



IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

STATE OF OHIO, ex rel.)
MICHAEL DEWINE)
Ohio Attorney General)
Cleveland Regional Office)
615 W. Superior Avenue, 11th Floor)
Cleveland, Ohio 44113-1899)

Plaintiff,)

-vs-)

MR. ROOTER OF YOUNGSTOWN)
c/o JP Meal, LLC)
208 Cashmere Court)
Cranberry Twp., PA 16066)

And)

MR. ROOTER CORPORATION)
c/o CT Corporation System)
1300 East 9th Street)
Cleveland, OH 44114)

And)

JOSEPH KIJOWSKI)
Operations Manager)
Mr. Rooter of Youngstown)
97 Karago Ave. #1)
Boardman, OH 44512)

Defendants)

CASE NO. 15CV2856

JUDGE Durkin

COMPLAINT AND REQUEST FOR
INJUNCTIVE AND DECLARATORY
RELIEF, CONSUMER RESTITUTION
AND CIVIL PENALTIES

JURISDICTION AND VENUE

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 the Ohio Consumer Sales Practices Act, R.C. 1345.01 et seq.

2. The actions of Defendants have occurred throughout Mahoning County and other counties in the State of Ohio, and are in violation of the Ohio 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. This Court has jurisdiction over the subject matter of this action pursuant to R.C. 1345.05 of the CSPA.

4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1) and (3), in that Defendants' business is located in Mahoning County and some of the transactions complained of herein, and out of which this action arises, occurred within Mahoning County, Ohio.

DEFENDANTS

5. Defendant Mr. Rooter of Youngstown ("Mr. Rooter") is an active Ohio corporation, registered with the Ohio Secretary of State, with its place of business located on 97 Karago Ave., Unit 1, Boardman, Ohio 44512.

6. Defendant Mr. Rooter of Youngstown is a franchise of Defendant Mr. Rooter Corporation, an Ohio corporation registered with the Ohio Secretary of State, with whom the

registered Agent is CT Corporation, 1300 East 9th Street, Cleveland, OH 44114.

7. Defendant Joseph Kijowski is the Operations Manager of Defendant Mr. Rooter of Youngstown, and directed, supervised, approved, controlled, formulated, authorized, ratified, caused, personally participated in, benefitted from and/or otherwise participated in the day to day activities and practices of Defendant Mr. Rooter of Youngstown, including the conduct described in this Complaint.

8. Defendants are “suppliers” as that term is defined in R.C. 1345.01(C) as Defendants were, at all times relevant herein, engaged in the business of effecting “consumer transactions” by providing services to individuals for purposes which were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).

9. 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 Mahoning County and other counties for purposes which were primarily personal, family or household within the meaning specified in R.C. 1345.21(A) and (E) of the HSSA.

STATEMENT OF FACTS

10. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through nine (1-9) of this Complaint.

11. At all times relevant to this action, whether initially contacted by the consumers or not, Defendants solicited consumers for plumbing and home improvement services in Mahoning County as well as other counties in the State of Ohio.

12. Whether initially contacted by the consumers or not, Defendants solicited and

sold these plumbing and home improvement services at the residences of Ohio consumers.

13. Defendants accepted payments for plumbing contracts, and would sometimes perform the plumbing and home improvement services in a manner which was unsatisfactory to the Ohio consumers

14. Defendants' failure to perform contracted plumbing and home improvement services in a proper manner has resulted in harm to consumers and required these consumers to incur additional expenses to have Defendants' contracted work completed and/or corrected.

15. The Ohio Attorney General's Office has received multiple consumer complaints regarding Defendants. Examples of two of these complaints are included in paragraphs 16 and 17. By listing these examples, Plaintiff is in no way limiting his request for relief in this complaint to these consumers.

16. Consumer Rossi, an 83 year old woman, contacted Mr. Rooter on or about April 11, 2014, after noticing some pooled water around a basement drain. She also contacted her insurance representative and scheduled a site visit for April 14, 2014 in order to evaluate whether the problem would be covered under her insurance policy. On April 12, 2014 representatives of Mr. Rooter came to Consumer Rossi's house and, after examining her insurance policy, convinced Rossi to allow them to commence work immediately due to their assurance that the repairs would be covered by her insurance company. The estimate for the work was \$5,200.00, and Rossi had a \$5,000.00 insurance policy. Two days after commencing the work, representatives from Mr. Rooter returned with a second work order for this job, requiring an additional \$8,000.00 for the job. Mr. Rooter representatives told consumer Rossi this additional work was necessary to replace destroyed exterior pipes from the home to the street. The cost of the combined Mr. Rooter contracts now exceeded \$13,000.00, and Consumer Rossi was given

paperwork to take out financing through GE Capital for the project in the amount of \$13,375.00. At this point, Consumer Rossi's nephew became involved and the Mr. Rooter employees were asked to leave the home. Consumer Rossi later contracted with a different company to fix the problem, and that company not only completed the project for less than Mr. Rooter's original estimate, they did so while producing video clips which show that the exterior pipes to the street were essentially clear to the street sewer, contradicting Mr. Rooter's claim that the pipes were destroyed and in need of replacement. A copy of the Rossi contract is attached hereto as Exhibit "A."

