

Frances R. Brunner, #17433
Assistant Attorney General
Office of the Attorney General
120 SW 10th Avenue, 4th Floor
Topeka, Kansas 66612-1597
(785) 296-3751

FILED BY CLERK
KS. DISTRICT COURT
MAY 24 12 00 PM '00
TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 9

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

Plaintiff,

vs.

APPLIANCE CARE, Inc.,
and all Principals, Agents and Employees,

Defendants.

Case No. 99-C~~7~~ 00 C 589

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this ____ day of May, 2000, comes before the Court the Journal Entry of Consent Judgment entered into between the parties pursuant to K.S.A. §50-632(b). The State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through Frances R. Brunner, Assistant Attorney General. Defendants Appliance Care Inc., and its Principals and Employees appear by and through counsel, Daniel J. Sevart.

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. Defendant Appliance Care, Inc., a division of Prime One Home Warranty, is a Kansas corporation. Defendant maintains a principal office at 6000 Gisholt Drive, Suite 106, Madison, Wisconsin 53713.

3. Defendants are suppliers as defined by K.S.A. §50-624(i).

4. At all times relevant hereto, and in the ordinary course of business, Defendants have engaged in consumer transactions in Kansas as defined by K.S.A. §50-624(c).

5. The undersigned Principals and Employees of Defendants stipulate to being personally, jointly and severally liable and responsible for all the terms of the judgment referenced in this Journal Entry of Consent Judgment, including, but not limited to, the monetary judgment and injunctive provisions.

JURISDICTION AND VENUE

6. Defendants enter their voluntary general appearance.

7. Defendants admit the Court has jurisdiction over the parties and the subject matter.

8. Defendants admit venue is proper in the Third Judicial District of Kansas (Shawnee County).

ALLEGATIONS

9. The Attorney General alleges the following acts and practices by Defendants are violations of the Kansas Consumer Protection Act and are deceptive and/or unconscionable:

a. Defendants willfully failed to state a material fact, and willfully concealed, suppressed and omitted a material fact in violation of K.S.A. §50-626(b)(3) in that:

i. Defendants did not disclose to consumers who enter into service contracts or renew their contracts that the number of service providers who will accept reimbursement from Appliance Care, Inc. is limited, or that several service providers demanded payment

- up front from consumers because of Appliance Care's failure to pay them in a timely manner;
- ii. Defendants sent out a notice to consumers about the "new contract" they were issuing, but failed to send the new contracts for consumers to review and approve, even though those contracts differed substantially from the previous contract.
- b. Consumers were unable to receive a material benefit from the subject of the transaction, in violation of K.S.A. §50-627(b)(3), in that:
- i. Defendants failed to pay repair service providers in a timely manner, and therefore those service providers refused to perform repair work for consumers with Appliance Care contracts;
 - ii. Defendants failed to pay for repairs and/or replacements of consumers' appliances under the terms of the contract, and in many instances when consumers paid for those repairs or replacements themselves, Defendants failed to reimburse consumers within a reasonable time.
- c. Defendants induced consumers into a transaction that was excessively one-sided in favor of Defendants, in violation of K.S.A. §50-627(b)(5), in that:
- i. Defendants mailed a notice to consumers that purportedly bound consumers to a new contract, with a one-year term, when consumers did not affirmatively agree to accept the new contract or its terms;
 - ii. Defendants declared that the consumers' act of paying their current monthly bill under the previous contract constituted acceptance of the new contract, when many consumers had paid that month's bill before they received notice of the new contract; and
 - ii. Defendants routinely switched consumers to the "new contract" with material changes in the contract terms before the expiration of their original contract term.

10. Defendants deny the allegations of the Attorney General. For the purposes of settlement only, Defendants voluntarily agree to this Consent Judgment without trial or adjudication of any issue of fact or law.

INJUNCTIVE RELIEF

11. Defendants agree to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be deceptive and/or unconscionable in paragraph nine (9) of this Consent Judgment, including all subparagraphs thereof. Defendants agree that engaging in such acts or similar acts after the date of this Consent Judgment, shall constitute a violation of this Journal Entry.

12. Defendants agree to cancel contracts with any consumer who has requested cancellation in the past. For any consumer who requests cancellation within the next twelve (12) months, Defendants agree to cancel its contracts with that consumer effective on the date of the request, provided that said consumer is not in the initial 12 month contract, but is in a renewal period entered into in accordance with paragraph 12 hereof when cancellation is requested. Defendants agree that it will not pursue collection of amounts that allegedly accrue after such cancellation.

13. Defendants agree to obtain affirmative consent from consumers on all contracts for terms longer than one month. Further, Defendants agree to provide clear and conspicuous notice of all changes or renewals to the affected consumers. For the purposes of this Consent Judgment, a verbal agreement by the consumer shall constitute affirmative assent only if Defendants can provide to the Office of the Attorney General a recording of the entire conversation with the consumer, including the portion of the conversation in which the consumer is informed of the new terms and conditions and subsequently agrees to be bound by them. Such agreement must be unambiguous, and Defendants' attempts to obtain consent must not otherwise be in violation of the Kansas Consumer Protection Act. Defendants agree that failure to provide such recording upon request by the Office of the Attorney General constitutes a violation of this

Consent Judgment. Nothing in this paragraph shall be interpreted to authorize any changes to contracts with Kansas consumers by Defendants.

