

CV

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO 2013 01 0256

STATE OF OHIO ex rel. ATTORNEY
GENERAL MICHAEL DEWINE
441 Vine Street, 1600 Carew Tower
Cincinnati, Ohio 45202

MARY L. SWAIN
BUTLER COUNTY
CLERK OF COURTS
Case No.

FILED BUTLER CO.
COURT OF COMMON PLEAS

Plaintiff,

JAN 28 2013

v.

MARY L. SWAIN
CLERK OF COURTS

JACOB WAGERS
d.b.a. Ohio Insurance Assessments
906 Heritage Drive
Trenton, Ohio 45067

Judge

and

COMPLAINT FOR DECLARATORY
JUDGMENT, INJUNCTIVE RELIEF,
RESTITUTION AND CIVIL
PENALTIES

JAMES SASSER
d.b.a. Ohio Insurance Assessments
890 Hathaway Drive
Trenton, Ohio 45067

Defendants.

JURISDICTION AND PARTIES

1. Plaintiff, State of Ohio, by and through 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. Defendants Jacob Wagers and James Sasser ("Defendants") had a principal place of business in Butler County, Ohio.
3. The actions of Defendants, hereinafter described, have occurred in multiple counties in the State of Ohio, including Butler 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. Defendants are "suppliers," as that term is defined in R.C. 1345.01(C), as they engaged in the business of effecting "consumer transactions" by soliciting consumers for the repair, construction, assembly and/or installation of various home improvement products, namely roofs, for a fee, within the meaning of R.C. 1345.01(A).
5. Defendants, as described below, were at all relevant times hereto "sellers" 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, Butler County and various other counties, 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)(1), (2), (3), and (6).

STATEMENTS OF FACTS

8. Defendants are individuals doing business in Ohio as Ohio Insurance Assessments and had a principle place of business at 4889 Mercedes Drive, Suite A, Hamilton, Ohio.
9. Ohio Insurance Assessments is the name of a business entity which is not registered to do business with the Ohio Secretary of State.
10. Defendants at all times pertinent hereto directed and controlled all business activities of Ohio Insurance Assessments, including the solicitation for sale and sale of home improvement services.

11. Defendants caused, personally participated in, or ratified the acts and practices of Ohio Insurance Assessments as described in the Complaint.
12. Defendants have solicited consumers and accepted payments for the repair or construction of various home improvement products, such as roofs and gutters, within multiple counties in Ohio, including Butler County.
13. Defendants went door to door and solicited consumers in their homes.
14. Defendants did not notify consumers of their cancellation rights nor did they provide consumers with a notice of cancellation. A copy of the contract used by Defendants is attached as Exhibit A as an example.
15. Defendants have accepted monetary deposits from consumers for the purchase and installation of roofing materials and have failed to deliver goods and services and have refused to refund consumers' deposits or payments.
16. Defendants have performed substandard and shoddy work in the construction and repair of roofing projects.
17. Defendants installed roofing material and shingles which were different brands and colors, as well as being of a lower quality, from what consumers had contracted for.
18. Defendants have delivered and installed roofing materials which were not of same standard, quality, grade, style, prescription, or model as the consumer had ordered.
19. Defendants' failure to perform contracted home improvement services in a proper manner and failure to perform the services has resulted in harm to consumers and required the consumers to pay additional money to have the Defendants' work corrected and/or to complete the work Defendants were supposed to do.

COUNT I - FAILURE TO DELIVER

20. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in preceding paragraphs.
21. Defendants have 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 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

22. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in preceding paragraphs.
23. Defendants have 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.
24. The acts and practices described above have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(B)(2).

COUNT III – MISREPRESENTING STANDARD, QUALITY, GRADE, OR

STYLE OF SUBJECT OF A CONSUMER TRANSACTION

25. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in preceding paragraphs.

26. Defendants have committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) and 1345.02(B)(2), by representing that the subject of a consumer transaction is of a particular standard, quality, grade, style, prescription, or model, if it is not:

27. The acts and practices described above have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(B)(2).

COUNT IV – VIOLATIONS OF THE HOME SOLICITATION SALES ACT

28. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in preceding paragraphs.

29. Defendants violated the HSSA, R.C. 1345.23(B), by failing to give proper notice to consumers of their right to cancel their contract by a specific date.

