

IN THE COURT OF COMMON PLEAS
MEDINA COUNTY, OHIO

COMMON PLEAS COURT

2016 AUG 18 PM 1:01

STATE OF OHIO, ex rel.
ATTORNEY GENERAL
MICHAEL DEWINE

Plaintiff,

v.

THRIFTY PROPANE, INC. et al.

Defendants.

CASE NO. 16CIV0008

JUDGE: JOYCE V. KIMBLER

AGREED JUDGMENT ENTRY
AND FINAL ORDER

FILED
DAVID B. WADSWORTH
MEDINA COUNTY
CLERK OF COURTS

PREAMBLE

This matter came to be heard upon the filing of a complaint by the Attorney General of Ohio ("State" or "Plaintiff") charging Thrifty Propane, Inc., Thrifty Propane Northern Ohio, Inc. and Thrifty Propane Columbus Ohio, Inc. (collectively "Defendants") with violations of Ohio's Consumer Sales Practices Act, R.C. 1345.01 et seq. and its Substantive Rules, 109:4-3-01 et seq. Defendants deem it to be in their respective best interests to settle and compromise the Plaintiff's Complaint and to enter into this Agreed Entry. The parties have agreed to settle and resolve the matter contained herein. By signing this Agreed Judgment Entry and Final Order ("Agreed Judgment"), Defendants submit to the personal jurisdiction of this Court, consent to the imposition of this Agreed Judgment pursuant to R.C. 1345.07(F), and consent to the rights of Plaintiff to enforce this Agreed Judgment.

Defendants, Thrifty Propane Inc., Thrifty Propane Northern Ohio, Inc., and Thrifty Propane Columbus Ohio, Inc., do not admit to the State's Findings of Fact and deny any admission of liability in the Findings of Fact and Conclusions of Law.

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ATTORNEY GENERAL OF OHIO

FEB 01 2017

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

FINDINGS OF FACT

1. Defendant Thrifty Propane, Inc. is an Ohio propane supplier, which does business in Medina County and other counties, in the State of Ohio.
2. Defendants Thrifty Propane Northern Ohio, Inc. and Thrifty Propane Columbus Ohio, Inc. are Ohio companies that administer the plan required by the Federal Motor Carrier Safety Administration and are not propane suppliers.
3. Defendant Thrifty Propane, Inc. operates a business which solicits for sales and sells liquid petroleum gas, commonly known as propane, and related products and services throughout the State of Ohio, including Medina County.
4. Defendant Thrifty Propane, Inc. regularly advertises their propane product throughout Ohio via the internet, at www.thriftypropane.com and through other marketing and advertising channels, for the purpose of inducing consumers to purchase their propane and related products and services.
5. Defendant Thrifty Propane, Inc. rents and sells propane tanks to consumers.
6. Consumers have paid Defendant Thrifty Propane, Inc. to purchase propane tanks and propane. In some instances, Defendant Thrifty Propane, Inc. has failed to deliver purchased propane tanks and/or propane in a timely manner.
7. Consumers have paid Defendant Thrifty Propane, Inc. to rent propane tanks and purchase propane. In some instances, Defendant Thrifty Propane, Inc. failed to deliver the rented propane tanks and/or purchased propane in a timely manner.
8. In some instances, Defendant Thrifty Propane, Inc. has failed to provide refunds to the consumers that have rented or purchased propane tanks without the involvement of the Attorney General via the Attorney General's informal complaint resolution process.

9. Defendant Thrifty Propane, Inc. sells propane to consumers via multiple programs, including Will-Call, Price Cap, and Pre-buy.
10. In some instances, Defendant Thrifty Propane Inc.'s Will-Call customers own their own propane tanks and pay the price per gallon of propane quoted at the time the order is placed.
11. Defendant Thrifty Propane Inc.'s Price Cap customers typically pay a flat fee and lock in at a per gallon rate during the summer for all winter deliveries.
12. Defendant Thrifty Propane, Inc.'s Pre-buy customers purchase and pay for a fixed amount of propane at a fixed price for future delivery.
13. Defendant Thrifty Propane, Inc. has instructed consumers to call for propane when their tank is at or above 30%.
14. At the time of order, customers have typically been told that propane will be delivered within 10 business days, weather and road conditions permitting such a delivery.
15. In some instances, Defendant Thrifty Propane, Inc. failed to fill consumers' propane tanks within 10 business days from the date of order, resulting in some consumers running out of fuel.
16. In some instances, Defendant Thrifty Propane Inc., failed to timely provide propane to consumers who have entered into Pre-buy contracts.
17. As a result of Defendant Thrifty Propane, Inc.'s actions, some Pre-buy customers paid money to other propane suppliers to purchase propane, above and beyond what they already paid Defendants for the propane that was not delivered.
18. As a result of Defendant Thrifty Propane, Inc.'s actions, some Pre-buy customers incurred additional fees to other propane suppliers, above and beyond what they already paid Defendants for the propane that was not delivered.

