



**PAVAN PARIKH
HAMILTON COUNTY CLERK OF COURTS**

COMMON PLEAS DIVISION

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September 21, 2023 09:13 AM

PAVAN PARIKH

Clerk of Courts

Hamilton County, Ohio

CONFIRMATION 1370980

**ATTORNEY GENERAL OF
OHIO**

A 2304047

vs.

BRIAN HAMILTON

**FILING TYPE: INITIAL FILING (OUT OF COUNTY) WITH NO JURY
DEMAND**

PAGES FILED: 6

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

STATE OF OHIO ex rel.)	
ATTORNEY GENERAL)	
DAVE YOST)	Case No:
30 E. Broad St., 14 th Floor)	
Columbus, Ohio 43215)	
)	Judge:
Plaintiff,)	
v.)	
)	
BRIAN HAMILTON, individually, and)	
DBA HAMILTON CONSTRUCTION)	<u>COMPLAINT AND REQUEST FOR</u>
7730 Stonesboro Dr.)	<u>DECLARATORY JUDGMENT,</u>
Dayton, OH 45424-2264)	<u>INJUNCTIVE RELIEF, CIVIL</u>
)	<u>PENALTIES, AND OTHER</u>
Defendant.)	<u>APPROPRIATE RELIEF</u>

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through its counsel, Ohio 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. 1345.01 *et seq.*

2. The actions and related transactions of Defendant Brian Hamilton, individually, and doing business as Hamilton Construction, hereinafter described, have occurred in Hamilton County and other counties in the State of Ohio and, as set forth herein, 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. 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(C)(3), in that Hamilton County is the county in which Defendants conducted activity that gave rise to the claims for relief, and in which all or part of the claim for relief arose.

DEFENDANT

5. Defendant Brian Hamilton is a natural person residing at 7730 Stonesboro Dr., Dayton, Ohio 45424-2264.
6. Defendant Hamilton operated a business under the fictitious name Hamilton Construction, which he never registered with the Ohio Secretary of State.
7. Defendant Hamilton is a “supplier” as that term is defined in R.C. 1345.01(C) of the CSPA, as he engaged in the business of effecting “consumer transactions” by soliciting consumers either directly or indirectly for household repair services for a fee, within the meaning of R.C. 1345.01(A).
8. Defendant Hamilton engaged in “home solicitation sales” as a “seller” as those terms are defined in the HSSA, R.C. 1345.21, as he made personal solicitations of his sales at the residences of buyers, within the meaning of R.C. 1345.21(A), (C), and (D).

STATEMENT OF FACTS

9. Defendant Hamilton engaged in the business of providing home improvement and construction services to consumers following a personal solicitation of the sale at the consumer’s residence.
10. Defendant Hamilton solicited consumers through various home improvement contractor referral websites, such as Angi.com and Thumbtack.com.

11. Defendant Hamilton paid these websites for the leads.
12. Defendant Hamilton did not have a retail business establishment with a fixed permanent location where goods were exhibited or offered for sale on a continuing basis.
13. Defendant Hamilton represented to consumers that he would undertake and complete various construction services and failed to deliver some the contracted for services within eight weeks.
14. After receiving payment, Defendant in at least one instance began work but failed to complete the work.
15. Defendant represented to consumers that he would provide the contracted for services within an estimated time and then failed to provide the services in the time promised.
16. Defendant provided incomplete, shoddy, and substandard services to consumers and then failed to correct such work.
17. Defendant refused to refund consumers' deposits or payments despite consumers' requests for refunds.
18. At the time of the transactions, Defendant failed to notify consumers of their rights to cancel the transactions and failed to provide consumers with notices of cancellation forms describing the consumers' rights to cancel the transactions.

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

COUNT I - FAILURE TO DELIVER

19. Plaintiff incorporates the above paragraphs as if fully reiterated herein.
20. Defendant Hamilton 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 services and then permitting eight weeks to elapse

without delivering 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 services of equal or greater value as a good faith substitute.

COUNT II- SHODDY AND SUBSTANDARD WORK

21. Plaintiff incorporates the above paragraphs as if fully reiterated herein.
22. Defendant Hamilton 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 or practices described above 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 III – UNREGISTERED FICTITIOUS NAME

24. Plaintiff incorporates the above paragraphs as if fully reiterated herein.
25. Defendant Hamilton committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by engaging in consumer transactions under a fictitious business name that is not registered with the Ohio Secretary of State as required by R.C. 1329.01(C).
26. The acts or practices described above 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).

PLAINTIFF’S SECOND CAUSE OF ACTION:

VIOLATION OF THE HSSA
FAILURE TO PROVIDE PROPER NOTICE OF THREE-DAY RIGHT OF
RESCISSION

27. Plaintiff incorporates the above paragraphs as if fully reiterated herein.

28. Defendant violated the HSSA, R.C. 1345.23, and R.C. 1345.02(A), by failing to give proper notices to consumers of their rights to cancel their transactions by a specific date.
29. The acts or 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).

PRAYER FOR RELIEF

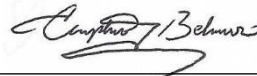
WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. ISSUE A DECLARATORY JUDGMENT that each act or practice complained of herein violates the CSPA, R.C. 1345.01 *et seq.*, its Substantive Rules, O.A.C. 109:4-3-01 *et seq.*, and the HSSA, R.C. 1345.21 *et seq.*, in the manner set forth in the Complaint.
- B. ISSUE A PERMANENT INJUNCTION enjoining the Defendant, his agents, employees, successors or assigns, and all persons acting in concert and participation with them, 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.*, its Substantive Rules, O.A.C. 109:4-3-01 *et seq.*, and the HSSA, R.C. 1345.21 *et seq.*
- C. ORDER Defendant, pursuant to R.C. 1345.07(B), to reimburse consumers found to have been damaged by the conduct of the Defendant as set forth in this Complaint.
- D. ASSESS, FINE and IMPOSE upon Defendant a civil penalty of up to \$25,000.00 for each separate and appropriate violation of the CSPA described herein pursuant to R.C. 1345.07(D).

- E. ISSUE AN INJUNCTION prohibiting Defendant from engaging in business as a Supplier in any consumer transactions in this state until such time as Defendant has satisfied all monetary obligations ordered pursuant to this litigation.
- F. GRANT Plaintiff its costs incurred in bringing this action, including, but not limited to, the costs of collecting on any judgment awarded.
- G. ORDER Defendant to pay all court costs associated with this matter.
- H. GRANT such other relief as the court deems to be just, equitable, and appropriate.

Respectfully submitted,

DAVE YOST
Attorney General



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