

ELECTRONICALLY FILED
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CLERK OF THE ALLEN COUNTY DISTRICT COURT
CASE NUMBER: 2017-CV-000033



Court: Allen County District Court
Case Number: 2017-CV-000033
Case Title: State of Kansas ex rel Derek Schmidt, Attorney General vs. Alta Care Corporation, et al.
Type: Journal Entry of Default Judgment as to Defendant Florida Senior Housing Coun

SO ORDERED.

A handwritten signature in black ink that reads "Daniel D. Creitz". The signature is written in a cursive style with a large, stylized 'z' at the end.

/s/ Honorable Daniel D. Creitz, Chief District Court Judge

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**IN THE DISTRICT COURT OF ALLEN COUNTY, KANSAS
THIRTY-FIRST JUDICIAL DISTRICT**

STATE OF KANSAS, *ex rel.*)
Derek Schmidt, Attorney General,)
)
Plaintiff,)
)
v.)
)
)
AltaCare Corporation)
DBA Pine Crest Nursing Home)
and)
Douglas K. Mittleider, an individual)
and)
Florida Senior Housing Council, Inc.)
)
Defendants.)
)

Case No. 2017-CV-33

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

JOURNAL ENTRY OF DEFAULT JUDGMENT
AS TO DEFENDANT FLORIDA SENIOR HOUSING COUNCIL, INC.

NOW, on this 9th day of January, 2018, Plaintiff's Motion for Default Judgment against Defendant Florida Senior Housing Council, Inc. comes before the Court. Plaintiff, State of Kansas *ex rel.* Derek Schmidt, Attorney General, appears by and through Assistant Attorney General Melanie Jack. Defendants Altacare Corporation and Douglas K. Mittleider appear by and through Lisa M. Brown, of Goodell, Stratton, Edmonds, & Palmer, L.L.P.

Having heard the statements of the parties, reviewed the file, and being duly advised in the premises, the Court enters the following findings of fact and conclusions of law:

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 Kansas Consumer Protection Act ("KCPA"), K.S.A. 50-623, *et seq.*, and the Wayne Owen Act, K.S.A. 50-6,139 *et seq.*, which is part of and supplemental to the Kansas Consumer Protection Act.

3. Defendant Florida Senior Housing Council Inc. is a Foreign Not For Profit Corporation organized under the laws of the State of Florida.

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

5. Venue is proper in Allen County, pursuant to K.S.A. 50-638(b).

6. On May 8, 2017, Plaintiff filed a Petition against Defendant Florida Senior Housing Council, Inc. ("Defendant").

7. Defendant was served with Plaintiff's Petition, Summons, and supporting documentation by Officer Monty D. Mohr of the Georgia Attorney General's office on July 21, 2017. Defendant was served by personal service on Alfred H. Cowley, President of Defendant corporation, at his residence located at 222 Robbins Creek Trail SW, Calhoun, GA 30701.

8. Defendant failed to file an Answer and more than 30 days has passed since service, as required by K.S.A. 60-308(a)(3), and Defendant is in default.

9. Plaintiff filed a Motion for Default Judgment against Defendant Florida Senior Housing, Inc. on October 10, 2017.

10. Plaintiff filed an Amended Petition on October 11, 2017. Defendant Florida Senior Housing, Inc., was served with Plaintiff's Amended Petition, Amended Summons, Motion for Default Judgment and Order for Hearing on Default Judgment on October 18, 2017. Defendant was served by personal service on Alfred H. Cowley, President of Defendant corporation, at his residence located at 222 Robbins Creek Trail SW, Calhoun, GA 30701.

11. Defendant failed to file an Answer on the Amended Petition and more than 30 days has passed since service, as required by K.S.A. 60-308(a)(3), and Defendant is in default.

12. Plaintiff filed a Renewed Motion for Default Judgment on October 16, 2017.

13. Defendant was sent notice of the January 9, 2018, hearing on the Renewed Motion for Default Judgment on December 18, 2017.

14. Defendant is not a minor nor an incapacitated person.

15. Plaintiff is entitled to judgment by default, and to all remedies Plaintiff has requested in the Amended Petition, pursuant to K.S.A. 50-632.

