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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION _____

STATE OF KANSAS, <i>ex rel.</i>)	
DEREK SCHMIDT, Attorney General,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
MARK WAGNER, an individual)	
and)	
SUSAN CUTHILL, an individual)	
and)	
DOLLHOUSE, INC.)	
d/b/a MWR, INC.)	
d/b/a MIDWEST RESTORATIONS)	
)	
Defendants.)	
)	

(Pursuant to K.S.A. Chapter 60)

PETITION

COMES NOW the Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Kansas Attorney General, by and through counsel, Meghan D. Lowry, Assistant Attorney General, and for its cause of action against Mark Wagner, an individual, and Susan Cuthill, an individual, and Dollhouse, Inc., d/b/a MWR, Inc. and d/b/a Midwest Restorations, and alleges and states as follows:

PARTIES

1. Derek Schmidt is the duly elected, qualified and acting Attorney General for 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 Roofing Registration Act, K.S.A. § 50-6, 121 *et seq.*, and the Kansas Consumer Protection Act, K.S.A. § 50-623, *et seq.*

3. Defendant Mark Wagner ("Defendant Wagner") is an individual with a residential address at 980 Court Road W, Lot S 1143, Fremont, Nebraska 68025.

4. Defendant Wagner may be served at his residential address or wherever he may be found.

5. Defendant Susan Cuthill ("Defendant Cuthill") is an individual with a residential address at 980 Court Road W, Lot S 1143, Fremont, Nebraska 68025.

6. Defendant Cuthill may be served at her residential address or wherever she may be found.

7. Defendant Dollhouse, Inc. ("Defendant Dollhouse") is a Kansas Foreign Limited Liability Company organized under the laws of the state of Nebraska, with a principal place of business at 3506 N. 156th Street, Omaha, Nebraska 68116.

8. Defendant Dollhouse may be served with process at its principal place of business or wherever Defendant Dollhouse may be found.

9. All references to Defendant Wagner, Defendant Cuthill and Defendant Dollhouse ("the Defendants") herein include acts performed individually, in concert, or by or through employees, agents, representatives, affiliates, assignees and successors.

JURISDICTION AND VENUE

10. This Court has personal and subject matter jurisdiction over this controversy by the Kansas Consumer Protection Act, K.S.A. § 50-623, *et seq.*, specifically K.S.A. § 50-638(a).

11. Venue is proper in the Third Judicial District (Shawnee County), pursuant to K.S.A. § 50-638(b).

THE ROOFING REGISTRATION ACT

12. The Roofing Registration Act, K.S.A. § 50-6,121 *et seq.*, requires all roofing contractors offering roofing services in the state of Kansas to obtain a valid registration certificate through the Office of the Kansas Attorney General.

13. Any violation of the Roofing Registration Act shall be deemed to be a deceptive or unconscionable act or practice under the provisions of the Kansas Consumer Protection Act, K.S.A. § 50-623 *et seq.*

ALLEGATIONS COMMON TO ALL COUNTS

14. All of the foregoing paragraphs are hereby incorporated by reference.

15. Defendant Dollhouse is managed and controlled by Defendant Wagner and Defendant Cuthill.

16. At all times relevant hereto, and in the ordinary course of business, the Defendants acted as a “roofing contractor,” as that term is defined by K.S.A. § 50-6,122(a)(1), and as a “supplier,” as that term is defined by K.S.A. § 50-624(l).

17. At all times relevant hereto, and in the ordinary course of business, the Defendants made or caused to be made “consumer transactions,” as that term is defined by K.S.A. § 50-624(c).

18. At all times relevant hereto, and in the ordinary course of business, the Defendants made or caused to be made “door-to-door sales,” as that term is defined by K.S.A. § 50-640(c)(1).

19. At all times relevant hereto, the Defendants made or caused to be made door-to-door sales with “consumers,” as that term is defined by K.S.A. § 50-624(b).

20. From at least November of 2014 until May of 2016, the Defendants made the aforementioned door-to-door solicitations and sales for the purpose of soliciting and selling the Defendants’ roofing services to Kansas consumers.

21. Since at least November of 2014, the Defendants engaged in the business of and acted in the capacity of a roofing contractor within this state.

