

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

IN RE BUCK'S FURNITURE
and SANDRA BUCK HOWARD

)
)
)
)
)
)

CIVIL DIVISION

Docket No.

662-11-14 Wicv

FILED

2014 NOV -5 P 2:16

VT SUPERIOR COURT
WASHINGTON UNIT
CIVIL DIVISION

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General William H. Sorrell ("the Attorney General"); Sandra Buck Howard, the Vice President, Secretary, and co-owner of Buck's Furniture; and Buck's Furniture (together, "Respondents") hereby agree to this Assurance of Discontinuance ("AOD") pursuant to 9 V.S.A. § 2459.

PARTIES AND JURISDICTION

1. Respondent Buck's Furniture is a business entity incorporated under the laws of Vermont, with its principal place of business located at 4155 Vermont Route 15, Wolcott, Vermont 05680. Buck's Furniture has been open and in the business of selling furniture and mattresses manufactured by national brands since 1957.
2. Respondent Sandra Buck Howard is the Vice President, Secretary, and co-owner of Buck's Furniture.
3. The Vermont Attorney General is authorized to enforce the provisions of the Consumer Protection Act, 9 V.S.A. chapter 63.

REGULATORY FRAMEWORK

4. Vermont's Consumer Protection Act prohibits "unfair or deceptive acts or practices in commerce." 9 V.S.A. § 2453(a).

5. Under 9 V.S.A. § 2453(d), the violation of a rule or regulation of the Office of Attorney General is prima facie proof of the commission of an unfair or deceptive act in commerce.
6. The Attorney General's Consumer Protection ("CP") Rules prohibit:
 - a. Misrepresentations that lead a reasonable consumer to be switched from goods originally advertised to different goods, CP Rule 103.01(a);
 - b. Promising prompt delivery unless the sellers have taken action to ensure prompt delivery, CP Rule 105.01(a);
 - c. Accepting money at the time of sale from the customer unless delivery can be made within six weeks, with limited exceptions, CP Rule 105.01(d);
 - d. Deceptive pricing, including reference pricing, whereby the amount listed as the former or tagged price is not the actual price at which the good was offered for sale for a reasonably substantially period of time, CP Rule 110.02(a);
 - e. Continuing a distress sale (e.g., going out of business sale) more than 45 days, with limited exceptions, CP Rule 114.03(c); and
 - f. Advertising a distress sale without disclosing specific information, CP Rule 114.04.
7. The Attorney General is authorized to pursue enforcement under 9 V.S.A. § 2458 for violations of the Consumer Protection Act and to seek relief, including injunctive relief, civil penalties of up to \$10,000 for each violation, and reimbursement of costs for the reasonable value of the State's services and its expenses in investigating and prosecuting an action.

FACTS AND ALLEGED VIOLATIONS OF LAW

8. The Attorney General's Consumer Assistance Program has received at least 68 customer complaints regarding Respondents' business practices since January 1, 2008.

9. At least four customers complained of ordering new items, but, upon delivery receiving the floor model, which was materially different than the goods ordered.

10. At least three customers complained of receiving mattresses and furniture that were different than what they ordered, including complaints that customers received the wrong type, brand, and fabric.

11. Numerous customers complained of delayed deliveries. Many customers paid Respondents in full at the time of purchase. While Respondents' receipts stated "No promised delivery date implied or expressed on non-stock goods," it was Respondents' practice to tell customers that non-stock furniture would generally arrive within thirty to ninety days. Due to its failure to make payments on time, since 2011 Respondent Buck's Furniture's accounts with multiple manufacturers were placed on a credit hold or cash on delivery status requiring payment for an order prior to production and shipment. Over twenty individuals complained of delayed deliveries in excess of ninety days from the time of order, with one complaint of a delivery being delayed as long as 211 days. Additionally, Respondents provided refunds based on delayed delivery complaints to twenty-five customers who did not file complaints with the Consumer Assistance Program.

12. Respondents routinely advertised on local television and radio stations, as well as with printed mailers to Vermont residents. For the 140 weeks from 2011 through September of 2013, Respondents only had 21 weeks in which they did not utilize television or radio spots or printed mailers to advertise a storewide sale. Thus, during this 140-week period, Respondents ran storewide sales for a period of at least 119 weeks. These storewide sales were often reference-priced, meaning that the sale indicated a discount off of the tagged

price of the product on the sales floor. There were insufficient records produced by Respondents to establish the length of time goods were sold at the tagged price.

13. Respondents began a distress sale, their final "Going Out of Business" sale, on January 26, 2014 ("the Sale"), having hired DM Reid Associates, Ltd. to conduct the Sale.

Respondents did not discontinue the Sale by March 13, 2014, 45 days from the beginning date of the Sale, and Respondents failed to disclose to the public in all of its advertisements or other promotional materials that the Sale continued for more than 45 days. Additionally, Respondents failed to include the name and business address of DM Reid Associates, Ltd. in all of its advertisements for the Sale.

14. Respondents admit the truth of all facts set forth in paragraphs 8-13 above.

15. Based on the facts set forth in paragraphs 8-13, the Attorney General alleges that Respondents committed multiple violations of CP Rules 103, 105, 110, and 114.

16. The Attorney General alleges that the above conduct constitutes unfair and deceptive acts and practices under 9 V.S.A. § 2453.

ASSURANCES AND RELIEF

17. The parties have consented to the entry of this Assurance of Discontinuance for the purpose of settlement, and it does not constitute an admission by Respondents to the violation of any law, rule or regulation.

