



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

**Court of Common Pleas**

**New Case Electronically Filed: COMPLAINT**  
**June 8, 2020 12:56**

By: REBECCA F. SCHLAG 0061897

Confirmation Nbr. 2008746

STATE OF OHIO, EX REL. ATTORNEY GENERAL  
DAVE YOST

CV 20 933157

vs.

BERNARD JOHN RAFFERTY DBA OHIO ROAD  
MAINTEN, ET AL

**Judge:** PETER J. CORRIGAN

**Pages Filed:** 8

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

STATE OF OHIO, ex rel.  
ATTORNEY GENERAL DAVE YOST  
30 East Broad St., 14th Floor  
Columbus, Ohio 43215

Plaintiff,

v.

Bernard John Rafferty (father)  
d/b/a Ohio Road Maintenance  
4496 Mahoning Avenue  
Youngstown, Ohio 44515

and

Bernard John Rafferty (son)  
d/b/a Ohio Road Maintenance  
4496 Mahoning Avenue  
Youngstown, Ohio 44515

and

John Michael Rafferty  
d/b/a Ohio Road Maintenance  
4496 Mahoning Avenue  
Youngstown, Ohio 44515

Defendants

CASE NO.

JUDGE

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

**JURISDICTION AND VENUE**

1. Plaintiff State of Ohio ex rel. Attorney General Dave Yost, 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.

1345.07.

2. The actions of Defendants, hereinafter described, have occurred in Cuyahoga County, 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, O.A.C. 109:4-3-01 et seq., and the Home Solicitation Sales Act (“HSSA”), R.C. 1345.21 et seq.
3. Defendants, as described below, are “suppliers” as that term is defined in R.C. 1345.01(C) as they were, at all times relevant herein, engaged in the business of effecting consumer transactions by soliciting and selling home improvement services to individuals in Ohio, including Cuyahoga County, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A).
4. Defendants are “sellers” as that term is used in R.C. 1345.21(C) as Defendants, at all relevant times, engaged in personal solicitations of sales at a place other than the sellers’ place of business.
5. Defendants engaged in “home solicitations sales” as that term is defined in R.C. 1345.21(A) as Defendants solicited the sales of home improvement services to consumers at their residences and the buyers’ agreements or offers to purchase were made at a place other than the sellers’ place of business.
6. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04.
7. Venue is proper pursuant to Ohio Civ. R. 3(C)(3), in that Cuyahoga County was where Defendants conducted the activity that gave rise to this claim for relief.

## **THE DEFENDANTS**

8. Ohio Road Maintenance is owned and operated by Bernard John Rafferty and his two sons, Bernard John Rafferty and John Michael Rafferty. Together they are engaged in business of providing home improvement services, including asphalt paving, to consumers in Ohio.
9. Bernard John Rafferty is a natural person whose last known personal address is 4496 Mahoning Avenue, Youngstown, Ohio 44515. It does not appear that Bernard John Rafferty uses any suffix such as Senior, I, etc. to differentiate his name from his like-named son. For clarity, Bernard John Rafferty may be designated “Bernard John Rafferty, father” or “father” throughout this action.
10. Bernard John Rafferty is a natural person and the son of Bernard John Rafferty (father). His last known personal address is also 4496 Mahoning Avenue, Youngstown, Ohio 44515. It does not appear that Bernard John Rafferty uses any suffix such as Junior, II, etc. to differentiate his name from his like-named father. For clarity, Bernard John Rafferty may be designated “Bernard John Rafferty, son” or “son” throughout this action.
11. Michael John Rafferty is a natural person and the son of Bernard John Rafferty (father). His last known personal address is also 4496 Mahoning Avenue, Youngstown, Ohio 44515.
12. Defendants engaged in consumer transactions using the unregistered trade names Ohio Road Maintenance, Coast to Coast Contracting, B&R Paving, B&R Painting & Seal Coating, Bernard Paving & Chipsealing, Bernie Rafferty Sealcoating, Bernie Paving Chipseal, Platinum Asphalt, Bernard & Sons Painting, and ICC Contracting. Defendants use or have used various world wide web domain names for their business endeavors, including ohioroadmaintenance.com; platiumpaving.com; bernardandsonspainting.com; bernardandsonspaving.com; johnnysprotectivecoatings.com; statewide-services.com; icccontracting.org; icccontracting.co; industrialfloridacontracting.com; ifccontracting.co and