30. The acts and practices described above have been previously determined by Ohio courts to violate the CSPA. Defendants 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 in the manner set forth in the complaint.
- B. ISSUE a Permanent Injunction enjoining the Defendants, their agents, servants, 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.*, and the HSSA, R.C. 1345.21 *et seq.*

- C. ORDER Defendants to reimburse all consumers found to have been damaged by Defendants' unlawful actions.
- D. ASSESS, FINE and IMPOSE upon Defendants 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 Defendants 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. PROHIBIT Defendants, as a means of insuring compliance with this Court's Order and with the consumer protection laws of Ohio, from engaging in consumer transactions in this state until such time as Defendants have satisfied all monetary obligations ordered pursuant to this litigation.
- G. GRANT Plaintiff its costs incurred in bringing this action.
- H. ORDER Defendants 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



ERIC M. GOODING (0086555)
Assistant Attorney General
441 Vine Street, 1600 Carew Tower
Cincinnati, Ohio 45202
Phone: (513) 852-1527
Fax: (877) 381-1751
Eric.Gooding@ohioattorneygeneral.gov
Counsel for Plaintiff, State of Ohio

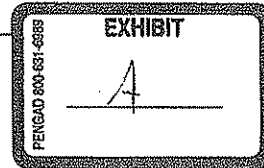


Ohio Insurance Assessments

Ohio Insurance Assessments
4889 Mercedes Drive, Suite A
Hamilton, OH 45011
513-571-4151
513-869-9738

Ins. Company: State Farm
Claim Number: 35H3712 20

Adjuster's Name: _____
Adjuster's Phone: _____



THIS AGREEMENT IS SUBJECT TO INSURANCE COMPANY APPROVAL

Customer: Donna B. Smith
Street: 5276 W. Main St
City: Hamilton State: OH Zip: 45014
Home Number: 513-863-0242
Work Number: _____
Mobile Number: 513-377-4951

Agreement contingent upon insurance company(s) approval
Property Owner: _____
Decking will be replaced at the following
\$ _____ Per Sheet \$ _____ Per Ft Lumber

SPECIFICATION

Shingle Style: _____
Shingle Warranty: _____
Shingle Color: _____ Initial: _____
Ventilation: _____
Drip Edge: _____ Color: _____
Tear Off: _____ Layers: _____
Pitch 12/12 Two Story Squares: _____
15 LB Felt: _____ 30 LB Felt: _____
Replace all Plumbing Boots
Remove Roofing Debris from yard
Roll yard with magnetic roller
Open Cornice: _____ Yes _____ No
Prior Gutter Damage _____ Yes _____ No
Prior Driveway Damage _____ Yes _____ No
Prior Interior Damage: _____ Yes _____ No
Leaks (where): _____
Skylights (quantity & size): _____
Actual Squares: _____
Waste Squares: _____
Total Squares: _____

SPECIAL ATTENTION AREA'S

ADDITIONAL NOTES

PAYMENT SCHEDULE
\$ _____ TOTAL PRICE Check

\$ _____ First Installment (Due upon signing)
\$ _____ Second Installment (Due upon _____)

JOB IS TO BE PERFORMED AT INSURANCE COMPANIES RATES, FIGURES AND MONEY.

TERMS: This agreement is for roofing, gutters and siding. It is subject to the specification set out herein and on the reverse side hereof to accomplish the replacement of repair. I hereby authorize Ohio Insurance Assessments to obtain at their discretion all roofing, gutters or siding prescribed repairs for the price stated above.

ABSOLUTELY NO VERBAL CONTRACTS WILL BE HONORED. CASH PAYMENTS ARE NOT ACCEPTED.

Make payment by check or money order. Field Representatives may collect payments, however, checks and money orders must be payable to Ohio Insurance Assessments.

COMPANY PROVIDES A TWO YEAR LIMITED WARRANTY FOR LABOR AND LEAKS ON FULL REPLACEMENTS.

Any person or company supplying labor or materials for this improvement to your property may file a mechanics lien against your property if that person or company is not paid for the contributions. Ohio Insurance Assessments is not responsible or takes any liability for mold or mold spores that are present before, during, or after job is completed. Buyer will be responsible to pay all Ohio Insurance Assessments attorney fees and costs for collection of unpaid contract balance. Ohio Insurance Assessments shall be entitled to liquidated damages and all disputes regarding this contract will be resolved in the state of OHIO for a sum equal to 25% of the value of the contract or insurance settlement.

