

E-03-000058

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DISTRICT COURT  
RUSSELL COUNTY, KS

Joseph N. Molina, #20934  
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**IN THE DISTRICT COURT OF RUSSELL COUNTY, KANSAS**

STATE OF KANSAS, <i>ex rel.</i>	)	
PHILL KLINE, Attorney General	)	
	)	
Plaintiff	)	
	)	
v.	)	Case No. 03-C-83
	)	
Wade Ryan Brown,	)	
	)	
Defendant.	)	

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

**JOURNAL ENTRY OF CONSENT JUDGMENT**

NOW on this 1<sup>st</sup> day of July, 2005, the Petition for Approval of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). The Plaintiff, the State of Kansas, *ex rel.* Phill Kline, Attorney General, appears by and through Joseph N. Molina, Assistant Attorney General. Defendant Wade Brown (hereinafter referred to as "Defendant") appears by and through counsel Jerry Driscoll.

**WHEREUPON** the parties advise the court that they have stipulated and agreed to the following:

## PARTIES, JURISDICTION AND VENUE

1. Phill Kline is the duly elected, qualified and acting 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. Defendant Wade Brown, is an individual residing in the State of Kansas, and may be served with process at 316 S. Windsor, Russell, KS 67665. Defendant Brown was the individual dealing directly with the consumers at relevant times alleged herein.
4. Upon information and belief, Defendant conducted business under the name "Brown Roofing" and is the sole proprietor of said business.
5. Defendant stipulates and admits that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties.
6. Defendant stipulates and admits that venue is proper in this Court.
7. Defendant is a supplier within the definition of K.S.A. 50-624(j) (K.S.A. 2002 Supp.) and engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c) (K.S.A. 2002 Supp.).

## ALLEGATIONS

8. Defendant, despite accepting payment from Dennis DiPentino and representing to Dennis DiPentino that Defendant would provide services pursuant to the DiPentino Contract, knew or had reason to know at the time of making such contracts that Dennis DiPentino would receive no material benefit from the transaction, all in

violation of K.S.A. 50-627(a), for which restitution to Dennis DiPentino should be paid and for which civil penalties should be imposed.

9. Defendant, despite accepting payment from Dennis DiPentino and representing to Dennis DiPentino that Defendant would provide services pursuant to the DiPentino Contract, offered said property or services without intent to sell them, all in violation of K.S.A. 50-626(a), for which civil penalties should be imposed.
10. Defendant, despite accepting payment from Dennis DiPentino and representing to Dennis DiPentino that Defendant would provide services pursuant to the DiPentino Contract, willfully used, in oral and written representations, exaggeration, falsehood, innuendo or ambiguity as to a material fact, to wit: the date on which the services would begin and/or be completed, in violation of K.S.A. 50-626(a), for which civil penalties should be imposed.
11. Defendant, during the course of the completing the door-to-door sale with Dennis DiPentino failed to satisfy the requirements of K.S.A. 50-640 in the following manners:
  1. The contract provided to Dennis DiPentino failed to contain in boldface type of a minimum size of ten (10) points the statement required by K.S.A. 50-640(b)(1);
  2. Failed to provide to Dennis DiPentino the "NOTICE OF CANCELLATION" required by K.S.A. 50-640(b)(2);
  3. Failed to orally inform Dennis DiPentino of his right to cancel as required by K.S.A. 50-640(b)(5).

Each of which constitutes a violation of K.S.A. 50-626 and K.S.A. 50-640(b)(2), for which civil penalties should be imposed.

INJUNCTIVE RELIEF

12. Defendant agrees to refrain from, and to be permanently enjoined from, engaging in those acts and practices set forth in paragraphs eight (8) through eleven (11) herein and Defendant agrees that engaging in any such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

CONSUMER RESTITUTION

13. Defendant agrees to provide a full refund for consumer Dennis Dipentino in the amount of \$4,500.00. Defendant shall pay \$2,500.00 upon signing. The remaining \$1,500.00 shall be due within 30 days of the date of signing. Payment shall be made by cashier's check.
14. Defendant shall be given a credit of \$500.00 paid against the \$4,500.00 restitution for losses to Dennis Dipentino in the Russell County criminal case.

INVESTIGATIVE FEES AND CIVIL PENALTIES

15. Defendant agrees to pay to the "Office of the Attorney General" of the State of Kansas \$1,000.00 for investigation fees and expenses and civil penalties pursuant to K.S.A. 50-632 and 50-636 (K.S.A. 2002 Supp.). Payment shall be provided to the Office of the Attorney General a check made payable to The Office of The Kansas Attorney General within thirty (30) days of signing this Consent Judgment.

16. The Defendant further agrees that this judgment shall not be dischargeable in bankruptcy pursuant to the United States Bankruptcy Code, specifically 11 U.S.C. 523(a)(2)(A) and (a)(7).

OTHER PROVISIONS

17. The provisions of this Consent Judgment will be applicable to the Defendant, and every employee, agent or representative of the Defendant.
18. 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.
19. 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.
20. Compliance with this Consent Judgment does not relieve the 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.
21. 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 the Defendant nor shall the 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 and in favor of Plaintiff in the amount of ~~\$5,500.00~~ <sup>5,000.00</sup>. *JWK* *WRB*

**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) (K.S.A. 2002 Supp.), the court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

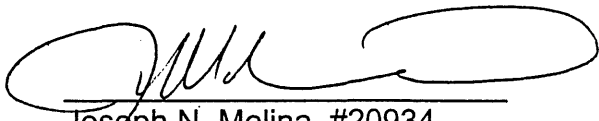
**IT IS SO ORDERED.**

  
DISTRICT COURT JUDGE

Approved by:

PLAINTIFF

 #11109  
PHILL KLINE, #13249  
Attorney General

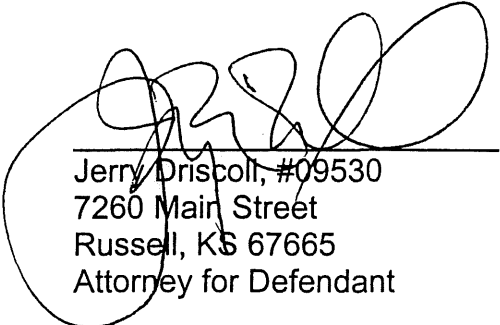


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