, R.C. 1345.02(A). Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

30. The acts and practices described above have been previously determined by Ohio Courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT IV
SOLICITING NEW CONSUMER TRANSACTIONS AFTER FAILING TO PAY
JUDGMENTS ARISING FROM CONSUMER TRANSACTIONS

31. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through thirty (1-30) of this Complaint.

32. Defendant Matthew McMillan dba Budget 1 Fence has had multiple judgments rendered against him/them in various Northeast Ohio courts, arising from consumer transactions and totaling well over Forty Thousand Dollars, yet Defendant Matthew McMillan has continued to solicit new consumer transactions without satisfying those judgments.

33. These actions constitute deceptive acts and/or practices in violation of R.C. 1345.02.

34. Such acts and practices have been previously determinations by Ohio Courts to

violate the CSPA, R.C. 1345.01 et seq. Defendant Matthew McMillan 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:

- A. ISSUE A DECLARATORY JUDGMENT** declaring that each act or practice complained of herein violates the CSPA in the manner set forth in the Complaint.
- B. ISSUE A PERMANENT INJUNCTION** enjoining Defendants, under these or any other names, their agents, servants, representatives, salesmen, employees, successors and assigns and all persons acting in concert or participation with Defendants, directly or indirectly, from engaging in the acts or practices of which Plaintiff complains and from any further violations of the CSPA, R.C. 1345.01 et seq. and the HSSA, R.C. 1345.21 et seq.;
- C. ENJOIN** Defendants from acting as suppliers in Ohio until all Judgment ordered remuneration has been paid and Defendants have produced satisfaction of judgments for all outstanding judgments against them;
- D. IMPOSE** upon Defendants civil penalties in the amount of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation of the CSPA pursuant to R.C. 1345.07(D);
- E. ORDER** that all contracts entered into between Defendants and Ohio consumers by unfair or deceptive acts or practices in violation of the CSPA be rescinded with full restitution to the consumers;
- F. GRANT** Plaintiff his costs in bringing this action;

- G. **ORDER** Defendants to pay all court costs;
- H. **GRANT** such further relief as justice and equity require.

Respectfully submitted,

MICHAEL DeWINE
OHIO ATTORNEY GENERAL



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