

~~FILED~~  
IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

2007 AUG -8 A 10: 31

STATE OF OHIO, ex rel.  
MARC DANN  
Attorney General of Ohio  
30 East Broad Street – 14<sup>th</sup> Floor  
Columbus, Ohio 43215-3428

Plaintiff,

v.

CARY A. LAVENSKY, Individually  
and dba HOME RESTORATION  
SERVICES  
9617 Baltic Road  
Cleveland, Ohio 44102-1716

Defendants.

Judge: BRIAN J CORRIGAN

CV 07 632077

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

**JURISDICTION**

1. Plaintiff, State of Ohio, by and through the Attorney General of Ohio, Marc Dann, having reasonable cause to believe that violations of Ohio's consumer 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 Ohio Revised Code (R.C.) 1345.07.
2. The actions of Defendants, hereinafter described, have occurred in Cuyahoga County, and as set forth below, are in violation of the Ohio Home Solicitation Sales Act R.C. 1345.21 et seq., (HSSA); the Debt Adjuster Act, R.C. 4710.01 et seq.; and the Consumer Sales Practices Act, R.C. 1345.01 et seq., and Substantive Rules, OAC 109:4-3-01 et seq.
3. Defendants were, at all relevant times hereto, "sellers" engaged in the business of effecting home solicitation sales by soliciting and selling foreclosure rescue services to "buyers" at the buyers' personal residences in Cuyahoga County, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.21(A) and (E).

4. Defendants engage in “debt adjusting” as defined in R.C. 4710.01(B) in that Defendants hold themselves out as providing services in the management of debts by effecting the adjustment, compromise, or discharge of any account, note or other indebtedness of the debtor.
5. Defendants are “suppliers” as defined in R.C. 1345.01(C) since Defendants are and/or at all times relevant hereto were engaged in the business of effecting consumer transactions either directly or indirectly by soliciting and/or selling goods or services to consumers in the State of Ohio for purposes that were primarily for personal, family or household use, within the meaning specified in R.C. 1345.01(A).

#### **NATURE OF DEFENDANTS' BUSINESS**

6. Defendant, Home Restoration Services, is an unincorporated and unregistered business for profit with its primary place of business located at 9617 Baltic Road Cleveland, Ohio.
7. Defendant, Cary Lavensky, is the principal owner and operator of Home Restoration Services, wherein he exercised the authority to establish, implement or alter policies and practices and personally participated in, committed, allowed, directed, ratified or otherwise caused the unlawful acts and practices alleged below to occur.
8. Defendants execute contracts to provide services to consumers, within the State of Ohio, for the purpose of saving the consumers' homes from foreclosure.

#### **STATEMENT OF FACTS**

9. Defendants contact consumers facing foreclosure by personally soliciting the sale of foreclosure rescue services at the consumers' residences or by using telephone solicitations whereby the consumer is advised, by a previous customer of Defendants, to contact Defendants in order to obtain Defendants' services, and the sale of the services is later consummated at the consumer's residence.

10. Defendants make, or at all times relevant hereto made, false or misleading statements concerning material terms of the transaction to consumers through their solicitations, including the ability of Defendants to save consumers' homes from foreclosure, and the ability to negotiate a buying price with the consumer's mortgage company and in turn give a portion of the amount to the consumer. Defendants, in at least one case, charged \$1,200 for foreclosure rescue services, which Defendant Lavensky collected at the consumer's residence.
11. Defendants have failed to comply with regulations set forth under R.C. 1345.21 et seq., by making verbal agreements with consumers, as a result of home solicitations, to purchase services, and have accepted payment without giving the consumer notice of their three-day right to cancel or obtaining a written agreement which outlines the consumers' rights, includes notice of cancellation, or fully discloses the terms of the agreement.
12. Defendants also promised debt adjusting services to consumers, such as negotiating with consumers' creditors to obtain a buying price for the consumers' residences for the purpose of discharging the consumers from their mortgage debt.
13. Defendants failed to comply with regulations set forth under R.C. 4710.02 et seq., including exceeding consultation contribution limits, failing to maintain separate trust accounts, failing to arrange for annual audits, and failing to maintain proper insurance coverage.
14. Defendants have accepted money from consumers for services, and have allowed more than eight weeks to elapse without making delivery of the ordered services.
15. Defendants failed to make full refunds of the moneys paid for undelivered service, despite requests from consumers to either deliver the services or make full restitution.
16. Defendants accepted money from consumers for the purpose of stopping the foreclosure of their homes despite knowing that there was a substantial likelihood that they would not provide services promised to the consumers and making misleading statements of opinion on which consumers relied to their detriment.

17. At least one Ohio family in foreclosure received no services or refund after giving \$1200 to Defendants after being told during the home solicitation that their home could be saved from foreclosure.

