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TOPEKA, KANSAS

2009 NOV 17 P 2:29

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

09C1056

STATE OF KANSAS, *ex rel.*,)
STEVE SIX, Attorney General,)
)
Platattiff,)
)
v.)
)
KIRKLAND YOUNG, LLC,)
)
Defendant.)

+056
Case No. 09 C-1055
D10129

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 7 day of Nov. 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. Vokins, Assistant Attorney General. Defendant appears by and through Amy Brozenic, Lathrop & Gage, LLP.

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

1. Steve Six 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, K.S.A. 50-623 *et seq.*
3. Defendant Kirkland Young, LLC, is a limited liability company registered with the Florida Secretary of State.

4. Defendant, Kirkland Young, LLC, has a principal place of business at 2915 Biscayne Blvd., #303, Miami, Florida 33137.
5. David Botton is the owner of Kirkland Young, LLC.
6. David Botton is responsible for all day-to-day business operations of Kirkland Young, LLC.
7. Defendant engages in consumer transactions in Kansas that include, but are not limited to mortgage modification assistance and mortgage debt reduction and negotiation services.
8. Defendant is a supplier as that term is defined by K.S.A. 50-624(j).
9. The Court has personal and subject matter jurisdiction over the parties for the sole purpose of entering into this Consent Judgment and any subsequent enforcement thereof.
10. The Plaintiff alleges Defendant engaged in the following deceptive and unconscionable acts and practices in violation of the Kansas Consumer Protection Act, specifically K.S.A. 50-626(a), K.S.A. 50-626(b)(2), K.S.A. 50-626(b)(3), K.S.A. 50-627(a), K.S.A. 50-627(b)(3), K.S.A. 50-627(b)(5), K.S.A. 50-1132, and K.S.A. 50-1134:
 - a. Defendant, in the course of consumer transactions, in both oral and written representations, made willful use of falsehood as to a material fact on consumer transactions by falsely representing that it would negotiate a loan modification for consumers, when in fact no negotiating takes place, an act or practice in violation of K.S.A. 50-626(b)(2).
 - b. Defendant, in the course consumer transactions, willfully failed to state a material fact or willfully concealed, suppressed or omitted material facts on consumer transactions by failing to disclose that it does not conduct any negotiating with

lenders or mortgage servicers on behalf of consumers, an act or practice in violation of K.S.A. 50-626(b)(3).

- c. Defendant, in the course of consumer transactions, willfully failed to state a material fact or willfully concealed, suppressed or omitted material facts on consumer transactions by failing to disclose that it is not affiliated with any mortgage servicer or mortgage lender and does not provide any significant service for the consumer related to the modification other than forwarding paperwork that the consumer must complete without any guidance or assistance from Defendant, an act or practice in violation of K.S.A. 50-626(b)(3).
- d. Consumers do not obtain any material benefit as a result of transactions with Defendant as Defendant does no negotiating for the consumer and the consumer completes all of the steps necessary to obtain a mortgage modification independent of any service provided by Defendant, an act or practice in violation of K.S.A. 50-627(b)(3).
- e. Defendant induces consumers into transactions that are excessively onesided in favor of Defendant, by charging consumers fees for a service that the consumer can complete for no cost on their own, and that the service Defendant does provide is nominal in nature, an act or practice in violation of K.S.A. 50-627(b)(5).
- f. Defendant made or caused to be made unsolicited consumer telephone calls, for the purpose of soliciting the sale of Defendant's services, to consumers with telephone numbers listed on the Do-Not-Call registry, and in violation of K.S.A. 50-670a(e), an act or practice in violation of K.S.A. 50-627.

g. Defendant engages in acts and practices which are a violation of the Kansas credit services organizations act, which is a deceptive act or practice in violation of the Kansas Consumer Protection Act pursuant to K.S.A. 50-1132 and K.S.A. 50-1134.

11. Defendant denies all of the factual and legal allegations set forth in Plaintiff's Amended Petition as well as this Consent Judgment, but voluntarily agrees to this Consent Judgment without trial or adjudication of any issue of fact or law.
12. Defendant agrees to be permanently enjoined from engaging in the sale of goods or services in Kansas as a "supplier" as that term is defined by K.S.A. 50-624(j). Defendant agrees that engaging in the sale of goods or services as a supplier, after the date of this Consent Judgment, shall constitute a violation of this Order and civil penalties will be imposed for each subsequent violation.
13. The provisions of this Consent Judgment will be applicable to the Defendant, Kirkland Young, LLC, to David Botton individually, and every employee, agent or representative of Defendant.
14. Defendant 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.
15. 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 the terms of this Consent Judgment.

16. David Botton 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 the terms of this Consent Judgment.

17. Defendant agrees to pay the office of the Kansas Attorney General \$4,063.00 as restitution. The office of the Kansas Attorney General will distribute restitution to the following individuals:

- a. James Cook, 7649 W 149th Street, Overland Park, Kansas 66223;
- b. Richard Kane, 5644 NE 40th Street, El Dorado, Kansas 67042;
- c. Kathleen Frierson, 10804 Horton, Leawood, Kansas 66211;
- d. Shane McGrath and Cindy McGrath, 411 East Main Street, Meriden, Kansas 66512.

18. Defendant agrees to pay the office of the Kansas Attorney General consumer protection activity costs, enforcement costs, general costs, expenses and investigative fees of \$6,050.00.

19. The total judgment amount shall be \$10,113.00. Payment shall be made payable to the Kansas Attorney General's Office in five installments. \$5,056.50 shall be due upon signing of this document. The remaining payments shall be made in four installments.

Defendant shall pay:

- a. \$1264.12 on or before November 23, 2009;
- b. \$1264.12 on or before December 23, 2009;
- c. \$1264.12 on or before January 23, 2010;
- d. \$1264.14 on or before February 23, 2010.

20. Failure to pay any installment due under the terms of this Consent Judgment shall be deemed a violation of this Consent Judgment. Payment shall be mailed to the attention of Tai J. Vokins, Assistant Attorney General, 120 SW 10th Ave, 2nd Floor, Topeka, Kansas 66612.
21. 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.
22. If any portion, provision, or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reason, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions or parts.
23. 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.
24. The parties understand that this Consent Judgment shall not be construed as an approval of 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 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 Defendant pay restitution to in the amount of \$4,063.00. Payment shall be made to the Plaintiff upon signing of this document who shall then distribute payments to the above named individuals as required.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant pay the office of the Kansas Attorney General consumer protection activity costs, enforcement costs, general costs, expenses and investigative fees in the amount of \$6,050.00.

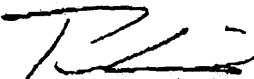
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant in favor of Plaintiff in the amount of \$10,113.00.

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

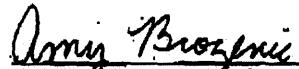
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.
IT IS SO ORDERED.


DISTRICT COURT JUDGE

Prepared and Approved by:


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Attorney for Defendant


David Botton
For Kirkland Young, LLC