

99-054

James J Welch, #09546
Assistant Attorney General
Office of the Attorney General
Kansas Judicial Center
Topeka, Kansas 66612-1597
(785)296-3751

FILED BY CLERK
KS. DISTRICT COURT
3RD JUDICIAL DISTRICT
SEP 1 4 05 PM '99
TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 6

STATE OF KANSAS *ex rel.*,)
CARLA J. STOVALL, Attorney General,)
)
Plaintiff,)
)
v.)
ARIC GENTRY and JERRY DOVE II)
)
Defendants.)

Case No. 99 C 1135

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 1st day of ^{September} ~~March~~, 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. Defendants appear by and through counsel, Mike Broemmel. 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. Defendants are individuals, and at all times relevant hereto, were doing business at 1900 NW Lyman Rd #258, Topeka, Kansas, 66618.

4. Defendants are residents of Shawnee County, Kansas, and are suppliers within the definition of K.S.A. 50-624(i) and have engaged in consumer transactions in Kansas within the definitions of K.S.A. 50-624(c).

5. Defendants admit the Court has personal and subject matter jurisdiction over the parties.

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

- (a) Defendants represented to consumers they had beanie babies for sale when, in truth and in fact, they did not, constituting the willful use, in oral or written representations, of exaggerations, falsehoods, innuendos or ambiguities as to material facts, in violation of K.S.A. 50-626(b)(2);
- (b) Defendants represented to consumers they had beanie babies for sale when, in truth and in fact, they did not, thereby offering property or services without the intent to sell them in violation of K.S.A. 50-626(b)(5);
- (c) Defendants represented to consumers they had beanie babies for sale when, in truth and in fact, they did not, thereby offering property or services without intent to supply reasonable expectable public demand, unless the offer discloses the limitation in violation of K.S.A. 50-626(b)(6);
- (d) Defendants continually received payments from consumers and failed to provide the promised product resulting in the consumer not receiving a material benefit from the subject of the transaction in violation of K.S.A. 50-627(b)(3);
- (e) Defendants represented to consumers they had beanie babies for sale when, in truth and in fact they did not, Defendants continually accepted payment

from consumers and failed to provide a product, all constituting the transaction the supplier induced the consumer to enter into was excessively one-sided in favor of the supplier in violation of K.S.A. 50-627(b)(5);

- (f) Defendants represented to consumers that once payments were received Defendants would mail the product to the consumer when, in truth and in fact, there never was a product to supply all constituting the supplier made a misleading statement of opinion on which the consumer was likely to rely to the consumer's detriment in violation of K.S.A. 50-627(b)(6)

7. Defendants agree to this Consent Judgment without trial or adjudication of any issue of fact or law and deny each and every one of the Attorney General's allegations set forth herein.

8. Defendants agree to refrain from and to be permanently enjoined from engaging in acts and practices described in paragraph ten (6) 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.

9. The provisions of this Consent Judgment will be applicable to Defendants.

10. 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.

11. Defendants agree to pay \$5,364.00 in restitution to consumers who have filed complaints with the Office of the Attorney General (Exhibit A attached). 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.

12. Defendants further agree to pay \$500.00 in investigation fees and expenses to the "Office of the Attorney General" of the State of Kansas and \$500.00 in civil penalties to the "State of Kansas".

13. With regard to the amounts payable in paragraphs 11 and 12 above, Defendants agree to make a payment of \$6,364.00 at the time of signing of this Journal Entry of Consent Judgment. Payment shall be made by certified check and shall be mailed or delivered to the Attorney General of the State of Kansas at the time this Journal Entry of Consent Judgment is approved by the Court.

14. Additionally, Defendants agree to provide complete refunds to those consumers filing complaints with the Office of the Attorney General on or before thirty (30) days after the filing of this Journal Entry of Consent Judgment with the Clerk of the District Court.

15. 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.

16. 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.

17. 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.

18. 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 Defendants Aric Gentry and Jerry Dove in the amount of \$6,364.00.

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.

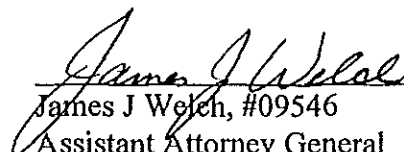
/s/ Hon. Terry Bullock

Judge of the District Court


PREPARED AND APPROVED BY:

Carla J. Stovall

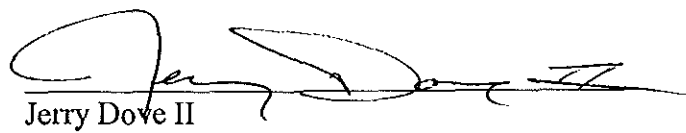
CARLA J. STOVALL, #11433
Attorney General


James J Welch, #09546
Assistant Attorney General
Office of the Attorney General
Kansas Judicial Center
Topeka, Kansas 66612-1597
(785) 296-3751
Attorney for Plaintiff

APPROVED BY:


Mike Broemmel
Attorney at Law
525 S. Topeka Boulevard
Topeka, Kansas 66603
(785) 233-7958
Attorney for Defendants


Eric Gentry


Jerry Dove II