



Court: Shawnee County District Court
Case Number: 2017-CV-000109
Case Title: State of Kansas ex rel Derek Schmidt Atty General
vs. John Shively
Type: Journal Entry of Consent Judgment

SO ORDERED.

A handwritten signature in cursive script that reads "Larry D. Hendricks".

/s/ Honorable Larry Hendricks, District Judge

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

STATE OF KANSAS, *ex rel.*)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff,)
)
v.)
)
JOHN SHIVELY, an individual)
d/b/a J&S CONSTRUCTION)
d/b/a J&R REMODELING)
)
Defendant.)
)

Case No. 2017-CV-109

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this date, the parties’ Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. § 50-632(b). The Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Attorney General, appears by and through Sarah M. Dietz, Assistant Attorney General.

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

PARTIES, JURISDICTION AND VENUE

1. Derek Schmidt is the duly elected, qualifying 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 Roofing Registration Act (“RRA”), K.S.A. § 50-6,121, *et seq.*
3. Defendant John Shively d/b/a J&S Construction d/b/a J&R Remodeling is a Kansas Sole Proprietorship.

4. Defendant has a residential address and business address at 930 SE 34th Street, Topeka, Kansas 66605.

5. All references to the Defendant herein include acts performed individually, in concert, or by or through employees, directors, officers, owners, managers, agents, assigns, and all other persons or entities acting in concert with them or on their behalf, including their predecessors, subsidiaries, affiliates and successors.

6. Jurisdiction and venue are appropriate in District Court of Shawnee County, Kansas, pursuant to K.S.A. § 50-638(a) and (b), respectively.

ALLEGATIONS

7. Plaintiff alleges that the Defendant has acted as a “supplier” in Kansas, as that term is defined by K.S.A. § 50-624(1).

8. Plaintiff alleges that the Defendant has engaged in “consumer transactions” in Kansas, as that term is defined by K.S.A. § 50-624(c).

9. Plaintiff alleges that the Defendant is a “roofing contractor,” as that term is defined by K.S.A. § 50-6,122(a)(1).

10. Plaintiff alleges that at all times relevant hereto, the Defendant engaged in acts and practices in violation of the Roofing Registration Act, K.S.A. § 50-6,121 *et seq.*, which acts and practices include, but are not limited to:

- a. The Defendant acted as a roofing contractor in the State of Kansas.
- b. The Defendant contracted for roofing services in the State of Kansas.
- c. When the Defendant performed roofing services in the State of Kansas, he was not properly registered to do so with the Office of the Kansas Attorney General.

- d. The Defendant entered into a consumer transaction in which the consumer was unable to receive a material benefit of the transaction.
- e. The Defendant entered into a consumer transaction that was excessively one-sided in favor of the supplier.

INJUNCTIVE RELIEF

11. The Defendant shall be permanently enjoined from operating as a roofing contractor in the State of Kansas.

12. The Defendant agrees to comply with all Kansas laws, statutes, rules and regulations relating to consumer transactions in Kansas, specifically, but not limited to, the Kansas Consumer Protection Act, K.S.A. § 50-623 *et seq.*

13. The Defendant shall not cause or encourage third parties, nor knowingly permit third parties acting on their behalf, to engage in practices from which Defendants are prohibited by this Consent Judgment.

14. The Defendant shall not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices which are prohibited in this Consent Judgment or for any other purpose which would otherwise circumvent the spirit or purposes of this Consent Judgment.

15. The Defendant agrees that the terms of this Consent Judgment apply to acts performed individually, in concert, or by or through its employees, agents, representatives, affiliates, assignees and successors.

MONETARY RELIEF

16. The Defendant agrees to issue a refund in the amount of \$1,125 in the form of a

cashier's check, money order or other certified funds payable to The Office of the Kansas Attorney General, to be dispersed to David Goldhammer, mailed to:

Sarah M. Dietz, Assistant Attorney General
Office of the Kansas Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, Kansas 66612

17. Monthly payments of \$112.50 will begin on or before November 30, 2017 and continue until the total amount of \$1,125.00 is paid.

