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KS. DISTRICT COURT
THIRD JUDICIAL DIST
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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 7

STATE OF KANSAS, *ex rel.*)
CARLA J. STOVALL, Attorney General)
)
Plaintiff,)
)
v.)
)
SAMANTHA J. TOLBERT)
d/b/a KMH ENTERPRISE,)
)
Defendant.)

Case No. 01 C 1329

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 17 day of Sept, 2002, 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 Samantha J. Tolbert, d/b/a KMH Enterprise, appears by and through Jay Thomas.

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 Samantha J. Tolbert is an individual who formerly did business as a Kansas licensed used car dealer, KMH Enterprise, dealer number 2511, with a principal office located at 142 North Burch, Olathe, Kansas, 66061.

4. Defendant had one licensed salesman, Norman W. Tolbert, who is now deceased.

5. Defendant Samantha J. Tolbert may be served with process at her current address of 6189 Doe Haven Drive, Farmington, New York, 14425.

6. 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(b) and (c).

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

8. Venue is proper in the Shawnee County under K.S.A. 50-638(b).

9. Defendant is responsible for the acts of its agents and employees under the legal theory of *respondeat superior*.

10. The Attorney General alleges and Defendant admits that Defendants' agents and employees engaged in the following acts and practices which are deceptive and/or unconscionable and violate the Kansas Consumer Protection Act:

- a. On or about January 1, 2000, through November 1, 2000, Defendant's agents and employees knowingly failed to disclose in over 90 classified advertisements placed in the Kansas City Star, that the vehicles being advertised for sale by Defendant were being offered for sale by a vehicle dealer, each advertisement in violation of K.S.A. 50-665;
- b. On or about September 18, 2000, Defendant's agents and employees willfully failed to state and willfully concealed, suppressed, and omitted the material fact that the vehicle Defendant sold to Mr. Danny Hu, a consumer, had been materially damaged in a flood, in violation of K.S.A. 50-626(b)(3);
- c. On or about April 20, 2000, Defendant's agents and employees sold a vehicle to Ms. Linda Fleetwood, a consumer. In that transaction, Defendant's agents and employees;

1. failed to furnish the consumer with a fully completed receipt which contained in immediate proximity to the space reserved for the consumer's signature a notice of consumer's rights to cancel, in violation of K.S.A. 50-640(b)(1);
2. failed to furnish the consumer with a completed "Notice of Cancellation" form in duplicate, attached to the consumer's receipt which was easily detachable and which contained the consumer's right to cancellation form in 10-point boldface type, in violation of K.S.A. 50-640(b)(2);
3. failed to inform the consumer orally of such consumer's right to cancel, at the time such consumer signed the contract and purchased the vehicle from Defendant, in violation of K.S.A. 50-640(b)(5);
4. limited the implied warranties of merchantability and fitness for a particular purpose by selling the vehicle to the consumer "as-is" with no warranty, in violation of K.S.A. 50-627(b)(7) and K.S.A. 50-639; and
5. knowingly or intentionally failed to disclose to the consumer that the vehicle sold to her was a prior leased vehicle, in violation of K.S.A. 50-659.

11. Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law.

12. 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 10 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.

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

14. 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.

15. Defendant agrees to pay \$8,570.60 as restitution to Mr. Danny Hu, a consumer, pursuant to K.S.A. 50-632(a)(3). Payment shall be made by Norton, Hubbard, Ruzicka & Kreamer, L.C. Trust Account check, made payable to Mr. Danny Hu, and shall be delivered to the Attorney General of the State of Kansas at the time of signing this Consent Judgment.

16. Defendant agrees to pay \$6,429.40 as restitution to Ms. Linda Fleetwood, a consumer, pursuant to K.S.A. 50-632(a)(3). Payment shall be made by Norton, Hubbard, Ruzicka & Kreamer, L.C. Trust Account check, made payable to Ms. Linda Fleetwood, and shall be delivered to the Attorney General of the State of Kansas at the time of signing this Consent Judgment.

17. Defendant agrees to pay \$2,500.00 pursuant to K.S.A. 50-632. Payment shall be made by Norton, Hubbard, Ruzicka & Kreamer, L.C. Trust Account check, made payable to "Office of the Attorney General" of the State of Kansas, and shall be delivered to the Attorney General of the State of Kansas at the time of signing this Consent Judgment.

18. 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.*

19. 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.

20. 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.

21. 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.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant in favor Plaintiff in the amount of \$17,500.00.

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 Tateis

DISTRICT COURT JUDGE

PREPARED AND APPROVED BY:



CARLA J. STOVALL, #11433

Attorney General



James J. Welch #09546

Assistant Attorney General

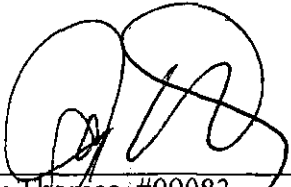
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APPROVED BY:



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Attorney for Defendant