

FILED CLERK
 K.S. DISTRICT COURT OF THE DISTRICT COURT
 THIRD JUDICIAL DISTRICT SHAWNEE COUNTY
 TOPEKA, KS. TRIAL DOCKET
 CIVIL
 2005 NOV -2 P 1:00 04C 001776

04C 001776

Division 9

Case Filed 12/28/04

___ Contested
 ___ Non-contested
 ___ Pre-trial
 Costs Taxed To ___ Plf. ___ Def.

Machine ___ No Record ___

STATE OF KANSAS EX REL PHILL KLINE ATTY GENERAL

~~JIM McCABRIA~~
~~RUTH A RITTHALER~~ 1AP
 ASSISTANCE ATTORNEY GENERAL
 120 SW 10TH AVENUE 2ND FLOOR
 TOPEKA KS. 66612
 785-296-3751

VS.

STEVEN JOSEPH LOTZER INDIVIDUALLY
 EDWARD J JENNINGS
 ED JENNINGS INDIVIDUALLY AKA

THOMAS R DAVIS 2AD
 14 CORPORATE WOODS STE 400
 8717 WEST 110TH STREET
 OVERLAND PARK KS. 66210

SAM WITHIAM 2AD 1
 PO BOX 1368
 CUSHING OK. 74023
 918-225-3541
 THOMAS R DAVIS 3AD

EDWARD TED MCDONALD
 TED JENNINGS INDIVIDUALLY AKA
 TED MCDONALD AKA

14 CORPORATE WOODS STE 400
 8717 WEST 110TH STREET
 OVERLAND PARK KS. 66210
 SAM WITHIAM 3AD 1
 PO BOX 1368
 CUSHING OK. 74023
 918-225-3541

04C1116 CHIEF CLERK

JOHN JENNINGS INDIVIDUALLY

Nature: PETITION YNA

Next Activity Type/Date/Time: 3/30/05 - sent Notice for Further Action of Dismissal
 00:00A 8/1/05 - Sent Notice Re: Case Mgmt. Order to be signed 9/9/05

Judge's Minutes:

06/03/05 Ruling on motion# 1 (to extend time to answer) SUSTAINED per TBC
 Order signed. CEA TBC

Date/Type Hearing | Judge's Minutes

Printed: MON, AUG 1, 2005, 3:25 PM
 Court entered judg
 JE signed
 RPA
 COT

James R. McCabria, #16563
Assistant Attorney General
Office of the Attorney General
Consumer Protection Division
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
THIRD JUDICIAL DISTRICT**

STATE OF KANSAS, *ex rel.*)
PHILL KLINE, Attorney General,)
)
 Plaintiff,)
)
 v.)
)
 Steven Joseph Lotzer, Individually,)
 Edward J. Jennings, AKA Ed Jennings,)
 Individually,)
 Edward Ted McDonald, AKA Ted McDonald)
 AKA Ted Jennings, Individually, and)
 John Jennings, Individually,)
)
)
 Defendants.)
)

Case No. 04 C 1776

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW, on this 2 day of ^{Nov.} ~~October~~, 2005 the above matter comes on for disposition on the joint motion of the Plaintiff and Defendants Edward J. Jennings, AKA Ed Jennings ("Jennings") and Edward Ted McDonald, AKA Ted McDonald, AKA Ted Jennings ("McDonald"), for approval by the Court of a Consent Judgment, pursuant to K.S.A. 50-632. Plaintiff, State of Kansas, *ex rel.* Phill Kline, Attorney General, appears by and through James R. McCabria, Assistant Attorney General. Defendants Jennings and McDonald appear by and through their attorney Thomas R. Davis. There are no other appearances.

