

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No. A 8:42 Wncv
2011 AUG 12
296-5-02

STATE OF VERMONT,)
Plaintiff,)
)
v.)
)
CASELLA WASTE SYSTEMS, INC.,)
Defendant.)

FILED

**STIPULATION FOR ENTRY OF REVISED FINAL JUDGMENT
BY CONSENT AND ORDER**

Plaintiff, State of Vermont (“the State”), by and through Vermont Attorney General William H. Sorrell, and Casella Waste Systems, Inc., (“Defendant”),¹ stipulate and agree as follows:

Violation of Assurance of Discontinuance

1. Defendant entered into an Assurance of Discontinuance with the State that was filed in this Court on May 22, 2002. *In Re Casella Waste Management Systems, Inc.*, Assurance of Discontinuance, Docket No. 296-5-02 Wncv (“the AOD”).
2. One of the State’s purposes in obtaining the AOD was to address its concern as to “evergreen” contracts in the waste hauling industry: contracts with provisions that made it difficult for customers to cancel their service with a waste management company, thereby resulting in barriers to entry for competing companies.
3. The AOD resolved allegations that Defendant had, among other things, “entered into written contracts with the vast majority of its existing small container customers . . . [that] make it more difficult and costly for customers to switch to a competitor of Casella.” AOD at 2.

¹ “Defendant” means Casella Waste Systems, Inc., a Delaware corporation with its headquarters in Rutland, Vermont, and its officers, directors, managers, agents, employees, successors, assigns, parents, affiliates, and subsidiaries.

4. Among other provisions, the AOD prohibited certain terms in Defendant's small-container customer contracts and provided for stipulated penalties in the amount of \$10,000 per violation of the AOD. Specifically, AOD Section VIII(B) stated: "If this Court enters an order finding Casella to be in violation of this Assurance of Discontinuance, then the parties agree that penalties to be assessed by the Court for each act in violation of this Assurance of Discontinuance shall be \$10,000. For purposes of this Section VIII, the term 'each act' shall mean: each contract with a Customer into which Casella enters in violation of the provisions of this Assurance, or each separate act with respect to each Customer that Casella takes in violation of the provisions of this Assurance."
5. In 2009 and 2010, Defendant erroneously issued approximately 2,441 contracts to its customers which each contained at least one term that was prohibited by the AOD. The term that the parties agree was in violation of the AOD was as follows:
 - a. Section IV(A)(8) of the AOD prohibits any contract term that "requires the Customer to give Respondent [Casella] notice of any offer by or to another solid waste hauling firm or requires the Customer to give Respondent a reasonable opportunity to respond to such an offer for any period not covered by the contract (sometimes referred to as a 'right to compete' clause)."
 - b. Bullet 3 under "YOUR COMMITMENT" on the back of each contract described above states: "Grant us the right to match any written competitive offer that is provided to you by the competition."
6. In addition, the State alleges that the contracts described above also violated the 30-day termination provision in AOD Section IV(A)(3):

- a. Section IV(A)(3) prohibits any contract term that “requires that the Customer give Respondent [Casella] notice of termination more than thirty (30) days prior to the end of any initial term or renewal term.”
 - b. The back of each contract described above states: “CANCELLATION: As your partner we are committed to resolving any issue that may arise. In the event that you are still not satisfied, you agree to give us four months notice in writing so that we can find a new home for your container.”
7. Defendant disagrees with the State’s interpretation, submitting that AOD Section IV(A)(3) does not apply to the cancellation language quoted above.
8. In addition, the State alleges that the contracts described above also violated the prohibition on tying hauling of recyclables to hauling of waste in AOD Section IV(A)(10):
 - a. Section IV(A)(10) prohibits any contract term that “requires a Customer to give Respondent [Casella] the right or opportunity to provide hauling service for recyclables for a Customer unless the Customer affirmatively chooses to have Respondent provide such recycling services by so stating on the front of the contract.”
 - b. Bullet 1 under “YOUR COMMITMENT” on the back of each contract described above states: “You give us the right to collect, dispose of, and process all of your non-hazardous waste and recycling materials generated at your location.”
9. Defendant submits that, although none of the contracts described above includes a separate written affirmation on the front of the contract, the front of each of those contracts clearly delineates the categories of material that Defendant is authorized to collect.

