

89-0126

TEL:

0222.90 16:06 No.009 P.02

Kansas

FILED BY CLERK
U.S. DISTRICT COURT
SHAWNEE JUDICIAL DISTRICT
Dec 17 12 40 PM '90
U.S. DISTRICT COURT
SHAWNEE JUDICIAL DISTRICT
TOPEKA KANSAS

E
13

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN
D. Jeanne Kutzley
Supreme Court #12399
Assistant Attorney General
Kansas Judicial Center - Lower Level
Topeka, Kansas 66612-1597
(913) 296-3751

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION FOUR

STATE OF KANSAS, ex rel.,
ROBERT T. STEPHAN, Attorney General,

Plaintiff,

vs.

Case No. 89CV363

THE WATSON & HUGHEY COMPANY, et al.,

Defendant.

JOURNAL ENTRY OF CONSENT JUDGMENT WITH DEFENDANTS
THE WATSON AND HUGHEY COMPANY,
JERRY C. WATSON AND
BYRON CHATWORTH HUGHEY

NOW on this 17th day of December, 1990, the Consent Judgment filed by the State of Kansas comes on for hearing. The State of Kansas appears by Robert T. Stephan, Attorney General, by and through D. Jeanne Kutzley, Assistant Attorney General. The Watson and Hughey Company, Jerry C. Watson and Bryon Chatworth Hughey ("Defendants") appear by Bernard F. Weinand, COPILEVITZ, BRYANT, GRAY & JENNINGS, P.C., 4550 W.109th, Suite 230, Overland Park, Kansas 66211; and MacKenzie Canter, III,

TEL:

07 22.90 16:06 No.009 P.03

-2-

LEHRFELD, CANTER & HENZKE, Suite 403, 1101 Connecticut Avenue, N.W., Washington, D.C. 20036; and Daniel T. Flaherty, KUTAK, ROCK & CAMPBELL, 1101 Connecticut Avenue, N.W., Washington, D.C. 20036-4376, Attorneys for Defendants.

Whereupon, the parties advise the Court they have stipulated and agreed to the following matters:

1. Robert T. Stephan is the duly elected, qualified and acting Attorney General of the State of Kansas.
2. The Attorney General's authority to bring this action is derived from the statutory and common law of the State of Kansas, specifically the Kansas Charitable Organizations and Solicitations Act, K.S.A. 17-1759 et seq.
3. The Defendants are located at 510 King Street, Alexandria, Virginia 22314. The Defendants enters their voluntary general appearance. The Defendants admit the Court has jurisdiction over the parties and the subject matter.
4. Venue is proper in Shawnee County.
5. The Defendants "professional fundraisers" as defined in K.S.A. 17-1760(d).
6. The Defendants are registered as professional fundraisers with the Kansas Secretary of State.
7. The Defendants were retained by charitable organizations primarily for the purpose of raising funds. Those charitable organizations sent solicitations to Kansas residents.
8. Kansas residents donated money to charitable organizations based on the Defendants' solicitations.
9. The Attorney General alleges that:

-3-

- a. The solicitations make it appear that Robert R. Stone, attorney-at-law, is officed at a location and has a phone number which in fact belongs to a telemarketing firm. This is in violation of K.S.A. 17-1769(b).
- b. The solicitations make it appear that the recipient has already qualified and won a large cash prize when in fact the recipient must be the specifically named "pre-selected" winner and must respond to the solicitation in order to win. Most persons who respond will share a small prize and will receive a prize of as little as 10 cents. This is in violation of K.S.A. 17-1769(b).
10. The Defendants voluntarily agree to this Consent Judgment without trial or adjudication of any issue of fact or law.
11. The provisions of this Consent Judgment will be applicable to the Defendants, and every employee, agent or representative of the Defendants.
12. The Defendants agree to make available and/or disclose the provisions of this Consent Judgment to their employees, agents and representatives.
13. The Defendants agree to refrain from and to be enjoined from engaging in all acts and practices alleged above by the State of Kansas to be deceptive and unconscionable.
14. The Defendants shall not enter into, form, organize or reorganize into any partnership, corporation, sole

TEL:

02-22-90 16:06 No.009 P.05

-4-

proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Consent Judgment.