16. At all times relevant hereto, and in the ordinary course of business, Defendant was a "person" as that term is defined by K.S.A. 2016 Supp. 50-6,139b(a)(2).

17. Defendant acted as a "supplier" in Kansas, as that term is defined by K.S.A. 60-624(1).

18. Defendant made "consumer transactions" in Kansas, as that term is defined by K.S.A. 50-624(c).

19. At all times relevant hereto, and in the ordinary course of business, Defendant acted as "holders," as that term is defined in K.S.A. 2016 Supp. 50-6,139b(a)(1), of "personal information," as that term is defined by K.S.A. 2016 Supp. 50-6,139b(a)(3).

20. At all times relevant hereto, Defendant had in its custody or control “records”, as that term as defined by K.S.A. 2016 Supp. 50-6,139b(a)(4), containing “personal information” as that term is defined by K.S.A. 2016 Supp. 50-6,139b(a)(3).

21. Such documents were received, collected, maintained and possessed by Defendant or caused to be such.

22. On and before July 1, 2015, and continuing until the filing of this petition, Defendant possessed or caused to be possessed such documents at the site of Pinecrest Nursing Home at 1020 Pine Street Humboldt, Kansas. The documents were stored in boxes and unsecured filing cabinets in unsecured rooms in an unsecured building.

23. Defendant failed to properly protect the aforementioned documents as required by K.S.A. 50-6,139(b).

24. On and after July 1, 2016, Defendant failed to implement and maintain reasonable procedures and practices as required by K.S.A. 2016 Supp. 50-6,139b(b)(1), an unconscionable act or practice under the Kansas Consumer Protection Act, in violation of K.S.A. 50-627.

25. On and after July 1, 2016, Defendant failed to exercise reasonable care to protect personal information as required by K.S.A. 2016 Supp. 50-6,139b(b)(1), an unconscionable act or practice under the Kansas Consumer Protection Act, in violation of K.S.A. 50-627.

26. On and after July 1, 2016, Defendant failed to take reasonable steps to destroy or arrange for the destruction of any records within Defendant’s custody or control containing any person’s personal information when Defendant no longer intended to maintain or possess such records as required by K.S.A. 2016 Supp. 50-6,139b(b)(2), an unconscionable act or practice under the Kansas Consumer Protection Act, in violation of K.S.A. 50-627.

27. Prior to July 1, 2016, Defendant failed to take reasonable steps to destroy or arrange for the destruction of a customer's records within its custody or control containing personal information which was no longer to be retained by Defendant by shredding, erasing or otherwise modifying the personal information in the records to make it unreadable or undecipherable through any means, in violation of K.S.A. 50-7a03 (repealed effective July 1, 2016), an unconscionable act or practice under the Kansas Consumer Protection Act, in violation of K.S.A. 50-627.

28. Defendants Altacare Corporation and Douglas K. Mittleider have no objection to Plaintiff's Motion for Default Judgment against Defendant Florida Senior Housing, Inc.

Relief requested by Plaintiff is reserved pending further discovery between the parties.

IT IS SO ORDERED. THIS ORDER IS EFFECTIVE AS OF THE DATE AND TIME SHOWN ON THE ELECTRONIC FILE STAMP.

Prepared and respectfully submitted by:

/s/ Melanie Jack

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Approved:

/s/ Lisa M. Brown

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Attorney for Defendants

AltaCare Corporation

and Douglas K. Mittleider

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she did e-file the forgoing Journal Entry of Default on January 22, 2018, and that due notice and the filing thereof will be provided via the e-file system to Defendants' attorney Lisa M. Brown, of Goodell, Stratton, Edmonds & Palmer, L.L.P., 515 S. Kansas Avenue, Topeka, KS 66603 and to Florida Senior Housing Council, Inc %Alfred H. Cowley 222 Robbins Creek Trail SW, Calhoun, GA 30701 via first class mail, postage prepaid, United States Postal Service.

/s/ Melanie Jack

Melanie Jack, #13213