



Court: Douglas County District Court
Case Number: 2020-CV-000312
Case Title: State of Kansas ex rel Derek Schmidt Atty General
vs. Marathon Roofing, LLC
Type: Journal Entry of Consent Judgment

SO ORDERED.

A handwritten signature in black ink, appearing to read "B. Kay Huff", is written over a horizontal line.

B. Kay Huff
District Court Judge
Division 3

/s/ Honorable Judge B. Kay Huff

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**IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS
SEVENTH JUDICIAL DISTRICT**

STATE OF KANSAS, *ex rel.*,)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff,)
)
v.)
)
MARATHON ROOFING, LLC,)
)
Defendant.)
)

(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 Kimberley A. Davenport, Assistant Attorney General. The Defendant appears by Benjamin L. Tompkins, Kennyhertz Perry LLC.

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 Kansas Roofing Registration Act ("KRRR"), K.S.A. 50-6,121 *et seq.*

3. Defendant Marathon Roofing LLC is a Missouri limited liability company registered with the Kansas Secretary of State as a "Foreign Covered Entity" and has a current status of "active and in good standing." Defendant has a principal place of business is 200 NW 72nd Street, Suite C, Gladstone, Missouri 64118. The registered agent for the Defendant is Kennyhertz Perry LLC and they can be served at 2000 Shawnee Mission Pkwy., Suite 210, Mission Woods, Kansas 66205.

4. 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.

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

ALLEGATIONS KANSAS ROOFING REGISTRATION ACT

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

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

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

9. Plaintiff alleges that at all times relevant hereto, the Defendant engaged in acts and practices in violation of the Kansas 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 offered and contracted to perform roofing services in the state of Kansas.
- c. The Defendant offered and contracted to perform roofing services in the state of Kansas at a time in which the Defendant was not properly registered to do so with the Office of the Kansas Attorney General.

**VIOLATION OF ORDER FOR DEFAULT JUDGMENT
AND INJUNCTIVE RELIEF**

10. On September 25, 2019, Judge Richard Anderson granted an Order for Default Judgment and Injunctive Relief in Shawnee County Case Number 2019-CV-00584. That ruling was in response to a Petition for Enforcement of a Subpoena filed against the Defendant. The Defendant failed to answer the Petition and failed to appear at the scheduled hearing after receiving notice. As a result, the Judge granted the Plaintiff’s Motion for Default and Injunctive Relief. The order enjoined the Defendants from soliciting, performing, supervising, accepting payments or in any manner, conducting any business related to the sale of property or services as defined in K.S.A. 50-624 within the state of Kansas until such time the Court found the Defendant in compliance

with the subpoena. The order also enjoined the Defendants from engaging in any consumer transactions until the Court found the Defendant in compliance with the subpoena. The Defendant subsequently complied with the subpoena on September 15, 2020 sufficiently for the Office of the Kansas Attorney General. Violations of the Court's Order were revealed by this subpoena response. Because the Defendant has complied with the subpoena, on November 3, 2020, the Court granted Plaintiff's Motion to Set Aside the Order for Default Judgment and Injunctive Relief and Dismissal and issued an Order of Dismissal Without Prejudice.

INJUNCTIVE RELIEF

11. As the Defendant has now complied with the subpoena and the prior action has now been dismissed, the Court's injunctive relief, including the enjoinder of Defendant from conducting business and consumer transactions in the state of Kansas, has been lifted. On November 3, 2020, the Office of the Kansas Attorney General issued Defendant a roofing registration certificate. Under this Consent Judgment, the Defendant shall not act as a roofing contractor in the state of Kansas unless they have a valid roofing registration certificate issued by the Office of the Kansas Attorney General.

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. Pursuant to K.S.A. 50-632(b), this Consent Judgment is not an admission by Defendants of a violation of the Kansas Consumer Protection Act or Roofing Registration Act. Notwithstanding, Defendants agree to this Consent Judgment without trial or adjudication of any issue of fact or law and solely for the purpose of settlement.

14. The Defendant agrees to comply with the Kansas Roofing Registration Act, K.S.A. 50-6,121 *et seq.*, while acting as a roofing contractor and performing roofing services in the state of Kansas.

15. 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.

16. 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.

17. 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.

CIVIL PENALTIES

18. The Defendant agrees to pay the Office of the Kansas Attorney General \$9,000.00 in civil penalties for violations of the Kansas Roofing Registration Act, pursuant to K.S.A. 50-6,123 and K.S.A. 50-636.

19. The Defendant agrees to pay the Office of the Kansas Attorney General \$5,000.00 in civil penalties for violations of the court ordered injunction pursuant to K.S.A. 60-909.

20. Payment shall be made in the form of a cashier's check, money order or other certified funds payable to the Office of the Kansas Attorney General, mailed to:

Kimberley A. Davenport, Assistant Attorney General
Attn: Roofing Registration Unit

Office of the Kansas Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597

OTHER PROVISIONS

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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 judgment is entered against the Defendant in favor of Plaintiff in the amount of \$9,000.00 for violations of the Kansas Roofing Registration Act, K.S.A. 50-6,121 *et seq.*

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against the Defendant in favor of the Plaintiff in the amount of \$5,000.00 for violations of the Court ordered injunction issued in Shawnee County case 2019-CV-00584 on September 25, 2019, pursuant to K.S.A. 60-909.

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 Kansas 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 SHOWN ON THE ELECTRONIC FILE STAMP.

Respectfully submitted by:

/s/ Derek Schmidt

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Kansas Attorney General



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Approved by:



Marathon Roofing, LLC
Ryan Utterback, Member



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