15. The Defendants agree to the following guidelines on all future solicitations which offer a prize in connection with a sweepstakes sent to Kansas residents. (A sweepstakes means any contest, game or other promotion for the distribution of a prize or prizes distributed or promised to be distributed on the basis of a drawing or random selection or other element of chance):

a. The solicitation will not use the name, letterhead, signature or other indicia of representation or sanction of an attorney-at-law, in such a fiduciary capacity, unless the attorney-at-law actually had knowledge of the winner of the sweepstakes and is personally notifying that winner. Nothing in this Consent Judgment shall prohibit the Defendants from using the name of an officer, director or employee who is an admitted attorney, provided that he or she is not identified as such.

b. The solicitation will clearly disclose that no payment, contribution or consideration is necessary to enter the sweepstakes.

c. The solicitation will disclose the description and/or value of the prize or prizes being offered, or prizes which have already been awarded; the odds of winning each prize; when and how the prize awards will be determined; and any other rules which may apply. These disclosures shall be made in 8 point type. These disclosures and any

sweepstakes rules shall not be printed on any portion the recipient must return to participate or donate.

d. The solicitation will not contain any statement that the recipient has won or is going to win an award or prize in any amount greater than can be substantiated at the time the solicitation is sent. Phrases such as "You have won" and "You have won a cash prize in the _____ sweepstakes" (where the blank is filled in by the total value of the prizes in the sweepstakes) may be used only if true.

e. The solicitation will not represent that funds raised by a solicitation will be earmarked for a specific project unless the defendant has a good faith intent and reasonably believes that the funds raised will be used for that specific project. It will be a defense to an enforcement action based upon this provision that despite good faith efforts it was not possible for the defendant to carry out the planned or projected activities. The solicitation shall make the following disclosures:

- (1) The year of the charitable organization's incorporation and either:
 - (a) That a substantial portion of proceeds actually received will be spent on donor acquisition and/or public education. A statement will be included that "public education" may include the information sent with the solicitation; or
 - (b) The percentage of funds spent on program services during the immediately preceding fiscal year using generally accepted accounting procedures. A statement will be included that

"public education" may include the information sent with the solicitation.

(2) The solicitation will state that a copy of the charitable organization's latest financial report is available upon request.

(3) The solicitation will state that further information about the charitable organization may be available from the office of the Attorney General of the State of Kansas.

(4) These disclosures will be made in 8 point type. ~~1/2~~ The Defendants agree to pay at the time of filing this Consent Judgment:

a. \$ 22,500.00 charitable donation to charities selected by the Attorney General.

b. Payment will be by certified check.

c. All payments will be sent directly to the Office of the Attorney General.

17. The Defendants agree to allow the Attorney General to inspect relevant business records of the Defendants' charitable solicitations to Kansas residents in the future. The Attorney General will give reasonable notice for these inspections. The Attorney General will not pre-approve any solicitation even if the Attorney General inspects the solicitation.

18. The Defendants agree to pay the following expenses to the Office of the Attorney General at the time of filing this Consent Judgment:

TEL:

Oct 22.90 16:06 No.009 P.08

-7-

For Pacific West Cancer Fund: \$314.81 deposition cost; \$30.00 service of Prejudgment Attachment Order; \$30.00 service of Petition;

For Project Cure: \$520.59 deposition cost; \$30.00 service of Petition;

For American Heart Disease Prevention Foundation: \$267.13 deposition cost; \$30.00 service of Petition;

For Walker Cancer Research Institute: \$250.73 deposition cost; \$30.00 service of Petition;

For Cancer Fund of America: \$534.50 deposition cost; \$30.00 service of Prejudgment Attachment Order; \$30.00 service of Petition;

For Watson & Hughey, Jerry C. Watson and Byron C. Hughey: \$30.00 service of Petition on Watson & Hughey; \$30.00 service of Petition on Watson; \$30.00 service of Petition on Hughey;

For Robert R. Stone, Jr.: \$30.00 service of Petition.

Total costs to be paid \$2,217.76.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Charitable Organizations and Solicitations Act, K.S.A. 17-1768(b) the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

TEL:

22.90 16:06 No.009 P.09

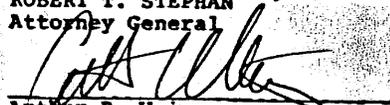
-8-

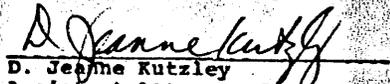
IT IS SO ORDERED.


JUDGE OF THE DISTRICT COURT

Approved by:


ROBERT T. STEPHAN
Attorney General


ARTHUR R. WEISS
Deputy Attorney General


D. JEANNE KUTZLEY
Assistant Attorney General

Attorneys for Plaintiff.

THE WATSON & HUGHEY COMPANY

By : Jay C. Watson
Title: Partner

Jay C. Watson
JERRY C. WATSON

Byron Chatworth Hughey
BYRON CHATWORTH HUGHEY

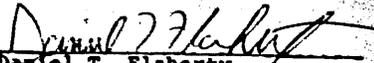
Bernard F. Weinand
Bernard F. Weinand
COPILEVITZ, BRYANT, GRAY
& JENNINGS, P.C.
4550 W. 109th
Suite 230
Overland Park, KS 66211
(913)339-9111
Attorney for Defendant

~~MacKenzie Canter, III
LEHRFELD, SANTER & HENZKE
Suite 403
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 861-0740
Attorney for Defendant~~

TEL:

On* 22.90 16:06 No.009 P.11

-10-


Daniel T. Flaherty
KUTAK, ROCK & CAMPBELL
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036-4376 Attorney for Defendant.

J/W&H.CJ
10-12-90