

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

STATE OF OHIO ex rel.
ATTORNEY GENERAL
MICHAEL DEWINE
30 E. Broad St., 14th Floor
Columbus, Ohio 43215

Plaintiff,

v.

BIG TEN CONSTRUCTION, LLC
700 Morse Road, Suite 200,
Columbus, Ohio 43214

and

ERIC TISCHER,
individually,
and dba BIG TEN CONSTRUCTION
5090 Blackstone Edge Drive
New Albany, Ohio 43054

Defendants.

Case No.

16 - CV H - 010025

Judge:

EVERETT H. KRUEGER

COMPLAINT AND REQUEST FOR
DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF, CIVIL
PENALTIES, AND OTHER
APPROPRIATE RELIEF

E-FILED

JAN ANTONOPLOS
CLERK

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COMMON PLEAS COURT
DELAWARE COUNTY, OHIO
FILED

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through its counsel, 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 R.C. 1345.01 et seq.
2. The actions of Defendants Big Ten Construction, LLC and Eric Tischer ("Defendants"), hereinafter described, have occurred in various Ohio Counties, including Delaware,



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Franklin, Union and Pickaway Counties, and, as set forth below, are in violation of the Consumer Sales Practices Act ("CSPA"), R.C.1345.01 et seq. and the Home Solicitation Sales Act ("HSSA"), R.C. 1234.21 et seq.

3. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3) in that Delaware County is the county in which the Defendants conducted activity that gave rise to the claims for relief.

DEFENDANTS

5. Defendant Eric Tischer is a natural person believed to reside at 5090 Blackstone Edge Drive, New Albany, Ohio 43054.
6. The principal place of business for Defendant Big Ten Construction, LLC is 700 Morse Road, Suite 200, Columbus, Ohio 43214.
7. Defendant Big Ten Construction, LLC is registered as a Domestic Limited Liability Company with the Ohio Secretary of State.
8. Defendants are "suppliers," as that term is defined in R.C. 1345.01(C), as they engaged in the business of effecting "consumer transactions" by soliciting consumers either directly or indirectly for home remodeling and repair goods and services for a fee, within the meaning of R.C. 1345.01(A).
9. Defendant Eric Tischer at all times pertinent hereto controlled and directed the business activities and sales conduct of Defendant Big Ten Construction, LLC, causing, personally

participating in, or ratifying the acts and practices of Defendant Big Ten Construction, LLC, including the conduct giving rise to the violations described herein.

STATEMENT OF FACTS

10. Defendants are, and at all times relevant to this action have been, engaged in the business of providing home improvement goods and services to consumers, including materials and installation services for room additions, bathrooms, garages, and finishing basements, and failed to deliver some of those goods and services within eight weeks.
11. On October 20, 2011, Defendant Eric Tischer, both individually and in his capacity as an agent/owner of Big Ten Construction, LLC, Akron-Canton Restoration, and TNT Builders, signed an Assurance of Voluntary Compliance ("AVC") with the Consumer Protection Section of the Ohio Attorney General's Office. Based on the AVC, Defendants agreed to refrain from:
 - a. Committing an unfair or deceptive act or practice in connection with a consumer transaction, in violation of the CSPA, R.C. 1345.02(A);
 - b. Committing an unfair or deceptive act or practice in connection with a consumer transaction, in violation of the CSPA, R.C. 1345.21 et seq.;
 - c. Accepting down payments for home improvement goods or services and then failing to deliver those goods or services or allow more than eight (8) weeks to elapse without delivering the goods or services or making a full refund of the down payments, in violation of the CSPA, R.C. 1345.02(A), and the Failure to Deliver Rule, Ohio Admin. Cod 109:4-3-09;

- d. Performing shoddy and unworkmanlike services in connection with a consumer transaction and then failing to correct such work, in violation of the CSPA, R.C. 1345.02(A); and
 - e. Failing to respond to consumer inquiries and failing to give consumers accurate information about material facts related to delivery and service dates, information pertaining to permits required for home improvement work, and the endorsement and deposit of insurance and down payment checks, in violation of the CSPA, R.C. 1345.02(A).
12. Pursuant to the terms of the AVC, Defendants agreed to pay a civil penalty of \$15,000, with \$13,000 suspended upon "full and complete compliance with the terms of this Assurance." A true and accurate copy of the AVC is attached hereto as Exhibit A and incorporated by reference.
13. Pursuant to the terms of the AVC, Defendants agreed to comply with all terms of the AVC and to conduct their business in compliance with Ohio law, including the CSPA and its Substantive Rules.
14. Defendants have refused to refund consumers' deposits or payments despite consumers' requests for refund.
15. After receiving payment, Defendants sometimes began work but failed to complete the work.
16. Defendants provided shoddy and substandard home repair services to consumers and then failed to correct such services.

