

IN THE COURT OF COMMON PLEAS
MEDINA COUNTY, OHIO

COMMON PLEAS COURT
2019 JUL -3 PM 1:20

STATE OF OHIO, ex rel.
ATTORNEY GENERAL
DAVE YOST

Plaintiff,

v.

THRIFTY PROPANE, INC.

Defendant.

CASE NO. 16CIV0008

JUDGE: JOYCE V. KIMBLER

FILED
DAVID B. WADSWORTH
MEDINA COUNTY
CLERK OF COURTS

SUPPLEMENTAL AGREED CONSENT
JUDGMENT ENTRY
AND FINAL ORDER RESOLVING
PLAINTIFF'S ALLEGATIONS OF
CONTEMPT BY DEFENDANTS

PREAMBLE

This matter came to be heard upon the entry of an Agreed Judgment Entry and Final Order in August of 2016 ("2016 Agreed Judgment"). The Attorney General of Ohio (hereinafter "State" or "Plaintiff") has since alleged that Thrifty Propane, Inc. ("Defendant") is in contempt of the 2016 Agreed Judgment by continuing to violate Ohio's Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq. and its Substantive Rules, 109:4-3-01 et seq. The parties have agreed to settle and resolve the contempt allegations contained herein and file this Supplemental Agreed Consent Judgment Entry and Final Order (hereinafter "Consent Judgment") to avoid further litigation. By signing this Consent Judgment, Defendant submits to the personal jurisdiction of this Court and consents to the right of Plaintiff to enforce this Consent Judgment. Defendant does not admit to the State's Findings of Fact and denies any admission of liability in the Findings of Fact and Conclusions of Law, but consents to the imposition of this Consent Judgment pursuant to R.C. 1345.07(F), and consents to the rights of Plaintiff to enforce this Consent Judgment. The Consent Judgment does not operate to extinguish the 2016 Agreed Judgment or the obligations of the Parties under the 2016 Agreed Judgment.

RECEIVED
ATTORNEY GENERAL OF OHIO

JUL 09 2019

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. Defendant operates a business which solicits for sale and sells liquid petroleum gas, commonly known as propane, and related products and services throughout the State of Ohio, including Medina County.
3. Defendant regularly advertises its propane product throughout Ohio via the internet, at www.thriftypropane.com and through other marketing and advertising channels, including email and direct solicitations, for the purpose of inducing consumers to purchase their propane and related products and services.
4. Defendant represents on its website that "...Thrifty Propane has paid attention to the market every year and has carefully planned its supply every winter...When you purchase your propane from Thrifty Propane you benefit from our constant vigilance that keeps supplies steady and propane prices down. Win the heating game with the dealer that always delivers – Thrifty Propane!"
5. Defendant does not provide consumers with the service promised on their website as described in Paragraph 4.
6. Defendant sells propane tanks to consumers.
7. In some instances, Consumers have purchased propane tanks and propane from Defendant that Defendant has failed to deliver or delivered late.
8. In some instances, Defendant has continued to advertise and sell propane tanks to new consumers, even while it has failed to deliver propane tanks in a timely manner for which consumers have already ordered and paid.

9. In some instances, Defendant has failed to timely provide refunds to the consumers that have purchased and not received propane tanks in a timely manner.
10. Defendant sells propane to consumers via multiple programs.
11. Defendant's "Will-Call" consumers typically own their propane tank and pay the price per gallon of propane quoted at the time the order is placed.
12. Will-Call consumers do not have a standing contract with Defendant.
13. Defendant's "Pre-buy" consumers purchase and pay for a fixed amount of propane at a fixed price for future delivery. For example, when propane prices are lower in July, a consumer may purchase and pay for the number of gallons of propane they expect to need for an entire year. The consumer will place orders for delivery of that propane in the fall and winter when the weather gets cold and they need to heat their home.
14. Defendant's website homepage instructs consumers to call for propane when their tank is at or above 30% capacity. In some instances, the 30% ordering capacity term conflicts with numerous versions of Defendant's Pre-buy terms and conditions sent directly to consumers, which contain varying capacity numbers of 30% or 40% or no capacity percentage at all.
15. The Pre-buy terms and conditions on Defendant's website state that delivery will occur in up to 15 business days. In some instances, consumers received versions of Pre-buy terms and conditions that stated that delivery should occur in as few as 10 weekdays or up to 15 weekdays. The differences in delivery times could postpone consumers' deliveries by a full week.
16. Defendant sends consumers the Pre-buy terms and conditions when they have purchased and paid for their Pre-buy propane.