19. In some instances, Defendant Thrifty Propane, Inc. failed to answer or timely respond to telephone calls from consumers low on propane.
20. In some instances, consumers who have reached out to Defendants via phone regarding their outstanding purchases are unable to get through to Defendants or do not receive promised calls back.
21. As a result of some of Defendant Thrifty Propane, Inc.'s actions, some customers have had to contact the Attorney General and the Better Business Bureau in an effort to get their propane tanks and/or propane delivered and/or receive refunds.
22. As a result of Defendant Thrifty Propane, Inc.'s actions, some customers have not received their ordered propane tanks, had propane delivered, and/or received refunds.

CONCLUSIONS OF LAW

23. The actions of Defendants have occurred in the State of Ohio and Medina County and other counties.
24. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the Consumer Sales Practices Act ("CSPA").
25. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3) in that the Defendants conducted activity which gave rise to the claims for relief in Medina County in the State of Ohio.
26. The Ohio Attorney General is the proper party to commence these proceedings under the authority provided to him under R.C. 1345.07.
27. Defendant Thrifty Propane Inc. is a "supplier" as that term is defined in R.C. 1345.01(C), since Defendant, at all relevant times hereto, were engaging in the business of effecting consumer transactions by soliciting and selling propane to consumers in Ohio for purposes

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that are primarily personal, family, or household, within the meaning specific in R.C. 1345.01(A).

28. A supplier who engages in conduct set forth in Paragraphs 7 – 22 of this Agreed Entry has committed acts which violate the CSPA, R.C. 1345.02(B)(2), R.C. 1345.02(A), and Ohio Admin. Code 109:4-3-09(A). Specifically,

- a. A supplier commits unfair and deceptive acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02(B)(1), by representing their propane sales and services have performance characteristics, accessories, uses, or benefits that they do not have.
- b. A supplier commits unfair and deceptive acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02(B)(2), by representing that their propane sales and services are of a particular standard, quality, grade, style, prescription, or model, when they were not.
- c. A supplier commits unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by engaging in inadequate and unfair customer services.
- d. A supplier commits unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and the Ohio Admin. Code 109:4-3-09(A), by accepting payments from consumers for propane and propane tanks and failing to deliver the propane and propane tanks contracted and paid for, and failing to return the payments to the consumers.
- e. A supplier commits unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and the Ohio Admin. Code 109:4-3-09(A), by accepting payments from consumers for propane and propane tanks and failing to deliver

the propane and propane tanks to consumers in the promised time-frame, causing consumers to be unable to heat their homes.

COMPLIANCE AND NOTICE

29. Defendant Thrifty Propane, Inc. shall continue to negotiate in good faith, and resolve, through the office of the Attorney General, any consumer complaints filed with the Ohio Attorney General's Office, concerning its conduct occurring prior to or after the entry of this Agreed Judgment. Each consumer complaint filed with the Ohio Attorney General's Office against Defendant, that requires a resolution, shall be sent via email to Defendant c/o Annmarie@thriftypropane.com and cc to agcomplaints@thriftypropane.com. Defendant shall have ten days to respond to the consumer complaint. Once the State receives a response from Defendant, the parties will engage in dialogue to resolve any outstanding issues related to the consumer complaint. Defendant shall provide the State with updated contact information within seven days of any change in the contact for consumer complaints.
30. As consideration for the relief agreed to herein, if the State determines that Defendant Thrifty Propane, Inc. has failed to comply with any of the terms of this Agreed Judgment, and if, in the State's sole discretion, the failure to comply does not threaten the health or safety of the citizens of the State and/or does not create an emergency requiring immediate action, the State will notify Defendant in writing of such failure to comply. The State shall provide the notice via FedEx, UPS, or certified mail to: Critchfield, Critchfield & Johnston, LTD., Attn. Amy Demlow or Duriya Dhinojwala, 4996 Foote Road, Medina, Ohio 44256. Defendant shall have fifteen (15) business days from receipt of such written notice to provide a written response to the State's determination. The response shall include:

- a) A statement explaining why Defendant believes it is in full compliance with the Agreed Judgment;
- b) A detailed explanation of how the alleged violation(s) occurred; and
- c) A statement that the alleged violation has been cured and/or how Defendant plans to address it.

