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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 7

STATE OF KANSAS, *ex rel.*)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff,)
)
v.)
)
)
MIKE GORMAN, an individual)
d/b/a PAVE ALL ASPHALT PAVING)
a/k/a PAVE ALL)
d/b/a MIKE & MARTIN'S ASPHALT)
PAVING, LLC)
a/k/a MIKE & MARTIN'S ASPHALT)
PAVING)
And)
PATRICK C. DOUGHERTY, an individual)
d/b/a PAVE ALL ASPHALT PAVING)
a/k/a PAVE ALL)
d/b/a SEAL DOCTORS)
and)
BARTHOLOMEW "BUD" DALEY, an)
Individual)
d/b/a PAVE ALL ASPHALT PAVING)
a/k/a PAVE ALL)
d/b/a PAVE-A-LOT)
d/b/a DALEY CONTRACTING)
and)
HARRY P. RILEY, an individual)
d/b/a PAVE ALL ASPHALT PAVING)
a/k/a PAVE ALL)
d/b/a H. RILEY PAVING)
)
Defendants.)

Case No. 2015-CV-387

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

**ORDER OF SUMMARY JUDGMENT AS TO DEFENDANT MIKE GORMAN
d/b/a PAVE ALL ASPHALT PAVING a/k/a PAVE ALL d/b/a MIKE & MARTIN'S
ASPHALT PAVING, LLC a/k/a MIKE & MARTIN'S ASPHALT PAVING**

On this day comes before the Court Plaintiff's Motion for Summary Judgment. Plaintiff, State of Kansas, ex. rel. Derek Schmidt, Attorney General, by and through counsel, Assistant Attorneys General Robert Reynolds and Kathryn Carter, previously having received due notice of the Motion and Memorandum in Support, Defendant Mike Gorman d/b/a Pave All Asphalt Paving a/k/a Mike & Martin's Asphalt Paving, LLC a/k/a Mike & Martin's Asphalt Paving, (hereafter "Defendant") did not file a response to Plaintiff's motion for summary judgment. Therefore, pursuant to Rule 141 of the Kansas Supreme Court Rules, the statement of uncontroverted facts are deemed admitted as to Defendant.

WHEREUPON, the Court, after having reviewed the submissions of record in this matter and after having reviewed Plaintiff's Memorandum in Support of its Summary Judgment Motion, finds that Plaintiff's Motion for Summary Judgment should be granted, and makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

A. Asphalt Services Provided.

1. Since at least 2011, Defendant has conducted business as Pave All Asphalt Paving in Kansas, also known as Pave All.
2. Defendant has conducted business as Mike and Martin's Asphalt, LLC, also known as Mike and Martin's Asphalt Paving, in Kansas since at least October of 2014.
3. Defendant is a "seller" as defined by K.S.A. 50-901(g).
4. Defendant made or caused to be made "consumer transactions" as defined by K.S.A. 50-624(c).

5. Defendant made or caused to be made “door-to-door” sales as defined by K.S.A. 50-640(c)(1).

6. Defendant made or caused to be made “door-to-door” sales with “consumers” as defined by K.S.A. 50-624(b) and with “buyers” as defined by K.S.A. 50-901(a).

7. Defendant was aware at all times relevant hereto, that deceptive or unconscionable practices during the course of consumer transactions are prohibited by law in the State of Kansas.

8. From September 2011 to April 2015, Defendant made or caused to be made the aforementioned door-to-door solicitations and sales for the purpose of soliciting and selling asphalt paving and home improvement services to Kansas consumers.

9. Defendant’s asphalt paving and home improvement services were purchased by *at least* twenty-three (23) Kansas consumers.

10. Defendant did not provide notice of the consumer’s three day right to cancel the transaction.

11. Defendant did not provide consumers duplicate notice of their three day right to cancel the transactions.

12. Defendant transferred consumers’ notes of indebtedness prior to the fifth business day following the transactions.

13. Defendant failed to seal the Consumer’s asphalt after representing that he would do so.

14. Defendant failed to seal the Consumer’s asphalt after representing that he would do so, failed to complete the work agreed, or did not return, but received payment in full.

B. Litigation History.

15. On August 17, 2015, Plaintiff filed its petition alleging Defendant Mike Gorman, d/b/a Pave All Asphalt Paving a/k/a Mike and Martin's Asphalt Paving, LLC a/k/a Mike and Martin's Asphalt Paving, (hereafter "Defendant") engaged in Door to Door Sales, as defined by K.S.A. 50-640(c)(1), but failed to follow the requirements of merchants engaged in Door to Door Sales, as set out at K.S.A. 50-640(b) and failed to comply with the Kansas Consumer Protection Act ("KCPA") as set out in K.S.A. 50-626 and K.S.A. 50-627 et seq. The allegations contained in the petition were based on evidence gathered from an investigation beginning in 2015, initiated after numerous consumer complaints. The petition listed twenty-one (21) victims with specific restitution claims.

16. On September 9, 2015, Defendant filed an answer to the petition, in which he entered:

- a. An admission that Defendant was subject to the jurisdiction of this Court, ref. ¶ 8;
- b. A general denial of Plaintiff's Petition ¶ 15-172 pages 3-16 and ¶ 1-32 pages 17-21 , ref. Defendant's answer ¶'s 1, 3, 4, 5, and 8-41.

17. On March 29, 2018, Plaintiff served upon Defendant Plaintiff's First Request for Admissions.

18. More than 30 days passed since service of the Request for Admissions, and Defendant never filed a response to the Request for Admissions. Therefore, all the requests are deemed admitted.

