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FILED  
1997  
MAR 7  
TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
Division 6

STATE OF KANSAS, *ex rel.*  
CARLA J. STOVALL, Attorney General

Plaintiff,

vs.

JOYCE STUFFLEBEAN, individually, and HAROLD  
STUFFLEBEAN, individually, d/b/a JAWS PEST  
CONTROL and JAWS CONSTRUCTION COMPANY,

Defendants.

Case No. 97CU267

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

**JOURNAL ENTRY OF CONSENT JUDGMENT**

NOW on this 7 day of March, 1997, Plaintiff's Petition for Approval of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). Plaintiff, the State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through Terry A. Iles, Assistant Attorney General. Defendants, Joyce Stufflebean and Harold Stufflebean d/b/a JAWS Pest Control and JAWS Construction Company, appear *pro se*.

Whereupon, the parties advise the Court that they have stipulated and agree to the following matters:

1. Carla J. Stovall 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.*

3. Defendants, Joyce Stufflebean and Harold Stufflebean d/b/a/ JAWS Pest Control and JAWS Construction Company, conducted business at 303 A East Wall, Fort Scott, Kansas 66701.

4. Defendants are suppliers within the definition of K.S.A. 50-624(i) and have engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c) and (h).

5. Defendants admit the Court has personal and subject matter jurisdiction over the parties.

6. Defendants stipulate and waive any objections to venue in Shawnee County.

7. Defendants are in the business of providing pest control and home remodeling and/or construction services to consumers.

8. The Attorney General alleges Defendants engaged in the following acts and practices which are deceptive and unconscionable and violate the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*:

a. Defendants engaged in multiple false and misleading statements regarding advertisements and solicitations concerning pest control and home remodeling and/or construction services in violation of the Kansas Consumer Protection Act, K.S.A. 50-626(a) and (b), in that:

i. Defendants knowingly or with reason to know represented they have approval and status for which they do not have [K.S.A. 50-626(b)(1)(B)];

- ii. Defendants willfully made oral and written representations of exaggeration, falsehood, innuendo and ambiguity as to a material fact [K.S.A. 50-626(b)(2)]; and
  - iii. Defendants willfully failed to state a material fact, or willfully concealed, suppressed or omitted a material fact [K.S.A. 50-626(b)(3)].
- b. Defendants committed unconscionable acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. 50-627(a) and (b), in that:
- i. Defendants took advantage of the inability of the consumer reasonably to protect the consumer's interests because of the consumer's inability to understand or comprehend the presence of termites or similar factors [K.S.A. 50-627(b)(1)]; and
  - ii. Defendants excluded, modified or otherwise attempted to limit the implied warranties of merchantability and fitness for a particular purpose or any remedy provided by law for a breach of those warranties [K.S.A. 50-627(b)(7)].
- c. Defendants committed unfair and deceptive acts and practices by failing to provide each and every consumer with a three day right to cancel in violation of the Kansas Consumer Protection Act, K.S.A. 50-640(a) and (b), in that:
- i. Defendants failed to furnish the consumer with a fully completed receipt or copy of any contract, and in immediate proximity of the space reserved in the contract for the signature of the consumer and in boldface type of a minimum size of 10 points, a statement in substantially the following form: "YOU THE BUYER, MAY

CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT" [K.S.A. 50-640(b)(1)];

- ii. Defendants failed to furnish each consumer with a completed form in duplicate, captioned "NOTICE OF CANCELLATION," that is attached to the contract or receipt and easily detachable [K.S.A. 50-640(b)(2)]; and
  - iii. In their sales presentation away from their place of business, Defendants failed to inform each consumer orally of their three-day right to cancel [K.S.A. 50-640(b)(5)].
- d. Defendants committed unconscionable acts and practices through their telephone solicitations in violation of the Kansas Consumer Protection Act, K.S.A. 50-670, in that, within 30 seconds after beginning the conversation, inquire whether the person being solicited is interested in listening to a sales presentation and immediately discontinue the solicitation if the person being solicited gives a negative response [K.S.A. 50-670(b)(2)].

9. Defendants voluntarily agree to this Consent Judgment without trial or adjudication of any issue of fact or law.

10. Defendants agree to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be deceptive or unconscionable in paragraph eight (8) of this Consent Judgment, and Defendants agree that engaging in such acts or similar acts after the date of this Consent Judgment shall constitute a violation of this Order.

11. Defendants agree to refrain from and to be permanently enjoined from owning, operating, or otherwise participating in any business that performs any form of pest control and/or home remodeling and/or construction services within the State of Kansas.

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

13. Defendants agree to make available and/or disclose the provisions of this Consent Judgment to their employees, agents and representatives within five days (5) of signing the Consent Judgment.

14. Defendants agree to resolve any future complaints filed with the Office of the Attorney General regarding Defendants after the date of this Consent Judgment to the satisfaction of the Attorney General within 30 days of the date such complaint is forwarded to Defendants for resolution.

15. Defendants agree 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 of this Consent Judgment.

16. Defendants agree to pay the total sum of \$6,086.00 as restitution to the consumers listed in Exhibit A pursuant to K.S.A. 50-632(a)(3), and agree to pay \$1,000.00 in investigative fees and expenses and \$500.00 in civil penalties to the "Office of the Attorney General" of the State of Kansas. Payments shall commence March 5, 1997, with a \$300.00 payment, \$300.00 due on or before April 5, 1997, and subsequent payments of \$100.00 thereafter due on or before the fifth (5th) day of each month, until the entire amount payable is satisfied. All payments shall be made payable to the "Office of the Attorney General" of the State of Kansas. In the event Defendant fails to make any payment as required herein, then all unpaid amounts shall immediately become due and owing.

17. Defendants agree to correct any negative information reported on any of the credit reports of any consumers listed in Exhibit A in connection with the purchase of the Defendants' goods and/or services.

18. Defendants admit that all civil penalties, investigative fees and restitution imposed and agreed to herein are a result of false pretenses and/or false representations to another entity and/or the property of another.

19. Defendants agree to maintain all business records for a period of five (5) years and to allow the Attorney General to inspect all of Defendants' business records in the future.

20. 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 or for the enforcement of compliance herewith.

21. If any portion, provisions, 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.

22. Compliance with this Consent Judgment does not relieve Defendants of any obligations 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.

23. 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 Defendants nor shall Defendants 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

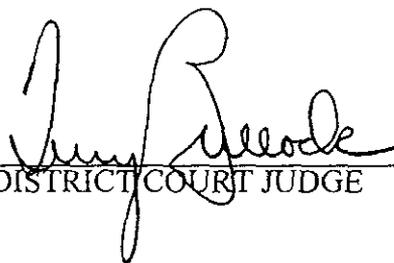
information submitted pursuant to the Consent Judgment shall not be construed as an approval of or sanction of any representations, acts or practices of Defendants.

IT IS FURTHER 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 judgment is entered against Defendants in favor of Plaintiff in the amount of \$7,586.00.

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.

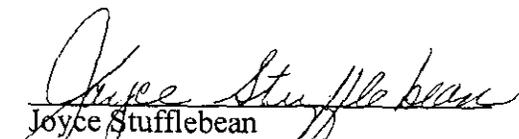
  
DISTRICT COURT JUDGE

Approved by:

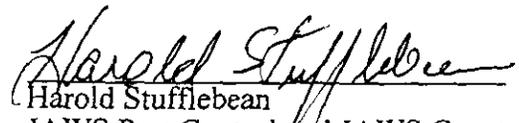
  
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Defendant

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