



Court: Rush County District Court
Case Number: 2018-CV-000006
Case Title: State of Kansas ex rel Derek Schmidt Atty General
vs. Robert W Blecha
Type: Journal Entry of Consent Judgment

SO ORDERED.

A handwritten signature in black ink, appearing to be "B. Gatterman", written in a cursive style.

/s/ Honorable Bruce Gatterman, Chief District Judge

3. Defendant Robert W. Blecha, is the owner and operator of a construction business. (“Defendant”).

4. Defendant’s residential address is 2441 E. Road, Garfield, Kansas, 67529.

5. All references to Defendant herein include acts individually, in concert, or by or through employees, agents, representatives, affiliates, assignees and successors.

6. Defendant stipulates and admits that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties.

7. Defendant stipulates and admits that venue is proper in this Court under K.S.A. 50-638(b).

8. Defendant has engaged in construction services in the State of Kansas.

9. Defendant is a “supplier” within the definition of K.S.A. 50-624(1).

10. Defendant is engaged in “consumer transactions” in Kansas within the definition of K.S.A. 50-624(c).

ALLEGATIONS

11. Plaintiff alleges that Defendant, solicited construction services with Kansas consumers and committed acts and practices in violation of the KCPA, which acts and practices include, but are not limited to:

a. Misrepresentations knowing or with reason to know the property or services had characteristics, uses, benefits or qualities they do not have, K.S.A. 50-626(b)(1)(A);

b. Misrepresentations knowing or with reason to know the property or services has an approval, status, affiliation or connection the supplier does not have, K.S.A. 50-626(b)(1)(B);

- c. Consumer transactions from which the consumer was unable to receive the material benefit of the transaction, K.S.A. 50-627(b)(3); and
- d. Consumer transactions where the supplier makes misleading statements of opinion on which the consumer is likely to rely to the consumer's detriment, K.S.A. 50-627(b)(6).

12. Defendant voluntarily agrees to this Consent Judgment without trial or adjudication of any issue of fact or law, solely for the purpose of settlement and without admitting any allegations contained herein.

13. Defendant agrees that by entering into this Consent Judgment he is not admitting to guilt and signing the agreement is not an admission of guilt.

INJUNCTIVE RELIEF

14. Defendant agrees to refrain, and to be permanently enjoined, from engaging in those acts and practices set forth in paragraph eleven (11) herein, and Defendant agrees that engaging in any such acts or similar acts, after the date of this Consent Judgment, may constitute a violation of this Consent Judgment.

15. By signing this consent judgment Defendant does not waive any right of due process under the Kansas Constitution, Section 18, related to the Attorney General's enforcement of the consent judgment herein.

16. Defendant agrees to comply with all Kansas laws, statutes, rules and regulations, relating to consumer transactions in Kansas, specifically the Kansas Consumer Protection Act, K.S.A. §50-623, *et seq.*

17. Defendant agrees that engaging in such acts or similar acts, after the date of this Consent Judgment, may constitute a violation of this Order and civil penalties may be imposed for each subsequent violation.

18. Defendant agrees to cooperate with the Office of the Kansas Attorney General in investigating and remedying any complaints filed with the Consumer Protection Division against the Defendant.

19. Defendant agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Consent Judgment.

20. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to each officer, director, member, manager, employee, agent, independent contractor and representative having responsibilities with respect to the subject matter of this Consent Judgment within ten (10) days of signing the Consent Judgment.

21. Upon filing of this Consent Judgment Plaintiff agrees to file a Motion and Order to Dismiss, *State ex rel. Derek Schmidt v. Robert W. Blecha*, Case No, 2017-CV-691, in Shawnee County District Court.

RESTITUTION, INVESTIGATIVE FEES AND CIVIL PENALTIES

22. Defendant agrees to make restitution to the following consumer:

- a. Terry Conard, \$4,770.95. Payment will be made in two payments. The first payment is due at the time of signing the consent judgment in the amount of \$2,385.48. The second payment of \$2,385.47 is due sixty (60) days following the first payment. Restitution is paid to directly to the consumer with proof of payment sent to the Office of the Attorney General.

23. Defendant agrees to pay to the Office of the Kansas Attorney General one thousand dollars (\$1,000.00) in investigative fees, paid after all restitution has been made to the consumer, but no later than November 1, 2019, pursuant to K.S.A. §50-632 and §50-636.

24. Defendant agrees to pay to the Office of the Kansas Attorney General one thousand dollars (\$1,000.00) in civil penalties, paid after all restitution has been made to the consumer, but no later than December 1, 2019.

25. Defendant agrees to pay additional civil penalties to the Office of the Kansas Attorney General of five thousand dollars (\$5,000.00) which penalty is *suspended* on the condition the Defendant does not violate the terms and conditions of this consent judgment.

26. Payment from Defendant shall be made in the form of a cashier's check or money order made payable to the Office of the Kansas Attorney General, and mailed to:

Office of the Kansas Attorney General
ATTN: Melanie Jack, Assistant Attorney General
120 SW 10th Ave, 2nd Floor
Topeka, Kansas 66612-1597

27. 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.

GENERAL PROVISIONS

28. The provisions of this Consent Judgment will be applicable to Defendant, and every employee, agent or representative of the Defendant.

29. 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.

30. 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.

31. Compliance with this Consent Judgment does not relieve Defendant of any obligation imposed by applicable federal, state, or local law, nor shall the Attorney General be precluded from taking appropriate legal action to enforce civil or criminal statutes under his jurisdiction.

32. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of the Defendant nor shall Defendant represent the decree as such an approval. The parties further understand 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 the Consent Judgment shall not be construed as an approval of or sanction of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

33. Defendant further represents that he has had an opportunity to consult with and obtain the advice of private legal counsel prior to entering into 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 the findings of fact and conclusions of law of the Court and any monies owed hereunder by Defendant immediately become a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant for payment of restitution to the following consumer:

- a. Terry Conard, \$4,770.95, Payment will be made in two payments. The first payment is due at the time of signing the consent judgment in the amount of \$2,385.48. The second payment of \$2,385.47 is due sixty (60) days following the first payment. Restitution is paid to directly to the consumer with proof of payment sent to the Office of the Attorney General.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant pay investigation fees and expenses of one thousand dollars (\$1,000.00) to the Office of the Attorney General paid after all restitution has been made to the consumer, but no later than November 1, 2019.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant and in favor of Plaintiff in the amount of one thousand (\$1,000.00) in civil penalties to the Office of the Attorney General paid after all restitution has been made to the consumer, but no later than December 1, 2019. Payment of additional civil penalties totaling five thousand dollars, (\$5,000.00) is *suspended* on the condition the Defendant does not violate the terms and conditions of this consent judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant pay all court costs of \$195.00 associated with this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), 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.**

Prepared and approved by:

OFFICE OF THE KANSAS ATTORNEY GENERAL


DEREK SCHMIDT, #17781
KANSAS ATTORNEY GENERAL


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FOR DEFENDANT:


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