INJUNCTIVE RELIEF

18. Respondents agree that they are going out of business and will not resume any business operations in the field of any retail furniture sales under the name Buck's Furniture or a new business name if the ownership, management, and/or control of the business remains with Respondent Sandy Howard for a period of one year from the execution of this AOD.

19. The individual Respondent agrees to provide notice to the Attorney General's Office not less than thirty days prior to acquiring an ownership interest in or management of any retail furniture business engaged in commerce in Vermont, including the sale of antiques, which notice shall include the name of the furniture business, the address of the retail store, the URL of any website, the role that Respondent will have in the business, the start date of Respondent's involvement, and a description of the business

20. Respondents agree to comply with the provisions of the Vermont Consumer Protection Act, 9 V.S.A. chapter 63, including without limitation all Consumer Protection Rules.

RESTITUTION

21. The parties have exchanged a list of customers who have complained to either Respondents or the Consumer Assistance Program between May 1, 2008, and the date of this AOD, with each customer's name and, if available, last known address, and telephone number.

22. Within 60 days of the signing of this AOD, Respondents shall write checks equal to \$100 to each customer on the list referenced in paragraph 21 for a total restitution amount of nine thousand dollars (\$9,000). Respondents shall clearly indicate on the front of the checks that they are void after 60 days.

23. Respondents will deliver the checks set forth in paragraph 22 to the Attorney General at Office of the Vermont Attorney General, Attn: Consumer Protection Unit, 109 State Street, Montpelier, Vermont 05609, within 65 days of the signing of this AOD. The Attorney General shall mail the checks to each of the customers on the list referenced in paragraph 21.

24. In the event that any check sent pursuant to paragraph 23 is not cashed within 60 days after Respondents send the payments to the Attorney General, Respondents shall mail to the Attorney General's Office:

- a. A single check, payable to "Vermont State Treasurer" in the total dollar amount of all checks that were not cashed, to be treated as unclaimed funds, under Vermont's unclaimed property statute, 27 V.S.A, chapter 14;
- b. The list referenced in paragraph 21 shall be updated to indicate which customers had checks that were not cashed.

PENALTIES

25. Respondents shall pay civil penalties of eleven thousand dollars (\$11,000) within 60 days of both Parties signing this AOD. Respondents shall make payment to the "State of Vermont" and send payment to: Office of the Vermont Attorney General, Attn: Consumer Protection Unit, 109 State Street, Montpelier, Vermont 05609.

OTHER TERMS

26. Respondents agree that this Assurance of Discontinuance shall be binding on Respondents and their successors and assigns.

27. Respondent Sandy Howard agrees that she will take all steps necessary to assure that the restitution and penalties set forth in paragraphs 22 and 25 are non-dischargeable if she files for bankruptcy pursuant to either 11 U.S.C. chapter 7 or 13 prior to, or within 90 days of, payment of the amounts set forth in those paragraphs.

28. The parties agree to work in good faith to amend the terms of this AOD as necessary to carryout its purpose if such terms are affected in any way by any bankruptcy proceedings filed by Respondents.

29. The Attorney General hereby agrees that interest will not accrue on the amounts set forth in paragraphs 22 and 25 until sixty days following the closure of the later of any bankruptcy proceeding pursuant to 11 U.S.C. chapters 7 &/or 13, provided such proceeding is begun within one year of the execution of this AOD.¹

30. The Attorney General hereby releases and discharges any and all claims arising under the Consumer Protection Act, 9 V.S.A. chapter 63, that it may have against Respondents for the conduct described specifically and generally in the Facts and Alleged Violations of Law section between the dates of January 1, 2008, through the date of this AOD.

31. The Superior Court of the State of Vermont, Washington Unit, shall have jurisdiction over this AOD and the parties hereto for the purpose of enabling the Attorney General to apply to this Court at any time for orders and directions as may be necessary or appropriate to enforce compliance with or to punish violations of this Assurance of Discontinuance.

NOTICE

32. Ms. Howard may be located at: PO Box 1144, 79 Church Street, Hardwick, Vermont 05843; Shhardwick@aol.com.

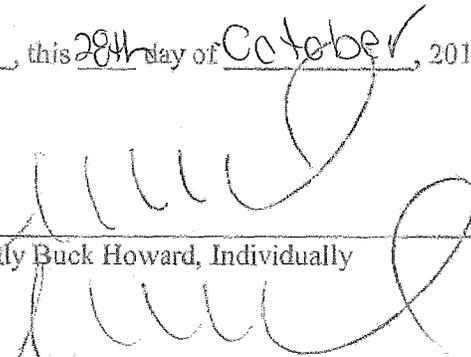
33. Until all payments are made pursuant to paragraphs 21-25, Ms. Howard shall notify the Attorney General of any change of business name or business or personal address within 20 business days of the change.

¹ .The parties recognize and understand that Respondent may be seeking Bankruptcy protection by filing a Chapter 7 and then following up with a Chapter 13. This paragraph contemplates a sequential filing may occur, and a reasonable period (not to exceed 60 days) between the filings will not trigger any interest obligations as well.

SIGNATURE

In lieu of instituting an action or proceeding against Respondents, the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance. By signing below, Respondents voluntarily agree with and submit to the terms of this Assurance of Discontinuance.

DATED at Hardwick, this 28th day of October, 2014.



Sandy Buck Howard, Individually

Sandy Buck Howard, As a duly authorized agent for Buck's Furniture

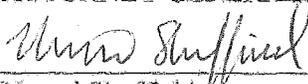
ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 30th day of October, 2014.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:



Naomi Sheffield
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, Vermont 05609
naomi.sheffield@state.vt.us
802-828-6906