

FILED
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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CLERK OF COURTS
CUYAHOGA COUNTY

STATE OF OHIO, *ex rel.*)
MICHAEL DeWINE)
ATTORNEY GENERAL OF OHIO)
615 W. Superior Ave. 11th Floor)
Cleveland, Ohio 44113)

CASE NO.

Judge: TIMOTHY MCCORMICK

CV 12 798039

Plaintiff,

v.

**COMPLAINT, REQUEST FOR
DECLARATORY AND INJUNCTIVE
RELIEF, DAMAGES AND CIVIL
PENALTIES**

WILLIAM J. ZELE individually and dba)
ABOVE ALL BASEMENT)
WATERPROOFING; RIGHT CHOICE)
ROOFING; and ZELE BASEMENT)
WATERPROOFING)
24940 Devoe Ave.)
Euclid, Ohio 44123)

Defendant.

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 the Consumer Sales Practices Act, R.C. 1345.01 et seq.
2. The actions of Defendant William J. Zele, dba Above All Basement and Waterproofing, Right Choice Roofing, and Zele Basement Waterproofing, (hereinafter "Defendant"), have occurred in the State of Ohio, Cuyahoga County,

and other counties throughout the State of Ohio and violate the Consumer Sales Practices Act, R.C. 1345.01 et seq.

3. This Court has jurisdiction over the subject matter of this action pursuant to R.C. 1345.04 of the Consumer Sales Practices Act.
4. This Court has venue to hear this case pursuant to Civ. R. 3(B)(3), in that some of the transactions complained of herein, and out of which this action arises, occurred in Cuyahoga County, Ohio.

DEFENDANTS

5. Defendant William J. Zele is an individual doing business as Above All Basement and Waterproofing, Zele Basement Waterproofing, and Right Choice Roofing, with his principal place of business located at 24940 Devoe Ave., Euclid, Ohio 44123.
6. Defendant is a “supplier” as that term is defined in R.C. 1345.01(C) as Defendant, at all times relevant herein, engaged in the business of effecting “consumer transactions” by soliciting services and performing the service of basement waterproofing, roofing, landscaping, and home improvement work, for “individuals” from Cuyahoga County, and other counties in the State of Ohio, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).

STATEMENT OF FACTS

7. Defendant was at all relevant times engaged in the business of soliciting, promoting, and performing the service of basement waterproofing, roofing, landscaping, and home improvement work.

8. On at least four occasions, Defendant solicited consumers for basement waterproofing, roofing, landscaping, and/or home improvement work, accepted money from the consumer, and failed to deliver any materials or services, or refund the consumer's money.
9. On at least three occasions, Defendant solicited consumers for basement waterproofing, roofing, landscaping, and/or home improvement work, and either failed to complete the work, or failed to perform in a workmanlike manner and failed to correct the work.
10. On at least two occasions, Defendant solicited consumers for basement waterproofing, roofing, landscaping, and/or home improvement work and then failed to honor a written or verbal warranty. On one such occasion Defendant's failure to honor his warranty left a consumer with a leaky roof, and on another Defendant's failure to honor his warranty left a consumer with a breached retaining wall.
11. On at least one occasion, Defendant attempted to begin waterproofing work on a consumer's home in a city which required a permit to perform such work, without obtaining the requisite permit.

PLAINTIFF'S CAUSE OF ACTION:
VIOLATIONS OF
THE OHIO CONSUMER SALES PRACTICES ACT

COUNT ONE
FAILURE TO DELIVER

12. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Eleven (1-11) of this Complaint.

13. Defendant has committed unfair or deceptive acts or practices in violation of the Failure to Deliver Rule, Ohio Admin. Code 109:4-3-09(A)(1) and the Consumer Sales Practices Act, R.C. 1345.02(A), by accepting down payments from consumers for basement waterproofing, roofing, landscaping, and/or home improvement work then failing to deliver the goods and/or services purchased or to return down payments to consumers.
14. The act or practice described in the preceding paragraph has been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq.
15. Defendant committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT TWO
FAILING TO PERFORM IN A WORKMANLIKE MANNER AND THEN
FAILING TO CORRECT SUCH WORK

16. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Eleven (1-11) of this Complaint.
17. Defendant has committed unfair or deceptive acts or practices in violation of the Consumer Sales Practice Act, R.C. 1345.02(A), by failing to perform basement waterproofing, roofing, landscaping, and/or home improvement work in a workmanlike manner and then failing to correct such work.
18. The act or practice of performing basement waterproofing, roofing, landscaping, and/or home improvement work in a shoddy and unworkmanlike manner in connection with a consumer transaction and then failing to correct such work has

been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq.

19. Defendant committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT THREE
FAILING TO HONOR EXPRESS WARRANTIES

20. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Eleven (1-11) of this Complaint.

21. Defendant has committed unfair or deceptive acts or practices in violation of the Consumer Sales Practice Act, R.C. 1345.02(A), by failing to honor express warranties.

22. The act or practice of failing to honor express warranties has been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq.

23. Defendant committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT FOUR
FAILING TO OBTAIN REQUIRED CONTRACTOR'S LICENSE

24. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Eleven (1-11) of this Complaint.

25. Defendant has committed unfair and deceptive acts and practices in violation of R.C. 1345.02(A) by performing or attempting to perform home improvement

services in a jurisdiction which requires a license prior to the commencement of such work, without obtaining the requisite license.

26. The act or practice described in the preceding paragraph has been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq.
27. Defendant committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- I. ISSUE a permanent injunction, pursuant to R.C. 1345.07(A)(2), enjoining Defendant William Zele, under this name or any other name, his agents, servants, representatives, salesmen, employees, successors or assigns, and all persons acting in concert and participation with him, directly or indirectly, from engaging in the acts and practices of which Plaintiff complains.
- II. GRANT A JUDGMENT against Defendant William Zele individually and doing business as Above All Basement and Waterproofing, Zele Basement Waterproofing, and Right Choice Roofing in an amount sufficient to reimburse all consumers found to have been damaged by the Defendant's unfair and deceptive acts and practices, including, but not limited to, making restitution to consumers who entered into contracts with Defendant and against whom the acts described in this complaint were committed.

- III. ISSUE a declaratory judgment, pursuant to R.C 1345.07(A)(1), declaring that each and every act or practice complained of herein violates the Consumer Sales Practices Act in the manner set forth in this Complaint.
- IV. ASSESS, FINE and IMPOSE upon Defendant, pursuant to R.C. 1345.07, a civil penalty of Twenty Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein.
- V. ENJOIN Defendant William Zele, under this name or any other name, from engaging as a supplier in any consumer transaction in the State of Ohio until such time as he has satisfied all monetary obligations due hereunder, as well as any unpaid judgments arising out of consumer transactions.
- VI. GRANT Plaintiff all costs incurred in bringing this action.
- VII. GRANT such other relief as the Court deems to be just, equitable, and appropriate.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General



MICHAEL R. SLIWINSKI(0076728)
Assistant Attorney General
Consumer Protection Section
615 W. Superior Avenue 11th Floor
Cleveland, Ohio 44113-1899
216-787-3104
877-616-5276
Michael.sliwinski@ohioattorneygeneral.gov

Counsel for Plaintiff