

99-045

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KS. DISTRICT COURT  
3RD JUDICIAL DISTRICT  
JUN 9 11 30 AM '99  
TOPEKA, KANSAS

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
Division 3

STATE OF KANSAS, *ex rel.*, )  
CARLA J. STOVALL, Attorney General, )  
 )  
Plaintiff, )  
 )  
v. ) Case No. 99C 753  
 )  
Ralph Tremain )  
 )  
Defendant. )

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

**JOURNAL ENTRY OF CONSENT JUDGMENT**

NOW on this 9<sup>th</sup> day of JUNE, 1999, 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. Defendant appears *pro se*.

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 was an individual working for Everlast Metal Buildings.
4. Defendant is a supplier within the definition of K.S.A. 50-624(i) and has engaged in consumer transactions in Kansas within the definitions of K.S.A. 50-624(c).
5. Defendant was employed by a business that sold and constructed metal buildings..
6. Defendant admits the Court has personal and subject matter jurisdiction.
7. 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 consumers for construction of metal buildings. Defendant failed to start projects for which consumer 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), in that it is the willful use of exaggeration, falsehood, innuendo and ambiguity as to a material fact.

(b) Defendant's failure to deliver products and services for which Defendant had received money from consumers, as described in paragraph 7(a) of this Journal Entry of Consent Judgment is also an unconscionable act and practice as defined by K.S.A. §50-627(b)(5), in that the transactions Defendant induced consumers to enter into were excessively one-sided in favor of the supplier.

(c) Defendant's failure to deliver products and services for which Defendant had received money from consumers, as described in paragraph 7(a) of this Journal Entry of Consent Judgment is also an unconscionable act and practice as defined by K.S.A. §50-627(b)(3), in that the consumers were unable to receive a material benefit from the subject of the transaction.

8. Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law and denies each and every one of the Attorney General's allegations set forth herein.

9. Defendant agrees to refrain from and to be permanently enjoined from engaging in acts and practices described in paragraph seven (7) in violation of the Kansas Consumer Protection Act. Defendant agrees that engaging in acts or similar acts after the date of this Consent Judgment shall constitute a violation of this Order.

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

11. 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.

12. Defendant agrees to pay a total of \$6,300.00 in restitution to consumers Don Jones (\$1300), Leon Coker (\$3,000), and RKP Hendrickson (\$2,000). Consumers listed who have received a full refund, in the amount listed, prior to this Journal Entry of Consent Judgment being filed shall not be entitled to a second, and duplicative, refund.

13. Defendant has previously supplied the State with the sum of \$1000 for use in consumer restitution. This sum shall be decreased from the total owed by the Defendant, bringing the total owed to \$5,300.00.

14. Defendant agrees to pay the amount of \$100 per month until full restitution has been made. Payments will begin on July 1<sup>st</sup>, 1999 and be due on the first of subsequent months. Failure to remit payment on time is a violation of this Judgment and will result in the remaining unpaid balance becoming due immediately.

15. Defendant further agrees to be permanently enjoined from engaging in the business of selling or constructing metal buildings within the State of Kansas.

16. 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.

17. 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.

18. 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.

19. 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 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 Defendants immediately become a judgment upon filing.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is entered against Defendant Ralph Tremain, and in favor of Plaintiff in the amount of \$6,300.00.

**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 Andrews  
Judge of the District Court

**PREPARED AND APPROVED BY:**

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**APPROVED BY:**

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