

James J. Welch, #09546
Deputy Attorney General
Office of the Attorney General
120 S.W. 10th Avenue, 2d Floor
Topeka, Kansas 66612-1597
(785) 296-3751

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KS. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS

2012 DEC 13 P 4:09

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 6**

STATE OF KANSAS, *ex rel.*,
DEREK SCHMIDT, Attorney General,

Plaintiff,

v.

**Morris E. Herrin, Jr., Forrest Dewayne Jackson,
Louis Holder Raymond, Robert Wayne Williams,
Floyd Jerry Robert, and Scott Alan Gilmer,
D.B.A. Allied Paving & Construction**

Defendants

Case No. 12-C-001101

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

**JOURNAL ENTRY OF CONSENT JUDGMENT
AGAINST MORRIS HERRIN**

NOW on this 13 day of DECEMBER, 2012, the Plaintiff's Motion for Approval of 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 James J. Welch; Defendant Morris E. Herrin, Jr. appears by and through Counsel Randy Debenham of Debenham Law Office LLC 3615 SW 29th Street, Topeka Kansas 66614.

WHEREUPON the parties advise the Court that they have stipulated and agreed to the Entry of Consent Judgment as follows:

FINDINGS OF FACT

AND CONCLUSIONS OF LAW

1. Defendant admits that Derek Schmidt is the duly elected Attorney General of the State of Kansas.

2. Defendant admits that the Attorney General's authority to bring this action and enter this Consent Judgment is derived from the statutory law of the State of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*

3. Defendant admits that Morris E. Herrin Jr. (herein after "Morris Herrin") owns and operates "Allied Paving & Construction" with a principal place of business in Baton Rouge Louisiana.

4. Defendant admits that that Allied Paving & Construction is a supplier as that term as defined by K.S.A. 50-624(j).

5. Defendant admits that this Court has subject matter jurisdiction over this case under the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*

6. Defendant admits that he is subject to the jurisdiction of this Court under the Kansas Consumer Protection Act, specifically K.S.A. 50-638(a).

7. Defendant admits that Venue is proper in the 3rd Judicial District of Kansas (Shawnee County) under K.S.A. 50-638(b).

8. The Plaintiff alleged that the Defendant, individually or in concert, solicited Kansas consumers for various home improvement services, including but not limited to the installation, sealing, and repair of asphalt driveways at Kansas residences in Shawnee and Wabaunsee County. The following Kansans are persons known to Plaintiff to have entered into consumer transactions with the Defendant:

a) Robert J. Lindsay, 12608 K-4 Highway, Maple, Hill, Kansas

Amount: \$9,000.00.

b) Dorthy Anderson of 902 N. Topeka Avenue, Topeka Kansas, was charged

\$14,000.00 but only paid \$4000.00.

9. The Plaintiff alleged that Defendant did not present consumers with a “Release – Agreement and Agreed Contract/Invoice.” And that consumers were not provided with a notice of any right to cancel the transaction or a Notice Of Cancellation form, as required by K.S.A. 50-640(b)(1) & (2).

10. The Plaintiff alleged and Defendant admitted that he failed to inform consumers, orally, of their right to cancel the transaction at the time of purchase, as required by K.S.A. 50-640(b) (5) but denied he used deceptive and/or unconscionable practices in transacting business with any consumers in Kansas.

11. The Plaintiff alleged and Defendant admitted he cashed the checks received from consumers at the respective local banks without waiting five (5) business days, in violation of K.S.A. 50-640(b)(8) but denies that he used deceptive and/or unconscionable practices in transacting business with any consumers in Kansas

12. The Plaintiff alleged and Defendant admitted that he has entered into other consumer transactions with Kansas consumers but denied he used deceptive and or unconscionable acts in transacting with any consumer.

13. The Plaintiff alleged and the Defendant denied that he failed to disclose certain material facts to consumers prior to entering into the transactions, including but not limited to the total price that would be charged and the method and timing of payment for the services, all in violation of K.S.A. 50-626(b)(3).

