



**NAILAH K. BYRD**  
**CUYAHOGA COUNTY CLERK OF COURTS**  
1200 Ontario Street  
Cleveland, Ohio 44113

**Court of Common Pleas**

**New Case Electronically Filed:**  
**October 15, 2018 12:58**

By: REBECCA F. SCHLAG 0061897

Confirmation Nbr. 1522060

STATE OF OHIO, EX REL. MICHAEL DEWINE

CV 18 905367

vs.

WILLIAM BURKE

**Judge:** CASSANDRA COLLIER-WILLIAMS

**Pages Filed:** 7

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

<b>STATE OF OHIO, ex rel.</b>	)	CASE NO.
<b>MICHAEL DEWINE</b>	)	
<b>Ohio Attorney General</b>	)	JUDGE
<b>Cleveland Regional Office</b>	)	
<b>615 W. Superior Avenue, 11<sup>th</sup> Floor</b>	)	
<b>Cleveland, Ohio 44113-1899</b>	)	
	)	<b><u>COMPLAINT AND REQUEST FOR</u></b>
<b>Plaintiff,</b>	)	<b><u>INJUNCTIVE AND DECLARATORY</u></b>
	)	<b><u>RELIEF, CONSUMER RESTITUTION</u></b>
<b>-vs-</b>	)	<b><u>AND CIVIL PENALTIES</u></b>
	)	
<b>WILLIAM BURKE</b>	)	
<b>dba Cuyahoga Construction</b>	)	
<b>3019 Ruby Avenue</b>	)	
<b>Cleveland, OH 44109</b>	)	
	)	
<b>Defendant</b>	)	

**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 Defendant resides in and some of the transactions complained of, and out of which this action arises, have occurred within Cuyahoga County, Ohio. .

### **DEFENDANT**

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 William R. Burke is a natural person and the Agent/Registrant of the fictitious name Cuyahoga Construction, whose last known address is 3019 Ruby Ave., Cleveland, OH 44109.

7. At all times relevant to this action, Defendant 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 Cuyahoga Construction.

8. Defendant is a “supplier” as that term is defined in R.C. 1345.01(C) as Defendant was, 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).

9. Defendant, as described below, at all relevant times hereto, was a “seller” 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**

10. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through nine (1-9) of this Complaint.

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

12. Defendant solicited and sold these home improvement goods and services at the residences of Ohio consumers.

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

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

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

16. In some instances Defendant 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.

17. In some instances, Defendant would perform some work, but the quality of the work was substandard.

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

19. Defendant continued to solicit new consumer transactions without satisfying at least one unpaid consumer judgment rendered against him by an Ohio court, in violation of the

CSPA, R.C. 1345.01 et seq.

**VIOLATIONS OF THE HOME SOLICITATION SALES ACT**

**COUNT I**

**FAILURE TO PROVIDE NOTICE OF CANCELLATION**

20. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through nineteen (1-19) of this Complaint.

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

22. Defendant 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).

23. 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 CSPA, R.C. 1345.02(A).

24. The acts and practices described above 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).

**VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT**

**COUNT II**

**FAILURE TO DELIVER**

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

forth in paragraphs one through twenty-four (1-24) of this Complaint.

26. Defendant has 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, failing to deliver the services, and then failing to refund the consumers within a reasonable time.

**COUNT III**  
**PERFORMING SUBSTANDARD WORK**

27. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through twenty-six (1-26) of this Complaint.

28. Defendant committed unfair and 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.

29. The acts and practices described above have been previously determined by Ohio courts to violate the CSPA. Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

**COUNT IV**  
**FAILURE TO GAIN PERMITS OR LICENSES**

30. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through twenty-nine (1-29) of this Complaint.

31. Defendant 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.) Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A) (3).

32. The acts and practices described above 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 V**  
**SOLICITING NEW CONSUMER TRANSACTIONS AFTER FAILING TO PAY**  
**JUDGMENTS ARISING FROM CONSUMER TRANSACTIONS**

33. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through thirty-two (1-32) of this Complaint.

34. Defendant has had at least one judgment in 2016 rendered against him in a Northeast Ohio court, arising from a consumer transaction and totaling well over Forty Thousand Dollars, yet Defendant continued to solicit new consumer transactions without satisfying this judgment.

35. This action constitutes a deceptive act and/or practice in violation of R.C. 1345.02.

36. Such acts and practices have been previously determinations 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:

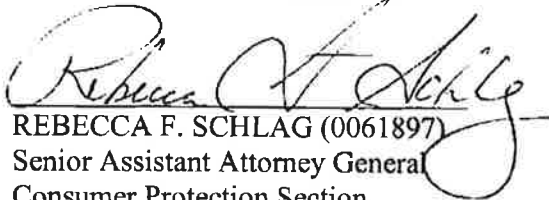
- A. ISSUE A DECLARATORY JUDGMENT** declaring that each act or practice complained of herein violates the CSPA in the manner set forth in the Complaint.
- B. ISSUE A PERMANENT INJUNCTION** enjoining Defendant, under his name, Cuyahoga Construction, or any other names, his agents, servants, representatives, salesmen, employees, successors and assigns and all persons acting in concert or

participation with Defendant, 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** Defendant from acting as a supplier in Ohio until all judgment-ordered remuneration has been paid and Defendant has produced satisfaction of judgments for all outstanding consumer judgments against him;
- D. **IMPOSE** upon Defendant 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 Defendant 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** Defendant 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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