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FILED BY CLERK
KS. DISTRICT COURT
302 JUDICIAL CENTER

DEC 3 2 16 PM '99

TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 7

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

Plaintiff,

vs.

JOE T. ELZEA; DENNIS HOWSER; JOHN JOSEPH ZUPAN;
ANTHONY FRITH BROOKS; DAVID ALLEN BERARD;
TERRY LEE JOHNSON, GEORGE R. DOSSET; and
JOSEPH CARRICO,
d/b/a ELZEA ASPHALT AND TREE SERVICE,

Defendants.

Case No. 99 C 1445

Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 3rd day of December, 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 Joe T. Elzea, d/b/a Elzea Asphalt and Tree Service appears by and through counsel, Thomas Lietz. All other defendants appear pro se.

WHEREUPON, the parties advise the Court they have stipulated and agree to the following

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 Joe T. Elzea, Dennis Howser, John Joseph Zupan, Anthony Frith Brooks, Bernard David Allen, George R. Dosset, Terry Lee Johnson and Joseph Carrico, all d/b/a Elzea Asphalt & Tree Service, are suppliers within the definition of the Kansas Consumer Protection Act, K.S.A. §50-624(i) and have engaged in consumer transactions, as defined by K.S.A. 50-624(c).
4. Defendants Elzea Asphalt & Tree Service and its owner, Defendant Joe T. Elzea, may be served with process at Route 1, Box 148, New London, Missouri 63459, or wherever in Kansas he may be found.
5. Defendant Dennis Howser may be served with process at 138 Locust Street, Quincy, Illinois 62301, or wherever in Kansas he may be found.
6. Defendant John Joseph Zupan may be served with process at 4014 Pushmatana, Hannibal, Missouri 63401, or wherever in Kansas he may be found.
7. Defendant Anthony Firth Brooks may be served with process at 1581 North Main, Las Vegas, NV 89101, or wherever in Kansas he may be found.
8. Defendant Bernard David Allen may be served with process at 831 Reserve, Hannibal, Missouri 63401, or wherever in Kansas he may be found.
9. Defendant George R. Dosset may be served with process at 201 West Terrace, Hannibal, Missouri 63401, or wherever in Kansas he may be found.
10. Defendant Terry Lee Johnson may be served with process at 716 Hickory, Hannibal, Missouri 63401, or wherever in Kansas he may be found.

11. Defendant Joseph Carrico may be served with process at 825 Maple, Quincy, Illinois 62301, or wherever in Kansas he may be found.

12. On at least October 5, October 6, October 7, and October 8, 1999, Defendants solicited and sold asphalt paving and tree-trimming services to consumers in Topeka, Kansas.

13. The Attorney General alleges Defendant engaged in the following acts and practices which are deceptive and violate the Kansas Consumer Protection Act:

- a. On at least October 5, October 6, October 7, and October 8, 1999, Defendants solicited and sold asphalt paving and tree-trimming 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. In all of the above described solicitations, the defendants failed to provide to the Kansas consumers 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).
- b. In each of the above described solicitations, the defendants failed to inform Kansas consumers orally of their rights to cancellation, as 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).
- c. Defendants cashed checks and/or disposed of monies 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.

- d. Defendants made solicitations and sales to Kansas consumers in the County of Shawnee, 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. Defendants' representation by implication that Defendants had obtained transient merchants' licenses is in violation of 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, Kansas, to make transient sales.
- e. Defendants willfully failed to state and willfully concealed, suppressed, and omitted the material fact that Defendants was conducting business in Shawnee County without a transient merchants license, in violation of K.S.A. 50-626(b)(3).
- f. Defendants solicited and accepted payments from consumers in excess of \$38,000.00 to purchase Defendant's services of tree-trimming; however, Defendant performed services of relatively insignificant value. This is in violation of K.S.A. §50-627(b)(3) and (b)(5), in that such transactions were excessively one-sided in favor of the Defendant, as the consumer received no material benefit.
- g. Defendant's solicitation and subsequent sale of services of substantially less value for amounts in excess of \$38,000.00 is unconscionable, and in violation of §50-627(b)(2), in that, when the consumer transaction was entered into, the price grossly exceeded the price at which similar services were readily obtainable in similar transactions by similar consumers.

h. Defendants have made solicitations and sales described above to at least eleven (11) consumers who are elder 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.