10. In addition, the State alleges that several of the contracts described above have a renewal term longer than one year in violation of AOD Section IV(A)(2), which prohibits any contract that “has any renewal term longer than one (1) year.”

11. Defendant disagrees with this interpretation, submitting that none of those contracts contained a “renewal term” under AOD Section IV(A)(2).

Lack of Compliance Program

12. Defendant acknowledges that factors leading to its violation of the AOD include its lack of written policies to prevent the alteration of such contracts without approval from the legal department, and its failure to train staff as to strict compliance with the AOD. Additionally, Defendant did not act immediately to bring its contracts into full compliance with the AOD.

Payment of Penalty

13. Defendant agrees to pay the State the sum of \$1 million, as follows:

- a. \$400,000 to be paid within 14 days of entry of the Revised Final Judgment;
- b. \$200,000 to be paid on or before October 30, 2011;
- c. \$200,000 to be paid on or before November 30, 2011;
- d. \$200,000 to be paid on or before December 30, 2011.

Entry of Revised Final Judgment and Release

14. On May 22, 2002, the State and Defendant filed a Final Judgment by Consent and Order, which was attached as Exhibit E to the AOD (“the Final Judgment”), under seal with this Court in the above-referenced action.

15. The State and Defendant have agreed to a Revised Final Judgment, which has been filed with this Stipulation. The parties ask that the Court hereby enter that Revised Final Judgment.

16. In exchange for the Revised Final Judgment and other relief set forth above, the State agrees to and hereby does release Defendant from any and all claims arising from the facts and circumstances described or alleged in this Stipulation, including any claim that Defendant as of the date of this Stipulation has engaged in conduct in violation of Section IV(A)-(F) and Section V of the AOD. Nothing in the Revised Final Judgment or this Stipulation shall impair or limit the private right of action that any consumer, person, or entity may have against Defendant, nor shall it provide any person or entity with a private right of action against Defendant.
17. The Revised Final Judgment and this Stipulation have been negotiated by and among the State and Defendant in good faith.
18. The State and Defendant waive all rights to contest or appeal the Revised Final Judgment and they shall not challenge in this or any other proceeding the validity of, or the Court's jurisdiction to enter, the Revised Final Judgment, except as is provided by the Revised Final Judgment.
19. The Revised Final Judgment and this Stipulation set forth the complete agreement of the parties and may be altered, amended, or otherwise modified only by the parties' written stipulation to be incorporated in an order issued by the Court, or as is provided by the Revised Final Judgment.
20. The parties agree to this Stipulation in lieu of a complaint and further agree that the Revised Final Judgment may be entered by the Court.
21. Defendant consents to entry of the Revised Final Judgment with full knowledge and understanding of the nature of the proceedings and obligations imposed upon it and waives any formal service requirements of the Revised Final Judgment and this Stipulation.

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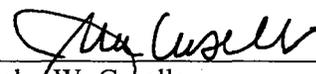
DATED at Montpelier, Vermont this 11th day of August, 2011.

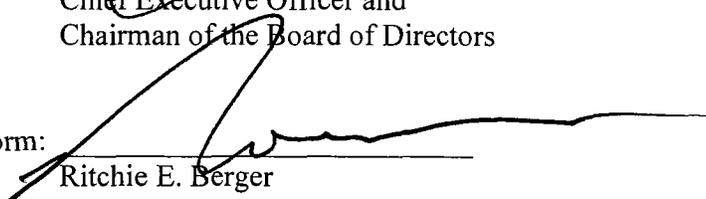
WILLIAM H. SORRELL
ATTORNEY GENERAL

By: 
Sarah E.B. London
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
802.828.5479

DATED at Rutland, Vermont this 11th day of August, 2011.

CASELLA WASTE SYSTEMS, INC.

By:

John W. Casella
Chief Executive Officer and
Chairman of the Board of Directors

Approved as to form:

Ritchie E. Berger
Dinse, Knapp & McAndrew, P.C.
209 Battery Street
PO Box 988
Burlington, VT 05402

Counsel for Casella Waste Systems, Inc.