

**IN THE COURT OF COMMON PLEAS
FRANKLIN 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.)	
)	
MICHAEL MURNANE)	COMPLAINT AND REQUEST FOR
DBA ATLAS EXTERIORS)	DECLARATORY JUDGMENT,
5672 Santiago Dr.)	INJUNCTIVE RELIEF, CONSUMER
Westerville, Ohio 43081)	RESTITUTION, CIVIL PENALTIES,
)	AND OTHER APPROPRIATE RELIEF
)	
Defendants.)	

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through its counsel, the Attorney General of Ohio, 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 Consumer Sales Practices Act (“CSPA”), R.C. 1345.01 *et seq.*

2. The actions of Michael Murnane (“Murnane”), hereinafter described, have occurred in Franklin County and, as set forth below, are in violation of the CSPA, R.C. 1345.01 *et seq.*, its Substantive Rules, Ohio Adm. Code 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)(1), (3), and (6), in that Defendant resides in Franklin County, this is the county where Defendant conducted some of the activity giving rise to the claims for relief, and the county in which all or part of the claims for relief arose.

DEFENDANT

5. Defendant Michael Murnane is a natural person residing at 5672 Santiago Dr., Westerville, Ohio 43081.
6. At various times relevant to this action, Defendant did business using the name Atlas Exteriors, LLC to engage in the business of soliciting, offering for sale, and selling windows and doors; however, Defendant is not affiliated with the Atlas Exteriors, LLC registered with the Ohio Secretary of State.
7. Defendant is a “supplier,” as he engaged in the business of effecting “consumer transactions” by soliciting “consumers” either directly or indirectly for home improvement goods and services for a fee, for purposes that were primarily for personal, family or household use, as those terms are defined in R.C. 1345.01(A), (C), and (D).
8. Defendant 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).

STATEMENT OF FACTS

9. Defendant provided home improvement and construction services, including the sale and installation of windows and doors, to consumers at their residences in Ohio, including Franklin County.

10. Defendant accepted down payments for home improvement goods and services, specifically for the installation of windows and doors.
11. After Defendant accepted down payments from consumers for the purchase of home improvement goods and services and failed to deliver those goods and provide the services.
12. Defendant did not provide consumers with refunds of deposits paid when Defendant did not perform the contracted work.
13. At the time of the transactions, Defendant failed to notify consumers of their rights to cancel their transactions, or to provide consumers with notices of cancellation forms describing the consumers' rights to cancel the transactions.

PLAINTIFF'S CAUSE OF ACTION: VIOLATION OF THE CSPA

COUNT I- FAILURE TO DELIVER

14. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in the preceding paragraphs of this Complaint.
15. Defendant committed unfair or deceptive acts or practices in violation of the Failure to Deliver Rule, Ohio Adm.Code 109:4-3-09(A), and the CSPA, R.C. 1345.02(A), by accepting money from consumers for goods and services and then permitting eight weeks to elapse without making shipment or delivery of the goods and 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 goods or services of equal or greater value as a good faith substitute.

PLAINTIFF'S SECOND CAUSE OF ACTION: VIOLATION OF THE HSSA

COUNT 1: FAILURE TO PROVIDE PROPER NOTICE OF THREEDAY RIGHT OF RESCISSION

16. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in the preceding paragraphs of this Complaint.
17. Defendants violated the HSSA, R.C. 1345.23 and the CSPA, R.C. 1345.02(A), by failing to give proper notices to consumers of their rights to cancel their transactions by a specific date.
18. 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).

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, Ohio Adm.Code 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 him, 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 its Substantive Rules, Ohio Adm.Code 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 pay actual damages to all consumers injured 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 by this Court, and any other Court in Ohio in connection with a consumer transaction.
- 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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