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IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
Division 15

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

Plaintiff,

vs.

JEFFREY D. LYON, and
QUEST CAPITAL MANAGEMENT, INC.,
d/b/a NATIONAL HOMEBUYERS ALLIANCE,

Defendants.

Case No. 00 CV 02964

Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 21st day of September, 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 James J. Welch, Assistant Attorney General. Defendants Jeffrey D. Lyon and Quest Capital Management, Inc., d/b/a National Homebuyers Alliance, appear by and through Andrew M. DeMarea and Karen M. Gleason.

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,

CLERK OF DISTRICT COURT
JOHNSON COUNTY, KS
2000 SEP 21 PM 1:00

K.S.A. §50-623, *et seq.*, the Credit Services Organization Act, K.S.A. §50-1101 *et seq.*, and the Credit Repair Organizations Act, 15 U.S.C. §1679 *et seq.*

3. Defendant Jeffrey D. Lyon is an individual residing in the state of Kansas and the director, incorporator, and sole officer of Quest Capital Management, Inc. Defendant Quest Capital Management, Inc., is a corporation organized under the laws of the State of Kansas.

4. Defendants are suppliers within the definition of K.S.A. §50-624(i) and operators of a business that, in part, provides the services of a credit services organization, as defined by K.S.A. §50-1101(a) and a credit repair organization, as defined by 15 U.S.C. §1679a(2). Defendants have engaged in consumer transactions in Kansas within the definition 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 Jeffrey D. Lyons and Quest Capital Management, d/b/a National Homebuyers Alliance, are responsible for the acts of their agents and employees under the legal theory of *respondeat superior*.

7. The Attorney General alleges defendants have violated the Kansas Consumer Protection Act, K.S.A. §50-623, *et seq.*, the Credit Services Organization Act, K.S.A. §50-1101 *et seq.*, and the Credit Repair Organizations Act, 15 U.S.C. §1679 *et seq.*, all as set forth in greater detail in the Petition.

8. Defendants have denied and continue to deny the plaintiff's allegations, and defendants shall not, by virtue of entering into this Consent Judgment, be deemed to have admitted any of the acts or violations alleged against them in the Petition. Defendants have agreed to the entry of this Consent Judgment without admitting any wrongdoing and for settlement purposes only.

9. All previous Temporary Restraining Orders are hereby set aside. The defendants agree to refrain from and be permanently enjoined, and the Court HEREBY ORDERS, that defendants are hereby permanently enjoined from the following:

a. Advertising, preparing, performing, accepting, supervising, operating, or in any manner conducting any business relating to the sale of credit services or the operation of a credit services organization from within the State of Kansas unless Quest Capital Management, Inc., is duly registered and qualified as a Credit Services Organization pursuant to K.S.A. 50-1101 *et seq.* This subparagraph shall not prevent Quest Capital Management, Inc., from changing its business so as not to offer the services of a Credit Services Organization, nor shall it preclude Quest Capital Management, Inc., from seeking to qualify for any exemption or exception to the Credit Services Organization registration requirement as authorized by K.S.A. 50-1101, *et seq.* However, defendants agree that if they form or operate any business in the future, they will duly register such new business or continue the registration of any altered business with the State to the extent that it provides the services of a Credit Services Organization, as required by K.S.A. 50-1101 *et seq.*, unless the new or altered business is subject to any exemptions or exceptions to the statute;

b. Contracting with consumers without conforming with and acting in compliance with the requirements of K.S.A. 50-1101 *et seq.* and 15 U.S.C. 1679 *et seq.*;

c. Contracting with consumers under the title or using the document or form called "Student Enrollment And Assistance";

d. Accepting payment to provide any service as a Credit Repair Organization (as defined by 15 U.S.C. §1679a(3)) before such service is fully performed pursuant to 15 U.S.C. 1679b(b); and

e. Contracting with consumers to provide services as a Credit Service Organization (as defined by K.S.A. 50-1102) and/or a Credit Repair Organization (as

defined by 15 U.S.C. §1679a(3)) without previously providing the separate disclosure statement as required by K.S.A. 50-1106 and 15 U.S.C. 1679c.

10. Defendants agree to provide to plaintiff on or before September 11, 2000, a hard copy and computer disk containing the complete list of all customers who transacted business with defendants from October 27, 1999, through June 8, 2000. Defendants have provided a prior list to plaintiff of customers who transacted business with defendants from the inception of defendants' business in Kansas through October 27, 1999. With regard to both of these customer lists:

a. Defendants, in good faith, represent that these two customer lists are proprietary and confidential and defendants have, in fact, treated the information contained on the two lists as proprietary and confidential.

b. As a result of defendants' representation in sub-paragraph (a) above, plaintiff agrees to maintain said customer lists as Confidential and will not disclose the information on said lists to any person except when disclosure is required by court order. If confidential information is requested, and resulting litigation ensues to compel production of said information, it shall be the duty of Defendants to intervene and assert any and all defenses applicable to the production of said information. Notwithstanding this agreement:

(1) Plaintiff shall be entitled to use the information on both lists to communicate with the consumers listed thereon. Furthermore, any complaints filed with Plaintiff by consumers whose information is on said lists shall become an open record under K.S.A. 45-215 *et. seq* when said complaint files are closed; and

(2) Plaintiff shall be entitled to disclose the information on both lists to other federal and state law enforcement officials.

c. Defendants represent that these lists contain all of the customers who have transacted business with defendants, and agree that any customers who are not identified and disclosed on said lists will be entitled to a refund from defendants if they make a claim for a refund to plaintiff or defendants at any time in the future, subject to the terms set forth in paragraph 11, subparagraph (d) (i) and (ii).

d. Plaintiff agrees to refrain from communicating with consumers depicted on the list to be provided by defendants on September 11, 2000, or on the list previously provided, prior to the filing of this Consent Judgment on September 21, 2000.

11. Defendants agree to pay refunds to customers of defendants and to pay civil penalties, attorneys' fees, and investigative fees and expenses pursuant to K.S.A. 50-632 as specified in the sub-paragraphs below. The parties recognize and agree that the Court sequestered approximately \$147,000 of the defendants' funds on May 26, 2000, and agree to consolidate the sequestered funds in Commerce Bank Account No. #590669046 into the remaining sequestered Commerce Bank Account No. #3746308705 (interest-bearing bond account). The parties agree to use the funds sequestered on May 26, 2000, to pay refunds, civil penalties, attorneys' fees, and investigative fees and expenses as follows:

a. Defendants agree to pay \$25,000 to the "Office of the Attorney General" pursuant to K.S.A. 50-632 to be applied to civil penalties, attorneys' fees, and investigation fees and expenses by the Attorney General.

b. As of May 26, 2000, plaintiff had received requests for refunds from consumers totaling over \$87,000. Since that date, the total refund requests are \$127,332.

~~The parties agree that plaintiff shall have until November 5, 2000, to collect additional requests for refunds from customers of defendants who have transacted business with defendants before June 9, 2000.~~ Plaintiff agrees to provide copies of requests for refunds received by plaintiff to counsel for defendants on a weekly basis from the date of this Consent Judgment through November 5, 2000.

c. On or before November 15, 2000, plaintiff shall communicate in writing to defense counsel the total of all refund requests received as of November 5, 2000, including the name, address, phone number, amount of refund claimed, and the reasons for the requested refunds. Plaintiff will use best efforts to communicate with defense counsel the total amount of refund requests between November 5 through November 15.

d. On or before November 25, 2000, defense counsel shall communicate to counsel for plaintiff the identities of any refund requests to which defendants object making the refund. The only bases on which defendants may object to paying a refund or total refund are: (i) the customer has already received a refund or partial refund of the amount presented to plaintiff and/or (ii) the customer never paid money to defendants or, alternatively, did not pay as much money to defendants as the customer seeks in the requested refund.

e. On or before December 5, 2000, counsel for plaintiff and defendants shall discuss the customers to which defendants objected making a refund (under paragraph (d), above) and attempt to reach a final list of refunds to which both parties agree. If the parties do not reach an agreement on the final list of customer refunds, the parties shall submit the disputed customer refunds to the Court for final determination. Defendants agree to pay the refunds on the final list of customer refunds agreed to between the parties or as determined by the Court.

f. In the event the sequestered funds exceed total refunds plus the \$25,000 in penalties and fees, within two weeks of the date the final list of refunds is agreed to between the parties, or determined by the Court, the parties shall jointly submit to the Court an approved Order directing the sequestered bank to pay refunds payable to the customers on the final list and the \$25,000 in penalties and fees to the Office of the Attorney General from the sequestered funds. In the event the total refunds plus the

\$25,000 in penalties and fees exceed the amount of the sequestered funds, defendants agree to the following payment schedule, amounts, and default requirements:

(1) On December 15, 2000, pay \$2,500 or the remaining judgment amount, whichever is less;

(2) On January 15, 2000, pay \$2,500 or the remaining judgment whichever is less;

(3) On February 15, 2000, and on the 15th day of each month thereafter until the entire amount payable is satisfied, pay (a) \$5,000 or (b) 5% of the amount determined by total refunds plus the \$25,000 in penalties and fees, less the amount of sequestered funds, whichever is less;

(4) Plaintiff agrees to stay execution on the entire monetary balance of this judgment to allow defendants to satisfy the judgment by the making of payments in the amount and on the dates specified above;

(5) However, in the event defendants fail to make a payment in the amount and/or on the date specified above, plaintiff will notify counsel for defendants by certified mail that defendants are in default, and defendants shall have five (5) calendar days from the date notice of default is received by counsel for defendants to cure said default. In the event said default is not cured by defendants within such five (5) calendar days, the entire outstanding balance of this judgment shall be due and owing, and subject to immediate execution by plaintiff;

(6) Payment for investigative fees and expenses and civil penalties shall commence after payments for restitution to consumers have been completed. Payments for restitution to consumers shall be made to the sequestered, interest-bearing account. Defendant shall instruct the bank to notify plaintiffs via fax of

each payment and current balance, and shall authorize said bank to release information regarding payments and the balance of said account to plaintiff;

(7) Banking and transaction costs associated with making the refunds shall be paid by the defendants; and

(8) When defendant has paid into the sequestered account the total refunds plus the \$25,000 in penalties and fees, the parties shall jointly submit to the Court an approved Order directing the sequestered bank to pay refunds payable to the customers on the final list and the \$25,000 in penalties and fees to the Office of the Attorney General from the sequestered funds.

