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MAR 2 3 48 PM '93

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
Division 4

STATE OF KANSAS, ex rel. )  
ROBERT T. STEPHAN, Attorney General, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ASSURED HERITAGE FAMILY TRUST; )  
ED HARDGRAVES; AND MARVIN ASHWELL; )  
 )  
Defendants. )

Case No. 93CV210

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 2<sup>nd</sup> day of Mar., 1993, the plaintiff's petition for approval of consent judgment comes before the court for consideration under K.S.A. 1991 Supp. 50-632(b). The State of Kansas ex rel. Robert T. Stephan, Attorney General, appears by and through Kathy Greenlee, Assistant Attorney General and Carol R. Bonebrake, Assistant Attorney General. The defendants appear in person.

Whereupon, the parties advise the court that they have stipulated and agreed to the following matters:

1. Robert T. Stephan is the Attorney General of the State of Kansas.

2. Defendant Assured Heritage Family Trust is a partnership with its principal place of business at 2816 E. 51st Street, Suite 140, Tulsa, Oklahoma 74105.

3. Defendants Ed Hardgraves and Marvin Ashwell are the sole partners of Assured Heritage Family Trust, 2816 E. 51st Street, Suite 140, Tulsa, Oklahoma 74105.

4. The defendants enter their voluntary general appearance. The defendants admit the court has jurisdiction over the parties and the subject matter.

5. The Attorney General alleges the following acts and practices by the defendants are violations of the Kansas consumer protection act and are deceptive and unconscionable:

a) Frank Wyer, on behalf of the defendants solicited Kansas consumers for the purpose of selling living trusts. All of Mr. Wyer's sales and promotions materials, including his business cards, contained the Assured Heritage Family Trust name and address. The literature Mr. Wyer used was prepared by Ed Hardgraves and Marvin Ashwell, the co-owners of Assured Heritage Family Trust.

b) On May 5, 1992, Frank Wyer contacted Mary Morris, Parsons, Kansas, in her home for the purpose of selling a living trust. Mr. Wyer's sales presentation lasted for several hours. Ms. Morris agreed to purchase a living trust from Mr. Wyer for the price of \$1500. Ms. Morris made a downpayment of \$750.

c) On May 27, 1992, Mary Morris signed her living trust documents and paid an additional \$750 to Frank Wyer. Shortly

thereafter she decided that the documents were much more than she needed for estate planning. She stopped payment on her second \$750 check.

d) On June 10, 1992, Frank Wyer contacted Mr. and Mrs. Roy Amos, Chetopa, Kansas, in their home for the purpose of selling a living trust. Mr. Wyer's sales presentation lasted for several hours. Mr. & Mrs. Amos agreed to purchase a living trust from Mr. Wyer for the price of \$1500. Mr. & Mrs. Amos made a downpayment of \$750.

e) On June 23, 1992, Frank Wyer called Mr. & Mrs. Amos and announced that he would be visiting them again on June 25th. Mr. & Mrs. Amos requested that they meet on June 27th. Mr. & Mrs. Amos never heard from Frank Wyer again. They have not received their living trust or a refund.

e) Defendants drafted a document entitled "Assured Heritage Family Trust Disclosure and Agreement of Compliance." A copy of this document was given to Mary Morris and Mr. & Mrs. Roy Amos. A copy of this document is attached as Exhibit A.

f) The "Disclosure and Agreement of Compliance" form contains the following statement: "I understand I have a 72 hour right to rescind this sale." This statement in no way approximates the statutory language set for in K.S.A. 50-640(b). Therefore, defendants have violated the Kansas consumer protection act by failing to deliver to consumers a proper notice of the three-day right to cancel.

g) As a part of the sales presentation, Frank Wyer and defendants have routinely distributed sales materials which contain exaggeration, innuendo and ambiguity as to material fact. Exhibits B and C which are attached are examples of such materials.

h) Because of the materials prepared and provided by the defendants, each solicitation made by Frank Wyer constitutes

a deceptive act as defined by K.S.A. 1991 Supp. 50-626(b)(2).

i) Neither Frank Wyer, Ed Hardgraves, nor Marvin Ashwell has received formal legal education. Neither Frank Wyer, Ed Hardgraves, nor Marvin Ashwell has received a post secondary education degree.

j) Frank Wyer, Ed Hardgraves and Marvin Ashwell lack the authority and ability to advise consumers on the disposition of their property.

k) Consumers relied to their detriment on Frank Wyer's advise and opinion and the Assured Heritage Family Trust materials. In the face of such practices, consumers could not reasonably protect their own interests. Therefore, each solicitation constitutes an unconscionable act as defined by K.S.A. 1991 Supp. 50-627.

