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FILED BY CLERK
KS DISTRICT COURT
3RD DISTRICT

JUN 3 1999

TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division II

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

Plaintiff,)

vs.)

Larry Goertzen)
d/b/a Mid-America Liquidators)

Defendant.)

Case No. 99-0731

Petition Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 3rd day of JUNE, 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 Larry Goertzen d/b/a Mid-American Liquidators appears by and through Robert E. Hiatt.

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 Larry Goertzen is an individual residing at 2830 West Randolph, Enid, Oklahoma 73703.

4. Defendant does business as Mid-American Liquidators, located at 1602 North Van Buren, Enid, Oklahoma 73703. Since July 1998, Defendant has done business as Mid-American Liquidators at 206 East Trail, Dodge City, Kansas.

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. Defendant sells furniture as Mid-American Liquidators in Enid, Oklahoma, Dodge City, Kansas and various other locations.

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

a. Defendant made representations that furniture "was" sold for various listed prices, and is "now" sold for other, lower prices, as listed in Defendant's advertisement, which is attached hereto and marked as Exhibit A. However, Defendant never sold any furniture at the past-referenced price. This is a violation of K.S.A. § 50-626(b)(7), in that defendant made false and misleading representations of facts concerning the existence of price reductions in comparison to defendant's own price at a past time..

b. Defendant's advertisement (as attached hereto and marked as Exhibit A) made claims that Defendant was going out of business, by using the phrases "TOTAL PUBLIC SELL-OFF", "Final Two Days", and "MERCHANDISE WILL BE LIQUIDATED REGARDLESS OF LOSS"

when Defendant is not, in fact, going out of business. This is a violation of K.S.A. §50-626(b)(2) in that Defendant willfully used in a written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact.

- c. Defendant's advertisement represented that an address local to consumers, 206 E. Trail, Dodge City, Kansas, was Defendant's "Warehouse Store;" however, Defendant leased this building solely for this promotion, and never, prior to this promotion, used such address as a warehouse store. This is in violation of K.S.A. §50-626(b)(2) in that Defendant willfully used in a written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact.
- d. Defendant mailed advertisements to consumers in the Dodge City, Kansas-area which referred to such recipients as "Private Preferred Customer"; however, such advertisements were addressed to "Resident" at various addresses, and no consumer was specifically selected as a "Private Preferred Customer." This is in violation of K.S.A. §50-626(b)(3), in that it is the willful failure to state and the willful concealment, suppression and omission of the material fact that solicitations were sent to consumers on a completely random basis.
- e. Defendant's advertisement represented to consumers that the promotion was in its "Final Two Days," limited to Saturday, July 25, 1998 and Sunday, July 26, 1998; however, Defendant failed to disclose to consumers and willfully concealed, suppressed, and omitted the material fact that the promotion in question was ongoing and without such time limitations, in violation of K.S.A. §50-626(b)(3).

- f. Defendant represented to consumers that Defendant "was contracted to liquidate the remaining merchandise of Croft Furniture and Carpet of Altus, Oklahoma"; however, Defendant was actually purchasing new merchandise from another furniture store (Eads Brothers Furniture, Fort Smith, Arkansas). This is in violation of K.S.A. §50-626(b)(2) in that Defendant willfully used in a written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact. It is also in violation of K.S.A. §50-626(b)(7), in that it is the false and misleading representation of fact concerning the reason for price reduction.
- g. Defendant's transactions with consumers constitute door-to-door sales, as defined by K.S.A. §50-640(c), in that they are the sale of consumer property with a purchase price of \$25.00 or more made at a place other than the Defendant's regular place of business. In each of the above described solicitations, Defendants failed to provide to Kansas consumers the written notice of cancellation required by K.S.A. §50-640(b)(2).
- h. Although Defendant's transactions with consumers constituted door-to-door sales, Defendants failed to inform Kansas consumers the oral notice of cancellation required by K.S.A. §50-640(b)(5).
- i. Although Defendant's transactions with consumers constituted door-to-door sales, Defendant's solicitation to consumers included: "All Sales Final" and "No Refunds or Exchanges," although consumers should have been afforded the three-day right of cancellation, as provided in K.S.A. §50-640. This is in violation of K.S.A. §50-640(b)(6), in that it is the misrepresentation of consumers' rights to cancel.

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

11. 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 nine (9) 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.

12. 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.

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

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

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. Defendant agrees to pay restitution to all Kansas consumers who request restitution.

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 \$2,500 in civil penalties to the "State of Kansas". Payment of \$500.00 per month shall commence on or before September 1, 1999, with subsequent \$500.00 payments thereafter due on or before the first (1st) day of each month, until the entire amount payable is satisfied.

18. Parties agree that payment of investigation fees and expenses and civil penalties, as set out in paragraph seventeen (17) of this Consent Judgment shall not be subject to interest as long as all payments are timely made. Defendants agree that failure to make timely payments of investigative fees and expenses and civil penalties, as set out in paragraph seventeen (17) of this Consent Judgment, will result in the amount of the entire unpaid balance becoming due within five (5) days of the first payment missed and subject to interest, as provided in K.S.A. §16-204.

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 or appropriate for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof.

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.

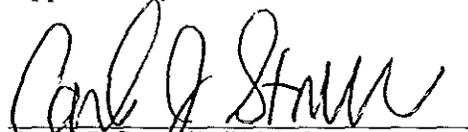
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant in favor Plaintiff in the amount of \$ 5,000.

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.

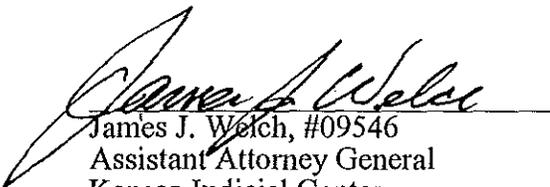
IT IS SO ORDERED.

/s/ Matthew J. Dowd
DISTRICT COURT JUDGE

Approved by:



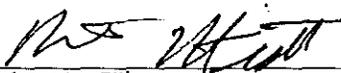
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