**PLAINTIFF'S FIRST CAUSE OF ACTION: VIOLATIONS OF THE  
HOME SOLICITATION SALES ACT**

**COUNT ONE  
THREE DAY RIGHT TO CANCEL**

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. Pursuant to HSSA, R.C. 1345.28, Defendants have committed unfair and deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02(A), by failing to provide consumers a three day right to cancel and "Notice of Cancellation" by violating HSSA, R.C. 1345.22.
20. Such acts and 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 TWO  
WRITTEN NOTICE OF CANCELLATION**

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. Pursuant to HSSA, R.C. 1345.28, Defendants have committed unfair and deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02(A), by failing to provide consumers with a written "Notice of Cancellation" in the form prescribed by HSSA, R.C. 1345.23(A).

23. Such acts and 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 THREE**  
**FAILURE TO INFORM**

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. Pursuant to HSSA, R.C. 1345.28, Defendants have committed unfair and deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02(A), by failing to inform each consumer orally, at the time they sign contracts for the goods or services, of their right to cancel in violation of HSSA, R.C. 1345.23(D)(2).

26. Such acts and 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).

**PLAINTIFF'S SECOND CAUSE OF ACTION:**  
**VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT**

**COUNT ONE**  
**FAILURE TO DELIVER**

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

28. Defendants have committed unfair and deceptive acts or practices in violation of R.C. 1345.02(A) and Ohio Adm. Code 109:4-3-09, by accepting money from consumers for goods and services and failing to make full delivery or a refund.

**COUNT TWO**  
**UNCONSCIONABLE ACTS OR PRACTICES**  
**NO SUBSTANTIAL BENEFIT/CONSUMER DETRIMENT**

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

30. Defendants committed unconscionable acts or practices in connection with consumer transactions in violation of R.C. 1345.03(A), as illustrated by R.C. 1345.03(B)(3) and 1345.03(B)(6), by knowing at the time that consumer transactions were entered into of the consumer's inability to receive a substantial benefit from the subject of the transaction and by making misleading statements of opinions upon which consumers relied to their detriment.

31. Such acts and practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq. Defendants committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

**COUNT THREE**  
**FALSE AND MISLEADING SALES REPRESENTATIONS**

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

33. Defendants have committed unfair and deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02(A) and unconscionable sales practices in violation of R.C. 1345.03 by making false and misleading statements.

34. Such acts and 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 FOUR**  
**UNFAIR AND DECEPTIVE ACTS OR PRACTICES**  
**FAILURE TO REGISTER FICTITIOUS NAME(S)**

35. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Seventeen (1-17) of this Complaint.
36. Defendant, Cary Lavensky, has committed unfair and deceptive acts or practices in violation of R.C. 1345.02(A) by failing to register the fictitious name Home Restoration Services with the Ohio Secretary of State, in violation of R.C. 1329.01 et seq.
37. Such acts and practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq. Defendants committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

**PLAINTIFF'S THIRD CAUSE OF ACTION:**  
**VIOLATION OF THE DEBT ADJUSTER'S ACT**

38. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Seventeen (1-17) of this Complaint.
39. Defendants have committed unfair and deceptive acts and practices by engaging in debt adjusting activities, including holding out that they can effect the adjustment, compromise, or discharge of any account, note, or other indebtedness of debtors who sign up for their services, without complying with the regulations set forth under the Debt Adjuster Act, R.C. 4710.01 et seq., in violation of R.C. 4710.02(F) and R.C. 1345.02(A) of the Consumer Sales Practices Act.

**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 Ohio Consumer Sales Practices Act, the Debt Adjuster Act, and the Ohio Home Solicitation Sales Act in the manner set forth in the complaint.

- B. ISSUE a permanent injunction enjoining Defendants, Home Restoration Services and Cary Lavensky, individually and doing business under this or any other names, their agents, partners, servants, representatives, salespersons, employees, successors and assigns and all persons acting in concert and participation with them, directly or indirectly, through any corporate device, partnership or association in connection with any consumer transaction from committing any unfair, deceptive or unconscionable act or practice which violates R.C. 1345.02 and R.C. 1345.03, including but not limited to violations of the specific statutes and rules alleged to have been violated herein.
- C. ORDER Defendants to pay damages to all consumers injured by the conduct of the Defendants as set forth in the complaint.
- D. ASSESS, FINE and IMPOSE upon Defendants a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein pursuant to R.C. 1345.07(D).
- E. ISSUE an Injunction prohibiting the Defendants from engaging in business as a supplier in any consumer transaction in the State of Ohio until such time as they have satisfied all monetary obligations due hereunder.
- F. HOLD each Defendant jointly and severally liable for all monetary amounts awarded herein.
- G. GRANT Plaintiff his costs in bringing this action.
- H. GRANT such other relief as the court deems to be just, equitable and appropriate.

Respectfully submitted,

MARC DANN  
Attorney General

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