Property Owner: Donna B. Smith
Print Name: _____ Date: 4-21-11

Field Representative: Betty L. Smith
Print Name: _____ Date: 4-21-11

Betty L. Smith

GENERAL TERMS AND CONDITIONS

- 1) **Time for acceptance of agreement:** This agreement and general terms must be signed and returned to the contractor within 15 days of date on the agreement or contract will be deemed null and void. Acceptance by contractor of this agreement depends upon approval of customer by the credit department. The agreement consists of both the contract and these general terms and conditions.
- 2) **Payment:** Deposit is required upon submission of this agreement, and/or upon receiving the first insurance check. All progress payments shall be due within 10 days from invoice date, and/or upon receipt of the same from insurance company. Final payment shall be due upon substantial completion and submittal of the final invoice (pay per trade - roof, siding, gutters, etc.). Any amount not paid when due shall bear interest from the due date until paid in full at 18% or the maximum amount allowed by law.
- 3) **Warranties and limitations on liability:** Contractor grants the customer a two year warranty on workmanship. In the event of a claim of defective workmanship, the notice of the warranty claim must be submitted in writing and must describe the claim in sufficient detail to determine the nature of the problem(s), and must be signed by the customer. Removal of roofing system lifts a great weight from the building, this causes uplift in the building, sometimes resulting in interior cracking of walls, ceilings, and floors. Such cracking may disappear upon roof replacement, however, uplift is unavoidable. Therefore, contractor shall not be liable should interior cracks occur. Any re-roofing requires removal of the membrane protecting the building from rainwater. Contractor shall use it's best efforts to cover the roof if rain occurs during re-roofing. However, if rain occurs during re-roofing, rain infusion and even mold infestation are inevitable. Therefore, should mold occur, contractor shall not be liable. Should fire, casualty, vandalism, storm(s) resulting in whole, or partial destruction of the building occur during the work due it shall not be deemed the fault of contractor, customer shall look solely to the homeowners insurance for recourse for any damage, and contractor shall not be liable. Contractor is not a dealer in roofing materials, and does not warrant materials supplied or installed. It is agreed that shingles and tiles shall vary in color and texture from time to time, and that such variation does not constitute a default under this agreement.
- 4) **Change orders:** Any extra work which is requested or required due to the condition of the building or building code changes shall be performed only after a written change order is signed by the customer upon a contractor's change order form, and delivered to contractor accompanied by full payment for the change order if applicable. A change order may increase or decrease the price, provide for more or less time to complete work, for more or less materials or labor and other clauses.
- 5) **Work funded by insurance payments:** In the event the work is to be funded from insurance proceeds, the insurance company and the contractor shall agree upon the total price. Customer authorizes the contractor to negotiate directly with the insurance company. Customer authorizes the insurance company to pay contractor directly for all work performed / provided for herein. If the insurer refuses to fund necessary work, contractor may terminate this agreement. Homeowner is responsible for paying claim deductible to contractor.
- 6) **Customer's covenant noninterference:** Customer shall not attempt to direct workers on the site, exclude them from the site, demand work from them, remove the permit from the site, or interfere in any way with the contractor's work.
- 7) **Customer's required insurance:** Customer shall carry homeowners insurance in the full replacement value of all improvements on the property and public liability insurance.
- 8) **Contractor's required insurance:** Contractor shall carry insurance required by law of a contractor.
- 9) **Removal of screens and other roof obstructions:** If screens or other objects obstruct access to fascia or other areas of the roof or surfaces being worked on, customer shall remove and replace any such at it's sole expense. Contractor is not licensed for this work.
- 10) **Excess materials:** In order to insure there are enough materials to do the work(s) contractor may order more materials than may be necessary to complete said work(s). Any excess materials will not result in a change of the agreed upon contract price. All materials remaining after completion of the work shall belong to Ohio Insurance Assessments.
- 11) **Default:** In the event that either party defaults in performing any covenant hereof, the non-defaulting party shall deliver to the defaulting party a dated "NOTICE OF DEFAULT", specifying the default and requesting the correction thereof. In the event it is not corrected within ten (10) days after receipt of said notice, the non-defaulting party shall have all remedies at law and in equity for said default. In addition to any other remedy for default provided for herein or at OHIO law, Contractor shall have the right, but not the obligation, to suspend or terminate it's work(s), to retain all deposits then held and to peacefully repossess all materials previously delivered or installed, for which payment has not been made in full, to remove its equipment from the job site and terminate this agreement.
- 12) **Notice:** Any notice shall be sufficient if delivered to the address of the party given in the agreement, by hand or U.S. mail.
- 13) **Assignment:** Neither this agreement nor any warranty granted herein is assignable.
- 14) **Act of God and delays:** In the event the completion of work is prevented or delayed due to damage or destruction of the building, fire, accident, vandalism, earth movement, hurricane, tornado, windstorm, theft, labor strikes, warfare, material shortage, delay of any governmental agency in issuing any required permit or certificate, or in performing inspections, litigation, or any act of God, then the completion of work shall be delayed until a later date and contractor and customer shall sign a change order reflecting the same. If customer declines to sign the change order then this agreement may be terminated by contractor whereupon all sums then due to contractor for work(s) completed shall be immediately due and payable to contractor.
- 15) **Time is of the essence for this agreement.**
- 16) **Effective date of this agreement:** This agreement becomes effective when signed and applicable terms such as insurance company approval, and/or deposit are met.
- 17) **Governing law, venue, waiver of the jury trial and attorney fees:** This agreement is to be governed by the law of OHIO. Venue for any action other than a lien foreclosure may at contractor's option lie in it's home County. The parties intentionally waive the right of a jury trial, in any litigation arising under this agreement, the prevailing party shall recover it's attorney fees and cost.
- 18) **Entire agreement; No prior representation; Amendment:** This is the entire agreement upon the contractor and customer. There is no representation past or present, by contractor or any person acting for contractor, which does not appear herein. This agreement may not be amended except by a written change order or amendment executed and paid for as provided herein.
- 19) **Severability:** Any remaining provisions hereof shall remain in full force and effect.

Acceptance of the contract constitutes agreement to these general terms and conditions.