

99-063

COPY

Derek L. Schmidt, #17781
Assistant Attorney General
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IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
DIVISION 12

STATE OF KANSAS, *ex rel.*
CARLA J. STOVALL, Attorney General,

Plaintiff,

vs.

ELLIOTT M. BRIGGS,
d/b/a UNIVERSAL STAR GROUP,

Defendant.

Case No. 99 C 10073

(Pursuant to K.S.A. Chapter 60)

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 16 day of August, 1999, comes before the Court the Plaintiff's Petition for Approval of the Journal Entry of Consent Judgment entered into between the parties, pursuant to K.S.A. 50-632(b). Plaintiff, State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through Derek L. Schmidt, Assistant Attorney General. Defendant appears *pro se*.

WHEREUPON, the parties advise the court that they have stipulated and agreed to the following matters:

THE PARTIES

1. Carla J. Stovall is the Attorney General of the State of Kansas.
2. The Attorney General's authority to bring this action is derived from statutory and common law of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*

CLERK OF DISTRICT COURT
JOHNSON COUNTY, KS.
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3. Defendant is an individual doing business as a sole proprietorship. Defendant's business is located at 3362 Westheimer, #522, Houston, Texas 77098. Defendant resides at 3346 East TC Jester, Houston, Texas 77018.

4. Defendant is a supplier within the definition of K.S.A. 50-624(i) and has engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c).

JURISDICTION AND VENUE

5. Defendant admits the Court has jurisdiction over the subject matter and over the parties pursuant to the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

6. Defendant admits venue is proper in the Tenth Judicial District of Kansas (Johnson County) as provided by K.S.A. 50-638.

7. Defendant waives service of process related to this Consent Judgment and appears voluntarily as allowed by K.S.A. 60-303(d).

VIOLATIONS OF THE KANSAS CONSUMER PROTECTION ACT

8. Defendant used the United States mail to deliver solicitations for the sale of business opportunity materials to consumers in the State of Kansas. Defendant estimates ten (10) to fifteen (15) such solicitations were sent to Kansas consumers.

9. Defendant sold business opportunity materials to a consumer in the State of Kansas after the consumer responded to a solicitation as described in paragraph eight (8). The business opportunity materials sold by Defendant consisted solely of instructions for the purchaser to send solicitations as described in paragraph eight (8) to other persons for the purpose of selling them the same business opportunity materials.

10. The Attorney General alleges and Defendant admits the following acts and practices by Defendant, which arise from the solicitation described in paragraph eight (8) and the sale described in paragraph nine (9), are violations of the Kansas Consumer Protection Act and are deceptive and/or unconscionable:

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10. The Attorney General alleges and Defendant admits the following acts and practices by Defendant, which arise from the solicitation described in paragraph eight (8) and the sale described in paragraph nine (9), are violations of the Kansas Consumer Protection Act and are deceptive and/or unconscionable:

a. Defendant failed to disclose to consumers that the business opportunity he was selling was, in truth and in fact, an illegal pyramid promotional scheme and that operating the business opportunity would subject consumers to criminal liability in the State of Kansas and in other jurisdictions, a willful failure to state a material fact, in violation of K.S.A. 50-626(b)(3);

b. Defendant failed to explain to consumers the eventual economic and mathematical failure of such a pyramid promotional scheme due to market saturation. Thus, consumers were unaware that those recruited last in the system would have little chance of finding additional investors. This constitutes a willful failure to state a material fact, in violation of K.S.A. 50-626(b)(3).

c. Defendant represented that consumers could receive a full refund plus a \$2,000.00 payment "just for participating" in Defendant's business opportunity but failed to disclose that consumers must participate in the business opportunity for at least two years and two months before any such refund or payment could be requested, a willful failure to state a material fact, in violation of K.S.A. 50-626(b)(3);

d. Defendant represented to consumers that using Defendant's business opportunity system was lawful, through statements such as "100% legal in all states," when, in truth and in fact, it is illegal in the State of Kansas and in other jurisdictions, a representation made knowingly or with reason to know that Defendant's business opportunity system had sponsorship, approval, or characteristics it does not have, in violation of K.S.A. 50-626(b)(1)(a);