17. In some instances, Defendant has provided consumers with conflicting versions of its Pre-Buy terms and conditions.
18. Each Pre-buy customer received only one version of the Pre-buy terms and conditions with each Pre-buy purchase. However, Defendant has taken the position that the Pre-buy terms and conditions on the Thrifty website were the terms applicable to a consumer, no matter what version of the terms and conditions the consumer was provided at the time of purchase.
19. For a period of time in 2018, Defendant's website stated that "the period between December 31 and January 31 of any heating season year constitutes a recurring emergency. During this recurring emergency period (December 31-January 31) you will be able to place only one order for propane from your pre-buy account...you may use the value of any gallons on your pre-buy account to purchase propane at the daily rate for express service." This language was also in some of the Pre-Buy terms and conditions that Defendant sent consumers following Pre-buy orders in 2018. After notice by Plaintiff that Plaintiff believed this term may be violating consumers' rights, Defendant decided that it would not enforce this term and removed this statement from its website.
20. As of September 27, 2018, Defendant's website states that consumers should "allow a delivery time of approximately 15 weekdays, M-F excluding Holidays, weather permitting."
21. The above-mentioned terms, and others, conflict with many versions of the Pre-buy terms and conditions Defendant has supplied to consumers once the consumers have purchased and paid for Pre-buy propane.
22. In some instances, where Defendant has properly disclosed to consumers that propane will be delivered within 15 business days, Defendant has failed to deliver propane in a timely manner.

23. In some instances, Defendant has failed to timely fill consumers' propane tanks when requests were made in accordance with its Pre-buy terms and conditions.
24. In some instances, Defendant has failed to timely provide propane to consumers who have entered into Pre-buy contracts with Defendant.
25. In some instances, some Pre-buy consumers have been unable to afford to purchase propane elsewhere because they have already paid Defendant for the propane Defendant did not deliver.
26. In some instances, some Pre-buy consumers paid money to other propane suppliers to purchase propane, above and beyond what they already paid Defendant for the propane Defendant could not deliver within the requisite time period.
27. In some instances, Defendant failed to timely respond to telephone calls from consumers who were low on propane.
28. Many consumers who have reached out to Defendant via phone regarding their outstanding purchases are unable to get through to Defendant or do not receive promised calls back.
29. As a result of Defendant's action, some customers have had to contact the Ohio Attorney General in an effort to get their propane tanks and/or propane delivered and/or to receive refunds.
30. Between November 1, 2017 and April 1, 2019, the majority of the propane related consumer complaints received by the Attorney General's Office were against Defendant.
31. In 2019 alone, over 90% of the propane related complaints received by the Attorney General's Office were against Defendant.
32. On August 18, 2016, Judge Kimbler signed an Agreed Entry and Final Consent Order, in case number 16CIV0008, which was submitted and agreed to by Defendant and the Ohio

Attorney General in the above-mentioned case. The August 18, 2016 settlement provided in part that:

- (1) Defendant was permanently enjoined from committing any unfair, deceptive, or unconscionable acts or practices including, but not limited to, specific violations of the CSPA, R.C. 1345.01 *et seq.* and its Substantive Rules, as noted within the Agreed Entry and Final Consent Order, and
- (2) Defendant agreed to 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 consumer calls.

33. It is the Plaintiff's position that Defendant's actions are in violation of the August 18, 2016 Agreed Entry and Final Consent Order and to avoid further litigation the parties are entering this Consent Judgment.

CONCLUSIONS OF LAW

34. The actions of Defendant have occurred in the State of Ohio, Medina County and other counties.
35. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.

36. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(C)(1) and (C)(3) in that the Defendant conducted activity which gave rise to the claims for relief in Medina County in the State of Ohio.
37. The Ohio Attorney General is the proper party to commence these proceedings under the authority provided to him under R.C. 1345.07.
38. Defendant is a "supplier" as that term is defined in R.C. 1345.01(C), since Defendant, at all relevant times hereto, was engaging in the business of effecting consumer transactions by soliciting and selling propane to consumers in Ohio for purposes that are primarily personal, family, or household, within the meaning specific in R.C. 1345.01(A).
39. A supplier who engages in conduct set forth in this Consent Judgment has committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(B)(1), by representing its propane sales and services have performance characteristics, accessories, uses, or benefits that they did not have.
40. A supplier who engages in conduct set forth in this Consent Judgment has committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(B)(1), by representing its propane sales and services had performance characteristics, accessories, uses, or benefits that they did not have, including, but not limited to, misrepresenting its preparation for the winter season and the ability to deliver propane to consumers in a timely manner.
41. A supplier who engages in conduct set forth in this Consent Judgment has committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(B)(2), by representing that its propane sales and services were of a particular standard, quality, grade, style, prescription, or model, when they were not, including, but not limited to,

misrepresenting its preparation for the winter season and the ability to deliver propane to consumers in a timely manner.

