



Court: Shawnee County District Court
Case Number: 2016-CV-000834
Case Title: State of Kansas ex rel Derek Schmidt Atty General
vs. Jason Stewart, et al.
Type: Journal Entry of Consent Judgment

SO ORDERED.

A handwritten signature in black ink that reads "Larry D. Hendricks". The signature is written in a cursive style with a large, looping initial "L".

/s/ Honorable Larry Hendricks, District Judge

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 Jason Stewart ("Defendant Stewart") is an individual with a residential address at 802 Creek Moore Pound Lane, Raymore, Missouri 64083.

4. Defendant APEX Contracting and Roofing, LLC ("Defendant APEX") is a Missouri limited liability company with a principal place of business at 802 Creek Moore Pound Lane, Raymore, Missouri 64083.

5. Defendant APEX C&R, LLC ("Defendant APEX C&R") is a Missouri limited liability company with a principal place of business at 406 Pine Street, Raymore, Missouri 64083.

6. Defendants APEX and APEX C&R are managed and controlled by Defendant Stewart.

7. 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.

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

9. 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).

ALLEGATIONS

10. Defendants have acted as a "supplier" in Kansas, as that term is defined by K.S.A. §

50-624(l).

11. Defendants have acted as a “roofing contractor” in Kansas, as that term is defined by K.S.A. 50-6,122(a)(1).

12. Defendants have engaged in “consumer transactions” in Kansas, as that term is defined by K.S.A. § 50-624(c).

13. Defendants have engaged in consumer transactions with “consumers,” as that term is defined in K.S.A. 50-624(b), and “protected consumers,” as that term is defined in K.S.A. 50-676(a).

14. At all times relevant hereto, the Defendants 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. Defendants engaged in the business of or operated in the capacity as a roofing contractor in the state of Kansas without having a valid registration certificate, in violation of K.S.A. 50-6,123(a).

15. At all times relevant hereto, Defendants have engaged in acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*, which acts and practices include, but are not limited to:

- a. Defendants entered in to a consumer transaction from which the consumer was unable to receive a material benefit of the subject of the transaction, in violation of K.S.A. 50-627.
- b. Defendants entered in to a consumer transaction that was excessively one-sided in favor of the Defendants, in violation of K.S.A. 50-627(b)(5).

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

INJUNCTIVE RELIEF

17. Defendants agree to refrain, and be permanently enjoined, from engaging in those acts and practices set forth in paragraph (14), specifically, those violations of the Roofing Registration Act, K.S.A. 50-6,121 *et seq.*, and agrees that engaging in such acts or similar acts after the date of this Consent Judgment shall constitute a violation of this Consent Judgment.

18. Defendants agree to comply with the 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.

19. Defendants agree to refrain, and be permanently enjoined, from engaging in those acts and practices set forth in paragraph (15), specifically, violations of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*, and agrees that engaging in such acts or similar acts after the date of this Consent Judgment shall constitute a violation of this Consent Judgment.

20. Defendants agree 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.*

21. Defendants agree to cooperate with the Office of the Kansas Attorney General in investigating and remedying any complaints filed with the Consumer Protection Division.

22. Specifically, Defendants agree to respond within fourteen (14) days of receipt of the request issued by the Office of the Kansas Attorney General within fourteen (14) days if receipt of the request.

23. Defendants agree 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.

24. Defendants 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 or within fifteen (15) days after any person assumes such position or responsibilities.

25. Defendants agree 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.

26. Plaintiff and Defendants are in agreement that, upon satisfaction of this Consent Judgment and the monetary relief ordered herein, this Consent Judgment shall not prevent or otherwise prohibit Defendants from applying for certification as a roofing contractor with the Office of the Kansas Attorney General.

MONETARY RELIEF

27. Defendants agree to pay the Office of the Kansas Attorney General \$10,000.00 in civil penalties for violations of the Roofing Registration Act, pursuant to K.S.A. § 50-6,123 and K.S.A. § 50-636.

28. Defendants agree to pay \$22,174.30 in consumer restitution, pursuant to K.S.A. § 50-632(c)(2).

29. Payments shall be made in monthly installments of \$1,350.00, to be paid on the 1st day of each month, beginning January 1st, 2018, for a period of twenty three (23) months, and a final payment of \$1,124.30 shall be made on the 1st day of the twenty fourth month, until the monetary judgment has been satisfied in full.

30. 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:

Meghan D. Lowry, Assistant Attorney General
Office of the Kansas Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, Kansas 66612

SUSPENDED MONETARY JUDGMENT

31. Judgment is hereby entered in favor of Plaintiff and against Defendants in the amount of \$10,000.00 for the payment of civil penalties for violations of the Roofing Registration Act, pursuant to K.S.A.. 50-636. Provided, however, this monetary judgment shall be suspended against Defendants as long as the Court makes no finding(s), as provided in the following section of this Consent Judgment titled "Right to Reopen," that Defendants have violated any provision of this Consent Judgment.

RIGHT TO REOPEN

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

33. Defendants' "material compliance" with the terms of this Consent Judgment shall mean material compliance with all of the provisions included in Paragraphs 17-31.

34. If, upon motion by the Attorney General to the Court, the Court finds that the Defendants have violated a material term of this Consent Judgment, the suspension of the monetary judgment as to the Defendants will be terminated and the entire judgment amount of \$10,000.00 shall become immediately due and payable to Plaintiff, and interest computed at the rate prescribed under Kansas law, shall begin immediately to accrue on the unpaid balance.

35. Defendants agree 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.

36. 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

37. 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.

38. 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.

39. Compliance with this Consent Judgment does not relieve Defendants 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.

40. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the attorney general of the Defendants' business practices, nor shall the Defendants 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 Defendants, 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.

41. This Consent Judgment represents the entire agreement between Plaintiff and the Defendants, 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.

42. Defendants hereby represent and warrant that Defendants have 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 Defendants under this Consent Judgment and the consequences of breach hereunder. Defendants represent that the Defendants have read the Consent Judgment and knows and understands the contents thereof. Defendants further represent and warrant that Defendants are signing this Consent Judgment as the result of his own free act, and that Defendants have 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.

43. By signing this Consent Judgment, the representative of the Defendants represents and warrants that such person is duly and legally authorized to execute this Consent Judgment on behalf of these Defendants, thus binding the Defendants 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 Defendants immediately becomes a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendants in favor of Plaintiff in the amount of \$32,174.30.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendants in favor of Plaintiff, and suspended, in the amount of \$10,000.00.

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.

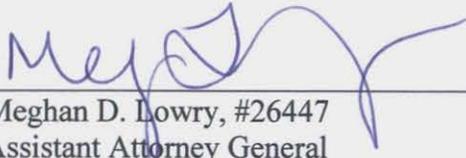
IT IS SO ORDERED.

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

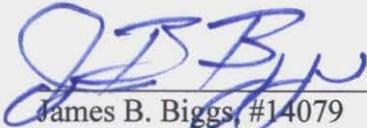
Respectfully submitted,



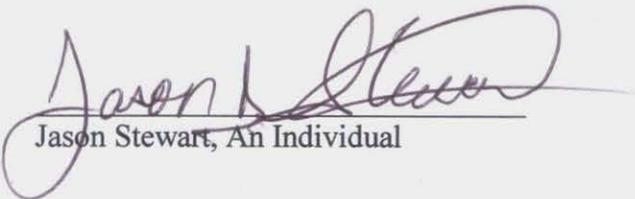
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Jason Stewart, An Individual