THEREUPON, the Court, after being duly advised in the premises, and after hearing the statements of counsel, makes the following findings, to-wit:

1. Phill Kline 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. Defendant Jennings is an individual who, at all relevant times, was doing business under his own name.
4. Defendant McDonald is an individual who, at all relevant times, was doing business under his own name.
5. Joseph Lotzer ("Lotzer") and John Jennings ("John Jennings") were named as defendants in this action but Plaintiff, after reasonable diligence, was unable to obtain personal service over either of them. The parties agree that this action should be dismissed as against Lotzer and John Jennings without prejudice.
6. This Court has subject matter jurisdiction over this case under the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq*.
7. Defendants each admit that this Court has personal and subject matter jurisdiction over all matters herein and, specifically, that jurisdiction is proper under the Kansas Consumer Protection Act, specifically K.S.A. 50-638(a) and that venue is proper in the Third Judicial District of Kansas (Shawnee County) under K.S.A. 50-638(b).
8. Defendants' business in Kansas consisted, in part, of conducting or offering to conduct or perform yard maintenance services at the residences of Kansas consumers. Defendants commonly solicited sale of their services via "door-to-door sales" as that term is defined by K.S.A. 50-640(c)(1).
9. Defendants are each suppliers within the definition of K.S.A. 50-624(j) and at all relevant times have engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c).

Pancake Transaction

10. Alfred Pancake ("Mr. Pancake") is a resident of Goodland, Kansas. His date of birth is April 8, 1917, and he is an elder person as that term is defined by K.S.A. 50-676(a).
11. Defendants, in concert with Lotzer and John Jennings, engaged in multiple

consumer transactions with Mr. Pancake. With respect to these transactions, the Attorney General alleges as follows:

- a) On or about April 1, 2004, Defendants personally solicited a door-to-door sale at the residence of Mr. Pancake.
- b) On or about April 1, 2004, Defendants contacted Mr. Pancake represented to him that they represented or were employed by the City of Goodland, Kansas, and that his property need yard maintenance to meet city code requirements. In truth and in fact, Defendants were not, and never have been, employees of and did not represent the City of Goodland. Mr. Pancake's property did not need to be cleaned up to meet city code requirements.
- c) Defendants further represented to Mr. Pancake that the City of Goodland, Kansas, had a contractor who could perform the allegedly required work for approximately \$42,000. Thereafter, Defendants performed limited yard maintenance services at the Pancake residence but did not complete the work they promised.
- d) Upon the demand of Defendants, Mr. Pancake wrote two personal checks to Defendants: one dated April 1, 2004, in the amount of \$10,000 made payable to "Steve Lotzer", and one dated April 1, 2004, in the amount of \$32,600 made payable to "Steve Lotzer".
- e) Lotzer cashed Alfred Pancake's checks on or about April 2, 2004 at First National Bank, Goodland, Kansas. Lotzer obtained cash and cashiers checks at First National Bank, Goodland, Kansas, one cashiers check in the amount of \$500 for himself and three cashiers checks, each in the amount of \$8000, payable to "E McDonald", "E Jennings", and "John Jennings".

12. Defendants Jennings and McDonald deny all of the allegations of the Attorney General. For purposes of settlement, and without admitting any factual basis, the Defendants do stipulate that they violated the Kansas Consumer Protection Act in conjunction with the solicitation and performance of the Pancake transaction, as follows:

- a) Defendants failed to provide the consumer with verbal notice of his right to

cancel the sale within three business days of the transaction, as required by K.S.A.50-640(b)(5). Said failure to provide the consumer with verbal notice of his right to cancel the sale within three business days constitutes a deceptive act or practice in violation of K.S.A. 50-626.

- b) Defendants failed to provide the consumer with written notice of his right to cancel the sale within three business days of the transaction, as required by K.S.A. 50-640(b)(1). Said failure to provide the consumer with written notice of his right to cancel the sale within three business days constitutes a deceptive act or practice in violation of K.S.A. 50-626.
- c) Defendants failed to provide the consumer a duplicate, easily detachable Notice of Cancellation form, as required by K.S.A. 50-640(b)(2). Said failure to provide a detachable Notice of Cancellation form constitutes a deceptive act or practice in violation of K.S.A. 50-626.