22. Specifically, the Defendants offered to engage in or solicited roofing-related services and performed roofing services.

23. The Defendants are not, and never have been, registered as a roofing contractor in this state.

Shawnee County Roofing Services

24. On November 25, 2014, the Defendants, doing business as MWR, Inc., contracted to perform roofing services with one Kansas consumer.

25. The Defendants solicited the aforementioned roofing services through a door-to-door sale.

26. The Defendants performed roofing services on the consumer’s home.

27. The Defendants were not registered to operate as a roofing contractor at that time.

28. “MWR, Inc.” was not registered as a corporation at that time.

29. The Defendants did not complete all of the roofing services that the Defendants

contracted to perform on the Consumer's home.

30. The Defendants failed to provide the consumer written notice of the consumer's three-day right to cancel the transaction.

31. The Defendants failed to provide the consumer duplicate notice of the consumer's three-day right to cancel the transaction.

32. On January 23, 2015, the Defendants, doing business as "MWR, Inc.," contracted to perform roofing services with one additional Kansas consumer.

33. The consumer was over the age of sixty (60) when the transaction occurred.

34. The Defendants solicited the aforementioned roofing services through a door-to-door sale.

35. The Defendants performed roofing services on the consumer's home.

36. The Defendants were not registered to operate as a roofing contractor at that time.

37. "MWR, Inc." was not registered as a corporation at that time.

38. The Defendants did not complete all of the roofing services that the Defendants contracted to perform on the Consumer's home.

39. The Defendants failed to provide the consumer written notice of the consumer's three-day right to cancel the transaction.

40. The Defendants failed to provide the consumer duplicate notice of the consumer's three-day right to cancel the transaction

Jefferson County Roofing Services

41. On February 3, 2015, the Defendants, doing business as MWR, Inc., contracted to perform roofing services with one additional Kansas consumer.

42. The consumer was over the age of sixty (60) when the transaction occurred.

43. The Defendants were not registered to operate as a roofing contractor at that time.
44. “MWR, Inc.” was not registered as a corporation at that time.
45. The Defendants solicited the aforementioned roofing services through a door-to-door sale.
46. The Defendants failed to provide the consumer written notice of the consumer’s three-day right to cancel the transaction.
47. The Defendants failed to provide the consumer duplicate notice of the consumer’s three-day to cancel the transaction

Marshall County Roofing Services

48. On April 28, 2016, the Defendants, doing business as MWR, Inc., contracted to perform roofing services with one additional Kansas consumer.
49. The Defendants were not registered to operate as a roofing contractor at that time.
50. “MWR, Inc.” was not registered as a corporation at that time.
51. The Defendants solicited the aforementioned roofing services through a door-to-door sale.
52. The Defendants failed to provide the consumer written notice of the consumer’s three-day right to cancel the transaction.
53. The Defendants failed to provide the consumer duplicate notice of the consumer’s three-day right to cancel the transaction.
54. On April 28, 2016, the Defendants, doing business as MWR, Inc., contracted to perform roofing services with one additional Kansas consumer.
55. The consumer was over the age of sixty (60) at the time the transaction occurred.
56. The Defendants were not registered to operate as a roofing contractor at that time.

57. "MWR, Inc." was not registered as a corporation at that time.
58. The Defendants solicited the aforementioned roofing services through a door-to-door sale.
59. The Defendants failed to provide the consumer written notice of the consumer's three-day right to cancel the transaction.
60. The Defendants failed to provide the consumer duplicate notice of the consumer's three-day right to cancel the transaction.
61. On May 2, 2016, the Defendants, doing business as MWR, Inc., contracted to perform roofing services with one additional Kansas consumer.
62. The Defendants were not registered to operate as a roofing contractor at that time.
63. "MWR, Inc." was not registered as a corporation at that time.
64. The Defendants solicited the aforementioned roofing services through a door-to-door sale.
65. The Defendants failed to provide the consumer written notice of the consumer's three-day right to cancel the transaction.
66. The Defendants failed to provide the consumer duplicate notice of the consumer's his three-day right to cancel the transaction.
67. On May 5, 2016, the Defendants, doing business as MWR, Inc., contracted to perform roofing services with one additional Kansas consumer.
68. The Defendants were not registered to operate as a roofing contractor at that time.
69. "MWR, Inc." was not registered as a corporation at that time.
70. The Defendants solicited the aforementioned roofing services through a door-to-door sale.