14. Defendants agree 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.

15. Defendants agree to pay the sum of \$2,145.40 as restitution to the consumers listed in Exhibit A, in their respective amounts, pursuant to K.S.A. §50-632(a)(3). Said Payment shall be made by cashier's check and shall be delivered to the Attorney General of the State of Kansas at the time of signing this Consent Judgment.

16. Additionally, Defendants agree to pay the sum of \$2,000.00 for future restitution, to be held by the Attorney General's office for twelve (12) months. Any restitution claims by consumers against Defendants in that period of time may, at the election of the Office of the Attorney General, be paid from that sum. At the end of 12 months, any balance remaining shall be returned to Defendants. Any restitution claims by consumers against Defendants shall be copied to Defendants, and Defendants shall provide any information regarding such claims to the Attorney General within ten (10) days of receipt. Payment of future restitution shall be made by cashier's check and shall be delivered to the Attorney General of the State of Kansas at the time of signing this Consent Judgment.

17. Defendants agree to resolve any complaints filed with the Office of the Attorney General regarding Defendants 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 Defendants.

18. Defendants agree that for any consumer who will receive restitution under this agreement, it will not report delinquent accounts to any credit reporting agency, will eliminate any negative report in any credit file that Defendants have entered for these consumers, and will not attempt to collect amounts allegedly owed to Defendants by those consumers.

INVESTIGATIVE FEES AND CIVIL PENALTIES

19. Defendants agree to pay \$4,000.00 in investigation fees and an additional \$4,000.00 in civil penalties to the "Office of the Attorney General" of the State of Kansas, pursuant to K.S.A. §50-623 *et seq.* Payment of investigative fees shall be made by cashier's check at the time of signing this Consent Judgment. Payment of the remaining civil penalties shall commence the first of the next month after the Consent Judgment is signed, in the amount of \$500 per month, with subsequent \$500 payments thereafter due on or before the first (1st) day of each month, until the entire amount payable is satisfied. Defendants agree that failure to make timely payments, as set out above, will result in the entire outstanding balance becoming due within five (5) days of the first payment missed. Defendants agree that, in the event of a missed payment, failure to remit the entire outstanding balance within five days will constitute a violation of this Consent Judgment.

GENERAL PROVISIONS

20. Defendants agree to resolve any future complaints filed with the Office of the Attorney General regarding Defendants 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 Defendants for resolution.

21. Defendants agree to be bound by this Journal Entry of Consent Judgment at all times after the date of entry without regard to whether Defendants act through its principals, officers, directors, shareholders, representatives, agents, servants, employees, subsidiaries, successors, assigns or whether acting through any corporation or other entity whose acts, practices or policies are directed, formulated, or controlled by Defendants.

22. Defendants agree to make available and/or disclose the provisions of this Consent Judgment to its employees, agents and representatives not later than twenty (20) days after the date of this Consent Judgment.

23. Defendants agree not to enter into, form, organize or reorganize into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose and/or with the effect of avoiding compliance with the terms of this Consent Judgment.

24. Defendants agree to refrain from and to be permanently enjoined from representing, in any manner whatsoever and to any person or entity whatsoever, that this Consent Judgment constitutes approval by, endorsement by or authority from the State of Kansas and/or the Attorney General of the State of Kansas for the business practices of Defendants. Defendants agree that making of any such representation, after the date of this Consent Judgment, shall constitute a violation of this Journal Entry.

25. 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 hereof.

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

27. Compliance with this Consent Judgment does not relieve Defendants 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 the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant Appliance Care, Inc., in the amount of \$10,145.40.

IT IS SO ORDERED.


DISTRICT COURT JUDGE

Approved by:

Carla J. Stovall, #13127, DEPUTY ATTORNEY GENERAL
CARLA J. STOVALL, #11433
Attorney General

Frances R. Brunner
Frances R. Brunner, #17433
Assistant Attorney General
120 SW 10th Avenue, 4th Floor
Topeka, Kansas 66612-1597
(785) 296-3751

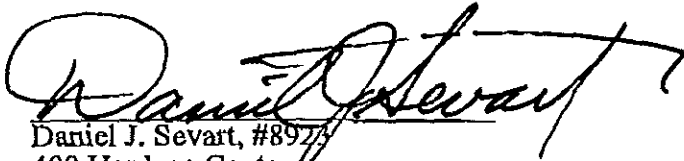
Attorneys for Plaintiffs



Karl L. Wellman
President, Appliance Care, Inc.
Principal



Cheryl L. Wellman
Vice President and Chief Financial Officer,
Appliance Care, Inc.
Principal



Daniel J. Severt, #8923
400 Hardage Center
100 South Main
Wichita, Kansas 67202

Attorney for Defendants