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C-07-001695

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

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

Division 9

2008 JUN 19 P 3:49

STATE OF KANSAS, *ex rel.*,)
STEPHEN N. SIX, Attorney General,)

Plaintiff,)

vs.)

Case No. 08C895

1ST AMERICAN COIN, LTD.)
d/b/a 1ST AMERICAN RESERVE,)

Defendant.)

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 18 day of Aug, 2008, Plaintiff's Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. 50-623(b). Plaintiff, the State of Kansas, *ex rel.* Stephen N. Six, Attorney General, appears by and through Emilie Burdette Rush, Assistant Attorney General. Defendant 1st American Coin, Ltd. d/b/a 1st American Reserve (hereinafter "Defendant 1st American") appears by and through William E. Raney of Copilevitz and Canter, LLC.

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

1. Stephen N. Six is the duly appointed and acting 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, K.S.A. 50-632(b).

3. Defendant 1st American has a principal place of business located at 7310 Phelan Boulevard in Beaumont, Texas.
4. Defendant 1st American is a Texas Limited Partnership organized under the laws of the State of Texas.
5. All references to Defendant herein include acts individually, in concert, or by or through employees, agents, representatives, affiliates, assignees and successors.
6. The Court has subject matter and personal jurisdiction pursuant to the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*
7. Venue is proper under K.S.A. 50-638(b) in the Third Judicial District of Kansas (Shawnee County).
8. Defendant 1st American is a business entity engaged in the solicitation and sale of coins to consumers, including by and through telemarketers.
9. At all times relevant hereto, Defendant has acted as a “supplier” as defined by K.S.A. 50-624(j).
10. At all times relevant hereto, Defendant has engaged in “consumer transactions” as defined by K.S.A. 50-624(c).
11. The Plaintiff alleges and Defendant denies the following factual allegations:
 - (a) Martha Kirkpatrick resides in Stafford, Kansas. Ms. Kirkpatrick’s date of birth is September 4, 1922, and she is deemed an “elder person” by K.S.A. 50-676.
 - (b) Ms. Kirkpatrick has been diagnosed with dementia and exhibits Alzheimer-like issues. She began exhibiting dementia symptoms on or before February 21, 2002. Defendant states recorded verifications of all transactions exhibited no signs, nor notification that Ms. Kirkpatrick

Defendant took advantage of the inability of Ms. Kirkpatrick to reasonably protect her interests because of her mental condition, all unconscionable acts in violation of K.S.A. 50-627. Defendant denies these allegations and states Defendant was never informed of Ms. Kirkpatrick's mental conditions. Defendant states recorded verifications of all transactions exhibited no signs, nor notification that Ms. Kirkpatrick suffered from any mental capacity issues. Further, Ms. Kirkpatrick acknowledged her suitability for the transactions and was provided award winning books and newsletters by Defendant to assist her in making decisions.

(b) Plaintiff alleges and Defendant denies as set forth in Paragraph 13, Defendant, through its telemarketing representatives, made or caused to be made sales to Ms. Kirkpatrick despite her statements evidencing her confusion, including that she did not remember making prior purchases, did not remember engaging in previous conversations, did not understand how payment arrangements were structured and would not be able to afford the purchases, all unconscionable acts in violation of K.S.A. 50-627. . Defendant denies these allegations and states Defendant was never informed of Ms. Kirkpatrick's mental conditions. Defendant states recorded verifications of all transactions exhibited no signs, nor notification that Ms. Kirkpatrick suffered from any mental capacity issues. Ms. Kirkpatrick affirmatively acknowledged all purchases including purchase prices and method of payment in the recorded verifications. Further, Ms. Kirkpatrick acknowledged her financial suitability for the transactions and was provided award winning books and newsletters by Defendant to assist her in making decisions.

(c) Plaintiff alleges and Defendant denies as set forth in Paragraph 13, Defendant, through its telemarketing representatives, failed to disclose to Ms. Kirkpatrick that the verification process was not merely a means to verify the initial sale, but also a continuation of the sales solicitation in which she would be sold additional merchandise, all deceptive acts in violation of K.S.A. 50-626. Defendant denies these allegations and states the majority of the recorded verifications do not include an attempt to sell Ms. Kirkpatrick any additional coins. Further, Defendant states Ms. Kirkpatrick only purchased additional coins on two occasions out of the twenty seven recorded verifications.

13. In response to the State's allegations contained in paragraphs 11 and 12,

Defendant asserts the following:

(a) Defendant states recorded verifications of all transactions exhibited no signs, nor notification that Ms. Kirkpatrick suffered from any mental capacity issues. Further, Ms. Kirkpatrick acknowledged her financial suitability for the transactions.

(b) Defendant states twenty seven transactions included recorded verifications where Ms. Kirkpatrick acknowledged her financial suitability for the purchase. Additionally, Defendant states Ms. Kirkpatrick never expressed any complaints or dissatisfaction during these verifications.

