

AND CONCLUSIONS OF LAW

1. Derek Schmidt is the duly appointed, qualified, and acting Attorney General for the State of Kansas.

2. The Attorney General's authority to enter this Consent Judgment is derived from the Kansas Consumer Protection Act ("KCPA"), K.S.A. 50-623, *et seq.*

3. Defendant George H. Swartz is an individual doing business under the name All Star Asphalt a/k/a All Star Paving a/k/a Asphalt Solutions a/k/a All Star Asphalt Paving, operating out of various Post Office boxes and street addresses outside of the State of Kansas.

4. Defendant James J. Swartz is an individual working with Defendant George H. Swartz and also doing business under the name All Star Asphalt a/k/a All Star Paving a/k/a Asphalt Solutions a/k/a All Star Asphalt Paving, operating out of various Post Office boxes and street addresses outside of the State of Kansas.

5. All further references to Defendant or Defendants include acts individually, in concert with, or by or through employees, agents, representatives, affiliates, assignees and successors of George H. Swartz and/or James J. Swartz.

6. This Court has subject matter jurisdiction over this case under the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*

7. Defendants are subject to the jurisdiction of this Court under the Kansas Consumer Protection Act, specifically K.S.A. 50-638(a).

8. Venue is proper in the 3rd Judicial District of Kansas (Shawnee County) under K.S.A. 50-638(b).

9. At all times relevant hereto, and in the ordinary course of business, Defendants have acted as "suppliers" as that term is defined by K.S.A. 50-624(j).

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

11. Defendants, individually or in concert, solicited Kansas consumers via “door to door sale” as defined by K.S.A. 50-640(c)(1) of the KCPA for various services, including but not limited to the installation, chip sealing, sealing and repair of asphalt driveways at Kansas residences in both Shawnee and Douglas Counties.

12. Some or all of Defendants’ transactions with Kansas consumers involved “elder persons” as defined in K.S.A. 50-676(a).

13. The following Kansas consumers entered into consumer transactions with the Defendants:

- a. Carl Wayne Bahnmaier, 565 N. 1624 Road, Lawrence, Kansas 66049, who paid \$4,000.00 to the Defendants.
- b. Larry Dean Peterson, 2640 NW Brickyard Road, Topeka, Kansas 66618, who paid \$2,000.00 to the Defendants.
- c. Kelly King 520 NW 58th Street Topeka, Kansas 66617, who paid \$2500.00 to the Defendants.

14. Defendants did not present Kansas consumers, at the time of the execution of the sale of Defendants’ products and services, with a fully completed receipt and/or written contract setting forth: the date of the transaction; the name and address for Defendants; and the specific cancellation advisement required by K.S.A. 50-640(b)(1).

15. Defendants did not present Kansas consumers with a “Notice Of Cancellation” form at the time of purchasing Defendants’ products and services, as required by K.S.A. 50-640(b)(2).

16. Defendants failed to orally inform Kansas consumers, at the time of purchasing Defendants' products and services, of their right to cancel the transaction within three business days of the transaction, as required by K.S.A. 50-640(b)(5).

17. Defendants cashed checks received from Kansas consumers, including Mr. Bahnmaier, Mr. Peterson, and Ms. King, at local banks prior to midnight of the fifth business day following the date of each consumer's transaction with Defendants in violation of K.S.A. 50-640(b)(8).

18. Defendants willfully failed to disclose, or otherwise willfully concealed, material facts in connection with the offer, solicitation, and sale of Defendants' products and services to Kansas consumers, including but not limited to the total price for each consumer's transaction with Defendants, in violation of K.S.A 50-626(b)(3).

19. Each Defendant acknowledges that this Consent Judgment constitutes a stipulation to the allegations set forth herein and that nothing about this Consent Judgment shall operate as a bar to any private action that any consumer may bring or has brought against the Defendants.

20. Compliance with this Consent Judgment does not relieve the Defendants of any obligation imposed by applicable federal, state, or local law, nor shall this Consent Judgment preclude the Attorney General from taking appropriate legal action to enforce any other statutes under his jurisdiction.

21. The parties understand and agree 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 to be an approval of or sanction of any representations, acts, or practices of the Defendant's by the Attorney General or the State of Kansas.

22. The Defendants agree that the Attorney General may take appropriate legal action

against the Defendants for violation of this Consent Judgment and/or for future violations of the Kansas Consumer Protection Act and any other law which the Attorney General is authorized to pursue and/or enforce.

