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DISTRICT COURT
RUSSELL COUNTY, KS

IN THE DISTRICT COURT OF RUSSELL COUNTY, KANSAS

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

Plaintiff,

v.

Case No. 03C82

THOMAS W. HART,
d/b/a HART'S HEARING AID CENTER,

Defendants.

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

JOURNAL ENTRY OF DEFAULT JUDGMENT

NOW on this 24th day of Nov, 2003, comes before the Court the Motion for Judgment by Default Against Defendant Thomas W. Hart, d/b/a Hart's Hearing Aid Center, and Memorandum in Support Thereof filed herein by the Plaintiff State of Kansas, *ex rel.* Phill Kline, Attorney General. Plaintiff appears by and through counsel, Stacy A. Jeffress, Assistant Attorney General. There are no other appearances.

Upon review of the file and the statements of counsel, and being fully apprised of the particulars in this matter, the Court finds and concludes as follows:

1. On September 19, 2003, the Plaintiff filed a Petition alleging that Defendant Thomas W. Hart, d/b/a Hart's Hearing Aid Center, committed violations of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*, and failed to obey a subpoena issued under authority of K.S.A. 50-631(a) and (b).

2. Defendant Thomas W. Hart was served with a copy of the summons and Petition by Federal Express, delivered to 11453 Madera Rosa Way, San Diego, California 92124, on September 26, 2003.

3. Plaintiff has requested that judgment by default be entered in favor of Plaintiff and against Defendant Thomas W. Hart, d/b/a Hart's Hearing Aid Center.

4. This Court has subject matter jurisdiction over this case under the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

5. This Court has jurisdiction over the parties pursuant to the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

6. More than thirty (30) days have elapsed since Defendant Thomas W. Hart, d/b/a Hart's Hearing Aid Center, was served with a copy of the summons and a copy of the Petition.

7. Defendant Thomas W. Hart has not filed an answer.

8. Defendant Thomas W. Hart is in default.

9. Judgment by default should be entered in favor of Plaintiff and against Defendant Thomas W. Hart, d/b/a Hart's Hearing Aid Center, for all relief to which Plaintiff is by law entitled.

10. Plaintiff has properly shown that Plaintiff's Motion for Judgment by Default has merit. Plaintiff's Motion for Judgment by Default should be granted and sustained.

11. Plaintiff has alleged in the Petition that the following acts and practices by Defendant Thomas W. Hart, d/b/a Hart's Hearing Aid Center, are violations of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*, and are deceptive:

- a. Defendant Thomas W. Hart, d/b/a Hart's Hearing Aid Center, engaged in unlawful deceptive acts or practices by, knowingly or with reason to know, representing to consumers that his products and services possessed a characteristic - refundability - that they did not possess, in violation of K.S.A. 50-626(b)(1)(A).
- b. Defendant Hart willfully failed to state, concealed, suppressed or omitted the material fact that Defendant Hart would not honor his money-back guarantee, a deceptive act in violation of K.S.A. 50-626(b)(3).

IT IS THEREFORE BY THE COURT ORDERED, ADJUDGED AND DECREED that the Plaintiff's Motion for Judgment by Default is granted and sustained.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of Plaintiff and against Defendant Thomas W. Hart, d/b/a Hart's Hearing Aid Center, as set forth in this Journal Entry of Default Judgment, on all claims.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the acts and practices alleged in Paragraph 11 above are hereby declared to be deceptive and in violation of the Kansas Consumer Protection Act.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Thomas W. Hart, d/b/a Hart's Hearing Aid Center, together with such Defendant's officers, directors,

employees, shareholders, agents, successors, servants and assigns, are hereby permanently enjoined from engaging in the above-cited deceptive acts and practices.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Thomas W. Hart, d/b/a Hart's Hearing Aid Center, together with such Defendant's officers, directors, employees, shareholders, agents, successors, servants and assigns, are hereby permanently enjoined from the sale or advertisement of any merchandise or services within the State of Kansas, pursuant to K.S.A. 50-631(e), until Defendant satisfies the Court that he has obeyed the subpoena served upon him by Plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in the event Defendant Hart seeks reinstatement of his license from the Kansas Board of Hearing Aid Examiners, such reinstatement will be suspended until compliance with such subpoena is confirmed by the Attorney General's Office.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Thomas W. Hart pay additional penalties of \$100.00 per day to the Office of the Kansas Attorney General for each day Defendant Hart fails to comply with the Subpoena, commencing the sixth day after service of the Court's order commanding the same, and continuing each day thereafter until compliance with such order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Hart be enjoined from destroying, disposing of or otherwise concealing the evidence commanded by the subpoena.

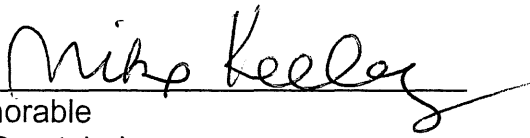
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of Plaintiff State of Kansas, *ex rel.* Phill Kline, Attorney General, and against Defendant Thomas W. Hart, d/b/a Hart's Hearing Aid Center, for civil penalties in

the amount of \$60,000.00 for committing three violations of the Kansas Consumer Protection Act against elder persons as provided by K.S.A. 50-677.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Thomas W. Hart pay consumer restitution in the total amount of \$12,350.00 to the following Kansas consumers in the respective amounts, pursuant to K.S.A. 50-632(a)(3): \$4,200.00 to Robert Clack, \$4,900.00 to Robert Lyda, and \$3,250.00 to Rex Whipple.

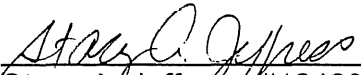
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Thomas W. Hart pay expenses and investigative fees in the amount of \$400.00 to the Office of the Kansas Attorney General.

IT IS SO ORDERED.



The Honorable
District Court Judge

Prepared by:



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