

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

STATE OF OHIO ex rel. ATTORNEY	:	
GENERAL MICHAEL DeWINE	:	
441 Vine Street, 1600 Carew Tower	:	Case No.
Cincinnati, Ohio 45202	:	
	:	
Plaintiff,	:	
v.	:	
	:	
DANIEL WILLIAM WELLS	:	
d.b.a. Kelly Heating & Air Conditioning	:	Judge
7607 Harshmanville Road	:	
Dayton, Ohio 45424	:	
	:	
Defendant.	:	<u>COMPLAINT FOR DECLARATORY</u>
	:	<u>JUDGMENT, INJUNCTIVE RELIEF,</u>
	:	<u>RESTITUTION AND CIVIL</u>
	:	<u>PENALTIES</u>
	:	
	:	

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. Defendant Daniel William Wells (“Defendant”) had a principal place of business at 7616 N. Main Street, Dayton, Ohio 45415.
3. The actions of Defendant, hereinafter described, have occurred in multiple counties in the State of Ohio, including Montgomery 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. Defendant is a “supplier,” as that term is defined in R.C. 1345.01(C), as he engaged in the business of effecting “consumer transactions” by soliciting consumers for home repair, construction, assembly and/or treatment products for a fee, within the meaning of R.C. 1345.01(A).
5. Defendant, as described below, was at all relevant times hereto a “seller” 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 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)(3) and (6).

STATEMENTS OF FACTS

8. Defendant is an individual who did business in Ohio as Kelly Heating & Air Conditioning.
9. Kelly Heating & Air Conditioning is the name of a business entity not registered to do business with the Ohio Secretary of State.
10. Defendant at all times pertinent hereto directed and controlled all business activities of Kelly Heating & Air Conditioning, including the solicitation for sale and sale of home improvement services.
11. Defendant controlled and directed the business activities and sales conduct of Kelly Heating & Air Conditioning, causing, personally participating in, or ratifying the acts and practices of it.

12. Defendant solicited consumers and accepted payments for the home improvement goods and services within multiple counties in Ohio, including Montgomery County.
13. Defendant solicited and sold home improvement goods and services at the residences of buyers.
14. Defendant does not have a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis.
15. Defendant did not notify consumers of their cancellation rights nor did he provide consumers with a notice of cancellation.
16. Defendant accepted monetary deposits from consumers for the purchase of home improvement goods and services and failed to deliver those goods and services and has refused to refund consumers' deposits or payments.
17. Defendant performed substandard, shoddy, and incomplete work when he did provide home improvement services.
18. After receiving payment, Defendant would sometimes begin to provide contracted services, but often failed to complete the work.
19. Defendant's failure to perform contracted services in a proper manner has resulted in harm to consumers and required the consumers to pay additional money to have the Defendant's work corrected and/or to complete the work Defendant was 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. Defendant 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. Defendant 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. Defendant committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(B)(2).

COUNT III – VIOLATIONS OF THE HOME SOLICITATION SALES ACT

25. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in preceding paragraphs.
26. Defendant 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 and by failing to give consumers a cancellation form.

27. The acts and practices described above have been previously determined by Ohio courts to violate the CSPA. Defendant 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 and the HSSA in the manner set forth in the complaint.
- B. ISSUE a Permanent Injunction enjoining the Defendant, his agents, servants, 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 the HSSA, R.C. 1345.21 *et seq.*
- C. ORDER Defendant to reimburse all consumers found to have been damaged by Defendant's unlawful actions.
- D. ASSESS, FINE and IMPOSE upon Defendant 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 Defendant 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 Defendant, 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 Defendant has satisfied all monetary obligations ordered pursuant to this litigation.

- G. GRANT Plaintiff its costs incurred in bringing this action.
- H. ORDER Defendant 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,

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Attorney General

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