16. Defendant agrees to refrain from and to be permanently enjoined from engaging in those acts and practices set forth in this Consent Judgment and agrees that engaging in any such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

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

18. 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 any of the terms or this Consent Judgment or the law of the State of Kansas.

19. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to each officer, director, and employee of management level that is involved in Kansas operations of the Defendant within ten (10) days of execution of this Consent Judgment.

24. Defendant agrees to provide restitution to Robert J. Lindsay in the amount of Four Thousand Dollars (\$4000.00) and that no further balance is due from Dorthy Taylor.

25. In addition to the restitution mentioned above the Defendant has also paid Twenty-One Thousand Dollars (\$21,000.00) to the "Office of the Attorney General" of the State of Kansas for civil penalties, investigative costs, and/or investigative fees, pursuant to K.S.A. 50-632 and/or 50-636. The apportionment of the \$21,000.00 payment is subject to the discretion of the Attorney General.

26. Payment has been made and delivered to the Attorney General of the State of Kansas prior to the signing of this Consent Judgment and therefore the monetary portion of this Consent Judgment is satisfied.

27. Defendant agrees that all unpaid or future restitution, fees, and/or penalties shall be non-dischargeable in any filing for bankruptcy.

28. The provisions of this Consent Judgment are applicable to the Defendant, Morris Herrin.

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 for such further orders and directions as may be necessary or appropriate for the modification of the provisions hereof, for the enforcement of compliance herewith, or 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 then that provision or portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions or portions.

31. Compliance with this Consent Judgment does not relieve the 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 this Consent Judgment shall not be construed as approval of or sanction by the Attorney General of the Respondent's business practices, nor shall Respondent represent this Consent Judgment as any such approval. Nor shall any failure by the State of Kansas or the Attorney General to take any future action in response to any information

submitted pursuant to the Consent Judgment be construed as an approval of or sanction of any representations, acts, or practices indicated by such information, nor shall it preclude any action thereon at a later date.

33. Each of the Defendant's representatives, signing this Journal Entry of Consent Judgment, warrants that the representative has been duly authorized by the Defendant for whom the representative appears to be acting to enter and execute this Journal Entry of Consent Judgment on behalf of Defendant. Defendant further represents that it has had an opportunity to consult with and obtain the advice of private legal counsel prior to entering into this Consent Judgment.

34. That there is no just reason for delay of the Entry of this Consent Judgment, against fewer than all of the parties.

35. The Defendant denied most of the allegations of the Plaintiff's Petition and admitted others therefore unless an allegation is specifically admitted herein or in the Answer to the Plaintiff's Petition (which is incorporated by reference herein) the defendant denies all remaining allegations.

36. The Defendant has agreed not to conduct any future business in the State of Kansas.

IT IS ORDERED, ADJUDGED AND DECREED that paragraphs one (1) through thirty-six (36) are hereby made findings of Fact and Conclusions of law by this Court.

IT IS ORDERED, ADJUDGED AND DECREED that the Order of Sequestration entered by this Court on or about October 11, 2012 is hereby dissolved by the Court upon the filing of this Journal Entry of Consent Judgment.

IT IS ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant and in favor of Plaintiff for civil penalties, investigative fees, restitution for the consumers named herein, as detailed above, in the total amount of Twenty-Five Thousand Dollars (\$25,000.00) .

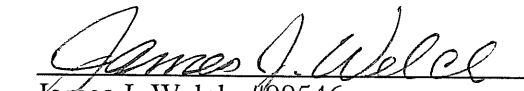
IT IS ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the court hereby grants the motion for approval of Consent Judgment and this Consent Judgment as the Order of this Court.

IT IS SO ORDERED


District Court Judge

Prepared and approved by:

ATTORNEY FOR PLAINTIFF


James J. Welch, #09546
Deputy Attorney General
Office of the Attorney General
120 S.W. 10th Avenue, 2d Floor
Topeka, Kansas 66612-1597
Tel: (785) 296-3751

ATTORNEY FOR DEFENDANT


Randy Debenham #19812
Debenham Law Office LLC
3615 SW 29th Street,
Topeka Kansas 66614