

FILED
2011 OCT 25

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, <i>ex rel.</i>)	
MICHAEL DeWINE)	C Judge: TIMOTHY J MCGINTY
ATTORNEY GENERAL OF OHIO)	CV 11 767525
615 W. Superior Ave. 11 th Floor)	JL _ _ _
Cleveland, Ohio 44113)	
)	
Plaintiff,)	
)	
v.)	<u>COMPLAINT, REQUEST FOR</u>
)	<u>DECLARATORY AND INJUNCTIVE</u>
FAMILY PAVING & CEMENT LLC)	<u>RELIEF, DAMAGES AND CIVIL</u>
c/o Robert C Stewart)	<u>PENALTIES</u>
3951 Erie St #215)	
Willoughby, Ohio 44094)	
)	
and)	
)	
ALFRED EARL EDWARDS)	
13938-A Cedar Rd. #250)	
University Heights, Ohio 44118)	
)	
Defendants.)	

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through its counsel, 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 Consumer Sales Practices Act, R.C. 1345.01 et seq.
2. The actions of Alfred Earl Edwards and Family Paving and Cement LLC (Defendants), have occurred in the State of Ohio and Cuyahoga County and violate the Consumer Sales Practices Act, R.C. 1345.01 et seq. and the substantive rules promulgated thereunder.

3. This Court has jurisdiction over the subject matter of this action pursuant to R.C. 1345.04 of the Consumer Sales Practices Act.
4. This Court has venue to hear this case pursuant to Civ. R. 3(B)(1)-(3), in that some of the transactions complained of herein, and out of which this action arises, occurred in Cuyahoga County, Ohio.

DEFENDANTS

5. Defendant Family Paving & Cement LLC is an Ohio limited liability company with its principal place of business located at 13938-A Cedar Rd., #250 University Heights, Ohio 44118.
6. Defendant Alfred Earl Edwards owns and operates Defendant Family Paving & Cement LLC.
7. Defendant Alfred Earl Edwards directs and controls all business activities of the limited liability defendant, including the promoting and selling of home improvement goods and services.
8. Defendant Alfred Earl Edwards personally engaged in the unlawful acts and practices enumerated in this complaint or he has allowed, directed, ratified or otherwise caused these unlawful acts or practices to be committed by his employees or agents.
9. Defendants in their promotion and selling of home improvement goods and services, is and has engaged in the solicitation, consummation, and effectuation of "consumer transactions," within the meaning of R.C. 1345.01(A).
10. Defendants are and at all times relevant hereto, were "suppliers" as that term is defined in R.C. 1345.01(C).

STATEMENT OF FACTS

11. Defendants were at all relevant times in the business of promoting, selling, and engaging in home improvement repairs and services, including but not limited to home waterproofing and cement and paving work.
12. Defendant Alfred Earl Edwards personally directed and controlled the policies and day to day operations of Defendant Family Paving and Cement LLC.
13. Defendant Alfred Earl Edwards solicited business on behalf of Family Paving and Cement LLC through print advertising and by personally visiting potential consumers at their home.
14. Defendant Alfred Earl Edwards solicited and accepted substantial down payments in consideration for performing improvements at the residences of Ohio consumers. Defendant Alfred Earl Edwards instructed consumers to make checks payable to the order of Alfred Earl Edwards. Checks were then negotiated at the consumer's financial institution and cash was obtained by Defendant Alfred Earl Edwards without a corresponding deposit into an account of Defendant Family Paving & Cement LLC. Defendant Alfred Earl Edwards failed to provide consumers with a written and dated deposit receipt advising the consumer whether his or her deposit was refundable and, if so, under what conditions it was refundable. Defendant Alfred Earl Edwards also failed to provide a written receipt stating the date and amount paid and the remaining amount due on subsequent deposits made by consumers.
15. In some cases Defendants failed to start jobs for which deposits had been accepted. In other cases Defendants performed work in a substantially unworkmanlike manner and/or failed to complete jobs that were started.

16. When questioned by consumers, Defendants continually stalled and evaded their legal obligations to complete the work. Defendant Alfred Earl Edwards continually made excuses as to why he had not commenced or completed work and persuaded consumers to continually extend the projected start or completion dates of projects.
17. Defendants promised to provide refunds to consumers in an attempt to delay their obligation to either complete the work or provide an actual cash refund.

PLAINTIFF'S CAUSES OF ACTION

COUNT ONE **FAILURE TO DELIVER OR PERFORM**

18. Plaintiff incorporates by reference, as if completely 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 Consumer Sales Practices Act, R.C. 1345.02(A) by violating Ohio Administrative Code 109:4-3-09(A)(1) by accepting money from consumers for the purchase of home improvement goods and/or services and failing to deliver such goods and/or services and refusing to refund deposits to consumers.
20. Defendants committed said acts or practices after a decision determining the acts or practices violated R.C. 1345.02 was made available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT II **DEPOSIT RULE**

21. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Seventeen (1-17) of this

Complaint.

