



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

**Court of Common Pleas**

**New Case Electronically Filed: COMPLAINT**  
**August 18, 2022 08:53**

By: REBECCA F. SCHLAG 0061897

Confirmation Nbr. 2630461

STATE OF OHIO, EX REL. ATTORNEY GENERAL  
DAVE YOST

CV 22 967578

vs.

FABIANI, LLC, ET AL

**Judge:** SHANNON M. GALLAGHER

**Pages Filed:** 9

**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.

FABIAN1, LLC  
dba CERTAINTY CONSTRUCTION  
AND HOME SOLUTIONS,  
c/o Eric Fabian, Statutory Agent  
6101 W. Ridgewood Dr.  
Parma, Ohio 44129

And

ERIC FABIAN, Individually  
6101 W. Ridgewood Dr.  
Parma, Ohio 44129

Defendants.

) CASE NO.

) JUDGE

) **COMPLAINT AND REQUEST**  
) **FOR DECLARATORY JUDGMENT,**  
) **INJUNCTIVE RELIEF, CONSUMER**  
) **RESTITUTION, CIVIL PENALTIES,**  
) **AND OTHER APPROPRIATE RELIEF**

**JURISDICTION AND VENUE**

1. Plaintiff, State of Ohio, by and through the Attorney General of Ohio, David 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 the Ohio Consumer Sales Practices Act ("CSPA"), 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 CSPA, R.C. 1345.01 et seq., its Substantive Rules O.A.C. 109:4-3-01 et seq., the Home Solicitation

Sales Act (“HSSA”), R.C. 1345.21 et seq., and the Home Construction Service Suppliers Act (“HCSSA”), R.C. 4722.01 et seq.

3. This Court has jurisdiction over the subject matter of this action pursuant to R.C. 1345.04 of the CSPA.
4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(C)(1) and (3) in that Cuyahoga County is where Defendants are located and where some of the transactions complained of herein, and out of which this action arises, have occurred.

### **DEFENDANTS**

5. Certainty Construction & Home Solutions is a registered trade name of Defendant Fabian<sup>1</sup>, LLC (“Certainty Construction”) a limited liability corporation registered with the Ohio Secretary of State on August 14, 2017 as a rental property entity.
6. Defendant Eric Fabian (“Fabian”), a natural person whose last known address is 6101 W. Ridgewood Dr., Parma, Ohio 44129.
7. At all times relevant to this action, Defendant Fabian 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 the home improvement business known as Defendant Certainty Construction.
8. 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).
9. Defendants are “sellers” engaging in “home solicitation sales” of “consumer goods or services” as those terms are defined in the HSSA, R.C. 1345.21(A), (C) and (E), because

Defendants engaged in personal solicitations at the residences of consumers, including solicitations in response to or following invitations by consumers.

10. Defendants are “home construction service suppliers” engaged in “home construction services” as those terms are defined in the HCSSA, R.C. 4722.01(B) and (D) because Defendants contracted with owners to construct a residential building for compensation.

### **STATEMENT OF FACTS**

11. Defendants provide home improvement and repair services to consumers in Ohio, including Cuyahoga County.
12. Defendants operated out of Defendant Fabian’s residence and did not have a retail business establishment having a fixed permanent location where goods are exhibited or services are offered for sale on a continuing basis.
13. Defendants solicited consumers at the consumers’ residences, including in response to or following invitations from consumers.
14. Defendants entered into contracts with consumers to provide home improvement and repair services.
15. Defendants accepted down payments for home improvement and repair services.
16. For some home improvement and repair consumers, Defendants did not provide any services, or provide refunds for services not delivered.
17. For some home improvement and repair consumers, Defendants provided some services, but did not provide the full services, or complete the work contracted for in a reasonable time.
18. For some home improvement and repair consumers, Defendants provided some services, but those services were shoddy and unworkmanlike services.

