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LOGAN DISTRICT COURT
LOGAN CO. KANSAS
HARVEY C. CLADIN

IN THE DISTRICT COURT OF LOGAN COUNTY, KANSAS
Division _____

STATE OF KANSAS, *ex rel.*)
CARLA J. STOVALL, Attorney General)
)
Plaintiff,)
)
vs.)
)
COLLINGWOOD GRAIN, INC.,)
)
Defendant.)

Case No. COC 23

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 21st day of August, 2000, 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 C. Steven Rarrick, Deputy Attorney General, and James J. Welch, Assistant Attorney General. Defendant Collingwood Grain, Inc. appears by and through its counsel, Daniel D. Crabtree and Patricia Konopka, Stinson, Mag & Fizzell, P.C., and Jeffrey A. Mason, VIGNERY & MASON, LLC

Whereupon, the parties advise the Court that they have stipulated and agreed 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, Collingwood Grain, Inc. is a Kansas corporation organized under the laws of the State of Kansas, doing business in Logan County, Kansas. Defendant has been served with process through its counsel.
4. Defendant's predecessors include the Oakley Elevator Company, Inc. and Smoot Grain Company. The Oakley Elevator Company, Inc. was a wholly-owned subsidiary of Smoot Grain Company. The Oakley Elevator Company, Inc. merged with Smoot Grain Company on January 1, 1993. Smoot Grain Company merged with Collingwood Grain, Inc. on July 1, 1995.
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. The Court has personal and subject matter jurisdiction over the parties.
7. Defendant stipulates to and waives any objections to venue in Logan County.
8. Defendant is engaged in the business of owning and operating elevators throughout Kansas.
9. The Attorney General alleges that defendant's predecessors engaged in the following acts and practices which were deceptive and/or unconscionable and violated the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*:

- a. from approximately September 1, 1993, to approximately June 6, 1995, an employee of defendant's predecessors frequently manipulated the scale at the Oakley Elevator by using an employee's body weight to increase the weight of some feed sales, thereby causing numerous customers to be overbilled;
- b. from approximately September 1, 1993, to approximately June 6, 1995, an employee of defendant's predecessors frequently manipulated the scale at the Oakley Elevator by using an employee's body weight to increase the weight of some liquid fertilizer sales, thereby causing numerous customers to be overbilled;
- c. from approximately March 1, 1990, to approximately October 1, 1994, an employee of defendant's predecessors frequently over-diluted liquid fertilizer by replacing a portion of the liquid fertilizer with water and charging customers as if the water were fertilizer, thereby causing numerous customers to be overbilled; and
- d. from approximately March 1, 1990, to approximately June 6, 1995, an employee of defendant's predecessors altered numerous scale tickets by adding pounds to the weight of liquid fertilizer and feed transactions over the amount shown by the scale ticket, thereby causing numerous customers to be overbilled.

10. Defendant denies these allegations and denies that the Kansas Consumer Protection Act was violated, but voluntarily agrees to this Consent Judgment without trial or adjudication of any issue of fact or law to resolve and settle this dispute. Pursuant to K.S.A. 50-632(b), defendant

does not admit any violation of the Kansas Consumer Protection Act by entering into this Consent Judgment.

11. 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 nine (9) 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.

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

13. Defendant agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structure for the purpose of avoiding compliance with the terms of this Consent Judgment.

14. Defendant agrees to pay the total sum of \$224,976.36 as restitution to the customers listed on Exhibit A to this Consent Judgment in the amounts stated on Exhibit A pursuant to K.S.A. 50-632(a)(3). Payment shall be by check made payable to the individual customer and shall be delivered to the Attorney General of the State of Kansas at the time of signing this Consent Judgment. Each check will contain the following language on the back:

By cashing this check, I (and all persons purchasing on my account) fully and forever release Collingwood Grain, Inc., from any and all liability under the Kansas Consumer Protection Act arising out of the transactions I (and all persons purchasing on my account) conducted with the Oakley Elevator Company, Inc., Smoot Grain, Inc., or Collingwood Grain, Inc., at the elevator in Oakley, Kansas, from March 1, 1990, through June 6, 1995 and which are alleged to be deceptive or unconscionable in the Consent Judgment with the Office of the Kansas Attorney General.

