

98-010

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KS. DISTRICT COURT
THIRD JUDICIAL DIST

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JUDICIAL DISTRICT
TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 7

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

Plaintiff,

vs.

YOUR NEIGHBORHOOD BUTCHER, INC.,

Defendant.

Case No. 98CU278

Petition Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 3 day of MARCH, 1998, 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 James J. Welch, Assistant Attorney General. Defendant Your Neighborhood Butcher, Inc., appears by and through S. Lucky DeFries.

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. Defendant Your Neighborhood Butcher, Inc. is a foreign corporation organized under the laws of the state of Florida. The principal office of the corporation is located at 12061 31st Court North, St. Petersburg, Florida 33702. Defendant Your Neighborhood Butcher, Inc. is also doing business from an office located at 2903 NW Platte Road, Building 1 in Riverside, Missouri 64150. Defendant Your Neighborhood Butcher, Inc. has not applied with the Kansas Secretary of State for authority to do business in Kansas by filing a Foreign Corporation Application.

4. Pursuant to its Foreign Corporation Application, Defendant Your Neighborhood Butcher, Inc. may be served with process by serving its registered agent, Corporation Service Company, d/b/a CSC-Lawyers Incorporating Service Company, 222 East Dunklin Street in Jefferson City, Missouri 65101.

5. The officers and shareholders of Your Neighborhood Butcher, Inc. are Russell K. Smith, President and Steve James, Vice-President. Both of these officers and shareholders is a resident of the state of Florida.

6. Defendant is a supplier within the definition of K.S.A. §50-624(i) and has engaged in consumer transactions in Kansas within the definition of K.S.A. §50-624(c) and (h).

7. Defendant admits the Court has personal and subject matter jurisdiction over the parties.

8. Defendant stipulates and waives any objection to venue in Shawnee County.

9. Defendant sells meat and seafood products. Defendant's transactions with consumers within the State of Kansas constitute door-to-door sales, as defined by K.S.A. §50-640.

10. The Attorney General alleges Defendant engaged in the following acts and practices which are deceptive and/or unconscionable and violate the Kansas Consumer Protection Act:

- a. Defendant solicited and sold to consumers meat products by the box, case, or by the number of "portions," but did not disclose to such consumers the price-per-pound of such meat products. This is in violation of K.S.A. §50-903(b)(4), in that Defendant represented to consumers prices of products to be offered for sale in units larger than one pound in terms other than price per single pound.
- b. Defendant represented during solicitations to consumers within the State of Kansas that Defendant was selling meat and seafood products which were excess, or left-over, product from Defendant's delivery of such product to restaurants which were local to consumers solicited; however, Defendant made no such deliveries to such restaurants. This is in violation of K.S.A. §50-626(b)(2), in that it is the willful use of exaggeration, falsehood, innuendo, and ambiguity as to a material fact.
- c. Defendant failed to furnish consumers with fully completed receipts which contained, in immediate proximity to the space reserved for the consumers' signatures, notices of consumers' rights to cancel, in violation of K.S.A. §50-640(b)(1).
- d. Defendant failed to furnish consumers with a completed "Notice of Cancellation" form in duplicate, attached to consumers' receipts which were easily detachable and which contained the consumers' right to cancellation form in 10-point boldface type, in violation of K.S.A. §50-640(b)(2).

- e. Defendant failed to inform consumers orally of such consumers' rights to cancel, at the time such consumers signed the contracts and purchased meat from Defendant, in violation of K.S.A. §50-640(b)(5).
- f. Defendant told consumers that they could cancel their transactions with Defendant by contacting the salesperson if they were unsatisfied with the product; however, consumers who did contact the salespersons were not allowed to cancel their transactions. This is in violation of K.S.A. §50-640(b)(6), in that it was the misrepresentation of consumers' rights to cancel.
- g. During February 1997, Defendant willfully caused to be transported into the State of Kansas, offered for sale, and sold boxes of meat which were labeled with net-weights significantly larger than the amounts of meat which was actually contained within said boxes. This is in violation of K.S.A. §50-626(b)(2), in that it is the willful use in oral and written representation of exaggeration and falsehood as to a material fact.
- h. Defendant induced consumers to enter into transactions with Defendant in which the Defendant took advantage of the inability of such consumers to reasonably protect such consumers' interests because of the consumers' inability to determine the price-per-pound of product, in violation of K.S.A. §50-627(b)(1).
- i. Defendant sold meat product to consumers for prices exceeding \$5.00 per pound; however, similar meat product was available to such consumers locally for substantially lower prices. This is in violation of K.S.A. §50-627(b)(2), in that Defendant's prices grossly exceeded the prices at which similar product was readily obtainable in similar transactions by similar consumers.

j. The transactions Defendant induced consumers to enter into were excessively one-sided in favor of Defendant, in violation of K.S.A. §50-627(b)(5).

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

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

13. Defendant agrees to resolve any future complaints filed with the Office of the Attorney General regarding Defendant 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 Defendant for resolution.

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

15. 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.

16. 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 of this Consent Judgment.

17. Defendant agrees to pay \$7,500 in investigation fees and expenses to the "Office of the Attorney General" of the State of Kansas. In addition, Defendant agrees to pay \$7,500 in civil penalties to the "State of Kansas." Payment of \$5,000.00 per month shall commence with an initial payment made before or on February 28, 1998 and subsequent payments made before or on March 31, 1998, and April 30, 1998, until the entire amount payable is satisfied.

18. Defendant agrees that failure to make timely payments, as set out above will result in the entire outstanding balance becoming due within five (5) days of the first payment missed. Defendant agrees that, in the event of a missed payment, failure to remit the entire outstanding balance within five (5) days shall constitute a violation of this order.

19. Defendant agrees to pay all expenses and reasonable attorney's fees in connection with the collection of any amounts in this judgment, provided Defendant does not pay the amounts as agreed herein within the time frame stated.

20. Defendant agrees to maintain all business records for a period of five years and to allow the Attorney General to inspect all of Defendant's business records in the future.

21. 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.

22. 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.

23. 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.

24. 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 Plaintiff in the amount of \$ 15,000.

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.

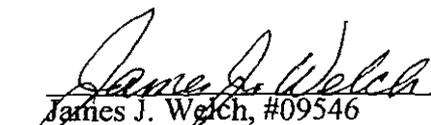
IT IS SO ORDERED.

(s) Hon. FRANK WELCH
DISTRICT COURT JUDGE

Approved by:



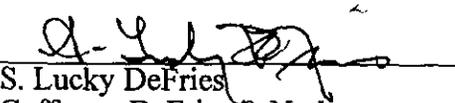
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