13. The Attorney General further alleges, and Defendants deny, that the following violations of the Kansas Consumer Protection Act could be proven where this matter to be litigated:

- a) Defendants performed and charged the consumer for services from which they knew or should have known he would derive no material benefit, an unconscionable act or practice in violation of K.S.A. 50-627(a) and/or (b)(3).
- b) Defendants representations to the consumer that they worked for the City of Goodland, Kansas, were made knowingly or with reason to know that they had no such affiliation or authority from the City of Goodland, Kansas., a deceptive act or practice in violation of K.S.A. 50-626(a) and/or 50-626(b)(1)(A).
- c) Defendants willfully used falsehood as to material facts in oral or written representations to the consumer that his property did not conform to city code requirements to induce him to enter the transaction, a deceptive act or practice in violation of K.S.A. 50-626(a) and/or 50-626(b)(3).
- d) Defendants charged fees which grossly exceeded the price at which similar consumers could purchase similar services to the extent that doing so

constitutes an unconscionable act or practice in violation of K.S.A. 50-627(a) and/or (b)(2).

14. Defendants agree to the entry of judgment against each of them upon the stipulated and admitted violations in the amount of \$2,500 in civil penalties pursuant to fees to the Office of the Attorney General pursuant to K.S.A. 50-632(1)(4). Defendants Jennings and McDonald have previously settled with Alfred Pancake and charges in Sherman County case numbers 04-CR-81 and 04-CR-82 in Goodland, Kansas were dismissed without prejudice.

15. Defendants further stipulate and agree to entry of a permanent injunction prohibiting them from engaging in retail or door-to-door sales in the State of Kansas, and from engaging in any of the conduct described in Paragraph 12 hereof.

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

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, where such restructuring is done for the purpose of object of avoiding compliance with the terms of this Consent Judgment.

18. 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 enforcement of compliance herewith, and for the punishment of violations hereof.

19. 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 effect the validity or enforceability of the remaining provisions, portions or parts.

20. Compliance with this Consent Judgment does not relieve Defendants of any obligation imposed by applicable federal, state or local law, nor shall this Consent Judgment preclude the Attorney General from taking appropriate legal action to enforce

civil or criminal statutes under his jurisdiction. Defendant further understands that nothing in this Consent Judgment shall preclude the Attorney General from taking further action against Defendants in operating this or any other business upon belief that the business is being promoted or operated in a fashion that otherwise violates the law.

21. 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 which they now have in their possession and may believe forms the basis for a violation of this 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.

22. Nothing in this Consent Judgment shall be construed to limit the rights of any consumer not identified by name herein from pursuing any and all legal remedies which they may be entitled to assert.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulations and agreements of the parties contained herein are found to be reasonable and are hereby adopted and approved as the findings of fact and conclusions of law 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 SO ORDERED.

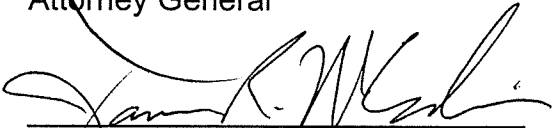

Judge of the District Court

State of Kansas, ex rel. Kline
v. Lotzer, et al.
Case No. 04 C 1776
Journal Entry of Consent Judgment

PREPARED AND APPROVED BY:




PHILL KLINE, #13249
Attorney General



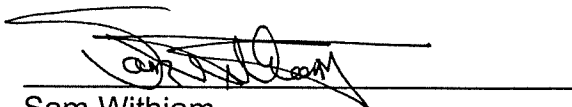
James R. McCabria #16563
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751

Attorney for Plaintiff

APPROVED BY:



Thomas R. Davis # 16397
STRAUSBAUGH & TONGIER, L.L.C.
14 Corporate Woods, Suite 400
8717 West 110th Street
Overland Park, KS 66210



Sam Withiam
SAM WITHIAM & ASSOCIATES
P.O. Box 1368
Cushing, OK 74023

Attorneys for Defendants Jennings and McDonald