

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

STATE OF OHIO

IN THE MATTER OF:

Aqua Limo & Ground Transportation Group/
Cleveland Nautical Services, Inc./
Donald Kowalsky

DOCKET # 530793

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance (hereafter "Assurance") is entered into this 15th day of September, 2017 by Donald Kowalsky, President of Cleveland Nautical Services, Inc. and Agent/Registrant of Aqua Limo & Ground Transportation Group ("Supplier") and Michael DeWine, Attorney General of the State of Ohio ("Attorney General"). For purposes of this Assurance, "Supplier" includes Donald Kowalsky, Aqua Limo & Ground Transportation and all variations of ground transportation companies affiliated with Donald Kowalsky including Aqua Limo, Inc., Aqua Limo Yacht Charters, Cleveland Nautical Services, Inc., Aqua Limo Yacht Charters, Aqua Limo, and their officers, partners, managers, successors, or assigns and all persons acting in concert or participation with them, 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 and practices which violate Chapter 1345 of the Ohio Revised Code, known as the Consumer Sales Practices Act ("CSPA"), has conducted an investigation pursuant to the authority granted him pursuant to RC 1345.06 which Supplier fully cooperated with, and;

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CONSUMER PROTECTION SECTION
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WHEREAS, the Attorney General may, pursuant to RC 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 their intent to conduct business in a manner designed to comply with the provisions of the CSPA, R.C. 1345.01, *et seq.*; and

WHEREAS, Supplier, desiring to comply with all aspects of the CSPA, hereby voluntarily enters 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 this Assurance.
- (3) By giving this written Assurance, the Supplier agrees to comply with all the terms of this Assurance and to conduct their business in compliance with all applicable Ohio laws, including without limitation, the CSPA, R.C. 1345.01 *et seq.* and the Ohio Administrative Code, O.A.C. 109:4-3-01 *et seq.*

BACKGROUND AND STATEMENT OF FACTS

- (4) Supplier operates ground transportation service(s), including Aqua Limo & Ground Transportation Service, a fictitious name registered with the Ohio Secretary of State, with the Agent/Registrant being Cleveland Nautical Services, Inc., P.O. Box 45294,

Westlake Ohio 44145. The Statutory Agent for Cleveland Nautical Services, Inc. is Donald Kowalsky.

- (5) Donald Kowalsky, Aqua Limo & Ground Transportation Services, Cleveland Nautical Services, Inc. etc. are all "suppliers" as that term is defined in R.C. 1345.01(C) and have been, at all times relevant herein, engaged in the business of effecting consumer transactions by selling transportation services to individuals in the State of Ohio for purposes that were primarily personal, family, or household within the meaning specified in RC 1345.01(A).
- (6) In exchange for money, Supplier was supposed to provide transportation services typically for weddings, parties, and special occasions. Supplier accepted partial or full payment for services to be rendered at a later date, but then failed to provide the transportation as contracted, or to provide a timely refund within eight weeks as required by R.C. 1345.02 and Ohio Administrative Code 109:4-3-09.

COMPLIANCE AND GENERAL PROVISIONS

- (7) Supplier understands and agrees that this Assurance applies to the named entities within, as well as any related or affiliated business owners, principals, officers, directors, agents, representatives, salespersons, employees, instructors, independent contractors, successors and assigns.
- (8) This Assurance shall be governed by the laws of the State of Ohio.
- (9) Supplier shall not engage in acts and practices that violate the CSPA.
- (10) This Assurance is entered into by Supplier of their own free and voluntary act and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed by this Assurance.

- (11) 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 its business practices.
- (12) This Assurance sets forth the entire agreement between the Attorney General and Supplier and supersedes any and all prior agreements or understandings, whether written or oral, between the parties and/or their respective counsel 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.
- (13) 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.
- (14) Supplier shall negotiate in good faith, through the Office of the Attorney General, any consumer complaints filed with this Office concerning Supplier's conduct occurring prior to or after the Effective Date of this Assurance, which are brought by consumers that are discovered after entering into this Assurance.
- (15) This Assurance is a public record and shall be maintained in the Public Inspection File.
- (16) By accepting this written Assurance of Voluntary Compliance, the Attorney General agrees to terminate his current investigation into the Suppliers' business practices

occurring prior to the date of this Assurance, relative to Supplier's installation, service and maintenance practices.

- (a) By giving this written Assurance, Supplier agrees that it shall not violate the CSPA, R.C. 1345.01, *et seq.* by failing to deliver contracted services or give full refunds within eight weeks.
- (17) This Assurance shall in no way exempt Supplier from any other obligation imposed by law, and nothing contained herein shall relieve them of any legal responsibility for any acts or practices they have engaged in other than those specifically addressed by this Assurance.
- (18) Nothing in this Assurance shall in any way preclude any investigative or enforcement action(s) against Supplier(s) under any legal authority granted to the Ohio Attorney General:
 - (a) With respect to the transactions which are the subject of this enforcement action if the terms of the Assurance are not fully obeyed; or,
 - (b) With respect to transactions or occurrences which are not the subject of this assurance.
- (19) Supplier represents by executing this Assurance that they, by way of a designated representative, have carefully read this Assurance and agrees to the terms and conditions as set forth herein.

