

E-04-000063

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

James R. McCabria # 16563
Assistant Attorney General
Office of the Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, KS 66612-1597

2005 JUL 13 11:40:55 A 9 08

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 6**

STATE OF KANSAS, *ex rel.*)
PHILL KLINE, Attorney General)
)
Plaintiff)
)
v.)
)
JMW FINANCIAL SERVICES)
)
Defendant)

Case No. 04-C-1266

2005 JUL 15 11:40:55 A 9 08

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 13th day of July, 2005, comes before the Court the Journal Entry of Consent Judgment entered into between the parties, pursuant to K.S.A. 50-632(b). Plaintiff, State of Kansas, *ex rel.* Phill Kline, Attorney General, appears by and through James R. McCabria, Assistant Attorney General. Defendant JMW Financial Services, LLC, appears by and through its attorney Thomas G. Lemon. There are no other appearances.

WHEREUPON, the parties advise the Court 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 statutory and

common law of Kansas, specifically, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq*

3. Defendant JMW Financial Services, LLC (hereinafter "Defendant") is a limited liability company organized and in good standing in the State of Arizona with a principal place of business at 2655 W. Guadalupe Road, Suite 30, Mesa, AZ 85202. Defendant is a supplier as that term is defined by K.S.A. 50-624(j)(2003 Supp).

4. At all times relevant hereto, and in the ordinary course of business, Defendant engaged in consumer transactions as defined by K.S.A. 50-624(c).

5. The Court has subject matter jurisdiction over this case under the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq*. Defendant is subject to jurisdiction of the court under the Kansas Consumer Protection Act, specifically K.S.A. 50-638(a).

6. At all times relevant hereto, and in the ordinary course of business, Defendant solicited consumers within the State of Kansas through various newspaper advertisements similar in content and format to the attached Exhibit A (hereinafter "the advertisements"). As a result of such advertisements, Defendant engaged in a consumer transaction with at least one Kansas consumer, Arla Mae Peter (hereinafter "Ms. Peter").

8. The Attorney General alleges Defendant violated the Kansas Consumer Protection Act by engaging in the following acts and practices in conjunction with the solicitation and operation of its business:

a) Defendant, through its advertisements and solicitations, knowingly or with reason to know, represented to consumers that the service being sold via the advertisements, had characteristics or benefits that they do not have, a deceptive act in

violation of K.S.A. 50-626(b)(1)(A). Defendant made written and oral representations to Ms. Peter about the methods of operation and the profits or earnings a consumer could reasonably expect to realize by purchasing the goods or services of the Defendant.

b) Defendant willfully used oral and written representations of exaggeration, falsehood, innuendo or ambiguity as to material facts, a deceptive act in violation of K.S.A. 50-626(b)(2). Defendant represented orally to Ms. Peter during the telephone sales solicitation that she would be working for Defendant and that she would not be required to contact third parties to realize income from the business opportunity when, in truth and in fact, a consumer must contact third parties to realize any income at all.

c) Defendant engaged in unconscionable acts and practices in violation of K.S.A. 50-627 (b)(6), in that Defendant knew or had reason to know that Defendant made misleading statements of opinion on which Ms. Peter was likely to rely to her detriment.

9. Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law, but specifically denies each act, or that any described act constitutes a violation of law or that any intent to willfully commit any act or practice prohibited by the Kansas Consumer Protection Act existed. Further, the parties agree that a material term of this settlement is that Defendant has represented to Plaintiff that it has ceased doing business in the State of Kansas and will not do so in the future.

10. Defendant agrees to entry of judgment as follows:

a) Five-Hundred Dollars (\$500.00) in civil penalties and Five-Hundred Dollars (\$500) in investigative fees and expenses to the "Office of the Attorney General" of the State of Kansas for all violations of the Kansas Consumer Protection Act which have been alleged by the Attorney General in it's Petition in this case;

b) Defendant shall be permanently enjoined from any of the practices described in Paragraph 8;

c) restitution to Arla Mae Peter as provided in K.S.A. 50-632(a)(3) in the amount of ninety-eight Dollars (\$98.00); and

d) if the Attorney General has a basis to bring another action alleging violations of this Consent Judgment or alleging violations of a type and kind similar in nature to those alleged herein that, upon a finding by the Court that such violations have occurred, Defendant agrees that civil penalties in the amount of up to \$10,000.00 per violation may be imposed and the Court has the ability to enter an order permanently enjoining it from doing business within the State of Kansas.

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

12. Nothing in this Consent Judgment shall be interpreted to prevent any consumer from pursuing such remedies at law as are not inconsistent with the provisions hereof.

13. Defendant agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, where such restructuring is done for the purpose or object of avoiding compliance with the terms of this Consent Judgment.

14. 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 hereof.

15. 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.

16. 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 his jurisdiction. Defendant further understands that nothing in this Consent Judgment shall preclude the Attorney General from taking further action against this Defendant in promoting, soliciting or selling his services or any business associated therewith upon belief that such activity is being promoted or operated in a fashion that otherwise violates the law.

17. The parties understand 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.

18. Pursuant to the United States Bankruptcy Code, specifically 11 U.S.C. 523(a)(2)(A) and (a)(7), the judgment herein is not dischargeable.

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, 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.

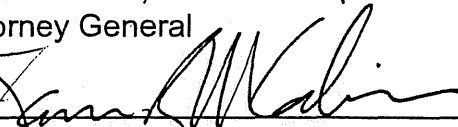
157

Judge of the District Court

PREPARED AND APPROVED BY:

 #11109


PHILL KLINE, #13249
Attorney General



James R. McCabria, #16563
Assistant Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751

Attorney for Plaintiff

APPROVED BY:



Thomas G. Lemon, #16120
Cavanaugh, Smith & Lemon, P.A.
2942 SW Wanamaker Drive
Suite 100
Topeka, KS 66614-4135
(785) 440 4000

Attorney for Defendant