23. Each Defendant hereby represents and warrants that he has had the opportunity to consult with and receive the advice of legal counsel regarding all matters relative to this Consent Judgment, including the rights and obligations of the Defendants under this Consent Judgment and the consequences of a breach of this Consent Judgment. Each Defendant represents that he has read the foregoing Consent Judgment and knows and understands the contents thereof. Each Defendant further represents and warrants that he is signing this Consent Judgment as the result of his own free act, and that he has not relied on any statement(s) or representation(s) of the Attorney General or anyone acting on his behalf, except for those contained in this Consent Judgment. By executing this Consent Judgment, each of the undersigned covenants and represents that he or she has the power and authority to execute this Consent Judgment.

24. The Release and Waiver of Claims, signed by the Defendants, attached hereto, and marked as "Exhibit A" is incorporated herein by reference in this Consent Judgment.

THE COURT HEREBY ENTERS JUDGMENT against Defendants, having reviewed the file, the Stipulated Consent Judgment and the attached Release and Waiver of Claims, as follows:

A. Paragraphs one (1) through twenty-four (24) above are hereby adopted as this Court's findings of fact and conclusions of law, pursuant to K.S.A. 60-252;

B. The Defendants' acts and practices set out above in paragraphs fourteen (14) through eighteen (18) are hereby declared to be deceptive and unconscionable acts and practices in violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-626, 50-627, and 50-640;

C. Pursuant to K.S.A. 50-632, the Defendants' acts and practices set out above in paragraphs fourteen (14) through eighteen (18) are declared to be acts and practices which are violations of the Kansas Consumer Protection Act.

D. Pursuant to K.S.A. 50-632(c)(5), all licenses or certificates of authority authorizing the Defendants to engage in business in Kansas are revoked;

E. Pursuant to K.S.A. 50-632(c)(6), the Defendants and their officers, directors, employees, shareholders and agents are hereby permanently enjoined from engaging in business in the State of Kansas;

F. Pursuant to K.S.A. 50-632(c)(6), the Defendants, individually or in association with other persons or entities, are hereby permanently enjoined from engaging in any "door to door sales", as defined by 50-640(b)(8), in the State of Kansas;

G. Plaintiff is awarded monetary recovery totaling Twenty Five Thousand Dollars (\$25,000.00), as follows:

- a. Eight Thousand Five Hundred Dollars (\$8,500.00) in damages to be paid as restitution to the Kansas consumers named above in paragraph thirteen (13), pursuant to K.S.A. 50-632(a)(3), and
- b. Sixteen Thousand Five Hundred Dollars (\$16,500.00) for reasonable investigative fees and expenses, as provided by K.S.A. 50-632(a)(4) and K.S.A. 50-636(c);

H. Each Defendant is 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. This Consent Judgment applies to all successors and assigns, along with every employee or agent of each Defendant.

I. This Consent Judgment is a final judicial order and judgment and operates as a permanent injunction against the Defendants.

J. The Court retains continuing jurisdiction over this Consent Judgment for an indefinite period of time for the purpose of protecting the integrity of this Consent Judgment and to enforce the terms of this Consent Judgment, if necessary.

K. This Consent Judgment can be modified, with consent of the Court, if changed circumstances subvert its intended purpose.

L. This Consent Judgment can be modified if the modification is agreed to by both parties and approved of by the Court.

M. The Court retains continuing jurisdiction over this matter in that the injunctive terms of this Consent Judgment remain in effect until dissolved by the Court.


N. Once the Attorney General has been notified that the payment of the Twenty-Five Thousand (\$25,000) by the Defendants has properly cleared the bank and the funds deposited or directly transferred to the State of Kansas, the Plaintiff shall timely file a Partial Satisfaction of Judgment with the Clerk of the Court. The filing of the Partial Satisfaction of Judgment shall not release or discharge the Defendants from the prospective application of the injunctive provisions this Court's Order.

O. Upon filing of the Partial Satisfaction of Judgment by the Plaintiff, it is the ruling of this Court that the Ex Parte Order of Sequestration dated October 23, 2013 is dissolved.

P. Once the Ex Parte Order of Sequestration dated October 23, 2013 is dissolved by the Plaintiff's filing of the Partial Satisfaction of Judgment, a representative of the Attorney General shall notify Jefferson County, Kansas.


Q. Upon such notification, Jefferson County, Kansas shall then release the sequestered property to the Defendants.

IT IS SO ORDERED


Hon. Rebecca W. Crotty
DISTRICT COURT JUDGE

Prepared and approved by:

PLAINTIFF:

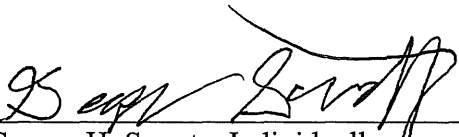



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Attorney General of the State of Kansas



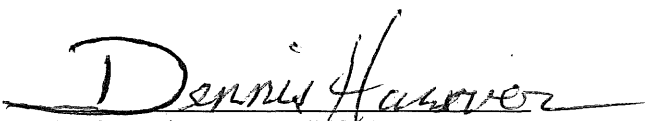
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