

Emilie Burdette Rush, #22094
Assistant Attorney General
Office of the Kansas Attorney General
120 S.W. 10th Avenue, 2d Floor
Topeka, Kansas 66612-1597
(785) 296-3751

IN THE DISTRICT COURT OF JEFFERSON COUNTY, KANSAS

2007 JUL 26 A 9:26
STATE OF KANSAS
JEFFERSON COUNTY
FILED

STATE OF KANSAS, *ex rel.*,
PAUL J. MORRISON, Attorney General,

Plaintiff,

Case No. 07 CV 109

ROAD MAINTENANCE PAVING & SEALING,
BILL BOSWELL, WILLIAM BOSWELL,
NATHAN BOSWELL, TOMMY A. WRIGHT
and LEWIS C. FOUNTAIN,

Defendants.

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW ON THIS 25th DAY of July, 2007, there comes before the Court the Journal Entry of Consent Judgment. Plaintiff, the State of Kansas, *ex rel.* Paul J. Morrison, Attorney General, appears by and through counsel, Emilie Burdette Rush, Assistant Attorney General. Defendants Road Maintenance Paving & Sealing, Bill Boswell, William Boswell, Nathan Boswell, Tommy A. Wright and Lewis C. Fountain appear by and through their attorney, Clinton E. Patty. There are no other appearances.

WHEREUPON, the Parties advise the Court that they have stipulated and agree to the following matters:

1. Paul J. Morrison is the duly elected and acting Attorney General of the State of Kansas.

2. The Attorney General's authority to bring this action is derived from statutory and common law of Kansas, specifically, the Kansas Consumer Protection Act (KCPA), K.S.A. 50-623 *et seq.* K.S.A. 50-622 authorizes the parties to resolve matters pursuant to a Consent Judgment and the parties have agreed to do so in this instance.
3. Defendants Road Maintenance Paving & Sealing, Bill Boswell, William Boswell, Nathan Boswell, Tommy A. Wright and Lewis C. Fountain are and were, at all relevant times, all suppliers within the definition of K.S.A. 50-624(j) and have engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c). The nature of Defendants' business is selling and soliciting for sale property and/or services to consumers within this State, specifically the sale and installation of asphalt as driveways and parking areas.
4. Defendants each admit that this Court has personal and subject matter jurisdiction over all matters and parties hereto.
5. The Attorney General alleges that, were this matter to be litigated, the following facts could be proven:
 - (A) Defendants, jointly and in concert, at various times and dates within the State of Kansas did enter into consumer transactions with Kansas consumers Leroy Bender and Laura Dick for the sale and installation of asphalt at their respective residences.
 - (B) Leroy Bender was billed for services but has not tendered any monies to Defendants to date.
 - (C) Leroy Bender has a date of birth of October 8, 1929, and is deemed an "elder person" as set forth in K.S.A. 50-676.
 - (D) Laura Dick tendered \$5,040.00 to Defendants.

- (E) Laura Dick has a date of birth of July 2, 1934, and is deemed an "elder person" as set forth in K.S.A. 50-676.
- (F) Each of the transactions identified above constitutes a door-to-door sale within the definition of K.S.A. 50-640(c)(1).
- (G) In each transaction, Defendants failed to furnish the consumer with a fully completed receipt or copy of any contract that contained the language required by K.S.A. 50-640(b)(1), advising consumers of their right to cancel the transaction;
- (H) In each transaction, Defendants failed to furnish the consumer with a "NOTICE OF CANCELLATION" required by K.S.A. 50-640(b)(2);
- (I) In each transaction, Defendants failed to inform each consumer orally, at the time such consumer signed the contract for the purchase of goods or services, of the consumer's right to cancel pursuant to K.S.A. 50-626(b)(5);
- (J) Defendants willfully failed to disclose material facts as to the fact that Defendants were not in compliance with local ordinances and state laws regulating transactions and services of the nature Defendants were performing, in violation of K.S.A. 50-626(b)(2); and
- (K) Defendants represented that they had a sponsorship, approval, status, affiliation or connection that Defendants do not have, specifically that they were state licensed and bond issued, in violation of K.S.A. 50-626(b)(1)(B).
6. Defendants voluntarily agree to this Consent Judgment without trial or adjudication of any issue of fact or law and admit the violations identified in Paragraph Five (5) above.

7. Defendants agree to refrain from and to be permanently enjoined from engaging in the acts and practices described in Paragraph Five (5) above which are alleged to be violations of the KCPA.
8. Defendants agree that engaging in acts or similar acts to those described in Paragraph Five (5) hereof shall constitute a violation of this Order and hereby stipulate, in that event, to civil penalties of \$10,000.00 per violation.
9. Defendants agree to pay \$10,000.00 in investigative fees, expenses and civil penalties to the "Office of the Attorney General" of the State of Kansas. Such funds to be paid at the time of filing of this document.
10. Defendants agree to be enjoined from engaging in any consumer transactions within the State of Kansas for a period of three (3) years.
11. Defendants further agree to pay restitution to Laura Dick in the amount of \$5,000.00. Such funds to be conveyed to Plaintiff for distribution to Laura Dick at the time of filing of this document.
12. Defendants further agree to release Kansas consumer Leroy Bender from any obligation of payment for services performed.
13. The Court hereby orders the immediate release of the property identified on the attached Exhibit A, and any other property of the Defendants currently being held pursuant to the Court's July 24, 2007, Ex Parte Order for Sequestration of Assets, Temporary Restraining Order to Seize and Hold Property, and Enjoining Defendant from Soliciting Business in Kansas.
14. Defendants agree to be responsible for any reasonable tow charges incurred by the Jefferson County Sheriff's Department in the seizure of Defendants' property.
15. The provisions of this Consent Judgment will be applicable to each and every

Defendant, and every employee, agent or representative of Defendants.

16. Defendants agree to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, where such restructuring is done for the purpose or object of avoiding compliance with the terms of the Consent Judgment.
17. 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 hereof.
18. 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.
19. 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 Attorney General from taking appropriate legal action to enforce civil or criminal statutes under his jurisdiction. Defendants further understand that nothing in this Consent Judgment shall preclude the Attorney General from taking further action against Defendants in operating this or any other operation upon belief that the operation is being promoted or operated in a fashion that otherwise violates the law.
20. 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 which the Attorney General now has in his possession and believes forms the basis for a violation of any law within his jurisdiction to enforce shall not preclude action thereon at a later date.

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 in favor of Plaintiff in the amount of \$10,000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants pay all costs associated with this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants are ordered to pay restitution in the amount of \$5,040.00 to Kansas consumer Laura Dick.

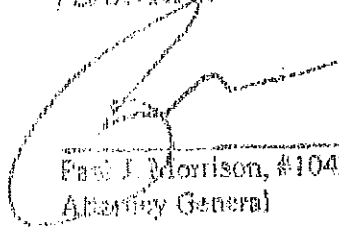
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

IT IS SO ORDERED.

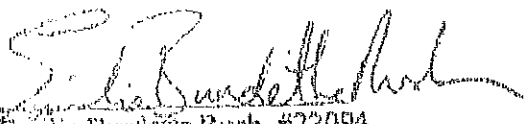

JUDGE

Prepared and approved by:

PLAINTIFF:



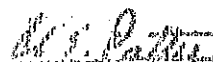
Paul J. Morrison, #10427
Attorney General



Ernie Burdette Rush, #22094
Assistant Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, Kansas 66612-1597

Attorneys for Plaintiff

DEFENDANT:



Clinton E. Potts, #18712
FRIEDEN & POWERS
515 South Kansas Avenue
Suite 303
Topeka, KS 66603