42. A supplier who engages in conduct set forth in this Consent Judgment has committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by engaging in inadequate and unfair customer services.
43. A supplier who engages in conduct set forth in this Consent Judgment has committed acts committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by failing to comply with the August 18, 2016 Agreed Entry and Final Consent Order.
44. A supplier who engages in conduct set forth in this Consent Judgment has committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by limiting consumers' ability to receive propane they had already paid for and were entitled to receive as needed.
45. A supplier who engages in conduct set forth in this Consent Judgment has committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by continually changing its Pre-buy terms and conditions and enforcing terms and conditions on consumers which were not applicable at the time of the consumers' Pre-buy purchase.
46. A supplier who engages in conduct set forth in this Consent Judgment has committed unfair and deceptive acts and practices 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 timely return the payments to the consumers.

47. A supplier who engages in conduct set forth in this Consent Judgment has committed 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.

ORDER

For the purpose of effecting this Consent Judgment, 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.*
- 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, directly or indirectly, through any corporate device, partnership or association, in connection with any consumer transaction, are PERMANENTLY ENJOINED from committing any unfair, deceptive, or unconscionable acts or practices including, but not limited to, violations of the specific statutes and rules noted in the Conclusion of Law section of this Consent Judgment.
- C. Defendant Thrifty Propane, Inc., doing business under this name, or any other name(s), its agents, partners, representatives, salespersons, employees, successors and assigns, shall comply with the following business practices and revise its practices, policies, and procedures within 90 days accordingly:

- (1) In all written agreements, Defendant shall clearly and conspicuously state all terms and conditions in plain language in order to be easily understood by a consumer. This includes, but is not limited to, the price per gallon and the current cost of any and all fees, charges, penalties, costs, or discounts, that may be lawfully assessed or charged to the consumer. Such fee schedule may be in the form of a written annual disclosure mailed or emailed to the consumers as well as posted on the Defendant's website.
- (2) Defendant shall not use conflicting Pre-buy terms and conditions for Pre-buy consumers. Defendant shall not enforce Pre-buy terms against consumers that have not have been provided directly to the consumer at the time of the Pre-buy purchase.
- (3) Defendant shall provide propane gas to Pre-buy and Will Call consumers within 15 business days after receipt of the consumer's order (made via phone call, voice mail or online chat), provided that the consumer is current in his/her payment obligation and has complied with all material terms and conditions. In the event Defendant fails to deliver propane to the consumer within 15 business days of an order (excluding situations outside of Defendant's control), the consumer may cancel their contract within the following 15 business days without incurring any additional fees, penalties, charges, or costs and Defendant shall reimburse the consumer, in full, the amount paid by the consumer for any fuel remaining on the consumer's Pre-buy account and remaining in the tank at the time Defendant picks up the tank at the price paid for by the consumer at the time of purchase. The tank pick-up shall occur within 10 business days of cancellation of the contract unless ground conditions are such that it would be dangerous to pick-up the tank. If such is the case, Defendant shall inform the consumer that the tank will be picked up as soon as conditions improve, understanding that the ability for the consumer

to obtain propane from another source is dependent upon Defendant picking up the tank in a timely manner. Any refund shall occur within 30 business days following the cancellation of the contract. Defendant will make commercially reasonable efforts to inform consumers that a consumer must call when their propane tank is at no less than 30% capacity to ensure that the tank is filled prior to becoming empty.

