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CLERK OF DISTRICT COURT
18TH JUDICIAL DISTRICT
SEDGWICK COUNTY, KANSAS
BY _____

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CIVIL DEPARTMENT

STATE OF KANSAS, *ex rel.*,)
CARLA J. STOVALL, Attorney General,)
)
Plaintiff,)
)
v.) Case No. 97-C-27
)
DAN MARTINEZ,)
d/b/a INSURANCE CLAIMS CONSULTANTS, INC.)
)
Defendant.)
)

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

JOURNAL ENTRY OF JUDGMENT

NOW on the 23 day of ~~December~~, ^{January} 1998, the Court enters the following judgment in regard to the above-captioned matter. Plaintiff, State of Kansas, *ex rel.*, Carla J. Stovall, Attorney General, appears through Gail E. Bright, Assistant Attorney General. Defendant Dan Martinez, d/b/a Insurance Claims Consultants, Inc., appears through counsel, Marc A. Powell of Powell & Brewer, L.L.P. There are no other appearances.

A jury trial was held in this matter September 22-24, 1997. Both Plaintiff and Defendant presented testimony and evidence. At the conclusion of the Plaintiff's case, Defendant moved for a directed verdict on all questions of fact and law outlined by the Pretrial Order. Defendant was

granted a directed verdict on the alleged violation of K.S.A. 50-627(b)(1), the Court finding no consumer transaction had been consummated. The motion for directed verdicts on the other KCPA violations and the unauthorized practice of law was overruled.

At the conclusion of the evidence, the jury answered the following Special Verdict questions:

1. Do you find that Defendant represented in print, radio and television advertisements that his services were of a particular quality with knowledge, or reason to know, that his services were materially different from the quality represented? NO
2. Do you find that Defendant represented to Darcia Bantista and Dwight Ray that Defendant had the status of possessing advanced legal knowledge and experience in the insurance claims process with knowledge, or reason to know, that Defendant did not have such status? NO
3. Do you find that Defendant willfully represented to Darica Bantista and Dwight Ray that he had advanced legal knowledge and experience in the insurance claims process and that those representations contained exaggerations, falsehoods, innuendoes, and ambiguities of material facts? YES
4. Do you find that Defendant disparaged the services of another by representing that attorneys would charge a fee of 25-40% on a workers' compensation award and that Defendant made such representations knowingly, or with reason to know, that they were false or misleading representations of material facts? YES

The Court, after reviewing the statements and arguments of counsel, its own notes and the transcripts, adopts the following as its findings:

1. Defendant is an individual doing business as Insurance Claims Consultants, Inc., in Wichita, Sedgwick County, Kansas. (Testimony of Defendant, pp. 4-5)
2. Defendant, in his ordinary course of business, provided services, pursuant to signed contracts, to approximately one thousand (1,000) consumers. (Testimony of Defendant, p. 7)

3. Defendant, in his ordinary course of business, prepared and submitted demand letters/settlement brochures on behalf of approximately two hundred (200) consumers. (Testimony of Defendant, pp. 31-32)

4. Defendant, in his ordinary course of business, provided services to Darica Bantista and Dwight Ray. (Testimony of Darica Bantista, pp. 5, 7-8; Testimony of Dwight Ray, pp. 3-4; Testimony of Defendant, pp. 26-27, 50)

5. Defendant, in his ordinary course of business, prepared and submitted a demand letter/settlement brochure on behalf of Darica Bantista. (Testimony of Defendant, pp. 47-48; Testimony of Darica Bantista, pp. 6-8)

6. Defendant, in his ordinary course of business, prepared and submitted a demand letter on behalf of Mary Jane Whitehair. (Testimony of Defendant, pp. 51-57)

7. Defendant is not licensed to practice law in the State of Kansas. (Testimony of Defendant, pp. 5-6)

8. Defendant's contracts with consumers stated he had the "right to file a LIEN against client's recovery" when, in fact, Defendant knew he had no such "right" and the insurance company would not pay him. (Testimony of Defendant, pp. 61-64)

9. Defendant advertised on radio and television that he was able to assist consumers in the following areas: workers' compensation, auto accidents, property casualty, malpractice, mediations, arbitrations and comparative negligence. (Testimony of Defendant, pp. 64-65)

10. Defendant willfully represented to Darica Bantista and Dwight Ray that he had advanced legal knowledge and experience in the insurance claims process and that those

representations contained exaggerations, falsehoods, innuendos, and ambiguities of material facts, in violation of K.S.A. 50-626(b)(2). (Jury Verdict, September 24, 1997, Question No. 3)

11. Defendant disparaged the services of another by representing that attorneys would charge a fee of 25-40% on a workers' compensation award and that Defendant made such representations knowingly, or with reason to know, that they were false or misleading representations of material facts, in violation of K.S.A. 50-626(b)(4). (Jury Verdict, September 24, 1997, Question No. 4)

12. Plaintiff'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.*, and pursuant to Quo Warranto, K.S.A. 60-1201, *et seq.*, and *State ex rel. Stephan v. Williams*, 246 Kan. 681, 793 P.2d 234 (1990).

