

89-006

DISTRICT COURT
JUDICIAL DISTRICT
Dec 17 2 40 PM '90

Dec 5 3 37 PM '90

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN
D. Jeanne Kutzley
Supreme Court #12399
Assistant Attorney General
Kansas Judicial Center - Lower Level
Topeka, Kansas 66612-1597
(913) 296-3751

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION FOUR

STATE OF KANSAS, ex rel.,
ROBERT T. STEPHAN, Attorney General,
Plaintiff,

vs.

Case No. 89CV363

THE WATSON & HUGHEY COMPANY, et al.,
Defendant.

JOURNAL ENTRY OF CONSENT JUDGMENT WITH DEFENDANT
PACIFIC WEST CANCER FUND, INC.

NOW on this 17th day of December, 1990, the Consent Judgment filed by the State of Kansas comes on for hearing. The State of Kansas appears by Robert T. Stephan, Attorney General, by and through D. Jeanne Kutzley, Assistant Attorney General. The Defendant Pacific West Cancer Fund, Inc. appears by Bernard F. Weinand, COPILEVITZ, BRYANT, GRAY & JENNINGS, P.C., 4550 W.109th, Suite 230, Overland Park, Kansas 66211; and MacKenzie Canter, III, LEHRFELD, CANTER & HENSKE, Suite 403, 1101 Connecticut Avenue, N.W., Washington, D.C. 20036; and Daniel T.

Flaherty, KUTAN, ROCK & CAMPBELL, 1101 Connecticut Avenue, N.W.,
Washington, D.C. 20036-4376, Attorney for Defendant.

Whereupon, the parties advise the Court they have stipulated and agreed to the following matters:

1. Robert T. Stephan is the duly elected, qualified 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 Charitable Organizations and Solicitations Act, K.S.A. 17-1759 et seq.

3. Pacific West Cancer Fund, Inc. is a Delaware corporation. Pacific West Cancer Fund, Inc.'s business is located at 1001 Fourth Avenue, Plaza #3200, Seattle, Washington 98154. Pacific West Cancer Fund, Inc. enters its voluntary general appearance. Pacific West Cancer Fund, Inc. admits the Court has jurisdiction over the parties and the subject matter.

4. Venue is proper in Shawnee County.

5. Pacific West Cancer Fund, Inc. is a "charitable organization" as defined in K.S.A. 17-1760(a).

6. Pacific West Cancer Fund, Inc. is registered as a charitable organization with the Kansas Secretary of State.

7. Pacific West Cancer Fund, Inc.'s charitable purposes are:

a. To increase public awareness of cancer and to provide direct support to cancer patients.

b. Through the use of direct mail, news media and

other avenues, increase public awareness of the dangers of cancer and promote improved rates of survivability for persons with cancer through awareness of early detection methods.

c. Promote improved rates of survivability for persons with cancer through awareness education directed to the early detection and treatment of cancer, increase public awareness of the causes of cancer; provide direct material services and support to cancer patients; and support national programs which improve methods of treatment of cancer.

8. Pacific West Cancer Fund, Inc. solicited funds, as defined in K.S.A. 17-1760(f), from Kansas residents to fulfill its stated charitable purposes.

9. Kansas residents received Pacific West Cancer Fund, Inc.'s solicitations.

10. Kansas residents donated money to Pacific West Cancer Fund, Inc. based on Pacific West Cancer Fund, Inc.'s solicitations.

11. The Attorney General alleges that:

a. The solicitations make it appear that Robert R. Stone, attorney-at-law, is officed at a location and has a phone number which in fact belongs to a telemarketing firm. This is in violation of K.S.A. 17-1769(b).

b. The solicitations make it appear that the recipient has already qualified and won a large cash prize when in fact the recipient must be the specifically named

"pre-selected" winner and must respond to the solicitation in order to win. Most persons who respond will share a small prize and will receive a prize of as little as 10 cents. This is in violation of K.S.A. 17-1769(b).

12. Pacific West Cancer Fund, Inc. voluntarily agrees to this Consent Judgment without trial or adjudication of any issue of fact or law.

13. The provisions of this Consent Judgment will be applicable to Pacific West Cancer Fund, Inc., and every employee, agent or representative of Pacific West Cancer Fund, Inc.. The provisions pertaining to future solicitations will be given to any professional fundraiser who will prepare and/or send solicitations on behalf of Pacific West Cancer Fund, Inc. into the State of Kansas.

14. Pacific West Cancer Fund, Inc. agrees to make available and/or disclose the provisions of this Consent Judgment to its employees, agents and representatives.

15. Pacific West Cancer Fund, Inc. agrees to refrain from and to be enjoined from engaging in all acts and practices alleged above by the State of Kansas to be deceptive and unconscionable.

16. Pacific West Cancer Fund, Inc. agrees to resolve all consumer complaints currently on file with the Attorney General's Office to the satisfaction of the Attorney General within thirty (30) days of the date of this Consent Judgment. Attached hereto is Exhibit A which lists those complaints

currently on file and the amount of actual damages for each complaint filed with the Office of the Attorney General.