The Attorney General will mail this check to each customer, along with a list, created and provided by defendant, of feed and liquid fertilizer transactions between the customer and the Oakley Elevator

during the relevant time periods between 1990 and 1995 and an explanatory letter. This tendered check shall be valid to and including January 2, 2001. If the tendered check is not cashed on or before January 2, 2001, it will become void and the customer will be deemed to not have accepted the terms of this Consent Judgment. The funds for any customer who declines to accept or cash the tendered check on or before January 2, 2001, shall first be made available to pay any additional restitution claimed on or before October 23, 2000, pursuant to paragraph 15 below. If the funds for any customer who declines to accept or cash the tendered check on or before January 2, 2001, are not used to pay additional restitution, sixty-five percent (65%) shall revert to defendant and remain the property of defendant, and thirty-five (35%) shall revert to plaintiff as additional penalties and investigative fees until plaintiff has recovered \$74,879.55. Once plaintiff has recovered \$74,879.55, 100% of any funds for any customer who declines to accept or cash the tendered check on or before January 2, 2001, shall revert to defendant. This reversion shall occur on January 3, 2001, or when any additional claims made under paragraph 15 below are finally resolved, whichever is later.

15. If any customer does not believe that the provided list of transactions is complete or accurate, he/she will have until and including October 23, 2000, to provide to the Office of the Attorney General credible documentation of transactions he/she engaged in with defendant's predecessors during the relevant time period that are not contained on or are inaccurately depicted on the list sent by the Attorney General. If the customer provides credible documentation of additional or inaccurately depicted transactions which affects the amount of restitution owed under the restitution formula agreed to by the Attorney General and defendant, he/she shall be entitled to additional restitution to be calculated by the formula agreed to by the Attorney General and defendant. If the customer does not provide credible documentation of additional or inaccurately

depicted transactions on or before October 23, 2000, and has endorsed and cashed the check, the customer will have waived his/her right to challenge the accuracy and completeness of the restitution payment tendered under the terms of this Consent Judgment. If the customer submits credible documentation of additional or inaccurately depicted transactions (in the manner described by this paragraph) on or before October 23, 2000, and plaintiff and defendant do not resolve that claim of additional or inaccurately depicted transaction(s) on or before January 2, 2001, Collingwood will issue a replacement check to the customer in the appropriate amount once that customer's claim is resolved.

16. By endorsing and cashing the check, the customer and each person making purchases on his/her account, will: (a) fully and forever release and discharge defendant from all liability under the Kansas Consumer Protection Act for the acts and practices alleged to be deceptive and/or unconscionable in paragraph nine (9) of this Consent Judgment at the elevator in Oakley, Kansas, from March 1, 1990, through June 6, 1995, as stated in the release contained on the back of the check (and quoted in paragraph 14 of this Consent Judgment); and (b) accept the terms and consequences of that release. However, endorsing and cashing the check will not preclude any customer or any person making purchases on his/her account from claiming damages (less appropriate credit for the amount paid to the customer by defendant in connection with this Consent Judgment) in any cause of action not arising under the Kansas Consumer Protection Act (including but not limited to, the claims asserted in the class action lawsuits being presently pursued). The letter sent by the Attorney General will fully explain the ramifications of endorsing and cashing the check.

17. Defendant agrees to pay \$325,120.45 in civil penalties and investigative fees to the "Office of the Attorney General" of the State of Kansas. Payment shall be made by check and shall

be delivered to the Attorney General of the State of Kansas at the time of signing this Consent Judgment.

18. Defendant agrees to maintain all business records for a period of five (5) years from the date of signing this Consent Judgment and to allow the Attorney General to inspect all of defendant's business records with respect to any future complaints filed with the Office of the Attorney General.

19. 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 or for the enforcement of compliance herewith.

20. If any portion, provisions, 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.

21. Compliance with this Consent Judgment does not relieve defendant of any obligations imposed by applicable federal, state or local law, nor shall the Attorney General be precluded from taking appropriate legal action to enforce other civil or criminal statutes under her jurisdiction.


22. 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 of defendant.

IT IS ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are fair and reasonable and are adopted and approved as the findings of fact and conclusions of law of the Court.


IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against defendant in the amount of \$550,096.81, said amount to be apportioned between restitution and penalties and fees as described previously in this Consent Judgment.

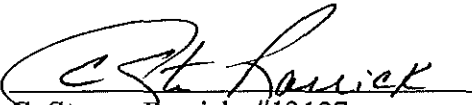
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

IT IS SO ORDERED.


Glenn D. Schiffner
DISTRICT COURT JUDGE


Approved by:


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Attorney General


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