(c) Defendant denies the allegations set forth in paragraph 12(a) and states Defendant was never informed of Ms. Kirkpatrick's mental conditions. Defendant states recorded verifications of all transactions exhibited no signs, nor notification that Ms. Kirkpatrick suffered from any mental capacity issues. Further, Ms. Kirkpatrick acknowledged her suitability for the transactions and was provided award winning books and newsletters by Defendant to assist her in making decisions.

(d) Defendant denies the allegations set forth in paragraph 12(b) and states Defendant was never informed of Ms. Kirkpatrick's mental conditions. Defendant states recorded verifications of all transactions exhibited no signs, nor notification that Ms. Kirkpatrick suffered from any mental capacity issues. Ms. Kirkpatrick affirmatively acknowledged all purchases including purchase prices and method of payment in the recorded verifications. Further, Ms. Kirkpatrick acknowledged her financial suitability for the transactions and was provided award winning books and newsletters by Defendant to assist her in making decisions.

(e) Defendant denies the allegations set forth in paragraph 12(c) and states the majority of the recorded verifications do not include an attempt to sell Ms. Kirkpatrick any additional coins. Further, Defendant states Ms. Kirkpatrick only purchased additional coins on two occasions out of the twenty seven recorded verifications.

14. Defendant 1st American voluntarily agrees to this Consent Judgment without trial or adjudication of any issue of fact or law and without admitting any allegation contained herein.

15. Defendant 1st American agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be unlawful and unconscionable in Paragraph Twelve (12) of this Consent Judgment.

16. Defendant 1st American agrees that engaging in such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Order and civil penalties will be imposed for each subsequent violation.

17. In any transaction entered with a Kansas consumer conducted by or through a telemarketer(s), Defendant 1st American agrees to verify the sale through an employee other than the original salesperson. If any sales(s), including but not limited to upgrades and completions of coin sets or series, are made during a verification procedure, then a subsequent verification by another verifying representative must immediately follow. No attempt to make any additional sale(s) shall be made during this subsequent verification.

18. In any transaction entered with a Kansas consumer conducted by or through a telemarketer(s), Defendant 1st American agrees to verify the age of the consumer to ascertain if a consumer is an "elder person" as defined by K.S.A. 50-676. This verification may include inquiring if the consumer is age 60 or older. If said consumer is an "elder person", Defendant 1st American agrees to record all sales solicitations and verifications. Such recordings shall be maintained for a period of not less than two years from the date of sale and verification.

19. Defendant agrees to prohibit telemarketer Paul D. Davis from engaging in sales and conducting verifications to any Kansas consumer.

20. Defendant agrees to cease all current and future communication with Ms. Kirkpatrick. Defendant further agrees to make restitution to Kansas consumer Martha Kirkpatrick in the amount of \$90,675.00. This sum shall represent all monies paid for coins, merchandise, shipping and handling. An itemized inventory is attached hereto as Exhibit A. Ms. Kirkpatrick agrees to remit all coins to the Office of the Kansas Attorney General. Defendant shall arrange for transfer of custody of said coins at Defendant's expense. Payment shall be made by check(s) payable to Martha Kirkpatrick and shall be delivered to the Attorney

General of the State of Kansas at the time of Defendant's signing this Consent Judgment. A release of legal claims has been executed by Ms. Kirkpatrick's power of attorney signing on her behalf. This executed release is attached hereto as Exhibit B.

21. Defendant agrees to pay \$30,000.00 in civil penalties and investigative fees to the Office of the Attorney General of the State of Kansas. Payment shall be made by check(s) payable to the Office of the Kansas Attorney General and shall be delivered to the Attorney General of the State of Kansas at the time of Defendant's signing this Consent Judgment.

22. This provisions of this Consent Judgment shall be applicable to Defendant 1st American and every employee, agent or representative of Defendant.

23. Defendant 1st American agrees to make available and/or disclose the provisions of this Consent Judgment to its employees, agents and representatives within five days of signing the Consent Judgment.

24. Defendant 1st American agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structure(s), for the purpose of avoiding compliance with the terms of this Consent Judgment.

25. This Court shall retain jurisdiction 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 or compliance of any provisions contained herein. This Court shall also retain jurisdiction if any violation of any term of this Consent Judgment is committed.

26. 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.

27. 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.

28. The parties understand that this Consent Judgment shall not be construed as an approval or sanction by the Kansas Attorney General of the business practices of Defendant nor shall Defendant represent the decree of such 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.

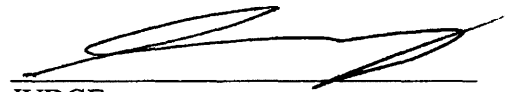
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulations and agreements of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the Court and any monies owed hereunder by Defendant 1st American immediately become a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant 1st American make full restitution to Kansas consumer Martha Kirkpatrick in the amount of \$90,675.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant in favor of Plaintiff in the amount of \$30,000.00.

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

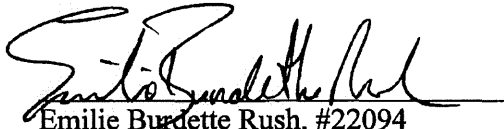
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.



JUDGE

Prepared and approved by:

Attorney for Plaintiff:



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