19. On August 8, 2018, Plaintiff filed its Motion for Summary Judgment and Memorandum in Support.

20. To date, Defendant has not filed a response to Plaintiff's Requests for Admissions.

CONCLUSIONS OF LAW

21. Defendant failed to honor at least one (1) valid notice of cancellation by a consumer within ten (10) business days after the receipt of such notice and to refund payments made under the contract or sale, in violation of K.S.A. 50-640(b)(7).

22. Defendant willfully made, or caused to be made, at least thirteen (13) representations of a falsehood of a material fact regarding the services that you would perform, in violation of K.S.A. 50-626(b)(2).

23. Defendant willfully made, or caused to be made, at least one (1) representation that a service was of a particular standard or quality, when the service was actually of another standard or quality which differed materially from his representation, in violation of K.S.A. 50-626(b)(1)(D).

24. Defendant entered into at least thirteen (13) consumer transactions from which the consumer was unable to receive a material benefit of the subject of the transaction, in violation of K.S.A. 50-627(b)(3).

25. Defendant entered into at least twenty-three (23) consumer transactions that were excessively one-sided in favor of himself, in violation of K.S.A. 50-627(b)(5).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that

A. Defendant's acts and practices, as set forth above, are found to be deceptive and unconscionable in violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-632(a)(1);

B. Defendant and Defendant's employees and agents are permanently enjoined from these and other practices in violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-632(a)(2);

C. Defendant is hereby ordered to pay restitution to twenty-one (21) Consumers as set out in the petition and requests for admissions, in the amount of \$160,235.00 as listed below as follows, less any amount paid as restitution from another Defendant :

- i. Angela Engels: \$12,000.00
- ii. Larry Beichle: \$18,000.00
- iii. Ryan Branfort: \$10,400.00
- iv. Brad Starnes: \$3,000.00
- v. Roxanne Simoneau: \$5,000.00
- vi. Carl Lynn: \$4,500.00
- vii. Esther Bruntz: \$8,400.00
- viii. Roger Lowe: \$700.00
- ix. Douglas Petersilie: \$30,000.00
- x. Alfred Rieschick: \$1,100.00
- xi. Homer Goering: \$7,200.00
- xii. Cornelius Vander Meyden: \$9,700.00
- xiii. Dale Mast: \$500.00
- xiv. Don Normandin: \$1,500.00
- xv. Virgil Whitsitt: \$5,000.00
- xvi. Robert Pokorny: \$3,135.00

- xvii. Jason Dinges: \$3,150.00
- xviii. Miles Legleither: \$6,200.00
- xix. Dennis Pfannenstiel: \$4,250.00
- xx. Dean Gottschalk: \$12,000.00
- xxi. James Hartman: \$14,500.00

- D. Defendant is ordered to pay restitution, as recited in Part C, to the Office of the Kansas Attorney General;
- E. Defendant is ordered to restrain from advertising, soliciting and selling any services, goods or property in Kansas, to wit: Consumer Transactions, as defined by K.S.A. 50-624(c), and, specifically, restrained from Door to Door Sales, as defined by K.S.A. 50-640(c)(1); and
- F. The Defendant is assessed a \$5,000 civil penalty for each violation of the Kansas Consumer Protection Act's Door to Door sales proscription as it pertains to such conduct under each of the one (1) sale or \$5,000.00 in total. The Defendant is assessed a civil penalty of \$10,000 for each other character of Consumer Protection violation as alleged occurring under each sale, as follows:

Petition ¶¶'s 41-47	\$10,000
¶¶'s 48-56	\$20,000
¶¶'s 57-63	\$10,000
¶¶'s 64-69	\$10,000
¶¶'s 75-82	\$10,000
¶¶'s 95-99	\$20,000
¶¶'s 106-112	\$10,000
¶¶'s 113-119	\$10,000
¶¶'s 154-160	\$10,000
¶¶'s 161-167	\$10,000
¶¶'s 168-172	\$10,000

for a cumulative total of \$130,000. The aggregate amount of all such civil penalties noted above is \$135,000.00.

G. Defendant is ordered to pay court costs and all costs associated with distributing and executing on any judgment made by this Court.

IT IS SO ORDERED, this 12th day of April, 2019.


The Honorable Franklin R. Theis

NOTICE OF CRIMINAL PROSECUTION FOR VIOLATION OF THIS ORDER PROHIBITING DOOR-TO-DOOR SALES IN KANSAS

Defendant is hereby notified that Defendant is permanently enjoined and expressly prohibited from conducting and making door-to-door sales, as defined in K.S.A. 50-640, in Kansas pursuant to the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*, K.S.A. 21-6423 and pursuant to this Order.

Defendant is hereby notified that so long as this Order remains in place, if the Defendant participates, directly or indirectly, in any door-to-door sales in the state of Kansas in violation of this Order, Defendant may be subject to prosecution pursuant to K.S.A. 21-6423, a Level 9, Person Felony.

Defendant is hereby notified that so long as the Order remains in place, if the Defendant causes, directs, employs, enables, or assists others in engaging in door-to-door sales in the state of Kansas in violation of this Order Defendant is committing a crime and may be subject to prosecution pursuant to K.S.A. 21-6423, a Level 9, Person Felony.

Defendant is hereby notified that the criminal liability imposed by K.S.A. 21-6423 does not relieve Defendant of any civil liability for violating the terms of this Order or any other judgments and civil sanctions and liability may be imposed in addition to any authorized criminal penalties.

Respectfully Submitted,

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