

IN THE COURT OF COMMON PLEAS
PERRY COUNTY, OHIO

RECEIVED
PERRY COUNTY

2016 JUL 28 AM 9:10

TIMOTHY J WOLLENBERG
CLERK OF COURTS

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

Plaintiff,

v.

DAVID LEE MARSH, SR.
DBA DAVID'S MOBILE HOME &
WELL SERVICE, DM MOBILE
HOME TRANSPORT and
DAVID'S MOBILE HOME
TRANSPORT & REPAIR
3250 West State Route 22
Somerset, Ohio 43783

Defendant.

Case Number:

16-CV-00195

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

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 David L. Marsh, Sr. dba David's Mobile Home & Well Service, DM Mobile Home Transport and David's Mobile Home Transport & Repair ("Defendant"), hereinafter described, have occurred in Perry County and other counties in the State of

Ohio and, as set forth below, are in violation of the Consumer Sales Practices Act (“CSPA”), R.C.1345.01, 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).

DEFENDANT

5. Defendant David L. Marsh is a natural person residing at 3250 West State Route 22 Somerset, Ohio 43783.
6. The principle place of business for David’s Mobile Home & Well Service, DM Mobile Home Transport and David’s Mobile Home Transport & Repair is 400 West Main Street, Somerset, Ohio 43783.
7. Defendant has registered the trade name of David’s Mobile Home and Well Service with the Ohio Secretary of State.
8. 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 soliciting consumers either directly or indirectly for mobile home transport and repair services for a fee, within the meaning of R.C. 1345.01(A).

STATEMENT OF FACTS

9. Defendant accepted monetary deposits from consumers for the purchase of mobile home transport and installation services and failed to deliver some or all of those goods and services within eight weeks.
10. Defendant has refused to refund consumers’ deposits or payments despite consumers’ requests for refunds.

11. After receiving payment, Defendant sometimes began work but failed to complete the work.
12. Defendant's failure to perform contracted mobile home moving services in a proper manner has resulted in harm to consumers.
13. In some instances, Defendant collected full payments and/or deposits from consumers but Defendant did not do any work.
14. In some instances, Defendant performed partial work, did not timely complete the work, and the work he did perform was substandard in nature.
15. Defendant entered into contracts with consumers for transport of mobile homes on specific dates, consumers relied on these dates for moving, and Defendant failed to deliver the homes when promised.
16. Defendant entered into contracts with consumers for the sale of products he represented to be required for the transport of the mobile homes when there was no need for consumers to purchase such products.
17. Defendant represented to consumers that specific repairs and services were needed when they were not.
18. Defendant represented to consumers that specific repairs and services were performed when they were not.

COUNT I- FAILURE TO DELIVER

19. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-18 of this Complaint.
20. Defendant 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 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 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- PERFORMING SUBSTANDARD/SHODDY WORK

21. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-20 of this Complaint.
22. Defendant 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.
23. 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 inspections pursuant to R.C. 1345.05(A)(3).

COUNT III- VIOLATION OF THE REPAIRS OR SERVICES RULE

24. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-23 of this Complaint.
25. Defendant committed unfair or deceptive acts or practices in violation of the Repairs or Services Rule, O.A.C. 109:4-3-05(D)(8) and (9) and the CSPA, R.C. 1345.02(A), by representing that repairs or services are necessary when they are not or by representing that repairs or services have been performed when they have not.

COUNT IV- UNCONSCIONABLE ACTS OR PRACTICES

26. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set

forth in paragraphs 1-25 of this Complaint.

27. Defendant has committed unconscionable acts or practices in violation of the CSPA, R.C. 1345.03(A), as set forth in R.C. 1345.03(B)(6), by making false or misleading statements of opinion on which consumers have relied to their detriment, in connection with consumer transactions.
28. Defendant has committed unconscionable acts or practices in violation of the CSPA, R.C. 1345.03(A), by refusing to make refunds without justification.
29. Such acts or practices 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- UNSATISFIED JUDGMENT

30. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-29 of this Complaint.
31. Defendant has committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by engaging in consumer transactions while having unsatisfied judgments and legal obligations arising out of previous consumer transactions.
32. Such acts or practices 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).

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 and its Substantive Rules in the manner set forth in the Complaint.

- B. ISSUE A TEMPORARY RESTRAINING ORDER and preliminary injunction preventing 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 as well as from engaging in consumer transactions as a supplier, and from selling or transferring personal or business assets.
- C. 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 soliciting consumers either directly or indirectly to enter into contracts for mobile home transport and repair services for a fee or any other injunctive relief as the court deems to be just, equitable, and appropriate.
- D. ORDER Defendant, 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 Defendant as set forth in this Complaint.
- E. 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).
- F. ISSUE AN INJUNCTION prohibiting Defendant from engaging in any consumer transactions in this state until such time as Defendant has satisfied all monetary obligations ordered pursuant to this litigation.
- 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,

MICHAEL DEWINE
Attorney General



JENNIFER L. MILDREN (0087564)
Assistant Attorney General
Counsel for Plaintiff, State of Ohio
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
614-466-8235