

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, ex rel.
ATTORNEY GENERAL
MICHAEL DEWINE
30 East Broad Street, Floor 14
Columbus, Ohio 43215

Plaintiff,

v.

BEST CHOICE INDUSTRIES, LLC
dba BEST CHOICE EGRESS
WINDOWS
c/o Jonathan Jackson, Agent
640 N. Hague Ave, Suite 200
Columbus, Ohio 43204

and

DANIEL PERLEY
682 Westbrook Ct.
Columbus, Ohio 43204

Defendants.

: CASE NO.

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: JUDGE

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

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JURISDICTION

1. Ohio Attorney General Michael DeWine, having reasonable cause to believe that violations of Ohio 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 Ohio Consumer Sales Practices Act, R.C. 1345.01 et seq. (“CSPA”) and the Home Solicitation Sales Act, R.C. 1345.21 et seq. (“HSSA”).
2. The acts and practices of Defendants which gave rise to this action occurred in the State of Ohio, including in Franklin County, and are violations of the CSPA and the HSSA.
3. This Court has subject matter jurisdiction over this action, pursuant to R.C. 1345.04.

4. This Court is the proper venue to hear this case, pursuant to Ohio Civ. R. 3(B)(3), because some of Defendants' acts and practices, which gave rise to the claims in this action, occurred in Franklin County.

DEFENDANTS

5. Defendant Best Choice Industries, LLC dba Best Choice Egress Windows ("Defendant Best Choice Windows" or "Best Choice Windows") is a Ohio-registered limited liability company engaged in the business of providing basement windows, window accessories, and installation services and has its principal place of business in Franklin County, Ohio.
6. Defendant Daniel Perley ("Defendant Perley") is a resident of the State of Ohio and is the owner, officer, and operator of Best Choice Windows.
7. Defendants are "suppliers," as defined in R.C. 1345.01(C), because Defendants are, and have been at all relevant times, engaged in the business of effecting consumer transactions, as defined in R.C. 1345.01(A), by soliciting, offering, and selling basement windows, window accessories, and installation services to consumers in the State of Ohio for purposes that are primarily personal, family, or household, within the meaning of R.C. 1345.01(D).
8. Defendants are "sellers," as defined in R.C. 1345.21(C), because Defendants are, and have been at all relevant times, engaged in the business of effecting home solicitation sales, as defined in R.C. 1345.21(A), by soliciting, offering, and selling basement windows, window accessories, and installation services to "buyers" in the State of Ohio for purposes that are primarily personal, family, or household, within the meaning of R.C. 1345.21(E).

STATEMENT OF FACTS

9. Defendants are, and have been at all relevant times, engaged in the business of soliciting, offering, and selling basement windows, window accessories, and installation services in the State of Ohio, including in Franklin County.
10. Defendants solicited, offered, and sold their basement windows, window accessories, and installation services through the internet, television, radio, newspaper and other print material.
11. Defendants represented in advertising that they were accredited by the Better Business Bureau, when such was not the case.
12. Defendants entered into contracts with consumers for the purchase of basement windows, window accessories, and installation services.
13. The consumer contracts used by Defendants and signed by Defendants and consumers gave consumers an inadequate notification of their right to cancel their consumer transactions within three business days of the signing of the contracts.
14. The consumer contracts used by Defendants included a provision in which consumer would waive their right to cancel for reasons not allowed by statute.
15. Defendants charged a purchase price of more than twenty-five dollars for ordered basement windows, window accessories, and/or installation services, in each consumer transaction.
16. Defendants accepted money from consumers as payments for the purchase of basement windows, window accessories, and/or installation services.
17. Defendants failed to fully provide consumers their ordered basement windows, window accessories, and/or installation services, even after eight weeks had elapsed since

Defendants accepted money from the consumers as payment for such ordered products and/or services.

18. Defendants failed to refund consumers' payments for ordered basement windows, window accessories, and/or installation services, even after eight weeks had elapsed without Defendants' fully providing such ordered products and/or services.
19. Defendants failed to furnish consumers with similar services as good faith substitutes to the consumers' ordered basement windows, window accessories, and installation services, even after eight weeks had elapsed without Defendants' fully delivering the product and/or ordered services.
20. Defendants failed to provide consumers with a written receipt adequately documenting their deposits for ordered basement windows, window accessories, and installation services.
21. Defendants provided shoddy and unworkmanlike services to consumers and then failed to correct such services.
22. In at least one instance, Defendants' shoddy and unworkmanlike services caused flooding in the consumer's basement and water damage to the consumer's property. Defendants failed to correct such shoddy and unworkmanlike services or repair the damage to the consumer's property.
23. Defendants promised or represented to consumers that Defendants would provide consumers their ordered basement windows, window accessories, and/or installation services in a satisfactory standard and quality but then failed to provide such services in such standard or quality.

