

01-013

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DISTRICT COURT
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TOPEKA, KS.

2001 MAY 24 A 9: 16

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 7

STATE OF KANSAS, *ex rel.*
CARLA J. STOVALL, Attorney General

Plaintiff,

vs.

DRAYTON GIBBES,
d/b/a FUTURE NOW,

Defendant.

Case No. 01 C 394

Petition Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 24 day of May, 2000, Plaintiff's Petition for Approval of Consent Judgment comes before the Court pursuant to K.S.A. §50-632(b). Plaintiff, the State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through James J. Welch, Assistant Attorney General. Defendant Drayton Gibbes, d/b/a Future Now, appears pro se.

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

1. Carla J. Stovall 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 Drayton Gibbes, d/b/a Future Now, is a sole proprietorship organized under the laws of the state of Oklahoma. The principal office of the corporation is located at 10501 Laramie Road, Yukon, OK 73099.

4. Defendant is a supplier within the definition of K.S.A. §50-624(i) and has engaged in consumer transactions in Kansas within the definition of K.S.A. §50-624(c) and (h).

5. Defendant admits the Court has personal and subject matter jurisdiction over the parties.

6. Defendant stipulates and waives any objection to venue in Shawnee County.

7. Defendant sells "Spirit Flags" to small businesses for resale. Defendant's sales constitute door-to-door sales, as defined by K.S.A. §50-640.

8. The Attorney General alleges and Defendant admits Defendant engaged in the following acts and practices which are deceptive and/or unconscionable and violate the Kansas Consumer Protection Act:

a. Defendant failed to furnish consumers with a fully completed receipts which contained in immediate proximity to the space reserved for the consumers' signature a notice of consumers' rights to cancel, in violation of K.S.A. §50-640(b)(1).

b. Defendant failed to furnish consumers with a completed "Notice of Cancellation" form in duplicate, attached to consumers' receipts which was easily detachable and which contained the consumers' right to cancellation form in 10-point boldface type, in violation of K.S.A. §50-640(b)(2).

c. Defendant failed, before furnishing copies of the "notice of cancellation" to consumers, to complete both copies by entering the dates of the transactions and the dates, not earlier than the third business days following the dates of the transactions, by which consumers may have given notices of cancellation, in violation of K.S.A. §50-640(b)(3).

- d. Defendant failed to inform consumers orally of such consumers' rights to cancel, at the time such consumers signed the contracts and purchased cleaner from Defendant, in violation of K.S.A. §50-640(b)(5).
- e. Defendant made solicitations and sales to Kansas consumers in several counties within the state of Kansas, leading such consumers to believe that Defendant had obtained the requisite transient merchant's license from the county in which solicitations and sales were made when, in fact, Defendant had obtained no such license. Defendant willfully failed to state and willfully concealed, suppressed, and omitted the material fact that Defendant was conducting business in said counties without a transient merchants license, in violation of K.S.A. §50-626(b)(3); Defendant's representation by implication that Defendant had obtained transient merchants' licenses also violates K.S.A. §50-626(b)(1)(B), in that it is the representation that Defendant had sponsorship, approval, status, affiliation and connection that the Defendant did not have - specifically, approval by the county to make transient sales;

9. Defendant voluntarily admits liability and agrees to this Consent Judgment without trial or adjudication of any issue of fact or law.

10. Defendant agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be deceptive or unconscionable in paragraph eight (8) of this Consent Judgment, and Defendant agrees that engaging in such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Order.

11. Defendant agrees to refrain from and to be permanently enjoined from engaging in any and all deceptive and/or unconscionable acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. §50-623 *et seq.*, as it now exists or as amended in the future and Defendant agrees that engaging in such acts or practices after the date of this consent judgment shall constitute a violation of this Order.

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

13. 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.

14. Defendant agrees to resolve any future complaints filed with the Office of the Attorney General regarding Defendant after the date of this Consent Judgment to the satisfaction of the Attorney General within 30 days of the date such complaint is forwarded to Defendant for resolution.

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. Defendant agrees to pay \$ 5,000, pursuant to K.S.A. §50-632, to "Office of the Attorney General" of the State of Kansas. Payments shall be made by cashiers checks in the amount of \$200.00 per month, commencing on July 1, 2001, and shall be delivered to the Attorney General of the State of Kansas. Thereafter, Defendant agrees to make monthly payments of \$200.00 until the entire remaining balance totaling \$5,000.00 is satisfied. Payment of \$200.00 per month shall commence on or before July 1, 2001, with subsequent \$200.00 payments thereafter due on or before the first (1st) day of each month, until the entire amount payable is satisfied.

17. Parties agree that payment of investigation fees and expenses and civil penalties, as set out in paragraph sixteen (16) of this Consent Judgment shall not be subject to interest as long as all payments are timely made. Defendant agrees that failure to make timely payments of investigative fees and expenses and civil penalties, as set out in paragraph sixteen (16) of this Consent Judgment, will result in the amount of the entire unpaid balance becoming due within five (5) days of the first payment missed and subject to interest, as provided in K.S.A. §16-204.

18. Defendant agrees to pay all expenses and reasonable attorney's fees in connection with the collection of any amounts in this judgment, provided Defendant does not pay the amounts as agreed herein within the time frame stated.

19. Defendant agrees to pay all expenses and reasonable attorney's fees in connection with the collection of any amounts in this judgment, provided Defendant does not pay the amounts as agreed herein within the time frame stated.

20. Defendant agrees to maintain all business records for a period of five years and to allow the Attorney General to inspect all of Defendant's business records in the future.

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 whatsoever, 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 her jurisdiction.

24. 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 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 judgment is entered against Defendant in favor Plaintiff in the amount of \$ 5,000.

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.

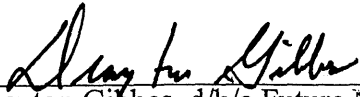
/s/ Hon. Franklin Treiz
DISTRICT COURT JUDGE

Approved by:

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Attorney for Plaintiff



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Defendant