

[Filed 11-14-08]

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA ex rel.
THOMAS J. MILLER,
ATTORNEY GENERAL OF IOWA,
99AG25112

Plaintiff,

vs.

MIDWEST PUBLISHING-DN, INC.,
a Michigan corporation;

JOHN F. McCALLUM,
President of Midwest Publishing-DN, Inc.,
in his individual and corporate capacities; and

STANISLAW BURZYNSKI,
Vice President of Sales of
Midwest Publishing-DN, Inc.,
in his individual and corporate capacities,

Defendants.

Equity No. CE 60511

CONSENT JUDGMENT

FILED
NOV 14 2008
POLK COUNTY IOWA

On this 14 day of November, 2008, the Court, having been presented by

Assistant Attorney General Steve St. Clair with this Consent Judgment and having reviewed the file in this matter, determines that final judgment should be entered herein, and finds as follows:

1. Plaintiff State of Iowa ex rel. Thomas J. Miller, Iowa Attorney General, has filed a Petition in Equity against the above-captioned defendants ("Defendants") pursuant to Iowa Code

§ 714.16 (2007), the Iowa Consumer Fraud Act, and this Consent Judgment, which has been approved by Plaintiff and each Defendant, is intended to resolve this litigation.

2. The Court has jurisdiction of the parties and subject matter.

3. Defendants deny wrongdoing or liability of any kind, but have agreed to entry of this Consent Judgment in order to resolve their dispute with Plaintiff. This Consent Judgment represents the signatories' settlement of a disputed claim, and the Court has made no finding of wrongdoing on the part of Defendants.

4. The Court finds that this Consent Judgment should be entered.

For purposes of this Consent Judgment:

"Advertisement" (including other forms of the word *"advertise"*) has the meaning set forth at Iowa Code § 714.16 (1) (a) (2007).

"Consumer" includes each person who is contacted by a representative of one or more Defendants and is solicited to provide material support to a donee organization by donating funds, becoming a sponsor, buying advertising, making a purchase, or otherwise; *"consumer"* includes any person from whom such support is solicited, whether or not the person in fact provides any support.

"Donee organization" means any entity for which one or more Defendants engage in fundraising.

"Fundraising" means any and all forms of soliciting donations and/or raising funds for a donee organization, pursuant to an arrangement that provides *inter alia* for how the proceeds of fundraising are to be divided between one or more Defendants and the donee organization; *"fundraising"* includes without limitation the sale of advertising, sponsorships, event tickets, or other merchandise in connection with supporting a donee organization. *"Fundraiser"* means one who engages in fundraising.

"Merchandise" has the meaning set forth at Iowa Code § 714.16 (1) (i) (2007).

"TSR" stands for Telephone Sales Representative, and includes each person who acts for one or more Defendants, whether as an employee, as an independent contractor, or as an employee of an independent contractor, in using the telephone to raise funds through direct contact with Iowa residents (including businesses).

IT IS THEREFORE ORDERED pursuant to Iowa R. Civ. P. 1.1501 *et seq.* and Iowa Code § 714.16(7) that the corporate defendant Midwest Publishing-DN, Inc., and each individual defendant, and, as applicable, each defendant's principals, employees, agents, servants, representatives, subsidiaries, affiliates, successors, assigns, parent or controlling entities, and all other persons, corporations and other entities acting in concert or participating with a defendant who have actual or constructive notice of the Court's injunction, are enjoined from engaging, whether individually or in combination, directly or indirectly, in the acts and practices set forth in the lettered subparagraphs below, to the extent the conduct in question is directed to an Iowa resident or performed by a person in Iowa:

A. Stating or implying that a TSR is a member of, an employee of, or a volunteer for a donee organization, or is otherwise associated with such organization in any manner other than as a professional fundraiser or a representative of a professional fundraiser.

B. Failing in the course of a fundraising contact, prior to any description of the cause for which funds are being raised, any description of the donee organization, or any actual solicitation, to state clearly: the full name of the company or business acting as the professional fundraiser (*e.g.*, "Midwest Publishing"); the fact that such entity is a professional fundraiser; and that the purpose of the contact is to make a fundraising request.

C. Stating or implying that a substantial portion of a donation will go to the donee organization, or for a charitable or other purpose for which funds are solicited, if in fact less than 50 % of donated funds go to such entity or purpose after the fundraiser has received its share. Without limiting the foregoing, a representation by a TSR that a donor's check or donation will be sent directly to the donee organization, or that the donee organization controls the funds, is

prohibited by this subparagraph unless accompanied by such additional explanation of the actual distribution of donated funds as is necessary to state clearly how the funds are divided.

