

ELECTRONICALLY FILED
2022 Oct 25 PM 3:27
CLERK OF THE SHAWNEE COUNTY DISTRICT COURT
CASE NUMBER: 2022-CV-000416



Court: Shawnee County District Court
Case Number: 2022-CV-000416
Case Title: Office of the Kansas Attorney General vs. Ryan Metzker, et al.
Type: Order for Default Judgment Against Defendant

SO ORDERED.

A handwritten signature in cursive script that reads "M.E. Christopher".

/s/ Honorable Mary E Christopher, District Judge

Sarah Dietz, #27457
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**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
THIRD JUDICIAL DISTRICT**

STATE OF KANSAS, <i>ex rel.</i>)	
DEREK SCHMIDT, Attorney General,)	
)	
Plaintiff,)	
)	
v.)	
)	CASE NO. 2022-CV-416
BENJAMIN THAYER, an individual,)	
dba Copperhead Contracting, LLC)	
and)	
RYAN METZKER, an individual)	
dba Copperhead Contracting, LLC)	
and)	
COPPERHEAD CONTRACTING, LLC, a corporation)	
)	
Defendants.)	
)	
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(Pursuant to K.S.A. Chapters 50 and 60)		

ORDER FOR DEFAULT JUDGMENT AGAINST DEFENDANT

NOW, on this date, Plaintiff’s Motion for Default Judgment against the Defendants Benjamin Thayer, Ryan Metzker and Copperhead Contracting LLC (“Motion for Default Judgment”) comes before this Court for consideration. Plaintiff, State of Kansas ex rel. Derek Schmidt, Attorney General, appears by and through Assistant Attorney General Sarah M. Dietz.

Defendants Benjamin Thayer, Ryan Metzker and Copperhead Contracting, LLC appears not and is in default.

WHEREUPON, after reviewing the Court's file and Plaintiff's Motion for Default Judgment, the Court finds the following:

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, K.S.A. 50-623, *et seq.*

3. 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).

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

5. On July 7, 2022, Plaintiff filed a Petition against Defendants Benjamin Thayer, Ryan Metzker and Defendant Copperhead Contracting, LLC ("Defendants").

6. Defendants Benjamin Thayer and Ryan Metzker ("Defendants Thayer and Metzker") are the owners and operators and exercises exclusive control over Defendant Copperhead Contracting, LLC.

7. Defendant Copperhead Contracting, LLC ("Defendant Copperhead Contracting") is a non-residential limited liability company with a principal address of 52 Merchant Row, Milton, Wisconsin 53563-1135. The address listed with the Wisconsin Department of Financial

Institutions for the Registered Agent, Ryan Metzker, is 52 Merchant Row, Milton, Wisconsin 53563-1135.

8. K.S.A. 17-6807 provides, “All corporations, whether they expire by their own limitation or are otherwise dissolved, including revocation or forfeiture of articles of incorporation...shall be continued, nevertheless, for the term of three years from such expiration or dissolution or for such longer period as the district court in its discretion shall direct, bodies corporate for the purpose of prosecuting and defending suits...”

9. Defendant Benjamin Thayer was served a copy of Plaintiff’s Petition, Affidavit and Exhibits, and Summons by Personal Service on July 22, 2022 at his residential address on file with the court and located in Jefferson City, Wisconsin, by a Jefferson County Sheriff’s Deputy pursuant to K.S.A. 60-205 and K.S.A. 60-303.

10. Defendant Copperhead Contracting was served with Plaintiff’s Petition, Affidavit and Exhibits, and Summons by Personal Service on August 3, 2022 at the residential address of Defendant Thayer in Jefferson City, Wisconsin by a Jefferson County Sheriff’s Deputy.

11. Defendant Ryan Metzker was served with Plaintiff’s Petition, with attached Affidavit and Exhibits, and Summons by tacking of his residence on September 9, 2022 at his residential address on file with the court and located in Fort Atkinson, Wisconsin and mailing a notice and copy on September 21, 2022 pursuant to K.S.A. 60-205 and K.S.A. 60-303.