24. Defendants engaged in a pattern of incompetence, inefficiency, and untimeliness in connection with providing window installation services to consumers by repeatedly delaying the start of work; promising consumers another time on which work would commence; and then failing to start work on such promised time without advising consumers of such failure.
25. Defendants knowingly made false or misleading statements of opinion on which consumers relied to their detriment. Based on such statements, consumers made payments to Defendants.
26. In at least one instance, Defendants promised in writing to refund a consumer's payment but then failed to provide such refund.
27. Defendant Perley, at all relevant times, authorized, directed, ratified, and personally committed or participated in the acts and practices described in Paragraphs Ten through Twenty-Six (10-26) of this Complaint.

PLAINTIFF'S FIRST CAUSE OF ACTION

VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT

COUNT I

FAILING TO DELIVER SERVICES OR TO PROVIDE REFUND

28. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Twenty-Seven (1-27) of this Complaint.
29. Defendants have committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), and the Failure to Deliver Rule, Ohio Adm. Code 109:4-3-09(A)(1), by accepting payments from consumers for the purchase of basement windows, window accessories, and installation services, and then permitting eight weeks to elapse

without making full delivery of the ordered services; making refunds of the consumers' payments; advising consumers of the duration of an extended delay and offering to send consumers refunds within two weeks, if consumers so requested; or furnishing similar services of equal or greater value as a good faith substitute, if consumers agreed.

30. Such acts or practices have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violations after such court decisions were available for public inspection, pursuant to R.C. 1345.05(A)(3).

COUNT II

PROVIDING SHODDY AND UNWORKMANLIKE SERVICES

31. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty (1-30) of this Complaint.
32. Defendants have committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by providing shoddy and unworkmanlike services in connection with consumer transactions and then failing to correct such shoddy and unworkmanlike services.
33. Such acts or practices have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violations after such court decisions were available for public inspection, pursuant to R.C. 1345.05(A)(3).

COUNT III

MISREPRESENTING THE STANDARD AND QUALITY OF SERVICES

34. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Three (1-33) of this Complaint.
35. Defendants have committed unfair or deceptive acts or practices in violation of the

CSPA, R.C. 1345.02(A) and R.C. 1345.02(B)(2), by misrepresenting the standard and quality of their basement windows, window accessories, and installation services, in connection with consumer transactions.

36. Such acts or practices have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violations after such court decisions were available for public inspection, pursuant to R.C. 1345.05(A)(3).

COUNT IV

MISREPRESENTING SPONSORSHIP, APPROVAL OR AFFILIATION

37. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Six (1-36) of this Complaint.
38. Defendants have committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.02(B)(9), by representing that Defendants had a sponsorship, approval, or affiliation that Defendants did not have.
39. Such acts or practices have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violations after such court decisions were available for public inspection, pursuant to R.C. 1345.05(A)(3).

COUNT V

**ENGAGING IN A PATTERN OF INCOMPETENCE, INEFFICIENCY, AND
UNTIMELINESS**

40. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Nine (1-39) of this Complaint.
41. Defendants have committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by engaging in a pattern of incompetence, inefficiency, and

untimeliness in connection with consumer transactions for basement windows, window accessories, and installation services.

42. Such acts or practices have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violations after such court decisions were available for public inspection, pursuant to R.C. 1345.05(A)(3).

COUNT VI

UNCONSCIONABLE ACTS AND PRACTICES

43. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Forty-Two (1-42) of this Complaint.
44. Defendants have committed unconscionable acts or practices in violation of the CSPA, R.C. 1345.03(A), by entering into a consumer transactions where at the time the time the transactions were entered into the supplier knew of the inability of the consumers to receive a substantial benefit.
45. Defendants have committed unconscionable acts or practices in violation of the CSPA, R.C. 1345.03(A), by knowingly making false or misleading statements of opinion on which consumers have relied to their detriment, in connection with consumer transactions.
46. Defendants have committed unconscionable acts or practices in violation of the CSPA, R.C. 1345.03(A), by refusing to make a refund without justification.
47. Such acts or practices have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violations after such court decisions were available for public inspection, pursuant to R.C. 1345.05(A)(3).