e. Defendant, knowingly or with reason to know such representation was unsubstantiated, exaggerated earnings potential available to consumers who purchased Defendant's business opportunity by representing that consumers could "become a millionaire in one month" by purchasing and using Defendant's

business opportunity, when, in truth and in fact, there was no reasonable basis for that claim, in violation of K.S.A. 50-626(b)(1)(F);

f. Defendant represented to consumers that the number of business opportunities available for sale was limited when, in truth and in fact, there was no limitation on the number available, a representation made knowingly or with reason to know that property or services have quantities that they do not have, in violation of K.S.A. 50-626(b)(1)(a);

g. Defendant represented to consumers that orders for Defendant's business opportunity would be received for only thirty (30) days when, in truth and in fact, such representations were false, a willful use of falsehood as to a material fact, in violation of K.S.A. 50-626(b)(2);

h. Defendant represented to consumers that the first one hundred (100) people to order Defendant's business opportunity materials would receive the business opportunity free, when, in truth and in fact, such representation was false, a willful use of falsehood as to a material fact in violation of K.S.A. 50-626(b)(2);

i. The business activities of Defendant, as set forth in paragraph 9(a) through 9(h), and in particular the sale (and the making of a solicitation for such sale) to consumers of a business opportunity that is unlawful to operate, constitute unconscionable acts or practices, in violation of K.S.A. 50-627(b).

11. Defendant voluntarily admits liability and agrees to this Consent Judgment without trial or adjudication of any issue of fact or law.

INJUNCTIVE RELIEF

11. Defendant agrees to refrain from and to be permanently enjoined from engaging in those acts and practices described in paragraphs eight (8), nine (9) and ten (10) in violation of

the Kansas Consumer Protection Act. Defendant agrees that engaging in such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Order.

12. Defendant agrees to refrain from and to be permanently enjoined from establishing, operating, advertising, promoting, or otherwise participating in any pyramid promotional scheme, as defined in K.S.A. 21-3762. Defendant agrees that failing to so refrain, after the date of this Consent Judgment, shall constitute a violation of this Order.

13. Defendant agrees to refrain from and to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures for the purpose of avoiding compliance with the terms of this Consent Judgment. Defendant agrees that failure to so refrain, after the date of this Consent Judgment, shall constitute a violation of this Order.

14. Defendant agrees to pay restitution to any Kansas consumer who files a complaint with the Attorney General at any time before or within one (1) year after the date of this Consent Judgment if such complaint arises from the acts and practices described in paragraphs eight (8) and/or nine (9) and/or from similar acts and practices. Defendant will pay such restitution within ten (10) days of being notified by the Attorney General that such payment is due pursuant to this Consent Judgment. Defendant agrees that failure to pay such restitution, after the date of this Consent Judgment, shall constitute a violation of this Order.

15. The provisions of this Consent Judgment will be applicable to Defendant, and every employee, agent or representative of Defendant.

INVESTIGATIVE FEES AND CIVIL PENALTIES

16. Defendant agrees to pay \$300.00 in investigation fees and expenses and an additional \$300.00 in civil penalties to the "Office of the Attorney General" of the State of Kansas at the time of signing this Consent Judgment. Payment will be by certified check.

OTHER PROVISIONS

19. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof.

20. If any portion, provision or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions or parts.

21. Compliance with this Consent Judgment does not relieve Defendant of any obligation imposed by applicable federal, state or local law, nor shall the Attorney General be precluded from taking appropriate legal action to enforce civil or criminal statutes under her jurisdiction.

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 fact and conclusions of law of the Court and any monies owed hereunder by Defendant immediately become a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant in favor of Plaintiff in the amount of \$600.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, including the provisions of K.S.A. 50-632(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.

RECEIVED
KANSAS ATTORNEY GENERAL
THOMAS E. FOSTER
AUG -2 A 9:46
DISTRICT COURT JUDGE

Approved by:


CARLA J. STOVALL, #11433
Attorney General


Derek L. Schmidt, #17781
Assistant Attorney General
Kansas Judicial Center
Topeka, Kansas 66612-1597
(785) 296-3751

Attorneys for plaintiff


ELLIOTT M. BRIGGS

Defendant