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

14. Defendants agree to refrain from and to be permanently enjoined from engaging in acts and practices described in paragraph thirteen (13) 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.

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

16. 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.

17. 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.

18. Defendants agree to be permanently enjoined from any collection activity of any kind on checks written to them by Thomas Herd and Katherine Klassen, and to be enjoined from filing liens on any real estate in Kansas.

19. 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. Further, Defendants agree to refund consumers listed in Exhibit A to this Consent Judgment, pursuant to K.S.A. §50-632(a)(3), totaling \$45,359.00. Payments shall commence at the time of UnionBank/West's receipt of this executed and filed Journal Entry of Consent Judgment. Parties agree that UnionBank/West shall, at the time of said receipt, close Savings Account No. 331096510 (balance of \$16,225.61) and Certificate of Deposit Account No. 331096520 (balance of \$2,222.92), and issue a cashier's check for these closed accounts, totaling \$18,448.53, payable to the "Office of the Kansas Attorney General." Thereafter, Defendants agree to make monthly payments of \$500.00 until the entire remaining balance of \$31,910.47 is satisfied. Payment of \$500.00 per month shall commence on or before January 1, 2000, with subsequent \$500.00 payments thereafter due on or before the first (1st) day of each month, until the entire amount payable is satisfied.

20. Parties agree that payment of investigation fees and expenses and civil penalties, as set out in paragraph nineteen (19) of this Consent Judgment shall not be subject to interest as long as all payments are timely made. Defendants agree that failure to make timely payments of investigative fees and expenses and civil penalties, as set out in paragraph nineteen (19) of this Consent Judgment, will result in the amount of the entire unpaid balance becoming due within five (5) days of the first payment missed and subject to interest, as provided in K.S.A. §16-204.

21. Defendants agree to pay all expenses and reasonable attorney's fees in connection with the collection of any amounts in this judgment, provided Defendants do not pay the amounts as agreed herein within the time frame stated.

22. 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.

23. 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.

24. 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.


25. 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 \$50,359.00.


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.

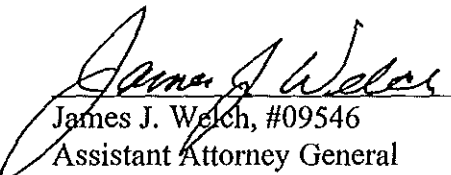


The Honorable Franklin R. Theis
Judge of the District Court

PREPARED AND APPROVED BY:



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Joe T. Elzea

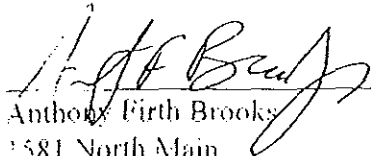
Joe T. Elzea, d/b/a Elzea Asphalt & Tree Service
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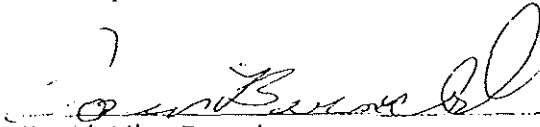
Dennis Howser

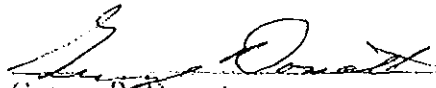
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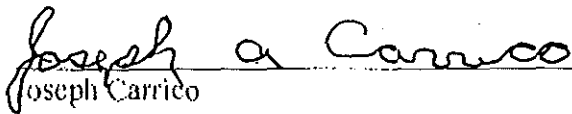
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