

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, <i>ex rel.</i>	)	CASE NO.
OHIO ATTORNEY GENERAL	)	
MICHAEL DEWINE	)	JUDGE
30 E. Broad Street, 14th Floor	)	
Columbus, Ohio 43215	)	
	)	<u>COMPLAINT FOR</u>
Plaintiff,	)	<u>DECLARATORY AND</u>
	)	<u>INJUNCTIVE RELIEF,</u>
v.	)	<u>DAMAGES, AND CIVIL</u>
	)	<u>PENALTIES</u>
DISABILITY OHIO ASSISTANCE, LLC.	)	
2668 Shelly Drive	)	
Columbus, Ohio 43207	)	
	)	
And	)	
	)	
KELLY S. MCELRAVEY, individually	)	
And Doing Business As:	)	
Disability Ohio Assistance, LLC.	)	
Ohio Disability	)	
Disability Assistance	)	
JLC Disability Services, LLC.	)	
2668 Shelly Drive	)	
Columbus, Ohio 43207	)	
	)	
Defendants.	)	

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through Attorney General 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 the Attorney General by the Consumer Sales Practices Act

(“CSPA”), R.C. 1345.01 et seq., and its Substantive Rules, Ohio Administrative Code (“O.A.C.”), 109:4-3-01 et seq.

2. This Court has jurisdiction over the subject matter of this action pursuant to the CSPA, R.C. 1345.04.
3. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1-3) in that Defendant McElravey resides in Franklin County, Defendant Disability Ohio Assistance, LLC., has its principal place of business in Franklin County and both Defendants conducted activity which gave rise to the claims for relief in Franklin County.
4. The actions of Defendants McElravey and Disability Ohio Assistance, LLC. (“Defendants”), as set forth below, occurred in Franklin and other counties in the State of Ohio, and as set forth below, are in violation of the CSPA, R.C. 1345.01 et seq. and its Substantive Rules, O.A.C, 109:4-3-01 et seq.

DEFENDANTS

5. Defendant Disability Ohio Assistance, LLC. (“DOA”) is a domestic, for-profit limited liability company, organized under the laws of Ohio and registered with the Ohio Secretary of State on February 6, 2016. Its principal place of business is 2668 Shelly Drive, Columbus, Ohio 43207, which is located in Franklin County. Defendant McElravey is the registered agent, the responsible party who filed the Articles of Organization and believed to be the sole employee.
6. Defendant Kelly S. McElravey is an individual who resides and conducts business at 2668 Shelly Drive, Columbus, Ohio 43207. McElravey also periodically conducted business using the names: Disability Assistance and Ohio Disability.

7. Defendants are “suppliers” as they were, at all times relevant herein, engaged in the business of effecting “consumer transactions” either directly or indirectly by soliciting and selling services to consumers in the State of Ohio, for purposes that were primarily personal, family or household in nature, as those terms are defined in the CSPA, R.C. 1345.01(A), (C), and (D).

STATEMENT OF FACTS

8. Defendants represented to consumers who were members of public employee retirement systems that Defendants would provide comprehensive consulting services to assist consumers with obtaining disability benefits.
9. Defendants offered consulting services to consumers who were members of the Ohio Police and Fire Pension Fund, the State Teachers Retirement System, the State Employees Retirement System, or the Ohio Public Employee Retirement System.
10. From early 2011, Defendant McElravey, using several business names, engaged in the practice of soliciting and selling consulting services to consumers seeking disability retirement benefits.
11. Defendant McElravey began providing consulting services when she was employed by Disability Assistance, Inc. Disability Assistance, Inc. was a limited liability company registered with the Ohio Secretary of State in 2010 and is not a party to this action. The business was located at 8000 Walton Parkway, Suite 212, New Albany, Ohio 43125, which is situated in Franklin County. McElravey was the sole employee and worked directly with consumers under the supervision of the founding member.
12. In May of 2013, Disability Assistance, LLC. entered into an asset purchase agreement with JLC Disability Services, LLC. JLC Disability Services, LLC was registered as a

limited liability company with the Ohio Secretary of State in May of 2013 and is not a party to this action. Now employed by JLC Disability Services, LLC. as a “senior pension specialist,” Defendant McElravey continued to provide consulting services from the same office space. Other than the founding member, who lived in and worked from Akron, Ohio, McElravey was the sole employee.

