

3. The actions of Defendant, hereinafter described, have occurred in multiple counties in the State of Ohio, including Montgomery County, 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. 1345.21 *et seq.*
4. Defendant is a “supplier,” as that term is defined in R.C. 1345.01(C), as he engaged in the business of effecting “consumer transactions” by providing or soliciting consumers for home improvement goods or services for a fee, within the meaning of R.C. 1345.01(A).
5. Defendant, as described below, was at all relevant times hereto 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 the State of Ohio for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.21(A) and (E).
6. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
7. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3) and (6).

STATEMENTS OF FACTS

8. Defendant is an individual who did business in Ohio as Kelly Heating & Air Conditioning.
9. Defendant is an individual who did business in Ohio as Reagan Same Day Heating & Cooling.
10. Defendant is an individual who did business in Ohio as Kelly’s Plumbing & Heating.

11. Defendant registered the business name “Kelly Heating and Air” with the Ohio Secretary of State on June 1, 2011.
12. Defendant’s business name registration was cancelled by operation of law on June 9, 2016.
13. Defendant solicited consumers and accepted payments for home improvement goods and services within multiple counties in Ohio, including Montgomery County.
14. Defendant solicited and sold home improvement goods and services at the residences of buyers.
15. Defendant does not have a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis.
16. Defendant accepted monetary deposits from consumers for the purchase of home improvement goods and services and failed to deliver those goods and services and has refused to refund consumers’ deposits or payments.
17. Defendant performed substandard, shoddy, and incomplete work when he did provide home improvement services.
18. After receiving payment, Defendant would sometimes begin to provide contracted services, and then fail to complete the work.
19. Defendant’s failure to perform contracted services in a proper manner has resulted in harm to consumers and required the consumers to pay additional money to have the Defendant’s work corrected and/or to complete the work Defendant was supposed to do.
20. Defendant continued to engage in consumer transactions despite having a court judgment against him for violations of consumer law.

21. Defendant did not notify consumers of their cancellation rights nor did he provide consumers with a notice of cancellation.

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 one through nineteen (1-21) of this Complaint.
23. Defendant committed unfair or deceptive acts and 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 or 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 consumers 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 – PERFORMING SUBSTANDARD / SHODDY WORK

24. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs one through twenty-one (1-23) of this Complaint.
25. Defendant committed unfair or 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.
26. The acts and practices described above have been previously determined by Ohio courts to violate the CSPA. Defendant committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(B)(2).

COUNT III – UNSATISFIED JUDGMENT

27. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs one through twenty-four (1-26) of this Complaint.
28. Defendant committed unfair or deceptive acts and practices in violation of R.C. 1345.02(A) of the CSPA, by engaging in consumer transactions while having an unsatisfied judgment and legal obligation owed to consumers arising out of previous consumer transactions.
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(B)(2).

PLAINTIFF'S SECOND CAUSE OF ACTION:

VIOLATION OF THE HSSA

COUNT 1:

FAILURE TO PROVIDE PROPER NOTICE OF THREE DAY RIGHT OF RESCISSION

30. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs one through twenty-seven (1-29) of this Complaint.
31. Defendant violated the HSSA, R.C. 1345.23(B), by failing to give proper notice to consumers of their right to cancel their contracts by a specific date and by failing to give consumers a cancellation form.
32. The acts and practices described above have been previously determined by Ohio courts to violate the CSPA. Defendant committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(B)(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. DECLARE that each act or practice complained of herein violates the CSPA and the HSSA in the manner set forth in the Complaint.
- B. ISSUE a Permanent Injunction enjoining the Defendant, his agents, servants, employees, successors or assigns, and all persons acting in concert and participation with him, 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.*, and the HSSA, R.C. 1345.21 *et seq.*
- C. ORDER Defendant to reimburse all consumers found to have been damaged by Defendant's unlawful actions.
- D. ASSESS, FINE and IMPOSE upon Defendant a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation of the CSPA, described herein 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 and in violation of the HSSA be rescinded with full restitution to the consumers.
- F. ISSUE a Permanent Injunction enjoining Defendant, as a means of insuring compliance with this Court's Order and the previous court judgment against Defendant, from engaging in consumer transactions as a supplier in this state until such time as Defendant has satisfied all monetary obligations ordered pursuant to this litigation and the previous court judgment against Defendant.
- G. GRANT Plaintiff its costs incurred in bringing this action.
- H. ORDER Defendant 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,

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