17. Defendants represented to consumers that Defendants would provide the ordered goods and services within an estimated time and then failed to provide such goods and services in the time promised.
18. Defendants failed to respond to consumer inquiries and failed to give consumers accurate information about material facts related to delivery and service dates and information pertaining to permits required for home improvement work.
19. In some instances, Defendants' contracts directed consumers to mail a Notice of Cancellation to "Distinctive Design Remodeling" in Lexington Kentucky.
20. In some instances, the Notice of Cancellation in Defendants' contracts was not located in immediate proximity to the space reserved for the signature of the consumers.
21. Defendants failed to include a detachable Notice of Cancellation form with their contracts.

PLAINTIFF'S FIRST CAUSE OF ACTION: VIOLATIONS OF THE CSPA

COUNT I- FAILURE TO DELIVER

22. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-21 of this Complaint.
23. Defendants 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 consumer 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.

COUNT II - SHODDY AND SUBSTANDARD WORK

24. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-23 of this Complaint.
25. Defendants committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by performing shoddy and substandard work and then failing to correct such work.
26. The acts or 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 OBTAIN PROPER PERMITS

27. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-26 of this Complaint.
28. Defendants committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by failing to acquire the proper permits before performing services.
29. The acts or 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 - VIOLATIONS OF THE TERMS OF AN ASSURANCE OF
VOLUNTARY COMPLIANCE**

30. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-29 of this Complaint.
31. Defendants have committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) by violating the terms of the October 20, 2011 AVC entered into by Eric Tischer individually and in his capacity as agent/officer of Big Ten Construction, LLC.
32. Pursuant to R.C. 1345.06(F)(2), evidence of a violation of an Assurance of Voluntary Compliance is prima-facie evidence of an act or practice in violation of the CSPA.
33. Such acts and practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

**PLAINTIFF'S SECOND CAUSE OF ACTION:
VIOLATIONS OF THE HSSA**

34. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-33 of this Complaint.
35. Defendants violated the HSSA, R.C. 1345.23 and R.C. 1345.02(A), by directing consumers to mail their notice of cancellation to Distinctive Design Remodeling in Lexington, Kentucky, an entity unrelated to Defendants.
36. Defendants violated the HSSA and R.C. 1345.02(A), by failing to include a detachable notice of cancellation form with their contract.
37. Defendants violated the HSSA and R.C. 1345.02(A), by not including the three day right

- to cancel in immediate proximity to the space reserved for signature of the consumers.
38. The acts or practices described above in paragraphs 35 and 36 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.

PRAYER FOR RELIEF

- WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:
- A. ISSUE A DECLARATORY JUDGMENT that each act or practice complained of herein violates the CSPA, its Substantive Rules, or the HSSA in the manner set forth in the Complaint.
 - B. ISSUE A PERMANENT INJUNCTION enjoining the Defendants, their agents, servants, employees, successors or assigns, and all persons acting in concert and participation with them, directly or indirectly, through any corporate device, partnership, or other association, under these or any other names, from engaging in the acts and 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. ORDER Defendants, pursuant to R.C. 1345.07(B), to pay all actual damages, including non-economic damages, to all consumers injured by the conduct of the Defendants as set forth in this Complaint.
 - D. ASSESS, FINE and IMPOSE upon Defendants a civil penalty of up to \$25,000.00 for each separate and appropriate violation of the CSPA described herein pursuant to R.C. 1345.07(D).

- E. ORDER Defendants to pay the previously suspended portion of the civil penalty in the agreed AVC, which is \$13,000.
- F. ISSUE AN INJUNCTION prohibiting Defendants from engaging in business as a Supplier in any consumer transactions in this state until such time as Defendants have satisfied all monetary obligations ordered pursuant to this litigation.
- G. GRANT Plaintiff its costs incurred in bringing this action.
- H. ORDER Defendants to pay all court costs associated with this matter.
- I. GRANT such other relief as the court deems to be just, equitable, and appropriate.

Respectfully submitted,

MICHAEL DEWINE
Attorney General

/s/ Brandon C. Duck
BRANDON C. DUCK (0076725)
Assistant Attorneys General
Counsel for Plaintiff, State of Ohio
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