PAYMENT TO THE STATE AND RESTITUTION

- (20) As consideration for the termination of the Attorney General's investigation of Supplier for violations of the CSPA, R.C. 1345.01 *et seq.*, Supplier shall make payment of Two Thousand One Hundred Twenty-three Dollars and twenty cents

(\$2,123.20) by certified check or money order, payable to "Ohio Attorney General" as restitution to the consumers listed in Addendum A. Supplier shall make minimum monthly payments, via certified check or money order made and delivered to:

Ohio Attorney General Michael DeWine
RE: Docket No. 530793
615 W. Superior Ave., 11th floor
Cleveland, OH 44113

The Ohio Attorney General will accept monthly payments over Fourteen months toward restitution as follows: Supplier shall remit \$150.00/month for Thirteen (13) months, and \$173.20 for the Fourteenth (14) month. Supplier's first monthly payment must be received by the Ohio Attorney General's Office on or before September 15, 2017 and each monthly payment thereafter will be due on the 15th of the month until fully repaid. There will be no penalty for prepaying this obligation, but failing to meet the minimum monthly obligation as set forth herein could subject

Supplier to the imposition of the full penalty amount set forth in paragraph 21, below. In any event, Supplier shall remit full restitution repayment on or before the 15th day of November, 2018.

- (21) As further consideration for the termination of the Attorney General's investigation of Supplier for violations of the CSPA, R.C. 1345.01 et seq., Supplier shall make a payment of Ten Thousand Dollars (\$10,000.00) to the State of Ohio, which shall be placed in the Ohio Attorney General's Consumer Protection Enforcement Fund, for use by the Attorney General as provided by R.C. 1345.51. This payment of Ten Thousand Dollars (\$10,000.00) to the Attorney General's Consumer Protection Enforcement Fund shall be suspended so long as Supplier makes full and timely restitution as reflected in paragraph 21 above, and is otherwise in


compliance with all terms contained within this Assurance of Voluntary
Compliance.

- (22) Pursuant to R.C. 1345.06(F)(2) a violation of this Assurance by Supplier shall be a prima-facie violation of the CSPA, and may result in the institution of a civil enforcement action and may result in the levying of a civil penalty of up to Twenty-five Thousand Dollars (\$25,000.00) against Supplier.

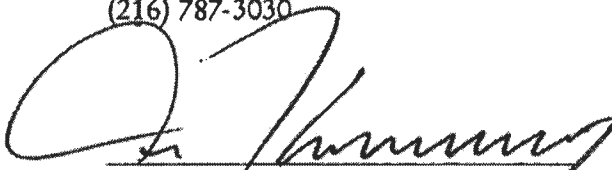
WHEREAS, the parties hereto affix their signatures in recognition and acceptance of the terms contained herein and warrant and represent that by affixing their signatures below they have the legal right to do so.

APPROVED BY:

MICHAEL DEWINE
Ohio Attorney General


Rebecca F. Schlag
Senior Assistant Attorney General
Consumer Protection Section
615 W. Superior Ave., 11th floor
Cleveland, OH 44113
Rebecca.Schlag@OhioAttorneyGeneral.gov
(216) 787-3030

Date: 9-15-2017


Donald Kowalsky
Individually and on behalf of
Aqua Limo & Ground Transportation Services
Cleveland Nautical Services, Inc.
P.O. Box 45294
Westlake, OH 44145

Date: 9-15-17

ADDENDUM A
ASSURANCE OF VOLUNTARY COMPLIANCE

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Supplier will make restitution payments to the Office of the Attorney General, who shall make appropriate distributions to the following Consumers:

- a.* Consumer Eric Rodriguez will be refunded \$295.00;
- b.* Consumer Brandon Basch will be refunded \$403.20;
- ~~*c.* Consumer Erica Rivera will be refunded \$225.00;~~
- d.* Consumer Krista Osborne will be refunded \$300.00;
- e.* Consumer Chad Novak will be refunded \$600.00;
- f.* Consumer Amy McDevitt will be refunded \$300.00.

Total restitution amount to be paid: \$2, 123.20.

Payment(s) shall be made in accordance with the terms as set forth within the Assurance of Voluntary Compliance and delivered timely to:

Ohio Attorney General Michael DeWine
RE: Docket No. 530793
615 W. Superior Ave., 11th floor
Cleveland, OH 44113