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FILED BY CLERK
K.S. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS.

2004 APR -2 A 8:58

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
THIRD JUDICIAL DISTRICT**

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

Plaintiff,

**John Arlen Swartz, Individually,
Gene Williams, Individually,
and John Doe, Individually,**

Defendants.

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) **Case No. 04C177**
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) **Div. 4**
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(Pursuant to K.S.A. Chapter 60)

JOURNAL ENTRY OF DEFAULT JUDGMENT

NOW on this 2nd day of April, 2004, comes before the Court the Motion for Judgment by Default Against Defendant John Arlen Swartz, 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 February 2, 2004, the Plaintiff filed a Petition alleging that Defendant John Arlen Swartz committed violations of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

2. Copies of the summons and Petition were served upon Defendant John Arlen Swartz through his wife, Chastity, at 509B Tablerock Circle, Leander, Texas, on February 25, 2004.

3. Plaintiff has requested that judgment by default be entered in favor of Plaintiff and against Defendant John Arlen Swartz.

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 John Arlen Swartz was served with copies of the summons and Petition.

7. Defendant John Arlen Swartz has not filed an answer.

8. Defendant John Arlen Swartz is in default.

9. Judgment by Default should be entered in favor of Plaintiff and against Defendant John Arlen Swartz, 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 John Arlen Swartz are violations of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*, and are deceptive:

- a. Defendant John Arlen Swartz engaged in unlawful deceptive acts or practices by failing to provide consumers with verbal notice of the

three-day door-to-door sales cancellation policy, in violation of K.S.A. 50-640(b)(5)(2003 Supp.).

b. Defendant Swartz engaged in unlawful deceptive acts or practices by failing to provide consumers with written notice of the three-day door-to-door sales cancellation policy, in violation of K.S.A. 50-640(b)(1)(2003 Supp.).

c. Defendant Swartz engaged in unlawful deceptive acts or practices by failing to furnish to consumers an easily detachable Notice of Cancellation form, in violation of K.S.A. 50-640(b)(2)(2003 Supp.).

12. Plaintiff has alleged in the Petition that the following acts and practices by Defendant John Arlen Swartz, are violations of the Kansas Consumer Protection Act, K.S.A. 50-623 et seq., and are unconscionable:

a. Defendant Swartz engaged in unlawful unconscionable acts or practices by charging fees which grossly exceeded the price at which similar consumers could purchase similar services, in violation of K.S.A. 50-627(a) and (b)(2)(2003 Supp.).

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 John Arlen Swartz, 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.

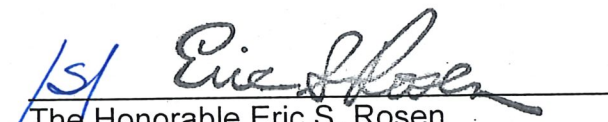
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the acts and practices alleged in Paragraph 12 above are hereby declared to be unconscionable and in violation of the Kansas Consumer Protection Act.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant John Arlen Swartz, 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 and unconscionable acts and practices.

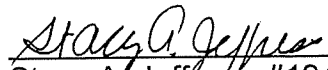
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Judgment is hereby entered in favor of Plaintiff State of Kansas, *ex rel.* Phill Kline, Attorney General, and against Defendant John Arlen Swartz, for enhanced civil penalties in the amount of \$240,000.00 for committing twelve (12) violations of the Kansas Consumer Protection Act against elder persons as provided by K.S.A. 50-677(2003 Supp.).

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 John Arlen Swartz, for consumer restitution in the total amount of \$4,480.00, pursuant to K.S.A. 50-632(a)(3)(2003 Supp.).

IT IS SO ORDERED.


The Honorable Eric S. Rosen
Judge of the District Court

Prepared by:



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