71. The Defendants failed to provide the consumer written notice of the consumer's three-day right to cancel the transaction.

72. The Defendants failed to provide the consumer duplicate notice of the consumer's three-day right to cancel the transaction.

73. On May 10, 2016, the Defendants, doing business as MWR, Inc., contracted to perform roofing services with one additional Kansas consumer.

74. The Defendants were not registered to operate as a roofing contractor at that time.

75. "MWR, Inc." was not registered as a corporation at that time.

76. The Defendants solicited the aforementioned roofing services through a door-to-door sale.

77. The Defendants failed to provide the consumer written notice of the consumer's three-day right to cancel the transaction.

78. The Defendants failed to provide the consumer duplicate notice of the consumer's three-day right to cancel the transaction.

CLAIMS

COUNT I

KANSAS ROOFING REGISTRATION ACT KANSAS CONSUMER PROTECTION ACT

79. All of the foregoing paragraphs are hereby incorporated by reference.

80. The Defendants engaged in the business of or operated in the capacity as a roofing contractor in Kansas without having a valid registration certificate on at least eight (8) occasions, in violation of K.S.A. § 50-6,123(a).

81. Defendant's violation of K.S.A. § 50-6,123(a) is a deceptive or unconscionable act or practice, pursuant to K.S.A. § 50-6,138(a), and thus a violation of K.S.A. § 50-626, *et seq.*, or K.S.A. § 50-627, *et seq.*

82. The Defendants' deceptive or unconscionable acts or practices are distinct violations for which the Court should assess a penalty in the amount of \$10,000.00 per violation, pursuant to K.S.A. § 50-636, in the aggregate of \$80,000.00.

83. The Defendants' deceptive or unconscionable acts or practices committed against an "elder person," as that term is defined by K.S.A. § 50-676(a), are distinct violations committed against a protected consumer, for which the Court should assess an enhanced civil penalty pursuant to K.S.A. § 50-677, in the amount of \$30,000.00.

84. The Defendants shall be held jointly and severally liable for the aforementioned violation of the Roofing Registration Act, K.S.A. § 50-6,121 *et seq.*

COUNT II
KANSAS CONSUMER PROTECTION ACT

85. All of the foregoing paragraphs are hereby incorporated by reference.

86. In the course of making, or causing to be made, consumer transactions with at least eight (8) Kansas consumers, the Defendants willfully made, or caused to be made, representations that the Defendants had a sponsorship, approval, status, affiliation or connection that the Defendants did not have, specifically, that the Defendants, doing business as "MRW, Inc.," were a registered corporation, in violation of K.S.A. § 50-626(b)(1)(B).

87. Each willful misrepresentation of the Defendants' sponsorship, approval, status, affiliation or connection is a deceptive act in violation of K.S.A. § 50-626, for which the Court should assess a civil penalty in the amount of \$10,000.00, in the aggregate of \$80,000.00.

88. The Defendants' deceptive acts or practices committed against an "elder person," as that term is defined by K.S.A. § 50-676(a), are distinct violations committed against a protected consumer, for which the Court should assess an enhanced civil penalty pursuant to K.S.A. § 50-677, in the amount of \$30,000.00.

89. The Defendants shall be held jointly and severally liable for the aforementioned violation of the Kansas Consumer Protection Act, K.S.A. § 50-623 *et seq.*

COUNT III
KANSAS CONSUMER PROTECTION ACT

90. All of the foregoing paragraphs are hereby incorporated by reference.

91. In the course of making, or causing to be made, consumer transactions with at least two (2) Kansas consumers, the Defendants entered in to consumer transactions from which the consumer was unable to receive a material benefit of the subject of the transaction, in violation of K.S.A. § 50-627(b)(3).

92. Each consumer transaction from which the consumer was unable to receive a material benefit of the subject of the transaction is an unconscionable act or practice in violation of K.S.A. § 50-627, for which the Court should assess a penalty in the amount of \$10,000.00 per violation, in the aggregate of \$20,000.00.