D. Stating or implying that a TSR is calling from some location other than the location from which the TSR in fact is calling.

E. Stating or implying that a donation will provide more of a benefit to the consumer's own community, region, or state than is in fact the case.

F. Making any false representation of a material fact in the course of fundraising.

G. Fundraising, on behalf of a group purportedly representing, assisting, or associated with fire fighters, in the area served by a fire department, if the head of such department (typically the fire chief) previously has submitted to the fundraiser based on good and proper cause a written request that the fundraiser (or the donee organization in question) not raise funds there. Plaintiff agrees not to initiate contact with any department or its officials for the purpose of soliciting the making of written requests as referred to herein; however, nothing in this Consent Judgment shall prevent Plaintiff from otherwise informing anyone of any terms of this Consent Judgment.

H. To the extent that fundraising is undertaken on behalf of a group purportedly representing, assisting, or associated with a particular category of law enforcement or emergency services (e.g., sheriffs, sheriff's deputies, police, state troopers, highway patrol, paramedics, etc.), fundraising, in the area served by a law enforcement or emergency services agency in the same category, if the head of such agency previously has submitted to the fundraiser based on good and proper cause a written request that the fundraiser (or the donee organization in question) not raise funds there. Plaintiff agrees not to initiate contact with any agency or its

officials for the purpose of soliciting the making of written requests as referred to herein; however, nothing in this Consent Judgment shall prevent Plaintiff from otherwise informing anyone of any terms of this Consent Judgment.

I. Providing to TSRs, or any employee who directly supervises TSRs, any form of performance bonus, such as a pay boost, periodic bonus, or other financial incentive, based on the number of donations or dollar volume of donations pledged, or the number or dollar volume of donations received, unless the provision of such performance bonus is also expressly contingent on compliance by the TSR or supervisor receiving the bonus with the requirements of this Consent Judgment, company policies, procedures and practices established pursuant to this Consent Judgment, and the laws of Iowa.

J. Failing to provide to the office of the Iowa Attorney General, within five business days of receipt of a written (including faxed or e-mailed) request from that office, a list of TSRs (including last known addresses and phone numbers, and beginning and ending dates of employment) (i) who are then employed by a defendant or who were so employed at any time in the sixty (60) days preceding receipt of the request; and (ii) whose employment involved making one or more contacts of Iowa residents for the purpose of soliciting donations or other payments; provided however that such request by the Attorney General be made no more often than once each calendar year unless triggered by a complaint from an Iowa resident regarding one of more such defendant's fundraising practices.

K. Failing to establish procedures, policies and practices reasonably designed to ensure that no fewer than 20 % of all telephone calls made to Iowa residents are recorded, that such recordings are clearly audible, and that such recordings are preserved intact for at least ninety

(90) days. Such recording shall be conducted in such a manner that no representative whose calls are or may be recorded has any information bearing on which calls are being recorded and which are not.

L. Failing to provide to the office of the Iowa Attorney General, within five business days of receipt of a written (including faxed or e-mailed) request from that office, such copies of recordings of telephone solicitations directed to one or more Iowa residents as Plaintiff may reasonably request.

M. Failing to establish procedures, policies and practices reasonably designed to ensure that a TSR responding to a consumer's question about the percentage or proportion of donations that are ultimately provided for the use of the donee organization, and/or the percentage or proportion of donations that are directed to the entity engaged in professional fundraising, provides an accurate and informative response and does not claim a lack of knowledge or refer the consumer to a website or other potential source of information.

N. Failing within thirty (30) days of entry of this Consent Judgment to implement hiring, training, supervision, monitoring, compensation, and subcontracting policies and practices reasonably designed to ensure that employees, subcontractors, and other agents under the control or supervision of one or more defendants are in full compliance with the injunctive provisions of this Consent Judgment that apply or may apply to their conduct.

IT IS FURTHER ORDERED that, in addition to whatever other legal remedies may be available, a violation of this Consent Judgment constitutes a violation of the Iowa Consumer Fraud Act, Iowa Code § 714.16 (2007), and each violation by one of more defendants of this Consent Judgment, in a Consumer Fraud Act action by the Attorney General that establishes

such violation by a preponderance of the evidence, gives rise to a presumptive civil penalty in the highest amount provided for by Iowa Code § 714.16 (7), namely \$40,000.00. To the extent that Plaintiff invokes this provision in connection with an alleged violation of subparagraphs A through F above, it will be a defense to the imposition of the penalty described in this paragraph that the violation was isolated and occurred in spite of procedures and policies reasonably designed to prevent such violations.

