

MICROFILMED  
3rd JUDICIAL DISTRICT

Michelle V. Hostetler, #13742  
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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
Division \_\_\_\_\_

STATE OF KANSAS, *ex rel.* )  
CARLA J. STOVALL, Attorney General, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JAMES CURTIS MCCOY, )  
d/b/a SPEAKERS INTERNATIONAL, )  
d/b/a DPBA ENTERPRISES, and )  
d/b/a THE JCM GROUP OF INDEPENDENT )  
BROKERS, )  
Defendant. )  
\_\_\_\_\_ )

Case No. 97CV340

Pursuant to K.S.A. Chapter 60.

JOURNAL ENTRY

NOW ON THIS 30th day of June, 1998, the above-captioned matter comes before the Court for trial. Plaintiff, State of Kansas, *ex rel.*, Carla J. Stovall, Attorney General, appears by and through counsel, Michelle V. Hostetler, Assistant Attorney General. Defendant James Curtis McCoy, d/b/ a Speakers International; d/b/a DPBA Enterprises; and d/b/a The JCM Group of Independent Brokers, appears pro se.

1. In lieu of trial, the defendant, James Curtis McCoy, d/b/ a Speakers International, d/b/a DPBA Enterprises; and d/b/a The JCM Group of Independent Brokers confesses judgment and admits to all allegations of the Plaintiff's proposed Consent Judgment. The court adopts the findings of the Journal Entry of Consent Judgment, and hereby finds and concludes the following:

2. Carla J. Stovall is the Attorney General of the State of Kansas.

3. 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.*

4. Defendant James Curtis McCoy is president, owner, operator, and works in every other capacity for Speakers International, DPBA Enterprises, and The JCM Group of Independent Brokers.

5. Defendant is a supplier, as defined by K.S.A. §50-624(i), and has entered into consumer transactions within the definition of K.S.A. §50-624(c) and (h), with consumers, as defined by K.S.A. §50-624(b).

6. The defendant has engaged in the following acts and practices which are deceptive and/or unconscionable and violate the Kansas Consumer Protection Act:

a. Defendant's solicitations refer to defendant as "one of the top listing agents in the country," or words of similar import, implying that defendant is a real estate agent. Defendant has not been licensed through the Kansas Real Estate Commission to sell real estate since December 31, 1991, when the Kansas Real Estate Commission revoked his license and has refused to reinstate the same. Defendant's promotion of himself as a real estate agent required to be licensed by a state licensing agency, when

he was not, is a violation of K.S.A. §50-626(b)(1), in that Defendant made a representation knowingly or with reason to know that Defendant had sponsorship, approval, status, affiliation or connection that Defendant did not have.

- b. Defendant solicited real estate agents for seminars which were free-of-charge to these consumers by delivering or causing to be delivered complimentary tickets to the same to these consumers' offices. During these seminars, Defendant told consumers that if consumers paid Defendant specified amounts, consumers would receive training materials, such as literature and audio tapes, and/or admission to a subsequent seminar conducted by Defendant. A list of such consumers and the amounts each paid is attached as Exhibit A. Defendant neither delivered to consumers said training materials for which consumer paid Defendant, nor did Defendant conduct seminars for which consumers had previously paid Defendant. Defendant's failure to deliver products and services for which Defendant had received money from consumers is a deceptive act and practice as defined by K.S.A. §50-626(b)(2). Defendant's failure to deliver products and services for which Defendant had received money from consumers is also an unconscionable act and practice as defined by K.S.A. §50-627(b) and K.S.A. §50-627(5).
- c. Defendant accepted credit card payment from consumers for training materials and for admission to subsequent paid-admission seminars, and charged consumers' credit cards more than once for the same transaction, without providing services or products for any of the credit-card transactions. Defendant's practice of multiple-debiting consumers' credit cards is a deceptive act and practice as defined by K.S.A. §50-

626(b)(1)(B). Defendant's multiple-debiting of consumers' credit cards is an unconscionable act and practice, as defined by K.S.A. §50-627(5).

- d. Defendant's transactions with consumers constitute door-to-door sales, as defined by K.S.A. §50-640(c)(1); however, Defendant failed to furnish consumers with fully completed receipts or copies of any type of contract pertaining to Defendants' sales to consumers at the time of execution of the sale which contained notices of cancellation, in violation of K.S.A. §50-640(b)(1) through K.S.A. §50-640(b)(3).
- e. Defendant failed to inform consumers orally, at the time such consumers signed contracts or purchased property and services, of such consumers' rights to cancel, in violation of K.S.A. §50-640(b)(5).
- f. Defendant told consumers that such consumers could cancel their transactions with Defendant if they were unable to attend seminars offered by Defendant by contacting Defendant; however, Defendant did not refund money to any consumers who attempted, for any reason, to cancel their transactions with Defendant. This is in violation of K.S.A. §50-640(b)(6), in that Defendant misrepresented the consumer's right to cancel.

7. Defendant has voluntarily admitted liability and agreed to the Consent Judgment without trial or adjudication of any issue of fact or law.