18. Failure by Defendant to make any installment payment shall trigger an acceleration clause whereby all outstanding payments become due to Plaintiff no later than five (5) calendar days after the failure to deliver any payment.

SUSPENDED MONETARY JUDGMENT

19. Judgment is hereby entered in favor of plaintiff and against Defendant in the amount of \$10,000 for the payment of civil penalties for violations of the Roofing Registration Act, pursuant to K.S.A. 50-6,123. *Provided, however*, this monetary judgment shall be suspended against Defendant as long as the Court makes no finding(s), as provided in the following section of this Consent Judgment titled "right to Reopen," that Defendant has violated any provision of this Consent Judgment.

RIGHT TO REOPEN

19. Plaintiff's agreement to Suspended Monetary Judgment contained in this Consent Judgment is expressly premised upon Defendant's material compliance with the terms of this Consent Judgment.

20. Defendant's "material compliance" with the terms of this Consent Judgment shall mean material compliance with all of the provisions included in Paragraphs 11-29.

21. If, upon motion by the Attorney General to the Court, the Court finds that the Defendant has violated a material term of this Consent Judgment, the suspension of the monetary judgment as to the Defendant will be terminated and the entire judgment amount of \$10,000 shall become immediately due and payable to the Defendant, and interest computed at the rate prescribed under Kansas law, shall begin immediately to accrue on the unpaid balance.

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

23. Proceedings instituted under the foregoing paragraphs are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings Plaintiff may initiate to enforce this Consent Judgment.

OTHER PROVISIONS

20. 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.

21. 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.

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

from any other Federal or State agency to enforce any other federal, state, or local law under its jurisdiction.

23. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the attorney general of the Defendant's business practices, nor shall the Defendant represent the Consent Judgment as such approval. The parties further 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 this Consent Judgment shall not be construed to be an approval of or sanction of any representations, acts, or practices of the Defendant, nor shall any inaction by the Attorney General be considered a waiver by the attorney general of any rights under this Consent Judgment or applicable law.

24. This Consent Judgment represents the entire agreement between Plaintiff and the Defendant, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Consent Judgment which are not fully expressed herein or attached hereto.

25. Defendant hereby represents and warrants that Defendant 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 Defendant under this Consent Judgment and the consequences of breach hereunder. Defendant represents that Defendant has read the Consent Judgment and knows and understands the contents thereof. Defendant further represents and warrants that Defendant is signing this Consent Judgment as the result of his own free act, and that Defendant 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.

26. By signing this Consent Judgment, the representative of Defendant represents and

warrants that such person is duly and legally authorized to execute this Consent Judgment on behalf of this Defendant, thus binding the Defendant to the provisions of this Consent Judgment.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as findings of fact and conclusions of law of the Court and any monies owed hereunder by the Defendant immediately becomes a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, the provisions of K.S.A. § 50-632(b) and the Roofing Registration Act, the court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

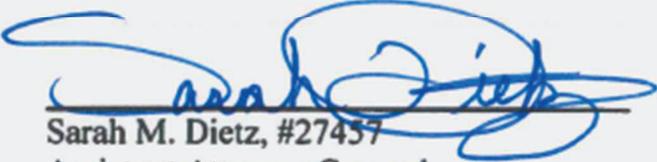
IT IS SO ORDERED.

THIS ORDER IS EFFECTIVE AS OF THE DATE AND TIME OF THE ELECTRONIC FILE STAMP.

Respectfully submitted,

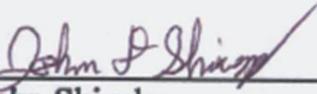


DEREK SCHMIDT, #17781
Kansas Attorney General

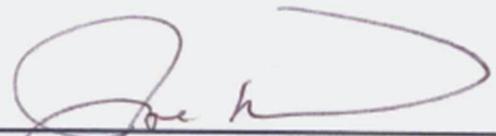


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