17. Pacific West Cancer Fund, Inc. agrees to resolve all consumer complaints filed after the date of this Consent Judgment to the satisfaction of the Office of the Attorney General whether brought to Pacific West Cancer Fund, Inc.'s attention by the State of Kansas or by consumers complaining directly to Pacific West Cancer Fund, Inc.. Pacific West Cancer Fund, Inc. shall apprise the State of Kansas, through the Plaintiff, in a simple and concise manner, of the disposition of those complaints and disputes within thirty (30) days after resolved.

18. Pacific West Cancer Fund, Inc. shall not enter into, form, organize or reorganize into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Consent Judgment.

19. Pacific West Cancer Fund, Inc. agrees to the following guidelines on all future solicitations which offer a prize in connection with a sweepstakes sent to Kansas residents. (A sweepstakes means any contest, game or other promotion for the distribution of a prize or prizes distributed or promised to be distributed on the basis of a drawing or random selection or other element of chance):

a. The solicitation will not use the name, letterhead, signature or other indicia of representation or sanction of an attorney-at-law, in such a fiduciary capacity, unless

the attorney-at-law actually had knowledge of the winner of the sweepstakes and is personally notifying that winner. Nothing in this Consent Judgment shall prohibit Pacific West Cancer Fund, Inc. from using the name of an officer, director or employee who is an admitted attorney, provided that he or she is not identified as such.

b. The solicitation will clearly disclose that no payment, contribution or consideration is necessary to enter the sweepstakes.

c. The solicitation will disclose the description and/or value of the prize or prizes being offered, or prizes which have already been awarded; the odds of winning each prize; when and how the prize awards will be determined; and any other rules which may apply. These disclosures shall be made in 8 point type. These disclosures and any sweepstakes rules shall not be printed on any portion the recipient must return to participate or donate.

d. The solicitation will not contain any statement that the recipient has won or is going to win an award or prize in any amount greater than can be substantiated at the time the solicitation is sent. Phrases such as "You have won" and "You have won a cash prize in the _____ sweepstakes" (where the blank is filled in by the total value of the prizes in the sweepstakes) may be used only if true.

e. The solicitation will not represent that funds raised by a solicitation will be earmarked for a specific project unless the defendant has a good faith intent and reasonably believes that the funds raised will be used for that specific project. It will be a defense to an enforcement action based upon this provision that despite good faith efforts it was not possible for the defendant to carry out the planned or projected activities. The solicitation shall make the following disclosures:

- (1) The year of Pacific West Cancer Fund, Inc.'s incorporation and either:
 - (a) That a substantial portion of proceeds actually received will be spent on donor acquisition and/or public education. A statement will be included that "public education" may include the information sent with the solicitation; or
 - (b) The percentage of funds spent on program services during the immediately preceding fiscal year using generally accepted accounting procedures. A statement will be included that "public education" may include the information sent with the solicitation.
- (2) The solicitation will state that a copy of the latest financial report is available upon request.
- (3) The solicitation will state that further information may be available from the office of the Attorney General of the State of Kansas.

(4) These disclosures will be made in 8 point type.

20. Pacific West Cancer Fund, Inc. agrees to pay at the time of filing this Consent Judgment:

- a. \$5,000.00 charitable donation to Camp Hope; and \$2,500.00 charitable donation to Ronald McDonald House — Sleepy Hollow, Wichita.
- b. Payment will be by certified check.
- c. All payments will be sent directly to the Office of the Attorney General.

21. Pacific West Cancer Fund, Inc. agrees to allow the Attorney General to inspect relevant business records of Pacific West Cancer Fund, Inc.'s charitable solicitations to Kansas residents in the future. The Attorney General will give reasonable notice for these inspections. The Attorney General will not pre-approve any solicitation even if the Attorney General inspects the solicitation.

22. The Attorney General agrees to move, not more than five days following the entry of this decree, to dissolve the prejudgment attachments on the accounts of Pacific West Cancer Fund at the Merchant's National Bank of America of Topeka, Kansas granted by the District Court of Shawnee County, Kansas on August 7, 1989.

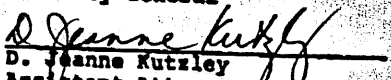
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Charitable Organizations and Solicitations Act, K.S.A. 17-1768(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 OF THE DISTRICT COURT

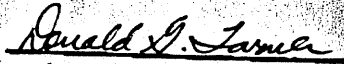

Approved by:

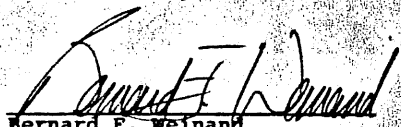

ROBERT T. STEPHAN
Attorney General


D. Jeanne Kutzley
Assistant Attorney General

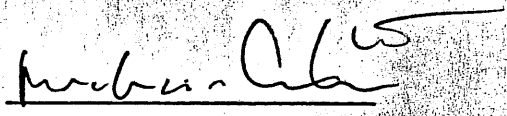
Attorneys for Plaintiff.

Pacific West Cancer Fund, Inc.

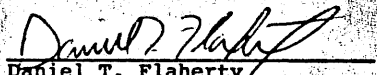
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