

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
Division 12

STATE OF KANSAS, *ex rel.* )  
STEVE SIX, Attorney General, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
BLUE HARBOR FINANCIAL, LLC )  
 )  
Defendant. )

Case No. 10010

FILED BY CLERK  
KS. DISTRICT COURT  
THIRD JUDICIAL DIST.  
2010 JAN 13 P 12:40

(Pursuant to K.S.A. Chapter 60

**JOURNAL ENTRY OF CONSENT JUDGMENT**

NOW on this 11<sup>th</sup> day of January, 2010, Plaintiff's Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). The Plaintiff, state of Kansas, *ex rel.* Steve Six, Attorney General, appears by and through Meghan E. Barnds, Assistant Attorney General.

WHEREUPON the parties advise the Court that they have stipulated and agreed to the following:

**PARTIES, JURISDICTION AND VENUE**

1. Steve Six 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, ("KCPA") K.S.A. 50-623 *et seq.*
3. Defendant Blue Harbor Financial, LLC ("Defendant Blue Harbor") is a limited liability company organized and existing under the laws of Michigan, and registered with the Michigan Department of Labor and Economic Growth.

4. Defendant Blue Harbor has a principal place of business at 236 ½ East Front Street in Traverse City, Michigan 49686.

5. Defendant Blue Harbor has no current certificate of registration filed with the Kansas Secretary of State's Office to operate as a foreign corporation in the State of Kansas.

6. All references to Defendant herein include acts individually, in concert, or by or through employees, agents, representatives, affiliates, assignees and successors.

7. Defendant stipulates and admits that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties, pursuant to K.S.A. 50-623 *et seq.*

8. Defendant stipulates and admits that venue is proper in this Court.

9. Defendant is a supplier within the definition of K.S.A. 50-624(j).

10. Defendant is engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c).

#### DEFINITIONS

As used herein, the following terms shall mean:

11. "Advertise," "Advertisement," or "Advertising," shall mean any written, oral, graphic, or electronic statement, illustration, or depiction that is designed to create interest in the purchasing of, impart information about the attributes of, publicize the availability of, or affect the sale or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, leaflet, mailer, letter, catalogue, poster, billboard, point-of-purchase display, electronic mail, website, homepage, film, radio, television, or any other medium.

12. "Clear and Conspicuous" or "Clearly and Conspicuously," shall refer to a statement that, regardless of the medium in which it is made, is readily understandable and presented in such size, color, contrast, duration, location, and audibility, as compared to the other

information with which it is presented, that it is readily apparent to the person to whom it is disclosed. A clear and conspicuous statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be present in close proximity to the information it modifies and in a manner that is readily apparent and understandable.

13. "Consumer," "Client," or "Customer" shall mean any individual, husband and wife, sole proprietor, or family partnership who seeks or acquires property or services for personal, family, household, business or agricultural purposes, as defined in K.S.A 50-624.

14. "Defendant" shall mean Blue Harbor Financial, LLC, along with its employees, directors, officers, owners, members, managers, parents, agents, assigns, and all other persons or entities acting in concert with them or on their behalf, and their predecessors, subsidiaries, affiliates, and successors.

15. "Represent" means to state or imply, directly or indirectly, through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages, or any other manner or means by which meaning might be conveyed. This definition applies to other forms of the word "represent," including without limitation "representation," "misrepresent," and "misrepresentation."

#### **ALLEGATIONS**

16. Defendant engages in the advertising, solicitation and sale of financial planning and debt management services.

17. Defendant contacts Kansas consumers over the phone to solicit the sale of the aforementioned services.

18. The Plaintiff alleges that Defendant, while offering the aforementioned services for sale in Kansas, engaged in deceptive and unconscionable acts and practices in violation of the KCPA, which acts and practices include, but are not limited to:

- a. Conducting business in Kansas without registering with the Kansas Secretary of State;
- b. Making misrepresentations regarding the cost of Defendant's services and the manner in which consumers will incur charges for Defendant's services, in violation of K.S.A. §50-626(b)(1)(A);
- c. Making representations regarding the benefits of Defendant's services, without a reasonable basis for making such representations, in violation of K.S.A. §50-626(b)(1)(F);
- d. Charging Kansas consumers' credit cards, for the purchase of Defendant's services, prior to receiving a signed confirmation from each consumer disclosing in full the terms of the transaction, in violation of K.S.A. §50-672(c);
- e. Making, or causing to be made, unsolicited consumer telephone calls to numbers listed on the national Do-Not-Call registry, in violation of K.S.A. §50-670a;
- f. Providing debt management services to Kansas consumers without registering with the Kansas State Bank Commissioner, in violation of K.S.A. §50-1118(a).

19. Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law solely for the purposes of settlement.

#### INJUNCTIVE RELIEF

20. Defendant agrees to refrain from, and to be permanently enjoined from, engaging in those acts and practices set forth in paragraph eighteen (18) herein, and Defendant agrees that engaging in any such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

21. Defendant agrees to refrain from, and to be permanently enjoined from, making oral representations that, directly or indirectly, contradict terms or language contained in Defendant's written contracts with Kansas consumers.

