

E-03-000026

FILED BY CLERK
KS. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS
2003 SEP 29 A 10:36

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 6

State of Kansas, ex rel.,
Phill Kline, Attorney General,

Plaintiff,

v.

American Paving Company, Joshua J,
Werner d/b/a American paving company,

Defendants.

Case No. 03 C 756

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 29th day of September, 2003, this matter comes on for hearing on the parties Journal Entry of Consent Judgment. Plaintiff, the State of Kansas, *ex rel.* Phill Kline, Attorney General, appears by and through Rex G. Beasley, Assistant Attorney General. Defendants appear by and through counsel Thomas C. Boone.

Whereupon, the parties advise the Court that they have stipulated, agreed, admit and accept 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.*
3. Defendants are suppliers as defined by the Kansas Consumer Protection Act and have engaged in consumer transactions in Kansas as defined by said act. The Court has personal and subject matter jurisdiction over the parties.

4. Defendants stipulate to jurisdiction and venue in Shawnee County, Kansas.

5. Defendants have engaged in door-to-door sales in the State of Kansas as defined by the Kansas Consumer Protection Act.

6. On or about May 4 through May 14, 2003 defendant engaged in unconscionable and deceptive acts and practices in violation of the Kansas Consumer Protection Act as follows:

(a) Entering into door-to-door sales without complying with the requirements of K.S.A. 50-640(b).

(b) Soliciting and engaging in consumer transactions in which defendants falsely represented to consumers that defendants had extra or leftover material from other jobs which they would provide to the consumers a substantial savings to the consumers.

7. Defendants voluntarily waive a trial or other hearing and agree to the entry of this Judgment against them. The Attorney General accepts this consent judgement in lieu of continuing this proceeding.

9. Defendants agree to refrain from and to be permanently enjoined from engaging in the unconscionable and deceptive acts and practices described in paragraph six (6) above. Defendants agree to restrain from and to be permanently enjoined from sales or solicitations in the State of Kansas which would constitute door-to-door sales as defined by Kansas law.

10. Defendants acknowledge and agree that, after the date of this Consent Judgment, engaging in any of the acts enjoined by this Consent Judgment or similar acts, shall and will constitute a violation of this Order and will result in civil penalties of \$20,000.00 being imposed for each subsequent violation.

11. The provisions of this Consent Judgment will be applicable to defendants, and their employees, agents, representatives and anyone else working for or on behalf of any defendant.

12. Defendants shall make available to and/or disclose the provisions of this Consent Judgment to their respective current employees, agents, representatives and anyone else working for or on behalf of either of them within five days of signing the Consent Judgment, and shall make available to and/or disclose the provisions of this Consent Judgment to their respective future employees, agents, representatives and anyone else working for or on behalf of either of them at or before the creation of each such future relationship.

13. Defendants agree to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other entity, alliance, agreement, understanding or legal structures, for the purpose of avoiding or attempting to avoid strict compliance with the terms of this Consent Judgment.

14. Defendants agree to pay \$1,500.00 in investigative and attorneys fees to the "Office of the Attorney General" of the State of Kansas. Payment shall be made by cashier's check, payable to the Office of the Attorney General, and shall be delivered to the Attorney General of the State of Kansas with the executed original of this Consent Judgment. The signature of the Kansas Attorney General or his designee on this Consent Judgment will constitute the receipt and acceptance of said payment.

15. Jurisdiction shall be 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 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 any defendant of any other obligations imposed by applicable federal, state, or local law, nor shall the Attorney

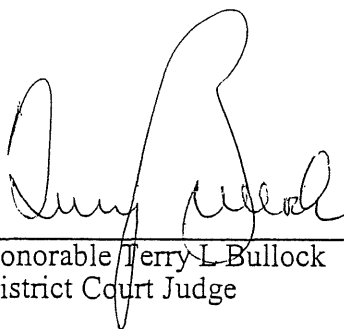
General be precluded from taking appropriate legal action to enforce other civil or criminal statutes under his jurisdiction. Nor does this Consent Judgment bar any other action by the Attorney General against the parties hereby restrained or constitute a waiver of any claims of the Attorney General for any conduct not herein described.

18. This Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of defendants nor shall defendants represent the decree as having such approval. The parties further understand that any failure by the State of Kansas or by the Attorney General to take any action against the parties hereby restrained for any violation of the terms of this 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.

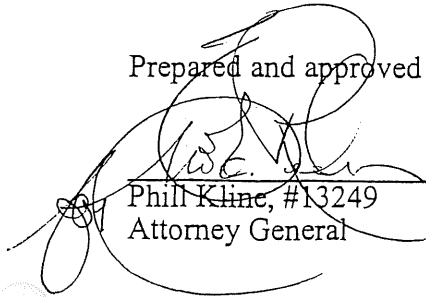
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

IT IS SO ORDERED




Honorable Terry L. Bullock
District Court Judge

Prepared and approved by:

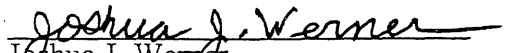


Phill Kline, #13249
Attorney General

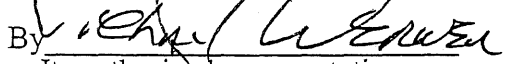

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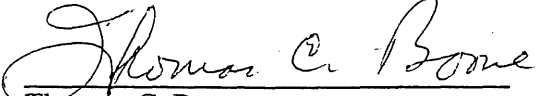
Reviewed and approved by:

Defendant Joshua J. Werner


Joshua J. Werner

Defendant American Paying Company

By 
Its authorized representative


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Attorney for Defendants