

E-04-000049

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K.S. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS.

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 12

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

Plaintiff,

v.

WALTER SHUTT d/b/a MIRACLE EAR

Defendant.

Case No. 04C 1094

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 10th day of August, 2004, 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 *pro se*.

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.*, K.S.A. 50-670 (2002 Supp.) and K.S.A. 50-670a (2002 Supp.).
3. Defendant Walter Shutt d/b/a Miracle Ear is a sole proprietorship operating under the laws of the state of Kansas. The principal office of the corporation is located at 1420 N. Mt. Carmel, Wichita, KS 67205.

4. Defendant is a telephone solicitor, as defined by K.S.A. 50-670(a)(3)(2002 Supp.) and has engaged in unsolicited consumer telephone calls within the definition of the K.S.A. 50-670(a)(1-2) (2002 Supp.).

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. The Plaintiff alleges Defendant engaged in the following unconscionable acts and practices in violation of the Kansas Consumer Protection Act, specifically K.S.A. 50-670 (2002 Supp.) and K.S.A. 50-670a (2002 Supp.):

- a. Defendant made or caused to be made no less than four (4) 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 by the National Do Not Call Registry.
- c. Prior to making the unsolicited consumer telephone calls Defendant failed to consult the Kansas No-Call list.

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

8. 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. Defendant agrees that engaging in such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Order.

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

10. 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.

11. 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 or this Consent Judgment.

12. Defendant agrees to pay \$1,000.00 in civil penalties and investigative 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 at the time of Defendant's signing this Consent Judgment.

13. 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.

14. 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.

15. 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 \$1,000.00.

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.

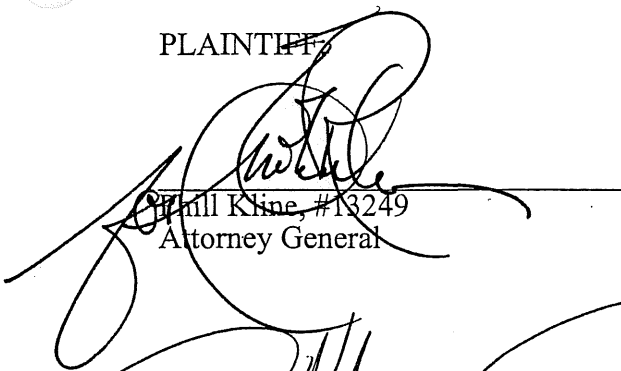
IT IS SO ORDERED




DISTRICT COURT JUDGE

Prepared and approved by:

PLAINTIFF



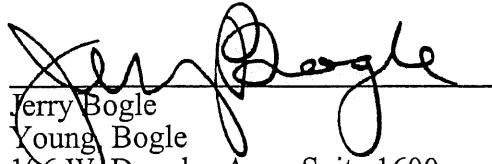
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