22. Defendant agrees to refrain from, and to be permanently enjoined from, misrepresenting, directly or indirectly, in Defendant's advertising, promotional materials, sales presentations, or in any manner the cost of Defendant's services or the manner in which Kansas consumers will incur charges for Defendant's services.

23. Defendant agrees to refrain from, and to be permanently enjoined from, misrepresenting, directly or indirectly, in Defendant's advertising, promotional materials, sales presentations, or in any manner the nature of the services to be performed, specifically the ability of Defendant to: 1) achieve a particular level of savings for Kansas consumers and/or 2) achieve results for Kansas consumers within a particular time period.

24. Defendant agrees to refrain from, and to be permanently enjoined from, misrepresenting, directly or indirectly, in Defendant's advertising, promotional materials, sales presentations, or in any manner the qualifications, training or experience of Defendant's personnel.

25. Defendant agrees to refrain from, and to be permanently enjoined from, charging Kansas consumers' credit cards prior to receiving written, signed confirmations disclosing in full the terms of the transaction.

26. Defendant agrees to refrain from, and to be permanently enjoined from, billing or charging Kansas consumers for products and services that Defendant neither provides nor performs.

27. Defendant agrees to refrain from, and to be permanently enjoined from, making unsolicited telephone calls to Kansas consumers with telephone numbers listed on the Federal Trade Commission's Do-Not-Call Registry.

28. Defendant agrees to comply with all Kansas laws, statutes, rules and regulations, relating to consumer transactions in Kansas, specifically the Kansas Consumer Protection Act, K.S.A. §50-623, *et seq.* and the Kansas Credit Services Organization Act, K.S.A. §50-1116, *et seq.*

29. Defendant agrees to register with the Kansas Secretary of State within twenty (20) days of execution of this Consent Judgment or cease conducting business in the state of Kansas.

30. Defendant agrees to register with the Kansas State Bank Commissioner within twenty (20) days of execution of this Consent Judgment or cease all debt management service activities in the state of Kansas.

31. Defendant agrees to respond to all consumer complaints in good faith and in a reasonable, timely manner.

32. 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.

33. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to each officer, director and employee of management level that is involved in Kansas operations of the Defendant within ten (10) days of execution of this Consent Judgment.

#### **CONSUMER RESTITUTION**

34. Defendant agrees to provide a refund to the following Kansas consumers in the amounts set forth below, to the extent such refund has not already been received:

*Bob Haviland \$795.00*  
*Barbara Gonzales \$895.00*  
*Lynda Diediker \$990.00*  
*Orval Burtnett \$995.00*  
*Martha Brunkhardt \$749.00*  
*Nurjni Ramakrishnan \$499.00*  
*Shirley Kilbourn \$895.00*  
*Keith Meador \$997.00*  
*Andrew Voelmeck \$997.00*  
*Judy Dent \$997.00*  
*Thomas Chenoweth \$695.00*  
*Gloria Beuoy \$749.00*  
*Kimberly A. Nelson \$749.00*

#### **INVESTIGATIVE FEES AND CIVIL PENALTIES**

35. Defendant agrees to pay \$5,000.00 in expenses to the Office of the Kansas Attorney General, pursuant to K.S.A. §50-632.

36. Defendant agrees to pay \$15,000.00 in civil penalties to the Office of the Kansas Attorney General for violations of the Kansas No Call Act, pursuant to K.S.A. §50-670a(m).

37. Defendant agrees to pay the aforementioned expenses and penalties, by check, in three (3) installments.

38. Defendant shall pay \$5,000.00 to the Office of the Kansas Attorney General within sixty (60) days of signing this Consent Judgment. The remaining \$15,000 shall be paid in two (2) equal installments of \$7,500.00.

39. Defendant shall pay \$7,500.00 to the Office of the Kansas Attorney General within ninety (90) days of entry of this Consent Judgment, another \$7,500.00 within one hundred and twenty (120) days of entry of this Consent Judgment.

40. Defendant agrees that pursuant to 11 U.S.C. 523(a)(2)(A) and (a)(7), and due to the nature of the conduct underlying this settlement, any unpaid restitution, penalties and/or fees shall not be dischargeable in any bankruptcy proceeding commenced after the entry of this Consent Judgment.

#### **OTHER PROVISIONS**

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

42. *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.*

43. 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.

44. Compliance with this Consent Judgment does not relieve the 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 his jurisdiction.

45. 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 the Defendant nor shall the 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.

46. Each of the Defendant's representatives, signing this Journal Entry of Consent Judgment, warrants that the representative has been duly authorized by the Defendant for whom the representative appears to be acting to enter and execute this Journal Entry of Consent Judgment on behalf of Defendant.

**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 and in favor of Plaintiff for investigative fees in the amount of \$5,000.00 and civil penalties in the amount of \$15,000.

**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.**

DISTRICT COURT JUDGE

Prepared and approved by:

PLAINTIFF:



Meghan E. Barnds, #23685  
Assistant Attorney General  
Office of Kansas Attorney General, Steve Six  
120 Southwest 10<sup>th</sup> Ave., 2<sup>nd</sup> Floor  
Topeka, Kansas 66612  
(785) 296-3751

Attorney for Plaintiff

DEFENDANT:



Peter Ostrowski  
President  
Blue Harbor Financial, LLC