93. The Defendants' unconscionable acts or practices committed against an "elder person," as that term is defined by K.S.A. § 50-676(a), are distinct violations committed against a protected consumer, for which the Court should assess an enhanced civil penalty pursuant to K.S.A. § 50-677, in the amount of \$10,000.00.

94. The Defendants shall be held jointly and severally liable for the aforementioned violation of the Kansas Consumer Protection Act, K.S.A. § 50-623 *et seq.*

COUNT IV

KANSAS CONSUMER PROTECTION ACT

95. All of the foregoing paragraphs are hereby incorporated by reference.

96. In the course of making, or causing to be made, at least eight (8) door-to-door solicitations and sales of roofing services to Kansas consumers, the Defendants failed to furnish the consumer with a receipt providing notice to the consumer of their right to cancel the transaction at any time until the third business day following the transaction, in violation of K.S.A. § 50-640(b)(1).

97. Each failure to furnish the consumer with such notice of the consumer's right to cancel the transaction at the time the door-to-door sale was made is a deceptive act in violation of K.S.A. § 50-626, pursuant to K.S.A. 50-640(b), for which the Court should assess a penalty in the amount of \$10,000.00 per violation, in the aggregate of \$80,000.00.

98. The Defendants' deceptive acts or practices committed against an "elder person," as that term is defined by K.S.A. § 50-676(a), are distinct violations committed against a protected consumer, for which the Court should assess an enhanced civil penalty pursuant to K.S.A. § 50-677, in the amount of \$30,000.00.

99. The Defendants should be held jointly and severally liable for the aforementioned violation of the Kansas Consumer Protection Act, K.S.A. § 50-623 *et seq.*

COUNT V KANSAS CONSUMER PROTECTION ACT

100. All of the foregoing paragraphs are hereby incorporated by reference.

101. In the course of making, or causing to be made, at least eight (8) door-to-door solicitations and sales of roofing services to Kansas consumers, the Defendants failed to furnish the consumer with a duplicate notice to the consumer of their right to cancel the transaction at

any time until the third business day following the transaction, in violation of K.S.A. § 50-640(b)(2).

102. Each failure to furnish the consumer with such duplicate notice of the consumer's right to cancel the transaction at the time the door-to-door sale was made is an unfair and deceptive act in violation of K.S.A. § 50-626, pursuant to K.S.A. § 50-640(b), for which the Court should assess a penalty in the amount of \$10,000.00 per violation, in the aggregate of \$80,000.00.

103. The Defendants' unconscionable acts or practices committed against an "elder person," as that term is defined by K.S.A. § 50-676(a), are distinct violations committed against a protected consumer, for which the Court should assess an enhanced civil penalty pursuant to K.S.A. § 50-677, in the amount of \$30,000.00.

104. The Defendants should be held jointly and severally liable for the aforementioned violation of the Kansas Consumer Protection Act, K.S.A. § 50-623 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. The above-listed acts and practices be declared violations of the Roofing Registration Act and the Kansas Consumer Protection Act, pursuant to K.S.A. § 50-632(a)(1);

B. The Defendants be permanently enjoined from these and any other practices in violation of the Roofing Registration Act and the Kansas Consumer Protection Act, pursuant to K.S.A. § 50-632(c)(1);

C. The Defendants be permanently enjoined from engaging in business in Kansas, pursuant to K.S.A. § 50-632(c)(6);

D. The Defendants pay reasonable investigative fees and expenses to Plaintiff in the

amount of \$1,500.00, pursuant to K.S.A. § 50-636(c);

E. The Defendants pay a civil penalty in the amount of \$10,000.00 for each violation alleged herein, in the aggregate of \$470,000.00;

F. The Defendants pay \$4,702.89 to be disbursed to the above-referenced consumers as restitution, pursuant to K.S.A. § 50-632(c)(2), as follows:

a. Dalinda Erhardt \$2,767.00

b. Dennis Harvey \$1,935.89

G. The Defendants pay all court costs and all other costs associated with distributing and executing on any judgment made by this Court

Respectfully submitted,



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