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FILED BY CLERK
KS. DISTRICT COURT
8th JUDGE

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TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 5

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

Plaintiff,

vs.

CHARLES BARONE, d/b/a FIRST CAPITAL
CONSUMER MEMBERSHIP SERVICES,

Defendant.

Case No. 99 C 610

Petition Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 30TH day of April, 1999, Plaintiff's Petition for Approval of Consent Judgment comes before the Court pursuant to K.S.A. §50-632(b). Plaintiff, the State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through James J. Welch, Assistant Attorney General. Defendant Charles Barone, d/b/a First Capital Consumer Membership Services, after having the competent advice and counsel of Glenn Erikson, appears pro se.

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

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 the statutory and common law of the State of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. §50-623 *et seq.*

3. Defendant Charles Barone is an individual doing business as First Capital Consumer Membership Services as a sole proprietorship organized under the laws of the state of New York.

4. Defendant Charles Barone, d/b/a First Capital Consumer Membership Services, may be served with process by serving at his residence, 108 Woodcrest, Amherst, New York 14226, or at the principal office of the business, 1685 Elmwood Avenue, Buffalo, New York 14207, or wherever he may be found.

5. 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) and (h).

6. Defendant admits the Court has personal and subject matter jurisdiction over the parties.

7. Defendant stipulates and waives any objection to venue in Shawnee County.

8. The Attorney General alleges that Defendant engaged in the following acts and practices which are deceptive and/or unconscionable and violate the Kansas Consumer Protection Act:

- a. Defendant solicited consumers by telemarketing; however, Defendant failed to obtain a signed confirmation from the consumer in conformity with K.S.A. §50-672.
- b. Defendant accepted payment and/or submitted charges to consumers' credit card accounts before receiving from such consumers an original copy of a confirmation, signed by the consumer that complied with K.S.A. §50-672(b). Defendant's acceptance of such payment and submitting of charges to consumers' credit cards is in violation of K.S.A. §50-672(c).

- c. Defendant's attempts to enforce credit card charges for transactions in which such signed confirmations complying with K.S. A. §50-672 were made in violation of K.S.A. §50-675(b).
- d. Defendant operates as a credit services organization, as defined in K.S.A. §50-1102, due to the fact that a substantial part of defendants' services involve assisting consumers in improving their credit records and/or in obtaining extensions of credit for such consumers. Defendant has charged consumers listed in Exhibit A for services before completing performance agreed upon without filing a surety bond in the amount of \$25,000.00 with the Kansas Consumer Credit Commissioner, in violation of K.S.A. §50-1103 and K.S.A. §50-1104. This is also in violation of K.S.A. §50-626(b), in that a violation of the Credit Services Organization Act is deceptive and a violation of the Kansas Consumer Protection Act, pursuant to K.S.A. §50-1111.
- e. Defendant advertised, or caused to be advertised, and solicited consumers for the services of a credit services organization without filing a registration statement with the consumer credit commissioner, in violation of K.S.A. §50-1103(f). This is also in violation of K.S.A. §50-626(b), in that a violation of the Credit Services Organization Act is deceptive and a violation of the Kansas Consumer Protection Act, pursuant to K.S.A. §50-1111.
- f. Defendant operates as a credit services organization; however, Defendant has failed to provide consumers/buyers with a disclosure statement containing all required information, in violation of K.S.A. §50-1106. This is also in violation of K.S.A. §50-626(b), in that a violation of the Credit

Services Organization Act is deceptive and a violation of the Kansas Consumer Protection Act, pursuant to K.S.A. §50-1111.

- g. Defendant provided consumers/buyers with various literature and information concerning Defendant's services, as well as that concerning Discount Subscription Service (Pompano Florida), U.S. Grocery Savers, Inc. (Knoxville, Tennessee), and Mini Vacations (Tampa, Florida); however, none of the literature provided to consumers/buyers included a notice of cancellation to said consumers/buyers, in violation of K.S.A. §50-1107. This is also in violation of K.S.A. §50-626(b), in that a violation of the Credit Services Organization Act is deceptive and a violation of the Kansas Consumer Protection Act, pursuant to K.S.A. §50-1111.
- h. Defendant made representations during solicitations to consumers that such consumers would receive an application to apply for a low-interest credit card and that, if not approved, such consumers would receive a full refund. Defendant did not send consumers said applications; however, Defendant failed to provide refunds to consumers upon such consumers' requests. Such representations are in violation of K.S.A. §50-626(b)(2), in that they involve the willful use of exaggeration, falsehood, innuendo, and ambiguity as to a material fact.
- i. Defendant's representations to consumers included ones to the effect that consumers would receive a low-interest credit card or a full refund from Defendant; however, in violation of K.S.A. §50-626(b)(3), Defendant willfully failed to state the material facts and willfully concealed, suppressed and omitted the material facts that:

- i. consumers would not receive a low-interest credit card from Defendant, but, instead, merely a list of sources from which such consumers might apply for a low-interest credit card; and
 - ii. consumers would not be eligible for a refund from Defendant until after applying and obtaining denial letters from several sources listed in Defendant's literature.
- j. Defendant made solicitations and sales described above, in violation of the Kansas Consumer Protection Act, to elderly consumers, in violation of K.S.A. §50-676, *et seq.*

9. By entering into this Consent Judgment, Defendant shall not be deemed to admit the Attorney General's allegations.

10. Defendant agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be deceptive or unconscionable in paragraph eight (8) of this Consent Judgment, and Defendant agrees that engaging in such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Order.

11. Defendant agrees to refrain from and to be permanently enjoined from engaging in any and all deceptive and/or unconscionable acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. §50-623 *et seq.*, as it now exists or as amended in the future and Defendant agrees that engaging in such acts or practices after the date of this consent judgment shall constitute a violation of this Order.

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

13. Defendant agrees to make available and to disclose the provisions of this Consent Judgment to his employees, agents and representatives within five days of signing the Consent Judgment.

14. Defendant agrees to make full refunds to any and all consumers with a Kansas address who request a refund and/or file a complaint with the Kansas Attorney General's Office. Such refunds shall be made payable to named consumers and delivered to the Kansas Attorney General's Office in the form of cashiers checks or money orders within thirty (30) days of the date such complaints are forwarded to Defendant by the Attorney General's Office.

15. Defendant agrees to resolve any future complaints filed with the Office of the Attorney General regarding Defendant after the date of this Consent Judgment to the satisfaction of the Attorney General within 30 days of the date such complaint is forwarded to Defendant for resolution.

16. Defendant agrees 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.

17. Defendant agrees to pay \$ 2,500 in investigation fees and expenses to the "Office of the Attorney General" of the State of Kansas. In addition, Defendant agrees to pay \$ 1,250 in civil penalties to the "State of Kansas," and an additional \$1,250 in civil penalties for violations of the Kansas Consumer Protection Act committed against elderly consumers, pursuant to K.S.A. §50-677 (totaling \$2,500 civil penalties). Payment shall be made by certified checks and shall be delivered to the Attorney General of the State of Kansas at the time of Defendant's signing of this Consent Judgment.

18. Defendant agrees to pay all expenses and reasonable attorney's fees in connection with the collection of any amounts in this judgment, provided Defendant does not pay the amounts as agreed herein within the time frame stated.

19. Defendant agrees to maintain all business records for a period of five years and to allow the Attorney General to inspect all of Defendant's business records in the future.

20. 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 for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof, or for modification of this Consent Judgment upon agreement of the parties. The parties agree that this Consent Judgment resolves all issues known to parties under the Kansas Consumer Protection Act relating to the acts and practices alleged to be deceptive or unconscionable in paragraph eight (8), including sub-paragraphs, of this Consent Judgment up through the date of the execution of this Consent Judgment. Pursuant to the terms of this Consent Judgment, the Kansas Attorney General agrees that she and her office will not pursue any claims, demands or civil causes of action under the Kansas Consumer Protection Act against Defendant for the acts and practices alleged to be deceptive and/or unconscionable in paragraph eight (8) of this Consent Judgment up through the date of the execution of this Consent Judgment, excepting only any action which may be required to enforce the provisions of this Consent Judgment.

21. 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.

22. 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.

23. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of Defendant nor shall Defendant represent the decree as such an approval. The parties further understand that any failure by the State of Kansas or by the Attorney General to take any action in response to any

information submitted pursuant to the Consent Judgment shall not be construed as an approval of or sanction of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

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.

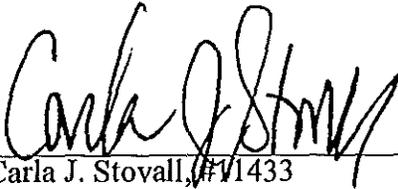
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant in favor Plaintiff in the amount of \$ 5,000.

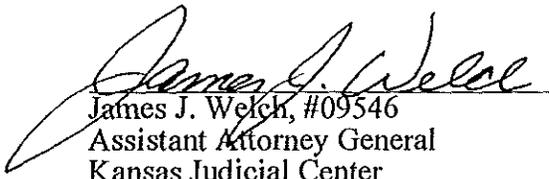
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. §50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

IT IS SO ORDERED.

/s/ Hon. Laura M. MacNish
DISTRICT COURT JUDGE

Approved by:


Carla J. Stovall, #1433
Attorney General



James J. Welch, #09546
Assistant Attorney General
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Defendant