

99-010

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FILED BY CLERK
KS. DISTRICT COURT
3RD JUDICIAL DISTRICT

JAN 26 3 43 PM '98

TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 11

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

Plaintiff,

vs.

FURTHERANCE INTERNATIONAL, INC.,
d/b/a PREMIER CARD SERVICES,

Defendant.

Case No. 990129

Petition Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this _____ day of _____, 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 Furtherance International, Inc., d/b/a Premier Card Services appears by and through William E. Raney.

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 Furtherance International, Inc., d/b/a Premier Card Services is a corporation organized under the laws of the State of Arizona. The principal office of the

business is located at 10827 South 51st Street, Suite #103, Phoenix, Arizona 85048. Defendant Furtherance International, Inc., d/b/a Premier Card Services also uses the address 3646 East Ray Road, Suite #B-1691, Phoenix, Arizona 85048.

4. Defendant Furtherance International, Inc., d/b/a Premier Card Services, may be served with process by serving the Kansas Secretary of State, with directions to serve Defendant's registered agent, Donald W. Hudspeth, P.C., at the registered office, 3030 North Central Avenue, Suite #603, Phoenix, Arizona 85012.

5. 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).

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

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

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

- a. Defendant failed to provide consumers with a confirmation of sale which conforms with K.S.A. §50-672(b). Some consumers received no such confirmation. Consumers who did receive such confirmation received a confirmation which did not include Defendant's address and telephone number, a detailed description of the services being sold, a duplicate copy of the confirmation, and the following statement in a type size of a minimum of twelve points, in a space immediately preceding the space allotted for the consumer signature: "YOU ARE NOT OBLIGATED TO PAY ANY MONEY UNLESS YOU SIGN THIS CONFIRMATION AND RETURN IT TO THE SELLER," in violation of K.S.A. §50-672(b).

- b. Defendant accepted payment and/or submitted charges to consumers' credit card accounts before receiving from such consumers an original copy of a confirmation, signed by the consumer that complied with K.S.A. §50-672(b). Defendant's acceptance of such payment and submitting of charges to consumers' credit cards is in violation of K.S.A. §50-672(c).
- d. Defendant's attempts to enforce credit card charges and transactions and refusals to make refunds to consumers for transaction in which such signed confirmations were not received by Defendant are unconscionable, in violation of K.S.A. §50-675(b).
- e. Defendant's registration and/or confirmation forms' exclusion of a statement that a consumer would not be responsible for any charge unless and until the consumer signed such confirmation and returned the same to the defendant is in violation of K.S.A. §50-626(b)(11), in that it is the sending and deliver a solicitation for goods and services which could reasonably be interpreted or construed as a bill, invoice, or statement of account due.
- f. Defendant made solicitations and sales described above to consumers who are elder persons (60 years of age or older), as defined by K.S.A. §50-676(a). Defendant's pattern of deceptive and unconscionable practices in transactions with elder consumers subjects Defendant to enhanced penalties, pursuant to K.S.A. §50-677.

9. Defendant, by entering into this Consent Judgment shall not be deemed to admit - and specifically denies - violations of the Kansas Consumer Protection Act alleged herein.

10. 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 eight (8) 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.

11. Defendant agrees to refrain from and to be permanently enjoined from engaging in any and all deceptive and/or unconscionable acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. §50-623 *et seq.*, as it now exists or as amended in the future and Defendant agrees that engaging in such acts or practices after the date of this consent judgment shall constitute a violation of this Order.

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

13. Defendant agrees to make available and to disclose the provisions of this Consent Judgment to his employees, agents and representatives within five days of signing the Consent Judgment.

14. Defendant agrees to make full refunds to all consumers with a Kansas address who request such refund from Defendant or notify Plaintiff of their desire to cancel any transaction with the Defendant. Any such requests outstanding at the time of execution of this document shall be made payable to individuals due such refunds and delivered to the Kansas Attorney General's Office in the form of cashiers checks or money orders at the time of Defendant's signing of this Journal Entry of Consent Judgment.

15. 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.

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 \$20,000 in investigation fees and expenses to the "Office of the Attorney General" of the State of Kansas. In addition, Defendant agrees to pay \$10,000 in civil penalties to the "State of Kansas," and an additional \$10,000.00 in civil penalties for violations of the Kansas Consumer Protection Act committed against elderly consumers, pursuant to K.S.A. §50-677 (totaling \$20,000 civil penalties). Payment shall be made by certified checks and shall be delivered to the Attorney General of the State of Kansas at the time of Defendant's signing of this Consent Judgment.

18. Parties agree that Defendant's compliance with paragraph eight (8) of this Consent Judgment and timely payment at the time of Defendant's signing this Consent Judgment, as set out in paragraph seventeen (17) of this Consent Judgment, totaling \$40,000.00 shall constitute payment-in-full and satisfaction of this judgment.

19. Defendant agrees that failure to comply with the terms of this Consent Judgment and to make timely payment of \$40,000.00, in accordance with the terms of paragraph seventeen (17) of this Consent Judgment, will result in the entire outstanding balance of \$50,000.00 becoming due within five (5) days of Plaintiff's reporting said violation to the Court and notifying Defendant of the same.

20. Defendant admits that nothing within the terms of this Consent Judgment, including the suspension of \$10,000.00 investigative fees and civil penalties (or payment of the same, in the event of a violation of this Consent Judgment by Defendant), shall preclude the Attorney General from taking appropriate further action to enforce this Order, as provided in K.S.A. §50-636.

21. 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.

22. 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 to the extent allowed by law.

23. 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 for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof, or for modification of this Consent Judgment upon agreement of the parties. The parties agree that this Consent Judgment resolves all issues known to parties under the Kansas Consumer Protection Act relating to the acts and practices alleged to be deceptive or unconscionable in paragraph eight (8), including sub-paragraphs, of this Consent Judgment up through the date of the execution of this Consent Judgment. Pursuant to the terms of this Consent Judgment, the Kansas Attorney General agrees that she and her office will not pursue any claims, demands or civil causes of action under the Kansas Consumer Protection Act against Defendant for the acts and practices alleged to be deceptive and/or unconscionable in paragraph eight (8) of this Consent Judgment up through the date of the execution of this Consent Judgment, excepting only any action which may be required to enforce the provisions of this Consent Judgment.

24. 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.

25. 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.

26. 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.

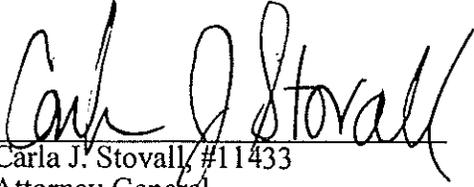
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant in favor Plaintiff in the amount of \$50,000, plus refunds to all Kansas consumers.

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.

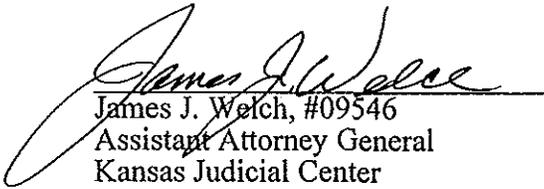
IT IS SO ORDERED.

DISTRICT COURT JUDGE

Approved by:



Carla J. Stovall, #11433
Attorney General



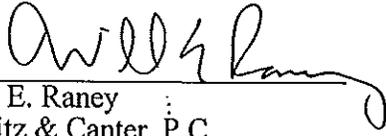
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