

E-03-000028

FILED BY CLERK
KS. DISTRICT COURT
THIRD JUDICIAL DIST
2003 MAY 14 P 2:14

Joseph N. Molina, #20934
Assistant Attorney General
Office of the Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

Division 6

STATE OF KANSAS, ex rel.,
PHILL KLINE, Attorney General,

Plaintiff,

v.

AMERIPURE WATER COMPANY,

Defendant.

Case No. 03 C 706

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 14th day of May, 2003, 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.* Phill Kline, Attorney General, appears by and through Joseph N. Molina, Assistant Attorney General. Defendant appears through counsel William E. Raney.

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

1. Phill Kline 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.*, and the Kansas No-Call Act, ch. 179, § 1-2 (2002 Session Laws).
3. Defendant AmeriPure Water Company is a corporation licensed under the laws of the State of Kansas. Its principal place of business is located at 1904 Elm St. Eudora, Kansas 66025.

4. Defendant alleges and the Plaintiff denies that it is a telephone solicitor, as defined by Kansas No-Call Act, ch. 179, § 1(a)(3) (2002 Session Laws) and has engaged in unsolicited consumer telephone calls within the definition of the Kansas No-Call Act, ch. 179, § 1(a)(1) (2002 Session Laws).

5. 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.

6. Defendant stipulates and waives any objection to venue in Shawnee County for the sole purpose of entering into this Consent Judgment and any subsequent enforcement thereof.

7. The Plaintiff alleges Defendant engaged in the following unconscionable acts and practices in violation of the Kansas Consumer Protection Act, specifically the Kansas No-Call Act, ch. 179, § 1-2 (2002 Session Laws):

- a. That on or about the dates of November 2, 2002 through December 18, 2002, Defendant made or caused to be made 16 unsolicited consumer telephone calls for the purpose of soliciting a sale of property or services, an extension of credit for the sale of property or services or for obtaining information that will or may be used for the direct solicitation of a sale of property or services.
- b. At the time of the unsolicited consumer telephone calls, each of the consumer telephone numbers were registered on the Kansas No-Call list published on October 1, 2002.
- c. Prior to making the unsolicited consumer telephone calls Defendant failed to consult the Kansas No-Call list.

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

9. Defendant, by entering into this Consent Judgment, make no admission of liability as to any practice.

10. Defendant agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be unconscionable in Paragraph Seven (7) of this Consent Judgment.

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

12. 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.

13. 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.

14. For the violations described in Paragraph Seven (7), Defendant agrees to pay \$10,000.00 in cost and investigative fees to the "Office of the Attorney General" of the State of Kansas. A payment of \$2,500.00 shall be made by cashier's check and shall be delivered to the Attorney General of the State of Kansas at the time of Defendant's signing this Consent Judgment. The remaining \$7,500.00 shall be paid in \$1,500.00 intervals every 30 (thirty) days from the date this Consent Judgment is signed and delivered to the Attorney General of the State of Kansas until the judgment is satisfied. Failure to make timely payments required by this Consent Judgment shall void the entire Consent Judgment. In this event, all monies collected or paid to the Attorney General shall be forfeited.

15. 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.

16. 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.

17. 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.

18. 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 of Plaintiff in the amount of \$10,000.00.

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

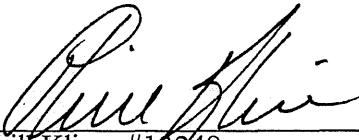
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. §50-632 (b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

IT IS SO ORDERED


151
DISTRICT COURT JUDGE

Prepared and approved by:

PLAINTIFF:



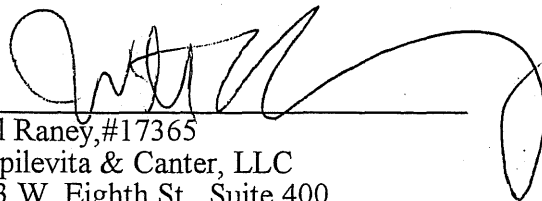
Phil Kline, #13249
Attorney General



Joseph N. Molina, #20934
Assistant Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751

Attorneys for Plaintiff

DEFENDANT:



Bill Raney, #17365
Copilevita & Canter, LLC
423 W. Eighth St., Suite 400
Kansas City, MO 64105

Attorney for Defendant