13. Defendant is a supplier as defined by K.S.A. 50-624(i).

14. Darica Bantista and Dwight Ray are consumers as defined by K.S.A. 50-624(b).

15. 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).

16. Defendant has committed two hundred and one (201) unconscionable acts and practices, as defined by K.S.A. 50-627(b)(6), by offering his opinions to more than two hundred (200) consumers concerning: (a) the legal value of their legal claim, (b) Defendant possessing the legal ability and qualifications to make demands to insurance companies on their behalf, and (c) Defendant having the right to file a lien against their recovery, all of which are misleading statements of opinion on which the consumers were likely to rely to their detriment.

17. Defendant has engaged in the unauthorized practice of law by the following:

- a. providing legal advice and counsel, supported by Defendant's testimony that he prepared and submitted demand letters to insurance companies, on behalf of consumers (see Plaintiff's Exhibit Nos. 2 and 4; Defendant's Exhibit No. 36; Testimony of Darica Bantista, pp. 6-8, 9; Testimony of Dwight Ray, pp. 4-7, 10-11; Testimony of Dennis Phelps, pp. 6-9; Testimony of Dustin DeVaughn; pp. 5-7; Testimony of Defendant, pp. 18, 26, 31-32, 34, 35, 37-38, 48-50, 52-54);
- b. representing he has legal knowledge beyond that of a layman and has provided professional assistance to clients for a fee by preparing settlement evaluations/letters and having clients sign employment agreements for Defendant to be paid a contingency fee ranging from 15% to 18% of the consumers' recovery (see a. above; Plaintiff's Exhibit Nos. 1 and 3);
- c. taking basic information from consumers with regard to their personal injury and/or workers' compensation claims and assembling it into settlement proposals as evidenced by the testimony of Darica Bantista, a consumer who contracted with Defendant to have him negotiate her son's claim with an insurance company, and the testimony of Defendant that he sent 200 demand letters (see Testimony of Darica Bantista, pp. 7-8, 11-12, 18; Testimony of Defendant, pp. 31-32, 34, 35, 37-38, 48-50; Plaintiff's Exhibit Nos. 1 and 2); and
- d. conferring with clients, advising them as to their legal rights and/or causes of action or defenses related to insurance, workers' compensation and bankruptcy claims (see Testimony of Darica Bantista, p. 9; Testimony of Dwight Ray, pp. 5-6, 10-11; Testimony of Dennis Phelps, pp. 6-9; Testimony of Defendant, pp. 37-38, 54-55; Plaintiff's Exhibit Nos. 5, 6, 7 and 8).

18. On the issue of monetary penalties available pursuant to K.S.A. 50-636(a), the Court enters judgment in the following amounts:

- a. K.S.A. 50-626(b)(2) [2 violations per jury verdict @ \$5,000 each] \$ 10,000.00
- b. K.S.A. 50-626(b)(4) [1 violation per jury verdict @ \$5,000 each] \$ 5,000.00
- c. K.S.A. 50-627(b)(6) [201 violations @ \$500 each] \$ 100,500.00

19. Pursuant to authority granted by K.S.A. 60-1201, *et seq.*, and *State ex rel. Stephan v. Williams*, 246 Kan. 681, 793 P.2d 234 (1990), Defendant is permanently enjoined from the unauthorized practice of law [as referenced in paragraph seventeen (17)] including, but not limited

to, providing any claims analyses and evaluations and settlement negotiations related to workers' compensation, insurance and bankruptcy claims within the State of Kansas except for services provided for a insurance company authorized to issue insurance in Kansas.

20. Further, pursuant to K.S.A. 50-632(a)(2), Defendant is permanently enjoined from committing the deceptive and unconscionable acts and practices referenced in paragraphs ten (10), eleven (11) and sixteen (16) above.

IT IS THEREFORE BY THE COURT ORDERED, ADJUDGED AND DECREED that the above findings are hereby incorporated by reference and made the order of the Court.

IT IS ALSO ORDERED, ADJUDGED AND DECREED that Defendant is permanently enjoined from the unauthorized practice of law [as referenced in paragraph seventeen (17)] including, but not limited to, providing any claims analyses and evaluations and settlement negotiations related to workers' compensation, insurance and bankruptcy claims within the State of Kansas except for services provided for a insurance company authorized to issue insurance in Kansas.

IT IS ALSO ORDERED, ADJUDGED AND DECREED that Defendant is permanently enjoined from committing the deceptive and unconscionable acts and practices referenced in paragraphs ten (10), eleven (11) and sixteen (16) above.

IT IS ALSO ORDERED, ADJUDGED AND DECREED that judgment for civil penalties is granted for Plaintiff and against Defendant in the amount of \$115,500.00.

IT IS SO ORDERED.

151 Keith Anderson

The Honorable D. Keith Anderson
Judge of the District Court

PREPARED AND APPROVED BY:

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