**STATEMENT OF FACTS**

13. Defendants performed residential home improvement services for consumers that included asphalt paving, tar and chip sealing, driveway resurfacing and resealing, and painting.
14. Defendants did not have a fixed location where goods or services were offered for sale. Rather, all business addresses found for Defendants have been post office boxes, campground locations, or hotels.
15. Defendants advertised their services through the third-party websites, [www.networx.com](http://www.networx.com) and [www.homeadvisor.com](http://www.homeadvisor.com).
16. Defendants misrepresented the quality of the work that was to be performed on consumers' property, including the types of materials used and the thickness of the asphalt that was to be applied.
17. Defendants performed home improvement services for consumers in a shoddy or unworkmanlike manner, including laying asphalt which, within weeks, had crumbled and had weeds growing up through it.
18. Defendants often made excuses for the delays in completing work at consumers' homes.
19. Defendants accepted substantial payments from consumers and failed to complete the work, or in some cases begin the work, for which they were paid.
20. Defendants failed to inform consumers of their three-day right to cancel and failed to give consumers a proper Notice of Cancellation.
21. The contracts that Defendants provided to consumers misrepresented the three-day right to cancel. Every contract used by Defendants improperly included a clause purportedly waiving the buyer's right to cancel that stated: "Because I want the contractor to start work on my project immediately. [sic] I hereby wave [sic] my 3 day, "Buyers Right to Cancel."

22. Defendants failed to respond to consumers, failed to correct the work, and failed to give refunds to consumers.

**PLAINTIFF'S CAUSES OF ACTION**

**COUNT I**

**FAILURE TO DELIVER GOODS AND/OR SERVICES  
OR ISSUE REFUNDS**

23. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs one through twenty-two (1-22) of this Complaint.

24. Defendants committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and O.A.C. 109:4-3-09 by accepting money from consumers for home improvement services and materials and permitting eight weeks to elapse without delivering the promised goods or services or issuing a full refund.

**COUNT II**

**UNFAIR AND DECEPTIVE ACTS AND PRACTICES**

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

26. Defendants 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 unworkmanlike manner.

27. Defendants committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(B)(2) by representing that the subject of a consumer transaction was of a particular standard, quality, grade, style, prescription, or model, when it was not. Such acts or practices 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**

#### **HOME SOLICITATION SALES ACT**

28. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs one through twenty-eight (1-28) of this Complaint.
29. Defendants committed unfair or deceptive acts or practices in violation of R.C. 1345.23(A) and (B) of the HSSA and R.C. 1345.02 of the CSPA, as set forth in R.C. 1345.28, by failing to include a proper Notice of Cancellation with the written agreement or offer to purchase.
30. Defendants committed unfair or deceptive acts or practices in violation of R.C. 1345.23(D)(1) of the HSSA and R.C. 1345.02 of the CSPA, as set forth in R.C. 1345.28, by including in the home solicitation sales contract, any waiver of any rights to which the buyer is entitled under this section, including specifically the buyer's right to cancel the sale in accordance with this section.
31. Defendants committed unfair or deceptive acts or practices in violation of R.C. 1345.23(D)(3) of the HSSA and R.C. 1345.02 of the CSPA, as set forth in R.C. 1345.28, by misrepresenting in any manner the buyer's right to cancel.
32. Such acts and practices 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 REGISTER WITH THE OHIO SECRETARY OF STATE**

33. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs one through thirty-three (1-33) of this Complaint.
34. Defendants committed unfair or deceptive acts or practices in violation of R.C. 1345.02(A) and R.C. 1329.01 by failing to register with or report their trade names to the Ohio Secretary of State.
35. Such acts and practices have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays that this Court:

- A. **ISSUE A DECLARATORY JUDGMENT** declaring that each act or practice described in Plaintiff's Complaint violates the CSPA in the manner set forth in this Complaint.
- B. **ISSUE PERMANENT INJUNCTIVE RELIEF** enjoining Defendants and their officers, agents, representatives, salespeople, employees, successors and assigns and all persons acting in concert or participating with them, directly or indirectly, from engaging in the acts or practices of which Plaintiff complains and from further violating the CSPA and HSSA.
- C. **ORDER** Defendants jointly and severally liable for reimbursement to all consumers found to have been damaged by Defendants' unfair and deceptive acts and practices.



- D. **ASSESS, FINE, AND IMPOSE** upon Defendants, jointly and severally, a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each of the appropriate unfair or deceptive acts alleged in the Complaint, pursuant to R.C. 1345.07(D).
- E. **ISSUE PERMANENT INJUNCTIVE RELIEF**, pursuant to R.C. 1345.07, enjoining Defendants from engaging in business as suppliers in any consumer transaction in the State of Ohio until such time as they have satisfied all monetary obligations due hereunder.
- F. **GRANT** the Plaintiff its costs in bringing this action including, but not limited to, the costs of collecting on any judgment awarded.
- G. **ORDER** the Defendants to pay all court costs.
- H. **GRANT** such other relief as the Court deems to be just, equitable and appropriate.

Respectfully submitted,

**DAVE YOST**  
OHIO ATTORNEY GENERAL

*/s/ Rebecca F. Schlag*

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