

**STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION SECTION**

RECEIVED
ATTORNEY GENERAL OF OHIO

STATE OF OHIO

IN THE MATTER OF:
David Knicely, dba Knicely
Contracting

Docket #508460

JAN 04 2016

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("Assurance") is entered into this 4th day of January, 2016 by and between David Knicely, doing business as Knicely Contracting ("Supplier") and Michael DeWine, Attorney General of the State of Ohio ("Attorney General"). For purposes of this Assurance, "Supplier" means David Knicely, individually, doing business as Knicely Contracting, his partners, agents, servants, representatives, salespersons, employees, successors or assigns and all persons acting in concert or participation with him directly or indirectly, through any corporate device, partnership, association, or affiliation.

WHEREAS, the Attorney General, having reasonable cause to believe that Supplier may have engaged in acts or practices which violate Chapter 1345 of the Ohio Revised Code, specifically the Consumer Sales Practices Act ("CSPA") and the Failure to Deliver Rule, has conducted an investigation of Supplier pursuant to the authority granted to him by R.C. 1345.06; and

WHEREAS, the Attorney General may, pursuant to R.C. 1345.06(F), enter into and accept an Assurance of Voluntary Compliance; and

WHEREAS, this Assurance of Voluntary Compliance is an assurance in writing by Supplier of his intent to conduct business in a manner designed to comply with the provisions of the CSPA and its Substantive Rules, R.C. 1345.01 et seq.; and

WHEREAS, Supplier, desiring to comply with all aspects of the CSPA, hereby voluntarily enter into this Assurance with the Attorney General.

NOW THEREFORE, in consideration of the mutual promises and conditions set forth herein, the parties hereto **AGREE** as follows:

- (1) The "Effective Date" shall mean the date that is indicated on the first page of this Assurance.
- (2) By accepting this written Assurance, the Attorney General agrees to terminate the current investigation by his Consumer Protection Section of Supplier's business practices and actions occurring on or before the Effective Date of the Assurance.
- (3) By giving this written Assurance, Supplier agrees to comply with all the terms of this Assurance and to conduct any future business in compliance with all applicable Ohio laws, including without limitation, the CSPA and its substantive rules.

BACKGROUND AND STATEMENT OF FACTS

- (4) Knicely Contracting is not registered with the Secretary of State.
- (5) David Knicely is a natural person residing at 1509 E. Main St. #1290, Coshocton, Ohio, 43812.
- (6) David Knicely is the owner and principal representative of Knicely Contracting located at 1509 E. Main St., Coshocton, Ohio, 43812.
- (7) To date, Supplier is still in business.
- (8) David Knicely, doing business as Knicely contracting is a supplier as that term is defined in R.C. 1345.01(C) as he is, or at all times relevant herein was, engaged in the business of effecting or soliciting consumer transactions for purposes that are primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).

- (9) At all times relevant to this investigation, David Knicely controlled and directed the business activities and sales conduct of Knicely Contracting.
- (11) Supplier accepted monetary deposits or full payment from consumers for purchase of mobile home moving services and then failed to deliver some of those services within eight weeks.
- (12) Supplier failed to refund consumers' deposits or payments despite consumers' requests for refunds.

COMPLIANCE PROVISIONS

- (13) Supplier shall not engage in acts and practices that violate the CSPA, including the Failure to Deliver Rule.
- (14) Supplier shall refrain from committing unfair or deceptive business practices in violation of the CSPA R.C. 1345.02(A).

GENERAL PROVISIONS

- (15) Supplier understands and agrees that this Assurance applies to any related owners, principals, officers, directors, agents, servants, representatives, salespersons, employees, instructors, independent contractors, successors and assigns.
- (16) This Assurance shall be governed by the laws of the State of Ohio.
- (17) This Assurance is entered into by the Supplier of his own free and voluntary act with full knowledge and understanding of the nature of the proceedings and obligations and duties imposed by this Assurance.
- (18) This Assurance does not constitute an approval by the Attorney General of any of Supplier's business practices, and Supplier shall not represent directly or indirectly, or in

any way whatsoever, that the Attorney General has sanctioned, condoned or approved any part or aspect of his business practices.