- (4) Defendant shall not charge consumers any fees for an emergency or out of gas delivery when such situation was the result of Defendant's failure to provide a timely propane delivery.
- (5) Defendant shall not advertise or sell a propane tank that it cannot deliver in a timely manner.
- (6) Defendant shall communicate with consumers, in writing, regarding propane tank delivery and installation. If a propane tank cannot or will not be delivered within eight weeks of order, or any shorter time period included in the purchase terms, as required by Ohio Admin. Code 109:4-3-09, consumers may, at any time, cancel their contract for the purchase of the propane tank and propane and Defendant shall reimburse the consumer in full, without incurring any additional fees, penalties, charges, or costs.
- (7) Defendant shall implement customer service procedures and hire additional staff necessary to ensure that phone lines are staffed in such a way that, except at times of unusual call volume, consumers will reach a live person when calling Defendant's customer service number.
- (8) Defendant shall implement customer service procedures and hire additional staff necessary to ensure that voice mail messages left by consumers receive a return call within 24 hours, so long as the voicemail is left Monday through Thursday. In the event

Defendant fails to return consumer voice mail messages as set forth in this paragraph, the consumer may cancel their contract within the following 15 calendar days without incurring any additional fees, penalties, charges, or costs and Defendant shall reimburse the consumer, in full within 15 calendar days of the cancellation, the amount paid by the consumer for any fuel remaining on the consumer's Pre-buy account.

(9) Defendant shall immediately inform employees, successors or assigns and any agents or representatives acting in a supervisory capacity of the existence of, and terms and conditions of this Consent Judgment and shall direct those persons and/or entities to comply with this Consent Judgment.

(10) Defendant shall calculate business days, as required by this Consent Judgment, from the date that an order is placed by a consumer, not from the date it is processed by the Defendant except for orders placed on business holidays and weekends will be processed on the next business day.

D. If the Defendant enters into a contract or agreement with a third party that will engage in the solicitation and sale of products and services to Defendant's consumers, Defendant agrees to make acknowledgment of this Consent Judgment and its payment requirements a term of any contract or agreement entered into.

E. It is further ORDERED that, pursuant to R.C. 1345.07(D), Defendant or successors and assigns, is liable for a payment to the state in the amount of \$75,000. Defendant's initial payment of \$10,000 is due at time of execution. A payment of \$15,000 is due within 15 days of the date of the time-stamped entry of this Consent Judgment, \$25,000 is due within 90 days of the date of the time-stamped entry of this Consent Judgment and a final installment payment of \$25,000 is due within 150 days of the time-stamped entry of this Consent

Judgment. Failure to pay in accordance with the payment schedule set forth above or comply with any other provisions of this Consent Judgment will make the outstanding balance of the \$75,000 immediately due and payable on demand. Payment shall be made by certified check or money order made 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

- F. Defendant, its successors or assigns, under these or any other names, are ORDERED to maintain in their possession and control for a period of five 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 twenty-four 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.
- G. Defendant, its successors or assigns, under these or any other names, are ORDERED to keep the Office of the Attorney General apprised of any changes in ownership, address, or telephone number by notifying the Consumer Protection Section at the address listed below, within thirty days of such change.
- H. It is further ORDERED that in the event that the Ohio Attorney General must initiate legal action or incur any costs to compel the Defendant to abide by this Consent Judgment, Defendant shall be liable to the Ohio Attorney General should he prevail, for all related enforcement costs, including, but not limited to, a reasonable sum for attorneys' fees and investigatory costs.

COPY

I. It is further ORDERED that Defendant shall not represent, directly or indirectly, that the Court or the Ohio Attorney General has sanctioned, condoned, or approved any part or aspect of the Defendant's business operations.

J. It is further ORDERED that Defendant pay all court costs associated with this matter.

IT IS SO ORDERED.

DATE



JUDGE KIMBLER

APPROVED AND AGREED TO BY:

PLAINTIFF

DAVE YOST

Ohio Attorney General



TERESA A. HEFFERNAN (0080732)

Principal Assistant Attorney General

Consumer Protection Section

30 E. Broad St., 14th Floor

Columbus, Ohio 43215

614-466-1305

teresa.heffernan@ohioattorneygeneral.gov

Counsel for Plaintiff

DEFENDANT

THRIFTY PROPANE, INC.



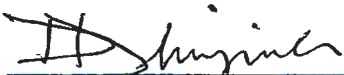
Angela Maloof, President

Thrifty Propane, Inc.

PO Box 2018

Medina, Ohio 44258

As to form:



DURIYA DHINOJWALA (0074982)

Brennan, Manna & Diamond, LLC

75 E. Market St.

Akron, Ohio 44308

330-253-5790

ddhinojwala@bmdllc.com

Counsel for Defendant