22. Defendants have committed unfair and deceptive acts and practices in violation of R.C. 1345.02(A) by failing to provide consumers with a deposit receipt advising the consumer whether his or her deposit is refundable and, if so, under what conditions it is refundable, and by failing to provide a written receipt stating the date and amount paid and the remaining amount due for subsequent deposits made by consumers.
23. Defendants committed said acts or practices after a decision determining the acts or practices violated R.C. 1345.02 was made available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT THREE
SHODDY WORKMANSHIP AND FAILURE TO PERFORM WORK TIMELY

24. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Seventeen (1-17) of this Complaint.
25. Defendants have committed unfair or deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02(A) by representing that work will be done timely and in a competent and workmanlike manner when such is not the case.
26. Defendants have committed unfair or deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02(A) by failing to perform home improvement services in a competent and workmanlike manner and then failing to take steps necessary to correct such defective work, including but not limited to, finishing work not completed, and redoing sloppily done work.
27. Defendants committed said acts or practices after a decision determining the acts

or practices violated R.C. 1345.02 was made available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT FOUR
FAILURE TO SECURE PERMITS

28. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Seventeen (1-17) of this Complaint.
29. Defendants have committed unfair or deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02(A) by performing home improvement services without securing the proper permits for such work.
30. Defendants committed said acts or practices after a decision determining the acts or practices violated R.C. 1345.02 was made available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT FIVE
FAILURE TO REGISTER AS A CONTRACTOR

31. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Seventeen (1-17) of this Complaint.
32. Defendants have committed unfair or deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02(A) by acting in the capacity of a contractor to perform work for which a permit is required without duly registering as a contractor with the City of Cleveland Heights, Ohio.
33. Defendants committed said acts or practices after a decision determining the acts or practices violated R.C. 1345.02 was made available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT SIX
MISLEADING STATEMENTS OF OPINION

34. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Seventeen (1-17) of this Complaint.
35. Defendants have committed unconscionable acts and practices in violation of R.C. 1345.03(B)(6) by knowingly making misleading statements of opinion on which consumers were likely to rely to their detriment by misrepresenting to consumers that work would be performed by employees of Defendants and then having work performed by subcontractors.
36. Defendants committed said acts or practices after a decision determining the acts or practices violated R.C. 1345.02 was made available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT SEVEN
STALLING AND EVADING LEGAL OBLIGATIONS

37. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Seventeen (1-17) of this Complaint.
38. Defendants have committed unfair or deceptive acts or practices in violation of the Consumer Sales Practices Act, 1345.02(A) by stalling and evading their legal obligations to complete home improvement work, return phone calls to consumers, and provide refunds to consumers.
39. Defendants committed said acts or practices after a decision determining the acts or practices violated R.C. 1345.02 was made available for public inspection pursuant to R.C. 1345.05(A)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- 1) ISSUE a permanent injunction, pursuant to R.C. 1345.07(A)(2), enjoining Defendants, their agents, servants, representatives, salesmen, employees, successors or assigns, and all persons acting in concert and participation with them, directly or indirectly, from committing unfair, deceptive and unconscionable acts or practices which violate Ohio's Consumer Sales Practices Act and the Substantive Rules contained in the Ohio Administrative Code, including but not limited to, the acts or practices enumerated in paragraphs 18 through 39 of this complaint.
- 2) ISSUE a declaratory judgment, pursuant to R.C. 1345.07(A)(1), declaring that each and every act or practice complained of in paragraphs 18 through 39 of this complaint violates the Ohio Consumer Sales Practices Act and the Substantive rules contained in the Ohio Administrative Code in the manner set forth in this complaint.
- 3) GRANT A JUDGMENT against Defendants Family Paving & Cement LLC and Alfred Earl Edwards, for joint and several liability, in an amount sufficient to reimburse all consumers found to have been damaged by the Defendants' unfair, deceptive and unconscionable acts and practices, including, but not limited to, making restitution to consumers who entered into contracts with Defendants and against whom the acts described in this complaint were committed.
- 4) ASSESS, FINE and IMPOSE upon each Defendant, pursuant to R.C. 1345.07, a civil penalty of Twenty Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein.

- 5) ENJOIN Defendants from engaging as a supplier in any consumer transaction in the State of Ohio until such time as they have satisfied all monetary obligations due hereunder.
- 6) As a means of insuring compliance with this Court's order and with the consumer protection laws of Ohio, ORDER Defendants, and their successors or assigns under these or any other names, to maintain in their possession and control for a period of five (5) years all business records relating to Defendants' solicitation of business in Ohio and to permit the Attorney General or his representative, upon reasonable twenty-four hour notice, to inspect and/or copy any and all of said records and further order that copies of such records be provided at Defendants' expense to the Attorney General's Office upon request of the Attorney General or his representative.
- 6) GRANT Plaintiff all costs incurred in bringing this action.
- 7) ORDER Defendants to pay all court costs.
- 8) GRANT such other relief as the Court deems to be just, equitable, and appropriate.

Respectfully submitted,
MICHAEL DEWINE
Attorney General



MICHAEL R. SLIWINSKI (0076728)
Assistant Attorney General
Consumer Protection Section
615 W. Superior Avenue
Cleveland, Ohio 44113-1899
216-787-3030
877-616-5276
Michael.sliwinski@ohioattorneygeneral.gov

Counsel for Plaintiff