13. In March of 2015, while employed by JLC Disability Service, LLC., but without the knowledge of the founding member/owner, Defendant McElravey began depositing consumers’ personal checks for consulting services into her personal checking account rather than to the JLC Disability Service business bank account.
14. Throughout 2015, Defendant McElravey deposited to her personal account, or otherwise negotiated, personal checks from at least 13 customers of JLC Disability Assistance, LLC. The misdirected funds totaled more than \$22,000.
15. In December of 2015, the owner of JLC Disability Service, under the impression that the company was not as profitable as hoped, agreed to sell the assets and liabilities of the company to Defendant McElravey.
16. On December 30, 2015, Defendant McElravey, using the fictitious name Ohio Disability, entered into an agreement with JLC Disability Service to purchase its assets and liabilities, including assuming the responsibilities for all transactions with past and present clients.
17. On February 1, 2016, Defendant McElravey filed Articles of Organization for Defendant Disability Ohio Assistance, LLC. Defendants continued to operate from the same office location at 8000 Walton Parkway in New Albany, Ohio and Defendant McElravey continued to be the sole employee.

18. Defendant McElravey, as the sole member and/or employee of Defendant DOA, had full dominion and control of Defendant DOA, at all times relevant herein, by controlling the policies, procedures, and activities. Defendant McElravey committed, allowed, directed, ratified, participated in, or otherwise caused the unlawful acts and practices set forth herein to occur.
19. In March of 2016, Defendants received a demand notice for rent, which was overdue rent for the office location in New Albany. The rental rate of \$300 per month was three months past due. Defendants failed to pay the past due rent and left the office space.
20. Upon vacating the office location, Defendants abandoned business records that included consumers' medical records and application files containing highly sensitive personal and financial information.
21. After leaving the office space, Defendants continued to operate throughout 2016 from McElravey's personal residence at 4054 Walnut Crossing Drive, Groveport, Ohio 43125 and later from her personal residence at 2668 Shelly Drive, Columbus, Ohio 43207. Both business locations are situated in Franklin County.
22. Defendants verbally represented to consumers, in-person and on their website at www.disabilityohio.com, that benefits of their services included, *inter alia*, coordinating medical exams with specialized physicians, collecting and analyzing medical records to include those with the application providing the strongest support, representing members in communications and hearings with the retirement system, maintaining application records and filing renewal applications or other documents necessary to retain benefits.
23. Defendants claimed to possess expertise and extensive experience assisting consumers with obtaining disability benefits from Ohio public pension systems.

24. Defendants falsely represented they had a 98% success rate in obtaining disability benefits for their clients.
25. Defendants falsely represented that they had “lost only one case in ten years.”
26. At times, Defendants falsely informed consumers that the consulting services were provided at the direction of, or while working with, an attorney.
27. Defendants referred to the fee charged for their consulting service as a “retainer” which led consumers to believe they were paying for services provided at the direction of, or with the oversight of, an attorney.
28. Defendants charged fees to consumers for representation in the initial application process for disability benefits, for annual service fees to maintain representation, or both.
29. Defendants included a provision in their service agreements, which required that consumers agree “not to contact the pension fund directly or indirectly for any reason whatsoever unless you have received the prior approval of the company.”
30. Defendants continued to enter into contracts with consumers and continued to accept money from consumers for services despite knowing of their financially precarious situation.
31. Defendants ceased operating from the retail office location known to consumers and failed to notify consumers of new contact information where they could be reached related to services still owed to consumers.
32. Defendants failed to return to consumers their medical records and application files containing highly sensitive personal information.

33. Defendants ceased consulting services for some consumers without informing consumers of that fact and without refunding monies to those consumers for partial or incomplete services.
34. Defendants missed significant filing deadlines that resulted in delays, denials, or termination of disability benefits.
35. Defendants failed to apprise consumers of their application status, significant deadlines, or actions taken on applications by the retirement systems.
36. In April of 2016, the Ohio Police and Fire Pension Fund ("OP&F") notified Defendants that they were no longer permitted to represent members in any dealings with OP&F. The ban resulted from an OP&F finding that Defendants violated OP&F's Agent Standards of Conduct. Upon investigating a complaint from a member who was represented by Defendants, OP&F determined that it had received benefit forms, emails and signatures of their disability panel, staff, and the Chair of OP&F's Board of Trustees which were altered or forged.
37. Defendants failed to adequately respond to verbal and written communications from consumers seeking information about the status of their representation, the return of their medical and application records, or refunds of fees paid.
38. Defendants comingled business funds and personal funds and failed to maintain adequate business accounting records for Defendant DOA.

VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT

COUNT ONE

UNFAIR, DECEPTIVE OR UNCONSCIONABLE REPRESENTATIONS

39. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Eight (1-38) of the Complaint.
40. Defendants committed unconscionable acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.03(A), by making false and misleading statements of fact or opinion to the detriment of consumers.
41. Defendants committed unfair or deceptive acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02(B)(1), by representing that their service had approval, performance characteristics, uses, or benefits that it did not.
42. Defendants committed unfair or deceptive acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02(B)(2), by representing that their service would be provided with a particular standard or quality when it was not.
43. Defendants committed unfair or deceptive acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02(B)(9), by representing that their company had approval or affiliation that it did not.
44. 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 CSPA, R.C. 1345.05(A)(3).

COUNT TWO

FAILURE TO DELIVER SERVICES

45. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Thirty-Eight (1-38) of this Complaint.

46. Defendants committed unfair or deceptive acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02(A) and O.A.C. 109:4-3-09, by accepting money from consumers for services and then permitting eight weeks to elapse without (a) delivering services as promised; (b) making full refunds; or (c) advising consumers of the duration of an extended delay and offering to send refunds within two weeks, if the consumers so request.
47. Such acts or practices have been previously declared to be deceptive, by a rule adopted pursuant to CSPA, R.C. 1345.05(B)(2) before the execution of the consumer transactions upon which this action is based.

COUNT THREE
PRECARIOUS FINANCIAL SITUATION

48. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Thirty-Eight (1-38) of this Complaint.
49. Defendants committed unfair or deceptive acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02 by signing contracts and accepting money from consumers for services without disclosing to the consumers the substantial likelihood that the supplier's financial condition would limit or otherwise adversely affect their ability to provide services as represented.
50. Defendants committed unconscionable acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.03(A) by knowingly taking advantage of consumers' inability to protect their interests by failing to inform the consumers of the suppliers' precarious financial condition and of the substantial likelihood that services would not be completed.

51. 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 CSPA, R.C. 1345.05(A)(3).

COUNT FOUR
EVADING CONTRACTUAL OBLIGATIONS AND
FAILURE TO PROVIDE ADEQUATE CUSTOMER SERVICE

52. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Eight (1-38) of the Complaint.
53. Defendants committed unfair or deceptive acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02, by repeatedly stalling and evading their contractual obligations.
54. Defendants committed unfair or deceptive, acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02 by failing to properly respond to valid consumer complaints and by failing to provide adequate customer service.
55. Such acts and 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 CSPA, R.C. 1345.05(A)(3).

COUNT FIVE
FAILING TO MAINTAIN AND RETURN CONFIDENTIAL CUSTOMER RECORDS

56. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Eight (1-38) of the Complaint.
57. Defendants committed unfair or deceptive acts or practices in connection with consumer transactions in violation of CSPA, R.C. 1345.02(A) by abandoning the customer and consumer information as those terms are defined in the federal laws designed to protect

personal financial information from improper disclosure and prevent identity theft under the Fair and Accurate Credit Transaction Act and the Gramm-Leach-Bliley Act and the rules promulgated thereunder.

58. Such acts or 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 CSPA, R.C. 1345.05(A)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- A. ISSUE an order declaring that the Defendants' acts and practices, as described herein, violated CSPA, R.C. 1345.01 et seq. and its Substantive Rules, O.A.C., 109:4-3-01 et seq.
- B. ISSUE a permanent injunction enjoining Defendants, their agents, partners, representatives, employees, salespersons, successors or assigns, including any person or entity which purchases, acquires, or otherwise receives any interest (whether legal, equitable, contractual or otherwise) in Defendants' business and continues to engage in consumer transactions, from engaging in acts and practices which violate CSPA, R.C. 1345.01 et seq. or its Substantive Rules, O.A.C., 109:4-3-01 et seq.
- C. ORDER Defendants to reimburse consumers for monetary losses resulting from Defendants' violations of the CSPA, R.C. 1345.01 et seq. and its Substantive Rules, O.A.C., 109:4-3-01 et seq.
- D. ASSESS, FINE, and IMPOSE upon Defendants a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and qualifying violation described herein, pursuant to R.C. 1345.07(D).

- E. ORDER Defendants jointly and severally liable for all monetary amounts awarded herein
- F. GRANT such other relief as the court deems to be just, equitable, and appropriate.
- G. ORDER Defendants to pay all court costs associated with this matter.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General

/s/ Erin B. Leahy

ERIN B. LEAHY (0069509)
Senior Assistant Attorney General
Office of the Ohio Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
(614) 752-4730
(866) 768-2648 (fax)
Erin.Leahy@OhioAttorneyGeneral.gov

Counsel for Plaintiff