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FILED BY CLERK  
KS. DISTRICT COURT  
THIRD JUDICIAL DIST.  
TOPEKA, KS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION 9

2011 JAN 19 P 2:11

STATE OF KANSAS, *ex rel.*, )  
DEREK SCHMIDT, Attorney General, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ROGER L. PORTER, JR., individually )  
and )  
BID'S N MORE, INC. )  
a/k/a )  
BNM ENTERPRISES )  
 )  
 )  
Defendants. )  
 )

Case No. 09 C 1661

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

**JOURNAL ENTRY OF CONSENT JUDGMENT**

NOW on this 18 day of Jan., 2011, Plaintiff's 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 Meghan E. Stoppel, Assistant Attorney General. Defendant Roger L. Porter, Jr., an individual, and Defendant Bid's N More, Inc. also known as BNM Enterprises appear through John P. Biscanin, Esq.

WHEREUPON the parties advise the Court that they have stipulated and agreed to the following:

**PARTIES, JURISDICTION AND VENUE**

1. Derek Schmidt is the Attorney General of 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.*

3. Defendant Roger L. Porter, Jr. ("Defendant Porter") is the sole officer of, and registered agent for, Defendant Bid's N More, Inc. a/k/a/ BNM Enterprises ("Defendant BNM").

4. Defendant BNM has a principal place of business located at 3306 Gillham Road in Kansas City, Missouri 64109.

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

6. Defendants stipulate and admit that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties.

7. Defendants stipulate and admit that venue is proper in this Court.

8. Defendants are suppliers within the definition of K.S.A. 50-624(j).

9. Defendants are engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c).

### **ALLEGATIONS**

10. Defendants engage in the advertising, solicitation and sale of automotive vehicles.

11. Defendants employ representatives and other agents to post solicitations on various websites and respond to consumer inquiries.

12. Defendants, through their agents and representatives, offered automotive vehicles for sale in Kansas.

13. Neither Defendant BNM nor Defendant Porter is a licensed automotive vehicle dealer with the Kansas Department of Revenue.

14. The Plaintiff alleges that Defendants, while offering vehicles for sale in Kansas, engaged in deceptive and unconscionable acts and practices in violation of the KCPA, specifically, but not limited to, K.S.A. 50-626 and 50-627 which acts and practices include, but are not limited to:

- a. Acting as vehicle dealers in Kansas without obtaining a license from the Kansas Department of Revenue;
- b. Attempting to limit the implied warranties of merchantability on each vehicle sold to Kansas consumers, by offering such vehicles for sale in Kansas “as is”;
- c. Using the fictitious name, BNM Enterprises, in transactions with Kansas consumers without registering the name with either the Kansas or Missouri Secretary of State.

15. Defendants agree to this Consent Judgment without trial or adjudication of any issue of fact or law solely for the purposes of settlement.

#### **INJUNCTIVE RELIEF**

16. Defendants agree to refrain from, and to be permanently enjoined from, engaging in those acts and practices set forth in paragraph fourteen (14) herein and Defendants agree 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. Defendants agree 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.*

18. Defendants agree to comply with all Kansas laws, statutes, rules and regulations, relating to the sale of automotive vehicles in Kansas, specifically the Kansas Vehicle Dealers and Manufacturers Licensing Act, K.S.A. 8-2401, *et seq.*

19. Defendants agree to obtain a vehicle dealer license from the Kansas Department of Revenue within twenty (20) days of execution of this Consent Judgment or cease selling motor vehicles in the state of Kansas.

20. 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.

21. Defendants agree 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 signing the Consent Judgment.

#### **CONSUMER RESTITUTION**

22. Defendants agree to provide a full refund to the following consumer(s) in the amounts set forth below, to the extent such refund has not already been received:

*Michele Yeager \$2,500.00*

23. Such restitution shall be delivered to the Office of the Kansas Attorney General at the time of signing this document. Payment shall be made by check(s) payable directly to the named consumer(s). Such check(s) shall be delivered by the Office of the Kansas Attorney General to the appropriate consumers at the time of executing this Consent Judgment.

#### **INVESTIGATIVE FEES AND CIVIL PENALTIES**

24. Defendants agree to pay to the Office of the Kansas Attorney General, \$8,000.00 in civil penalties and \$7,500.00 in investigative fees, pursuant to K.S.A. 50-632 and 50-636.

25. Defendants agree to pay the aforementioned fees and penalties in twelve (12) installments as follows:

- a. Defendants shall pay \$1,310.00 to the Office of the Kansas Attorney General within thirty (30) days of signing this Consent Judgment.
- b. Defendants shall pay the remaining \$14,200.00 in eleven (11) equal installments of \$1,290.00, due on or before the first of every month and starting on March 1, 2011.
- c. Defendants shall be responsible for the timely submission of each of the aforementioned installment payments.

26. Payment shall be made in the form of a cashier's check, money order or check disbursed through an attorney's trust account, made payable to the Office of the Kansas Attorney General, and mailed to:

Office of the Kansas Attorney General  
ATTN: Meghan E. Stoppel, Assistant Attorney General  
120 SW 10<sup>th</sup> Ave, 2<sup>nd</sup> Floor  
Topeka, Kansas 66612

27. Defendants agree to be held jointly and severally liable for the amounts sets forth in paragraphs twenty-four (24) through twenty-five (25).

28. 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 restitution, penalties and/or fees shall not be dischargeable in any bankruptcy proceeding commenced after the entry of this Consent Judgment.

#### **OTHER PROVISIONS**

29. The provisions of this Consent Judgment will be applicable to Defendants, and every employee, agent or representative of Defendants.

30. 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.

31. 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.

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

33. 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 Defendants nor shall Defendants 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.

34. Each of the Defendants' 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. Defendants further represent that they have 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 Defendants immediately become a judgment upon filing.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is entered against Defendants and in favor of Plaintiff for investigative fees in the amount of \$7,500.00 and civil penalties in the amount of \$8,000.00.


**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.**

  
DISTRICT COURT JUDGE

Prepared and approved by:

PLAINTIFF:

  
Meghan E. Stoppel, #23685  
Assistant Attorney General  
Office of Kansas Attorney General Derek Schmidt  
120 Southwest 10<sup>th</sup> Ave., 2<sup>nd</sup> Floor  
Topeka, Kansas 66612

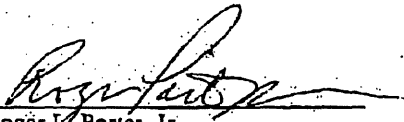
*Attorney for Plaintiff*


*Consent Judgment continues...*

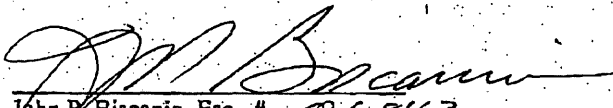
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No. 5851 P. 10 P.010

DEFENDANT:

  
Roger L. Porter, Jr.

  
Roger L. Porter, Jr.  
President  
Bid's N More, Inc.

  
John P. Biscanin, Esq., # 06843  
748 Ann Avenue  
Kansas City, KS 66101  
(913) 371-1930  
*Attorney for Defendant*