

U.S. DISTRICT COURT  
SIXTH JUDICIAL DISTRICT  
TOPEKA, KANSAS  
Dec 17 2 40 PM '90

Dec 5 9 43 AM '90

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 DEFENDANT  
AMERICAN HEART DISEASE PREVENTION FOUNDATION, INC.  
NOW on this 17<sup>th</sup> day of November, 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 Defendant American Heart Disease Prevention Foundation, Inc.  
appears by Bernard F. Weinand, COPILEVITZ, BRYANT, GRAY &  
JENNINGS, P.C., 4550 W.109th, Suite 230, Overland Park, Kansas  
66211; and MacKenzie Canter, III, 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, Attorney for Defendant.

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. American Heart Disease Prevention Foundation, Inc. is a Virginia corporation. American Heart Disease Prevention Foundation, Inc.'s business is located at 48 Plymouth Street, Montclair, New Jersey 07042. American Heart Disease Prevention Foundation, Inc. enters its voluntary general appearance. American Heart Disease Prevention Foundation, Inc. admits the Court has jurisdiction over the parties and the subject matter.

4. Venue is proper in Shawnee County.

5. American Heart Disease Prevention Foundation, Inc. is a "charitable organization" as defined in K.S.A. 17-1760(a).

6. American Heart Disease Prevention Foundation, Inc. is registered as a charitable organization with the Kansas Secretary of State.

7. American Heart Disease Prevention Foundation, Inc.'s charitable purposes are:

a. To promote, fund, and support the prevention of heart disease through research and education.

b. To promote, fund and support the prevention of cardiovascular disease through research into improving present technology, and developing new technology, procedures and skills and devices so that the public may benefit by improved programs, methods and techniques of preventing cardiovascular disease. To this end, the Foundation will conduct seminars and publish for the benefit of the public, the results of experiments, studies and research.

8. American Heart Disease Prevention Foundation, Inc. solicited funds, as defined in K.S.A. 17-1760(f), from Kansas residents to fulfill its stated charitable purposes.

9. Kansas residents received American Heart Disease Prevention Foundation, Inc.'s solicitations.

10. Kansas residents donated money to American Heart Disease Prevention Foundation, Inc. based on American Heart Disease Prevention Foundation, Inc.'s solicitations.

11. The Attorney General alleges that:

a. 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).

12. American Heart Disease Prevention Foundation, Inc. voluntarily agrees to this Consent Judgment without trial or adjudication of any issue of fact or law.

13. The provisions of this Consent Judgment will be applicable to American Heart Disease Prevention Foundation, Inc., and every employee, agent or representative of American Heart Disease Prevention Foundation, Inc. The provisions pertaining to future solicitations will be given to any professional fundraiser who will prepare and/or send solicitations on behalf of American Heart Disease Prevention Foundation, Inc. into the State of Kansas.

14. American Heart Disease Prevention Foundation, Inc. agrees to make available and/or disclose the provisions of this Consent Judgment to its employees, agents and representatives.

15. American Heart Disease Prevention Foundation, Inc. agrees 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.

16. American Heart Disease Prevention Foundation, Inc. agrees to resolve all consumer complaints currently on file with the Attorney General's Office to the satisfaction of the Attorney General within thirty (30) days of the date of this Consent Judgment. Attached hereto is Exhibit A which lists those complaints currently on file and the amount of actual damages for each complaint filed with the Office of the Attorney General.

17. American Heart Disease Prevention Foundation, Inc. agrees to resolve all consumer complaints filed after the date of this Consent Judgment to the satisfaction of the Office of the Attorney General whether brought to American Heart Disease Prevention Foundation, Inc.'s attention by the State of Kansas or by consumers complaining directly to American Heart Disease Prevention Foundation, Inc. American Heart Disease Prevention Foundation, Inc. shall apprise the State of Kansas, through the Plaintiff, in a simple and concise manner, of the disposition of those complaints and disputes within thirty (30) days after resolved.

18. American Heart Disease Prevention Foundation, Inc. shall not enter into, form, organize or reorganize into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Consent Judgment.

19. American Heart Disease Prevention Foundation, Inc. agrees 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 American Heart Disease Prevention Foundation, Inc. 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 American Heart Disease Prevention Foundation, Inc.'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 latest financial report is available upon request.
- (3) The solicitation will state that further information 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.

20. American Heart Disease Prevention Foundation, Inc. agrees to pay at the time of filing this Consent Judgment:

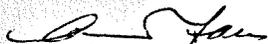
- a. \$7,500.00 charitable donation to charities selected by the Attorney General.
- b. Payment will be by certified check.
- c. All payments will be sent directly to the Office of the Attorney General.

21. American Heart Disease Prevention Foundation, Inc. agrees to allow the Attorney General to inspect relevant business records of American Heart Disease Prevention Foundation, Inc.'s 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.

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.

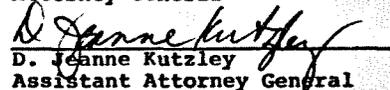
IT IS SO ORDERED.

  
\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

Approved by:



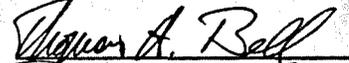
ROBERT T. STEPHAN  
Attorney General

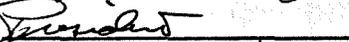


D. Jeanne Kutzley  
Assistant Attorney General

Attorneys for Plaintiff.

American Heart Disease Prevention Foundation, Inc.

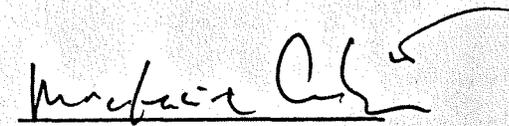
By : 

Title: 



Bernard F. Weinhart  
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(202) 861-0740  
Attorney for Defendant

-10-

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

J/AHDPF.CJ

EXHIBIT "A"

CONSUMERS FOR AMERICAN HEART DISEASE  
PREVENTION FOUNDATION, INC.

Lyne, Francis	\$ 7.00	90-0984
Clark, Rose	50.00	89-0463
Shewmake, Barbara J.	7.00	89-1402
Farney, Wilma L.	74.00	89-4830

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\$138.00