IT IS FURTHER ORDERED that Defendants provide a summary explanation of the provisions of this Consent Judgment within fifteen (15) days after its filing to each TSR, and that Defendants provide Plaintiff, within thirty (30) days after such filing, an affidavit of the corporate defendant's president attesting to having done so; for persons who are hired or moved into TSR positions after the fifteen (15) days referred to above, Defendants shall provide them a copy of the summary explanation before the person makes any calls into Iowa. The summary explanation shall be subject to Plaintiff's advance approval, which approval shall not be unreasonably withheld.

IT IS FURTHER ORDERED that Defendants provide a copy of this Consent Judgment within fifteen (15) days after its filing to each employee or independent contractor involved directly or indirectly in supervising the activities of TSRs ("covered positions"), and, for persons who are hired or moved into covered positions after the fifteen (15) days referred to above, Defendants shall provide them a copy of the Consent Judgment within two (2) days of assuming the covered position.

IT IS FURTHER ORDERED that each individual (non-corporate) defendant is relieved of any duty to comply with any of the above provisions of this Consent Judgment to the extent

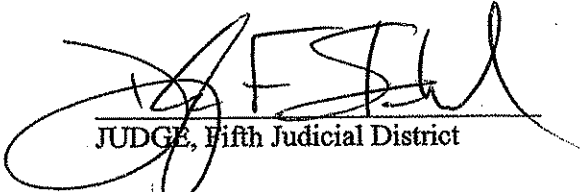
that such defendant is no longer associated in any way with Midwest Publishing-DN, Inc. and is no longer engaged, directly or indirectly, in fundraising directed to an Iowa resident or performed by a person in Iowa.

IT IS FURTHER ORDERED that, pursuant to Iowa Code § 714.16, Defendants pay to Plaintiff, on or before entry of this Consent Judgment, \$20,000.00 to be deposited in the consumer fraud enforcement fund referred to in Iowa Code § 714.16A (2007), and pay to Plaintiff, within sixty (60) days of entry of this Consent Judgment, an additional \$10,000.00 to be deposited in the same fund.

IT IS FURTHER ORDERED that, in addition to any other requirement of this Consent Judgment, the corporate defendant, Midwest Publishing-DN, Inc., pay the sum of \$100,000.00 to Plaintiff to be deposited in the consumer fraud enforcement fund referred to in Iowa Code § 714.16A (2007), PROVIDED HOWEVER that this requirement that the corporate defendant pay this latter sum shall be suspended for a period of three (3) years, on the condition that the corporate defendant comply in full with all material requirements of this Consent Judgment during the period of suspension. If the corporate defendant fails to so comply, Plaintiff may apply to the Court for a supplementary order requiring prompt payment of the amount in question. In a proceeding to rule upon such an application, Plaintiff shall have the burden of proving such failure of compliance by a preponderance of the evidence. If the three (3) year period passes without such an application, the requirement of this paragraph that the corporate defendant pay \$100,000.00 expires and automatically becomes null and void. Nothing in this paragraph diminishes or otherwise affects other remedies available to Plaintiff for violations of this Consent Judgment or applicable law.

IT IS FURTHER ORDERED that the Court retains jurisdiction for purposes of enforcing this Consent Judgment.

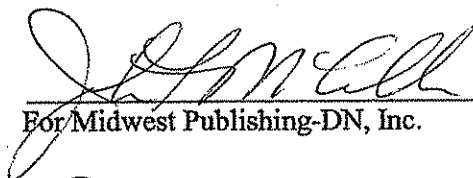
IT IS FURTHER ORDERED that Defendants pay the court costs herein.


JUDGE, Fifth Judicial District
Douglas F. Staskal, Judge

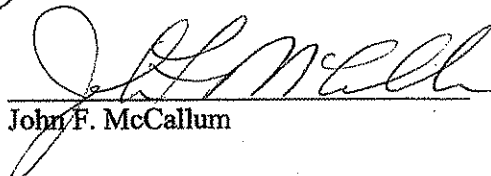
Approved:

FOR DEFENDANTS:

Date: 10-6-08


For Midwest Publishing-DN, Inc.

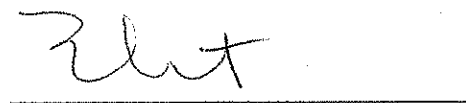
Date: 10-6-08


John F. McCallum

Date: 10-6-08

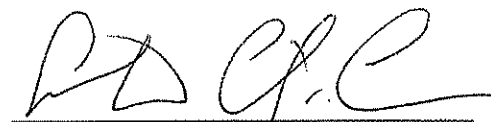

Stanislaw Burzynski

Date: 10-15-08


Errol Copilevitz
Attorney for Defendants

FOR PLAINTIFF:

Date: 11-13-08


Steve St. Clair
Assistant Iowa Attorney General