12. The Returns of Service for the Petition, with Affidavit and Exhibits, and Summons were filed with the Court for Defendant Benjamin Thayer on August 1, 2022, for Defendant Copperhead Contracting on August 16, 2022, and for Defendant Ryan Metzker on September 30, 2022, establishing proper service on Defendants, pursuant to K.S.A. 60-205 and K.S.A. 60-303.

13. Defendants failed to file an Answer within thirty (30) days after being served with process, as required by K.S.A. 60-212(a)(1). Therefore, Defendants are in default as set forth in K.S.A. 60-255.

14. Defendants have not appeared in this action. Therefore, no notice of a hearing on Plaintiff's Motion for Judgment by Default need be served on Defendants, pursuant to K.S.A. 60-255(a) and K.S.A. 60-205(a)(2).

15. Defendants have failed to file an Answer within thirty (30) days after being served with process, as required by K.S.A. 60-212(a)(1). Therefore, Defendants are in default as set forth in K.S.A. 60-255.

16. Plaintiff filed its Motion for Default Judgment on October 24, 2022.

17. Plaintiff's Motion for Default Judgment is predicated on Defendants' failure to file an Answer to the Plaintiff's Petition, which was filed on July 7th, 2022.

18. Defendants are not a minor or an incapacitated person.

19. Defendants are in default pursuant to K.S.A. 60-255.

20. The factual allegations set forth in the Plaintiff's Motion for Default Judgment are adopted by the Court as its findings of fact and conclusions of law and are as follows:

- a. Defendants Thayer and Metzker exclusively manage, operate and control Defendant Copperhead Contracting.
- b. At all times relevant hereto, and in the ordinary course of business, Defendant Thayer, Defendant Metzker and Defendant Copperhead Contracting acted as "suppliers," as that term is defined by K.S.A. 50-624(l).

- c. At all times relevant hereto, and in the ordinary course of business, Defendants engaged in or enforced “consumer transactions,” as that term is defined by K.S.A. 50-624(c).
- d. At all times relevant hereto, and in the ordinary course of business, Defendants acted as “roofing contractors,” as that term is defined by K.S.A. 50-6,122(a)(1).
- e. At all times relevant hereto, Defendants Thayer and Metzker and Defendant Copperhead Contracting made or caused to be made “door-to-door sales” as defined by K.S.A. 50-640(c)(1).
- f. Since at least May of 2018, Defendants have engaged in the business of and acted in the capacity as a roofing contractor within this state.
- g. The Defendants have offered to perform and/or performed roofing related services for Kansas consumers since May of 2018 and as such are required to obtain a roofing contractor registration certificate from the OAG.
- h. Defendants, as part of their regular business practices, contracted with at least seven (7) Kansas consumers to perform roofing related services.
- i. Defendants, as part of their regular business practices, accepted payments from consumers for jobs for which they contracted.
- j. On May 25, 2018, City of Oberlin issued a solicitation permit to Defendant Copperhead Contracting.
- k. On May 29, 2018, a registration application for Defendant Copperhead Contracting was received by The Office of the Kansas Attorney General, listing Benjamin Thayer as the owner. The application was incomplete.

- l. On May 31, 2018, The Office of the Kansas Attorney General received an anonymous tip regarding Defendant Copperhead Contracting soliciting, including door-to-door and placing signs in yards.
- m. On June 4, 2018, The Roofing Registration Unit (“RRU”) of The Office of the Kansas Attorney General traveled to Oberlin, Kansas and personally observed sign solicitations for Defendant Copperhead Contracting.
- n. On or about May 22, 2018, following a hail storm, Defendants contracted to perform roofing related services for Kansas consumer, Consumer J.W., in Oberlin, Kansas, Decatur County.
- o. On or about May 22, 2018, following a hail storm, Defendants entered into three (3) separate contracts to perform roofing related services for Kansas consumer, Consumer S.C., in Oberlin, Kansas, Decatur County.
- p. On or about May 22, 2018, following a hail storm, Defendants contacted to perform roofing related services for Kansas consumer, Consumer G.M., in Oberlin, Kansas, Decatur County.
- q. On or about May 19, 2018, following a hail storm, Defendants contracted to perform roofing related services for Kansas consumer, Consumer L.B., in Oberlin, Kansas, Decatur County.
- r. On or about May 20, 2018, following a hail storm, Defendants contracted to perform roofing related services for Kansas consumer, Consumer A.K., in Oberlin, Kansas, Decatur County.