19. Defendants failed to respond to consumer complaints and telephone calls despite repeated consumer attempts.
20. Defendants failed to perform their home improvement and repair duties in a timely manner to Ohio consumers.
21. In some cases, Defendants accepted partial payment for the home improvement and repair services, and started performance of the services, but thereafter abandoned the work site and failed to complete performance.
22. In addition to providing home improvement and repair services, Defendants sometimes contracted with consumers to construct new residential additions, the cost of which exceeded \$25,000.
23. Defendants accepted down payments for contracts exceeding \$25,000, and the down payments taken exceeded ten percent (10%) of the contract price.
24. The contracts for these residential additions failed to include certain required information including, but not limited to, Defendants' taxpayer identification number, the anticipated start and completion dates and a copy of Defendants' certificate of general liability coverage in an amount not less than \$250,000.
25. For some home construction services, Defendants failed to deliver the work contracted for, and failed to provide a full refund within a reasonable time period.
26. For some home construction services, Defendants did not perform the work in a workmanlike manner.
27. Defendants' failure to perform contracted home improvement services in a proper manner has resulted in harm to consumers.

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

**CSPA COUNT I  
FAILURE TO DELIVER**

28. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through twenty-eight (1-27) of this Complaint.
29. Defendants have committed unfair and 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 requested, or furnishing similar goods or services of equal or greater value as a good faith substitute.

**CSPA COUNT II  
ABANDONING THE WORKSITE AFTER PARTIAL PERFORMANCE**

30. Plaintiff incorporates by reference, as if rewritten herein, the allegations set forth in paragraphs one through thirty (1-29) of this Complaint.
31. Defendants violated the CSPA, R.C. 1345.02(A), by accepting partial payment from consumers and began work at consumers' residences, but abandoned the work site and refused to complete performance of the contracted work.
32. 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).

**CSPA COUNT III**  
**CONTINUALLY STALLING AND EVADING LEGAL OBLIGATIONS**

- 33. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through thirty-three (1-32) of this Complaint.
- 34. Defendants violated the CSPA, R.C. 1345.02(A), by maintaining a pattern of inefficiency and incompetence in performing the home improvement services contracted for, and in continually stalling and evading their legal obligations to consumers.
- 35. 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).

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

**FAILURE TO GIVE 3-DAY NOTICE OF CANCELLATION**

- 36. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through thirty-five (1-35) of this Complaint.
- 37. 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.
- 38. Defendants violated the CSPA, R.C. 1345.02(A) and the HSSA, R.C. 1345.23(B), by failing to include appropriate cancellation language in the contracts entered into with consumers, or giving consumers a separate, appropriately worded "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).

39. 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).

**PLAINTIFF'S THIRD CAUSE OF ACTION: VIOLATIONS OF THE HCSSA**

**HCSSA COUNT I  
FAILURE TO PROVIDE SERVICE CONTRACTS  
CONTAINING ALL STATUTORILY REQUIRED INFORMATION**

40. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through thirty-nine (1-39) of this Complaint.
41. Defendants violated the HCSSA, R.C. 4722.02, by entering into home construction services contracts with owners, and not including all of the required information in the contracts, such as Defendants' mailing address, taxpayer identification number, the owner's address and telephone number, the address or location of the property where the home construction services was to be performed, the anticipated start and completion dates for the project, and providing a copy of Defendants' certificate of general liability coverage in an amount not less than \$250,000, and the dated signatures of the Defendants and owners on the contract.

**HCSSA COUNT II  
FAILURE TO DELIVER**

42. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through forty-one (1-41) of this Complaint.
43. Defendants violated the HCSSA, R.C. 4722.03(A)(3)(f), by entering into home construction services contracts with owners, failing to deliver services in accordance with



the terms and conditions of the contract, and failing to provide a full refund within a reasonable time period.

**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, R.C. 1345.01 et seq., the HSSA, R.C. 1345.21 et seq., and the HCSSA, R.C. 4722.01 et seq., in the manner set forth in the Complaint.
- B. ISSUE A PERMANENT INJUNCTION** enjoining Defendants, under these or any other names, their agents, representatives, salespersons, 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, the HSSA, R.C. 1345.21 et seq., and the HCSSA, R.C. 4722.01 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 described herein pursuant to R.C. 1345.07(D) and 4722.07(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 its costs in bringing this action;
- G. ORDER** Defendants to pay all court costs;
- H. GRANT** such further 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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