

STATE OF KANSAS
JEFFERSON COUNTY
FILED

IN THE DISTRICT COURT OF JEFFERSON COUNTY, KANSAS
DIVISION _____

MO
CONNIE D. MILNER
CLERK OF DIST COURT

STATE OF KANSAS, *ex rel.*
Steve Six, Attorney General,

Plaintiff,

v.

CARL BAILEY, an individual,
d/b/a C&P COATINGS, a fictitious company.
Defendants.

Case No. 09 CV 172

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW ON THIS 30 DAY of October, 2009, Plaintiff's Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). Plaintiff, the State of Kansas, *ex rel.*, Steve Six, Attorney General, appears by and through Tai J. Volkins, Assistant Attorney General.

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

1. Steve Six is the attorney general 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. 50-632 authorizes the parties to resolve matters pursuant to a Consent Judgment and the parties have agreed to do so in this instance.
3. Defendant Carl Bailey d/b/a C&P Coatings is a supplier within the definition of K.S.A. 50-624(j) and has engaged in consumer transactions in Kansas within the definition of

SCANNED Date: 10.30.09
Document # 42398

K.S.A. 50-624(c). The nature of Defendant's business is selling and soliciting for sale property and/or services to consumers within this State, specifically the sale and installation of asphalt repaving and sealing services.

4. The Court has personal and subject matter jurisdiction over the parties for the purpose of entering into this Consent Judgment and any subsequent enforcement thereof.

5. The Attorney General alleges that, were this matter to be litigated, the following facts could be proven:

- a. Defendant engaged in a door-to-door sale in the state of Kansas within the definition of K.S.A. 50-640(c)(1) with a consumer, Mr. Jeff Feyh at Feyh Retail Liquor, a family partnership located at 301 S. Miller, Meriden, Kansas 66512.
- b. Defendant 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;
- c. Defendant failed to furnish the consumer with a "NOTICE OF CANCELLATION" required by K.S.A. 50-640(b)(2);
- d. Defendant failed to inform the 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);

6. Defendant voluntarily agrees 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. Defendant agrees to refrain from and to be permanently enjoined from engaging in the sale of petroleum products by delivery to consumers and those acts and practices alleged to be unlawful and unconscionable in Paragraph Five (5) of this Consent Judgment. Defendant 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.

8. Defendant agrees to pay \$5,850.00 in restitution, investigative fees and expenses to the Kansas Attorney General's Office. The office of the Kansas Attorney General shall make restitution of \$4,850.00 to Jeff Feyh, d/b/a Feyh Retail Liquor. Payment shall be made by cashier's check or money order, and shall be made payable and delivered to the Attorney General of the State of Kansas at the time of Defendant's signing this Consent Judgment.

9. The Court hereby orders the immediate release of the following property previously sequestered by the Court's prior orders pursuant to K.S.A. 50-632(c)(4):

- a. 1999 Loadstar utility flatbed trailer, Utah License Plate # LJ 4431;
- b. One Bobcat Loader, currently secured on the aforementioned loadstar trailer;
- c. 1995 Chevrolet Dump Truck, Idaho License Plate # KP 124;
- d. 1988 Freight Liner Dump Truck, Oklahoma License Plate # Y97855;
- e. 1994 International Dump Truck, Missouri License Plate # 35B0NC
- f. GMC Dump Truck of unknown year, no license plate, with attached trailer.

g. One asphalt roller, currently secured aboard the aforementioned trailer attached to the GMC Dump Truck.

h. All papers, contracts and invoices presented to and/or received from Kansas consumers over the course of the last seven days and all monies, checks, papers, documents and financial instruments in the possession of Plaintiff.

10. The Court hereby orders that the prior restraining order in this case be hereby lifted.

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

12. Defendant agrees 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.

13. 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.

14. 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.

15. Compliance with this Consent Judgment does not relieve Defendant 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. Defendant further understands that nothing in this Consent Judgment shall preclude the Attorney General from taking further action against Defendant 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.

16. 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 Defendant nor shall Defendant 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.

17. 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 the Defendant. Defendant further represents 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 Defendant immediately become a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant in favor of Plaintiff in the amount of \$5,850.00.

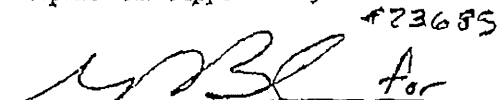
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant pay all costs associated with this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, 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:


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For C&P Coatings