Nothing herein shall prevent the State from agreeing in writing to provide Defendant with additional time beyond the 15 business day period to respond to the notice.

This provision expires at the end of Attorney General DeWine's tenure as Attorney General. It is further acknowledged that nothing in this Agreed Judgment shall prevent Defendant from approaching in good faith any future Attorneys General to continue this notice provision.

ORDER

For the purpose of effecting this Agreed Judgment, Defendants agree and it is therefore ORDERED, ADJUDGED, and DECREED that:

- A. Plaintiff's request for a Declaratory Judgment is GRANTED and it is therefore DECLARED that acts and practices enumerated herein violate the CSPA, R.C. 1345.01 et seq. and its Substantive Rules, Ohio Admin. Code 109:4-3-01 et seq. in the manner set forth.
- B. Defendant Thrifty Propane, Inc., doing business under this name, or any other name(s), its agents, partners, representatives, salespersons, employees, successors and assigns and all persons acting in concert and participation with it, through any corporate device, partnership or association, in connection with any consumer transaction, is PERMANENTLY ENJOINED from committing any unfair, deceptive, or unconscionable acts or practices

including, but not limited to, violations of the specific statutes and rules alleged to have been violated herein.

C. Defendant Thrifty Propane, Inc. agrees to comply with the following business practices:

(1) Defendant Thrifty Propane, Inc. shall immediately inform employees and representatives acting in a supervisory capacity of the existence of, and terms and conditions of, this Agreed Judgment and shall direct those persons and/or entities to comply with this Agreed Judgment.

(2) Defendant Thrifty Propane, Inc. shall implement and maintain business practices designed in a commercially reasonable manner to minimize customer service related concerns, including, but not limited to: failure to provide propane deliveries, repeated missed propane delivery dates, failure to communicate with consumers regarding installation dates or delays, inability by consumers to reach Defendant's customer service representatives, and failure by Defendant's customer service representatives to return customer calls. Implementation of revised business practices in compliance with this subsection C(2) shall begin immediately upon entry of this Agreed Judgment and shall be completed not later than 90 days of the entry of this Agreed Judgment.

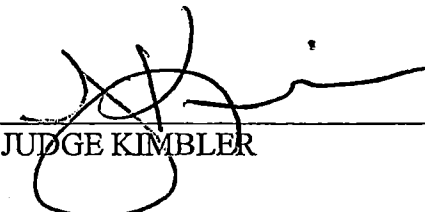
D. It is further ORDERED that, pursuant to R.C. 1345.07(D), Defendants are jointly and severally liable for a civil penalty in the amount of \$25,000. Payment shall be made by certified check or money order made within 14 days of the entry of this Agreed Judgment, payable to the "Ohio Attorney General," and directed to:

Finance Assistant
Consumer Protection Section
Office of the Attorney General
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215

- E. Defendant Thrifty Propane, Inc., its successors or assigns, under these or any other names, is ORDERED to maintain in their possession and control for a period of three years all business records relating to Defendant's solicitation or effectuation of business in Ohio and to permit the Ohio Attorney General or his representative, upon reasonable forty-eight hour notice, to inspect and/or copy any and all of said records, however stored, and further ORDER that copies of such records be provided at Defendant's expense to the Ohio Attorney General upon request of the Ohio Attorney General or his representatives;
- F. It is further ORDERED that Defendants shall not represent, that the Court or the Ohio Attorney General has sanctioned, condoned, or approved any part or aspect of the Defendants' business operations.
- G. It is further ORDERED that Defendants pay all court costs associated with this matter.
- H. This Court shall retain jurisdiction to enforce compliance with this Agreed Judgment.

IT IS SO ORDERED.

8.18.16
DATE


JUDGE KIMBLER

INSTRUCTIONS TO THE CLERK

Please provide notice of the foregoing Judgment and its date of entry upon the journal, per the provisions of Civ. R. 58.

APPROVED AND AGREED TO BY:

PLAINTIFF

MICHAEL DEWINE

Attorney General of Ohio



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Counsel for Plaintiff State of Ohio

DEFENDANT

THRIFTY PROPANE, INC.


President, Angela Maloof

DEFENDANT

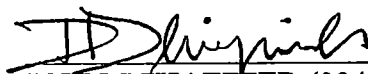
**THRIFTY PROPANE NORTHERN
OHIO, INC.**


President, Angela Maloof

DEFENDANT

**THRIFTY PROPANE COLUMBUS
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