- s. On or about May 21, 2018, following a hail storm, Defendants contracted with Fine Spirits for roofing related services in Oberlin, Kansas, Decatur County.
- t. On or about May 28, 2018, following a hail storm, Defendants contracted to perform roofing related services for Kansas consumer, Consumer E.W., in Oberlin, Kansas, Decatur County.
- u. Defendants do not and have never held a roofing registration with the State of Kansas.
- v. Defendants acted in the capacity of a roofing contractor and offered to perform roofing services on at least seven (7) occasions without holding a valid registration certificate issued by the OAG, in violation of the KRRRA, K.S.A. 50-6,133(a)(6).
- w. In the course of soliciting, at least eight (8) door-to-door sales to Kansas consumers, Defendants failed to furnish the consumer with a copy of the completed receipt or contract which contained the consumer's notice of right to cancel the agreement within three business days, pursuant to K.S.A. 50-640(b)(1).
- x. In the course of soliciting, at least eight (8) door-to-door sales of services to Kansas consumers, Defendants failed to provide the consumer with a completed form in duplicate notice of the three day right entitled "NOTICE OF CANCELLATION," , pursuant to K.S.A. 50-640(b)(2).
- y. Defendants were provided notice on July 7, 2022 that failure to answer this petition involving door-to-door consumer transactions under the Kansas Consumer Protection Act, 50-623 *et seq.*, could result in Defendants being

prohibited from making and conducting door-to-door sales should a judgment be issued. Violation of a judgment or temporary or permanent restraining order issued pursuant to the Kansas Consumer Protection Act could constitute a crime and subject Defendants to prosecution pursuant to K.S.A. 21-6423, a Level 9, Person Felony.

IT IS THEREFORE ORDERED, ADJUDICATED AND DECREED that Plaintiff's Motion for Default Judgment is granted.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Judgment is hereby entered against Defendants in favor of Plaintiff on all Counts of the Petition.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED unconscionable or deceptive acts, as appropriate, on violation of the KRRRA, K.S.A. 50-6,121 *et seq*, and the KCPA, K.S.A. 50-623;

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendants be permanently enjoined from these practices in violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-632(c)(1);

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED The defendants be permanently enjoined from soliciting and operating as a roofing contractor in the state of Kansas, pursuant to K.S.A. 50-632(c)(6);

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED The defendants be permanently enjoined from conducting consumer transactions in the state of Kansas, pursuant to K.S.A. 50-632(c)(6);

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendants pay civil penalties, jointly and severally, in the amount of \$10,000.00 for each violation of the Kansas Roofing Registration Act, or such other amount as the Court deems just and equitable, pursuant to K.S.A. 50-6,123, in the aggregate of \$70,000.00;

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendants pay civil penalties of Ten Thousand Dollars (\$10,000) for each violation of the Kansas Consumer Protection Act, or such other amount as the Court deems just and equitable, pursuant to K.S.A. 50-636, in the aggregate of \$160,000;

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendants pay reasonable investigative fees and expenses to Plaintiff in the amount of \$2,269.50, pursuant to K.S.A. 50-632(c) and K.S.A. 50-636(c);

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that Defendants pay all court costs and all other costs associated with distributing and executing on any restitution or judgment made by this Court.

IT IS FURTHER ORDERED, ADJUDICATED AND DECREED The defendants pay all court and all other costs associated with distributing and executing on any restitution or judgment made by this Court.

IT IS SO ORDERED.

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

Respectfully submitted,

/s/ Sarah M. Dietz

Sarah M. Dietz, #27457

Assistant Attorney General

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