COUNT VII

VIOLATIONS OF THE DEPOSIT RULE

48. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Forty-Seven (1-47) of this Complaint.
49. Defendants have committed unfair or deceptive acts or practices in violation of the CSPA, Ohio Adm. Code 109:4-3-07(B), by failing to provide consumers with a dated receipt, at the time of the initial deposit, that documents the goods and services to which the deposit applies, the cash selling price and the amount of the deposit, the allowance on the goods to be traded in or other discount, the time during which any option is binding, the conditions receiving a refund of the deposit, and any additional costs to the consumer.
50. Such acts or practices have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violations after such court decisions were available for public inspection, pursuant to R.C. 1345.05(A)(3).

PLAINTIFF'S SECOND CAUSE OF ACTION

VIOLATIONS OF THE HOME SOLICITATION SALES ACT

COUNT I

FAILING TO PROVIDE THE REQUIRED NOTICE OF RIGHT TO CANCEL

51. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Fifty (1-50) of this Complaint.
52. Defendants have violated the HSSA, R.C. 1345.23(A), by failing to provide an adequate notice of the consumer's right to cancel.
53. Defendants have violated the HSSA, R.C. 1345.23(D)(1), by including in a home solicitation sales contact a waiver of rights which the buyer is entitled to under the HSSA.

54. Such acts or practices also constitute deceptive acts or practices in violation of the CSPA, pursuant to R.C. 1345.28.
55. Such acts or practices have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violations after such court decisions were available for public inspection, pursuant to R.C. 1345.05(A)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court:

1. ISSUE A DECLARATORY JUDGMENT declaring that each act or practice described in Plaintiff's Complaint violates the CSPA and HSSA, in the manner set forth in the Complaint.
2. ORDER Defendants Best Choice Industries, LLC, dba Best Choice Egress Windows and Daniel Perley jointly and severally liable for reimbursement to all consumers found to have been damaged by Defendants' unfair, deceptive, and unconscionable acts and practices, including, but not limited to, making restitution to consumers who paid money to Defendants but never fully received the services for which they paid.
3. ISSUE PERMANENT INJUNCTIVE RELIEF enjoining Best Choice Industries, LLC, dba Best Choice Egress Windows and Daniel Perley, their agents, servants, representatives, salespeople, employees, successors and assigns, and all persons acting in concert or in participation with them, directly or indirectly, from engaging in the acts or practices of which Plaintiff complains and from violating the CSPA and HSSA.
4. ISSUE PERMANENT INJUNCTIVE RELIEF enjoining Defendants Best Choice Industries, LLC, dba Best Choice Egress Windows and Daniel Perley from acting as suppliers and soliciting consumer transactions in the State of Ohio, until all unpaid

judgments against Defendants, whether ordered by this Court or any other court, are paid in full.

5. ASSESS, FINE AND IMPOSE upon Defendants Best Choice Industries, LLC, dba Best Choice Egress Windows and Daniel Perley, jointly and severally, a civil penalty of at least Twenty-Five Thousand Dollars (\$25,000.00) for each appropriate violation determined by this Court, pursuant to R.C. 1345.07(D).
6. ORDER Defendants Best Choice Industries, LLC, dba Best Choice Egress Windows and Daniel Perley, as a means of ensuring compliance with this Court's Order and with the laws of Ohio, to maintain in their possession and control for a period of five (5) years all business records relating to Defendants' solicitation, offer, and sale of home improvement services in the State of Ohio and to permit the Ohio Attorney General or his representative, upon a reasonable twenty-four (24) hour advance notice, to inspect and/or copy any and all such records.
7. ORDER Defendants Best Choice Industries, LLC, dba Best Choice Egress Windows and Daniel Perley, jointly and severally, to reimburse the Ohio Attorney General for all costs incurred in bringing this action.
8. ORDER Defendants Best Choice Industries, LLC, dba Best Choice Egress Windows and Daniel Perley, jointly and severally, to pay all court costs incurred in this action.
9. GRANT such other relief as the Court deems to be just, equitable, and appropriate.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General

/s/ Teresa A. Heffernan

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