(9) In the event defendant defaults on the payment schedule and fails to cure said default pursuant to sub-paragraph 5 above, plaintiff may apply for an Order directing the sequestered bank to pay full or partial refunds to consumers on the final list, and if any funds remain, the remaining amount towards the \$25,000 in penalties and fees to the Office of the Attorney General.

g. If any amount remains in the sequestered funds after paying the final list of refunds, civil penalties, attorneys' fees, and investigative fees and expenses, the parties shall jointly submit to the Court an approved Order directing the sequestered bank to pay any remaining funds to the respective defendants.

h. The parties agree that any customer who accepts a total refund under the terms of this Consent Judgment shall no longer be considered a customer of the defendants, and further agree that defendants shall have no obligations to perform any activities for or on behalf of said customers who accept a total refund under the terms of this Consent Judgment.

i. Each check for a total refund will contain the following restrictive endorsement language on the back of the check:

By cashing this check, I fully and forever release Jeffery Lyon and Quest Capital Management, Inc., d/b/a National Homebuyers Alliance from any and all liability under the Kansas Consumer Protection Act, the Kansas Credit Services Organizations Act, and the federal Credit Repair Organizations Act arising out of the transactions I conducted with them prior to June 9, 2000.

j. By endorsing and cashing the check for a total refund, the customer will fully and forever release and discharge defendants from all liability under the Kansas Consumer Protection Act, the Kansas Credit Services Organizations Act, and the federal Credit Repair Organizations Act arising out of the transactions conducted with defendants prior to June 9, 2000, as stated in the release contained on the back of the check (and quoted in the sub-paragraph above). The letter sent by the Attorney General will fully explain the ramifications of endorsing and cashing the check for a total refund.

12. Upon payment of the final refunds, civil penalties, attorneys' fees, and investigative fees and expenses, plaintiff shall immediately file a satisfaction of monetary judgment in favor of defendants. In the event a satisfaction of monetary judgment is filed pursuant to this paragraph, the remainder of the Journal Entry, including injunctive remedies, will continue in full force and effect.

13. The parties agree that defendants' counterclaims shall be, and hereby are, dismissed with prejudice, with each party to bear its own costs, expenses, and attorneys' fees relative to the counterclaim. Defendants agree to release any claim they have made or could have made against plaintiff arising out of this lawsuit.

14. Defendants hereby agree to instruct the removal of any "adverse action" information, as defined by 15 U.S.C. §1681, that they have caused to appear in the name of Quest Capital Management, Inc., or National Homebuyers Alliance on any and all credit reports of any consumer with whom Defendants transacted business prior to June 9, 2000. Plaintiff agrees, however, that the ultimate responsibility to request any such removal of such "adverse actions" ultimately rests with each affected consumer. No violation of this paragraph will be deemed to

have occurred until a customer requests the removal of an "adverse action" that is the subject of this paragraph and the defendants do not instruct the credit reporting company(ies) to remove it.

15. 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, except as provided in paragraph 9 (a) above.

16. The provisions of this Consent Judgment will be applicable to defendants, who are responsible for their employees, agents and representative carrying it out.

17. Defendants agree to make available and to disclose the provisions of this Consent Judgment to its employees, agents and representatives within five days of the entry of this Consent Judgment by giving them a copy of the Consent Judgment.

18. Defendant Quest Capital Management, Inc., agrees to maintain all business records for a period of two years and to allow the Attorney General to inspect the past two years of defendants' business records at any time in the future.

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, for the enforcement of compliance herewith, and for the punishment of violations thereof.

20. 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.

21. 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.

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 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.


23 Defendants agree that the Consent Judgment has been entered into with the consent and approval of the Board of Directors of Quest Capital Management, Inc.

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.

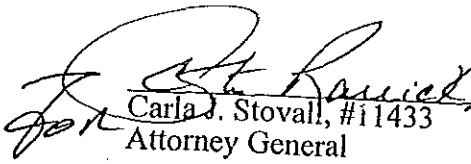
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the funds sequestered in Commerce Bank Account No. #590669046 shall be consolidated into the remaining sequestered Commerce Bank Account No. #3746308705 (interest-bearing bond account).

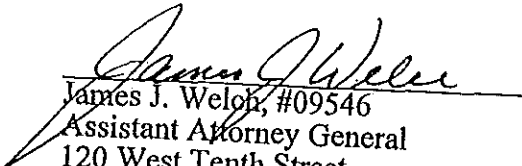
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. §50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

IT IS SO ORDERED.



Lawrence E. Sheppard
District Court Judge

Approved by:


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