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James J. Welch, #09546
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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 9

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

Plaintiff,

v.

) Case No. 98 CV 1064

BRUCE J. HARRIS, NAILOR L. HARRISON, JR., and
WALTER R. HOLMES,
d/b/a ROCKY'S BLACKTOP SERVICE,
d/b/a H & H CONSTRUCTION, d/b/a HOLMES BROTHERS,
and d/b/a B& H ASPHALT PAVING & MAINTENANCE,

Defendants.

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this ____ day of August, 1998, 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.* Carla J. Stovall, Attorney General, appears by and through James J. Welch, Assistant Attorney General. Defendants appear by and through counsel, Robert E. Hiatt. There are no other appearances.

WHEREUPON, the parties advise the Court 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 statutory and common law of Kansas, specifically, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*
3. Defendant Bruce J. Harris is a resident of Slidell, Louisiana.
4. Defendants Nailor L. Harrison, Jr., and Walter R. Holmes are residents of Carthage, Missouri.
5. Defendants Bruce J. Harris, Nailor L. Harrison, Jr., and Walter R. Holmes, all do business as H & H Construction and B & H Asphalt Paving & Maintenance.
6. Defendants are suppliers within the definition of the Kansas Consumer Protection Act, K.S.A. 50-624(i).
7. Defendants have engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c).
8. Defendants admit the Court has personal and subject matter jurisdiction over the parties.
9. Venue is proper in Shawnee County because an act or practice declared to be a violation of the Kansas Consumer Protection Act occurred in such county and because Defendants have no principal place of business in the State of Kansas.
10. The Attorney General alleges Defendants engaged in the following acts and practices which are deceptive and violate the Kansas Consumer Protection Act:
 - (a) Between at least August 1 and August 5, 1998, Defendants solicited and sold asphalt paving and patching services to consumers in Topeka and Shawnee County, Kansas;
 - (b) Between at least August 1 and August 5, 1998, Defendants solicited and sold asphalt paving and patching services to consumers at a place other than the usual place of

business of Defendants, and for a purchase price of \$25.00 or more. Such solicitations constitute door-to-door sales and are subject to the provisions of K.S.A. 50-640;

- (c) In each of the above described solicitations, Defendants failed to provide to the Kansas consumer the written notice of cancellation required by K.S.A. 50-640(b)(2). The failure to provide the required notice constitutes a deceptive act in violation of K.S.A. 50-626 as enumerated in K.S.A. 50-640(b);
- (d) In each of the above described solicitations, Defendants failed to inform Kansas consumers the oral notice of cancellation required by K.S.A. 50-640(b)(5). The failure to provide the required oral notice constitutes a deceptive act in violation of K.S.A. 50-626 as enumerated in K.S.A. 50-640(b);
- (e) In at least one of the above-described solicitations, Defendants left consumers with a contract which included the clause: "If for any reason customer decides not have said job done after signing this agreement, thirty percent of the above price will be charged for services rendered." This is in violation of K.S.A. 50-640(b)(6), in that it is a misrepresentation of such consumers' right to cancel under Kansas law which prohibits such penalties;
- (f) Defendants made solicitations and sales to Kansas consumers in Shawnee County, leading such consumers to believe that Defendants have a transient merchant's license in the county of Shawnee, Kansas; when, in fact, Defendants have no such license;
- (g) Defendants willfully failed to state and willfully concealed, suppressed, and omitted the material fact that Defendant was conducting business in Shawnee County without a transient merchants license, in violation of K.S.A. 50-626(b)(3);
- (h) Defendants' representation by implication that Defendants had obtained transient merchants' licenses also violates K.S.A. 50-626(b)(1)(B), in that it is the representation that Defendants have a sponsorship, approval, status, affiliation and connection that the Defendants did not have - specifically, approval by the county of Shawnee County, Kansas, to make transient sales;
- (i) Defendants represented to consumers that consumers' purchases of Defendants' services included a one-year warranty on all workmanship; however, Defendants provided no address or other indication to consumers of Defendants' permanent location. The inability of consumers to subsequently contact Defendants rendered this "warranty" virtually worthless;
- (j) Defendants' misrepresentations of the existence of a warranty are deceptive, and 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;

- (k) Defendants' misrepresentations of the existence of such a warranty are also unconscionable, and in violation of K.S.A. 50-627(b)(1), in that the Defendants took advantage of the inability of the consumers to reasonably protect such consumers' own interests because of the consumers' inability to determine the transience of Defendants;
- (l) Defendants cashed checks given to Defendants by consumers as payment for services immediately upon receipt thereof. This is in violation of K.S.A. 50-640(b)(8), which provides that a note or other evidence of indebtedness incurred as a result of a door-to-door sales may not be negotiated, transferred, sold or assigned prior to midnight of the fifth business day following the day the contract was signed or the services were purchased;
- (m) Defendants have made solicitations and sales described above to at least two consumers who are elderly persons (60 years of age or older), as defined by K.S.A. 50-676(a); Defendants' violations committed against elderly consumers subject Defendants to enhanced penalties, pursuant to K.S.A. 50-677;

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

12. Defendants agree to refrain from and to be permanently enjoined from engaging in acts and practices described in paragraph ten (10) in violation of the Kansas Consumer Protection Act. Defendants agree that engaging in acts or similar acts after the date of this Consent Judgment shall constitute a violation of this Order.

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

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 thirty (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 \$2,500.00 in investigation fees and expenses to the Office of the Attorney General of the State of Kansas and \$2,500.00 in civil penalties to the State of Kansas. Payment shall be made by cash and/or cashier's check, payable to the "Office of the Attorney General," and shall be delivered to the Attorney General of the State of Kansas at the time of signing this Consent Judgment.

17. 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.

18. 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.

19. Compliance with this Consent Judgment does not relieve Defendants 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. 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 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 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 Defendants immediately become a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant in favor of Plaintiff in the amount of \$5,000.00.

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.

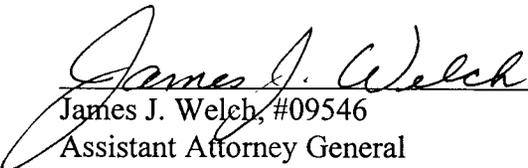
IT IS SO ORDERED.

15/ Hon. Charles E. Andrews, Jr.
The Honorable Charles E. Andrews, Jr.
Judge of the District Court

PREPARED AND APPROVED BY:



CARLA J. STOVALL, #11433
Attorney General

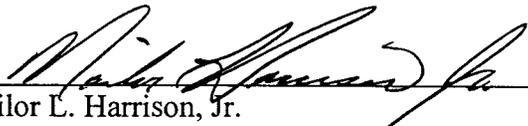


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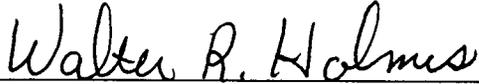
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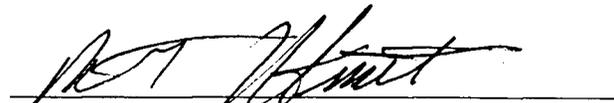
Bruce J. Harris
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Nailor L. Harrison, Jr.
R.R. 5, Box 50-A
Carthage, Missouri 64836



Walter R. Holmes
2221 Oak Rd.
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A handwritten signature in black ink, appearing to read "R. E. Hiatt", is written over a horizontal line.

Robert E. Hiatt, #13810
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Attorney for Defendant