6. The Attorney General alleges the following acts and practices by the defendants constitute the practice of law as defined by the common law of the State of Kansas:

a) The plaintiff incorporates by reference paragraphs 5(a) -(k) as though fully stated herein.

b) Neither Frank Wyer, Ed Hardgraves nor Marvin Ashwell are registered by the Kansas Supreme court to engage in the practice of law.

c) Frank Wyer has solicited Kansas consumers for the purpose of selling living trusts. In so doing, Mr. Wyer has conferred with consumers and advised them of their legal rights. He has also gathered information from which legal documents are to be drafted.

d) Ed Hardgraves and Marvin Ashwell have prepared various materials regarding probate, estate planning and living trusts. These documents have been distributed through Assured Heritage Family Trust to prospective clients. Samples of the

documents are attached. Exhibits D through K.

e) The counsel provided by Frank Wyer, Ed Hardgraves and Marvin Ashwell requires the professional knowledge and application of legal principles and techniques.

7. The defendants voluntarily agree to this consent judgment without admitting liability and without trial or adjudication of any issue of fact or law.

8. The provisions of this consent judgment will be applicable to the defendants, and every employee, agent or representative of the defendants.

9. The defendants agree to make available and/or disclose the provisions of this consent judgment to their employees, agents and representatives.

10. The defendants agree to refrain from and to be enjoined from engaging in all acts and practices alleged by the State of Kansas to be deceptive and unconscionable, in paragraph number five.

11. The defendants agree to refrain from the conduct set forth in paragraph 6 and agree to be enjoined from engaging in the practice of law as defined by the common law of the State of Kansas.

12. The defendants agree to issue refunds to the following consumers within thirty (30) days of the date of this consent judgment:

- a) Mr. & Mrs. [REDACTED], \$750
- b) Ms. [REDACTED], \$750.

13. The defendants agree to resolve to the satisfaction of the Office of the Attorney General all other consumer complaints which arise within one year after the date of this consent judgment. The defendants agree to resolve these complaints whether brought to defendants' attention by the State of Kansas or by consumers complaining directly to the defendants. Defendants shall apprise the State of Kansas of the disposition of those complaints within thirty (30) days after they are resolved.

14. The defendants shall not enter into, form, organize or reorganize into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this consent judgment.

15. The defendants agree to pay \$1000 in investigation fees and expenses to the Attorney General of the State of Kansas at the time of filing this consent judgment. Payment will be by certified check.

16. The defendants agree to allow the Attorney General to inspect relevant business records in the future.

17. The defendants agree to pay all court costs and filing fees.

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 the court.

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 THEREFORE ORDERED, ADJUDGED AND DECREED that the defendants will pay all court costs and filing fees.

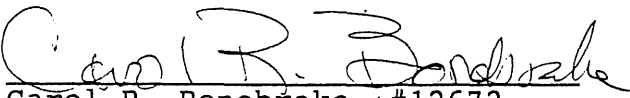
IT IS SO ORDERED.

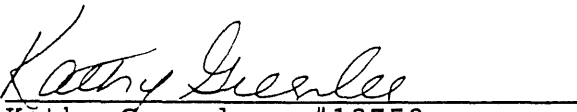
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DISTRICT COURT JUDGE

Approved by:

  
ROBERT T. STEPHAN, #05340  
Attorney General

  
Carol R. Bonebrake, #12672  
Assistant Attorney General

  
Kathy Greenlee, #13759  
Assistant Attorney General  
Office of the Attorney General,  
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Attorneys for plaintiff

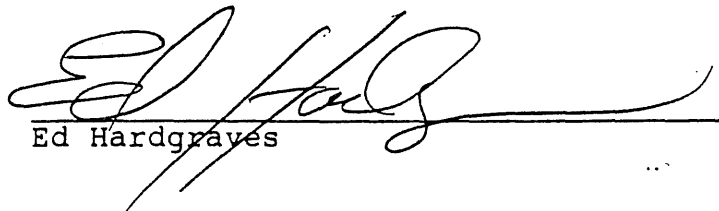
Approved by:

DEFENDANT ASSURED HERITAGE FAMILY TRUST

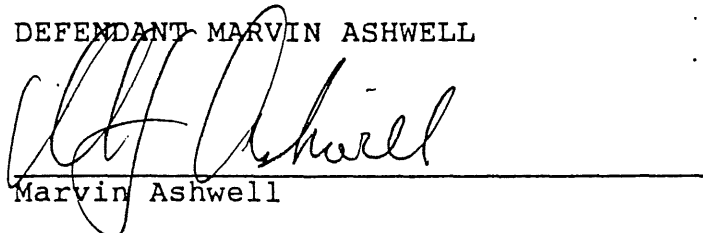
By : 

Title: Partner

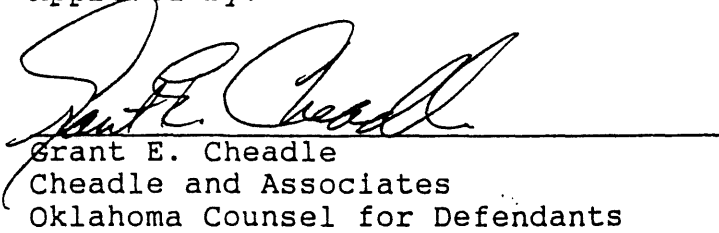
DEFENDANT ED HARDGRAVES

  
Ed Hardgraves

DEFENDANT MARVIN ASHWELL

  
Marvin Ashwell

Approved by:

  
Grant E. Cheadle  
Cheadle and Associates  
Oklahoma Counsel for Defendants