17. Consumers John and Ann Thomas, both senior citizens, called Mr. Rooter in October 2014 to come to their home and perform a \$95.00 drain cleaning service as advertised in a local paper. Shortly after performing the drain cleaning service (on or around October 9, 2014), the Thomases' were given six additional contracts – on October 9, 2014 for \$550; on October 10, 2014 for \$1,200.00; on October 11, 2014 for \$3,550.00; on October 13, 2014 for \$8,675.00; on October 16, 2014 for \$2,825.00 and on October 22, 2014 for \$2,825.00. These consumers were led to believe their preventive drain cleaning necessitated home improvement services totaling thousands of dollars for repairs they believe to be both unnecessary and which exceeded the estimate by more than ten percent. Copies of the Thomas contracts are attached hereto as Exhibit "C."

COUNT I
FAILURE TO ITEMIZE PARTS AND LABOR

18. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through seventeen (1-17) of this Complaint.

19. Defendants have committed unfair and deceptive acts or practices in violation of

the CSPA, R.C. 1345.02 and O.A.C. 109:4-3-05(D)(12), by failing to provide consumers with an itemized list of repairs performed or services rendered, including a breakdown of the costs of parts or materials and a statement of whether they are used, remanufactured, or rebuilt if not new, and the amount charged for labor, and the identity of the individual performing the repair or service.

COUNT II
FAILURE TO GIVE ESTIMATE

20. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through nineteen (1-19) of this Complaint.

21. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02 and O.A.C. 109:4-3-05(C)(1), by failing, upon initial contact with the consumer, to inform the consumer of the consumer's right to receive an oral or written estimate of the anticipated cost of the repair or service.

COUNT III
UNNECESSARY REPAIRS

22. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through twenty-one (1-21) of this Complaint.

23. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02 and O.A.C. 109:4-3-05(D)(8), by representing that repairs or services were necessary when such was not the fact.

COUNT IV
UNDERSTATING OR MISSTATING ESTIMATED COST

24. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set

forth in paragraphs one through twenty-three (1-23) of this Complaint.

25. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02 and O.A.C. 109:4-3-05(D)(11), by materially understating or misstating the estimated cost of the repair or service.

COUNT V
FAILURE TO OBTAIN AUTHORIZATION FOR INCREASED COST

26. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through twenty-five (1-25) of this Complaint.

27. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02 and O.A.C. 109:4-3-05(D)(3), by failing to obtain oral or written authorization from the consumer for the anticipated cost of any additional, unforeseen, but necessary repairs when the cost of those repairs amounts to ten percent or more (excluding tax) of the original estimated cost.

COUNT VI
PERFORMING SUBSTANDARD WORK

28. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through twenty-seven (1-27) of this Complaint.

29. Defendants have committed unfair and deceptive acts and practices in violation of the Consumer Sales Practices Act, R.C. 1345.02(A) by performing substandard work and then failing to correct such work. Such acts or practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, 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).

COUNT VII
VIOLATIONS OF THE HOME SOLICITATION SALES ACT

30. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in paragraphs one through twenty-nine (1-29) of this Complaint.

31. Defendants engaged in home solicitation sales pursuant to the HSSA, R.C. 1345.21 et seq., in that Defendants procured the sale of consumer goods or services at the residences of consumers.

32. Defendants violated the HSSA by commencing services during the time in which the buyer has to cancel pursuant to R.C. 1345.22(A) and (B).

33. Failure to comply with the HSSA constitutes a deceptive act or practice in connection with a consumer transaction in violation of R.C.1345.02 per R.C. 1345.28.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. ISSUE** a declaratory judgment declaring 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 Defendants, under these or any other names, their agents, servants, representatives, salesmen, employees, successors and assigns and all persons acting in concert or participation with Defendants, directly or indirectly, from engaging in the acts or practices of which Plaintiff complains and from any further violations of the CSPA, R.C. 1345.01 et seq. and the HSSA, R.C. 1345.21 et seq.;
- C. IMPOSE** upon Defendants civil penalties in the amount of Twenty-Five

Thousand Dollars (\$25,000.00) for each separate and appropriate violation of the Consumer Sales Practices Act pursuant to R.C. 1345.07(D);

- D. **ORDER** restitution pursuant to R.C. 1345.07(B), for all Ohio consumers found to be damaged by Defendants' unfair or deceptive acts or practices;
- E. **GRANT** Plaintiff his costs in bringing this action;
- F. **ORDER** Defendants to pay all court costs;
- G. **GRANT** such further relief as justice and equity require.

Respectfully submitted,

MICHAEL DeWINE
OHIO ATTORNEY GENERAL



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