(19) This Assurance sets forth the entire agreement between the Attorney General and Supplier and supersedes all prior agreements or understandings, whether written or oral, between the parties with respect to the subject matter hereof. This Assurance may be amended by written agreement between the Parties, subject to any further requirements under state law.

(20) The Parties acknowledge that no other promises, representations, or agreements of any nature have been made or entered into by the Parties. The Parties further acknowledge that this Assurance constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.

PAYMENT TO THE STATE AND RESTITUTION

(21) As part of the consideration for the termination of the Attorney General's investigation of Supplier under the CSPA, the Parties hereby acknowledge that Supplier shall provide full restitution to the consumers identified in **ADDENDUM A**, attached, in the amount of \$8,741.73 to be distributed to the consumers by the Attorney General. Payment of this monetary amount shall be made in the following manner:

(a) Eighteen (18) monthly payments of \$485.65, totaling \$8,741.73, with the first monthly payment due on January 1, 2016 and subsequent payments due on the 1st of each successive month, until all payments are made.

(b) Each separate payment shall be made by delivery of a certified check or money order, payable to the "Ohio Attorney General's Office," delivered to the following address:

Finance Assistant
Consumer Protection Section
Ohio Attorney General's Office
30 E. Broad St., 14th Floor
Columbus, Ohio 43215

- (22) Supplier is liable for a payment in the amount of \$5,000.00 to the Attorney General. Said payment is suspended upon timely compliance with this Assurance. If Supplier fails to comply with all other provisions in this Assurance, the \$5,000.00 payment shall be due and payable upon demand.

PENALTIES FOR FAILURE TO COMPLY

- (23) The Attorney General may assert any claim that Supplier has violated this Assurance in a separate civil action to enforce this Assurance against Supplier and the court shall apply applicable standards of law to determine damages per any subsequent violation, which may include any and all remedies available to the Attorney General pursuant to R.C. 1345.07. In any such action or proceeding, relevant evidence of conduct that occurred before the Effective Date shall be admissible on any material issue, including alleged willfulness, intent, knowledge, contempt or breach, to the extent permitted by law. By this paragraph, Supplier does not waive any evidentiary objection or any other objection they may have as permitted by law to the admissibility of any such evidence, including, but not limited to, showing evidence that Supplier has fully and promptly cooperated in good faith with this investigation.

- (24) Pursuant to R.C. 1345.06(F), this Assurance is not, and shall not be construed as, evidence of any violation of the CSPA by Supplier. Evidence of a violation of an Assurance of Voluntary Compliance, though, is prima-facie evidence of an act or practice in violation of the CSPA, R.C. 1345.01 et seq., if presented after the violation in an action brought under the CSPA, R.C. 1345.01 et seq.
- (25) This Assurance shall in no way exempt Supplier from any other obligations imposed by law, and nothing contained herein shall relieve Supplier of any legal responsibility for any acts or practices engaged in by Supplier other than those acts specifically resolved by this Assurance.
- (26) Nothing in this Assurance shall in any way preclude any investigative or enforcement action against Supplier under any legal authority granted to the Attorney General:
- (a) With respect to the transactions or occurrences which are the subject of this enforcement action, if the terms of this Assurance are not fully obeyed; or
 - (b) With respect to transactions or occurrences which are not the subject of this action.

WHEREFORE, the parties hereto affix their signatures in recognition and acceptance of the terms contained herein on this 4th day of January 2016.

SIGNATURES

Accepted:

**MICHAEL DEWINE
ATTORNEY GENERAL**

BY: Jen. Mildren (per auth) Date: 1-4-16

Jennifer L. Mildren
Assistant Attorney General
Consumer Protection Section
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215
(614) 466-8235

Counsel for the Ohio Attorney General

Accepted:

David Knicely, dba Knicely Contracting.

BY: David Knicely Date: 12-26-15

David Knicely
1509 E. Main St. #1290
Coshocton, Ohio, 43812.

ADDENDUM A

CONSUMER RESTITUTION LIST

Last Name	First Name	Purchase Date	State	Disputed Amount
Chapman	Frederick	07/01/13	OH	\$5,741.73
Hess	Roy	07/28/14	OH	\$1,100.00
Rose	Robert	04/07/13	OH	\$1,900.00