8. The provisions of this Journal Entry will be applicable to Defendant, and every employee, agent or representative of Defendant.

9. Defendant has agreed 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.

10. Defendant has agreed 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.

11. Defendant has agreed and stipulated to specific performance for restitution to consumers listed in Exhibit A, attached to the Consent Judgment, in the amounts indicated therein, pursuant to K.S.A. 50-632(b). Restitution to consumers listed in Exhibit A of the attached Consent Judgment, totaling \$3,877.00, shall be delivered to the Office of the Attorney General, in the form of cashier's checks, payable to the "Office of the Attorney General." Such restitution shall commence with a payment of \$300.00, to be received by the Attorney General's Office by July 15, 1998. Payments of \$300.00 each shall be received by the Attorney General's Office every two weeks thereafter with a final payment of \$277.00 to be made by or before December 16, 1998.

12. Defendant has agreed to pay \$2,500.00 in investigation fees and expenses and \$2,500.00 in civil penalties to the "Office of the Attorney General" of the State of Kansas. Payment for investigative fees and expenses and civil penalties shall follow within two weeks of payment for completed restitution to consumers. Payment of \$400.00 per month shall commence within two weeks of completion of restitution payments, with subsequent \$400.00 payments thereafter due on or before the first (1st) day of each month, until the entire amount payable is satisfied.

13. Parties have agreed that Defendant's timely payments, as set out in paragraphs ten (10) and eleven (11) of this Journal Entry, totaling \$8,877.00 in accordance with the payment schedule

set out therein, and compliance with all other terms of the Consent Judgment shall constitute payment-in-full and satisfaction of this judgment.

14. Defendant has agreed that failure to make timely payments, as set out in the schedule in paragraphs ten (10) and eleven (11) of this Journal Entry will result in the entire outstanding balance becoming due within five (5) days of the first payment missed. Defendant has agreed 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.

15. Defendant has further agreed that any violation of this Order, including the terms of the Consent Judgment incorporated by reference, shall invalidate paragraph twelve (12) of this Consent Judgment, notwithstanding timely payments made by Defendant. Upon any violation of this Order, therefore, the entire outstanding balance shall become due within five (5) days of Plaintiff's reporting said violation to the Court and notifying Defendant of the same.

16. Defendant has admitted that all fines, penalties, and investigative fees imposed and agreed to herein are a result of willful and/or malicious injury to another entity or the property of another.

17. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this action 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.

18. Defendant has agreed that if any portion, provision, or part of the 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.

19. Compliance with this Journal Entry 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.

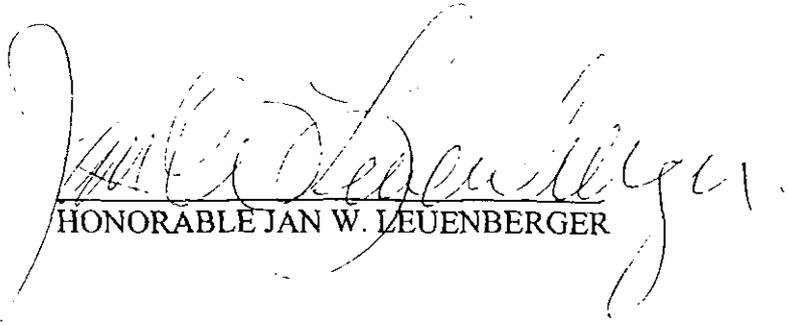
20. Defendant is hereby ordered to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be deceptive or unconscionable in paragraph five (5) of this Journal Entry, and Defendant agrees that engaging in such acts or similar acts, after the date of this Journal Entry, shall constitute a violation of this Order.

21. Judgment is hereby entered in favor of Plaintiff and against Defendant James Curtis McCoy, d/b/ a Speakers International; d/b/a DPBA Enterprises; and d/b/a The JCM Group of Independent Brokers, as follows:

- a. Pursuant to K.S.A. §50-636, Defendant is hereby ordered to pay \$2,500.00 in civil penalties to the Office of the Attorney General of the State of Kansas for violations of the Kansas Consumer Protection Act, K.S.A. §50-623 *et seq.*
- b. Pursuant to K.S.A. §50-632(a)(4), Defendant is hereby ordered to pay \$2,500.00 in investigative fees and expenses to the Office of the Attorney General of the State of Kansas.
- c. Pursuant to K.S.A. §50-632(a)(2), Defendant is hereby ordered to refrain from and to be permanently enjoined from owning, operating, or otherwise participating, transacting, or engaging in any business within the State of Kansas.

22. This Journal Entry shall become effective upon the filing of a Journal Entry herein.

IT IS SO ORDERED.

  
HONORABLE JAN W. LEUENBERGER

Prepared and approved by: 

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Attorney for Plaintiff

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James Curtis McCoy,  
d/b/a Speakers International,  
d/b/a DPBA Enterprises, and  
d/b/a The JCM Group of Independent Brokers  
10557 Goddard  
Overland Park, Kansas 66212

Defendant