

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

VT SUPERIOR COURT  
WASHINGTON UNIT  
CIVIL DIVISION

In Re: Cota & Cota Inc., Chris Cota

) 2014 CIVIL DIVISION 0000

) Docket No. 205-4-14 wncv

ASSURANCE OF DISCONTINUANCE

FILED

The State of Vermont, by and through Vermont Attorney General William H Sorrell, and Chris Cota and Cota & Cota, Inc. ("Cota & Cota" or "Respondent"), hereby enter into this Assurance of Discontinuance ("AOD") pursuant to 9 V.S.A. § 2459.

Background

*Cota & Cota, Inc.*

- 1 Cota & Cota, Inc. is a Vermont corporation with offices at 4 Green Street, Bellows Falls, Vermont 05101. Cota & Cota's operations include retail marketing, sale, and distribution of propane to residential, commercial, industrial, and agricultural customers in Vermont.

*Regulatory Framework*

- 2 Pursuant to 9 V.S.A. § 2461b, the Vermont Attorney General's Office has regulation of and rulemaking authority to promote business practices which are uniformly fair to sellers and to protect consumers concerning liquefied petroleum gas ("propane"). Since 1986, Vermont Consumer Protection Rule 111 ("CP 111" or "Propane Rule") has governed the business practices of propane service providers in Vermont and is enforced by the Office of the Attorney General. The Rule was amended in 2009, effective on January 1,

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05609

2010, and amended again in 2011, effective on January 1, 2012 (reference to “CP 111” or the “Propane Rule” refers to the most recent version as amended).

- 3 CP 111 governs the circumstances of when a propane provider may disconnect, or refuse to provide, propane service to a consumer. CP 111.11(a) states “ [a] seller shall only disconnect propane service without the consent of the consumer if: 1) there is a delinquency for charges for propane or fees for leak or pressure test, safety check, restart of equipment, after-hours delivery, special trip for delivery, and meter read, 2) the entire delinquency is not more than two years old, 3) the consumer or occupant uses propane as a primary source of heat and the amount of the delinquency which is less than two years old is not less than \$60.00 and is not fewer than 60 days past due, and 4) the consumer has been given an opportunity to enter into a reasonable Delinquency Payment Agreement to pay the delinquency ”
4. A violation of CP 111 constitutes an unfair and deceptive trade act and practice in commerce under Vermont’s Consumer Protection Act, 9 V.S.A. § 2453(a).  
CP 111 01
- 5 The Consumer Protection Act also protects consumers against retaliation. 9 V.S.A. § 2453b states “[n]o person shall retaliate against, coerce, intimidate, threaten, or interfere with any other person who: 1) has opposed any act or practice of the person which is collusive or in restraint of trade; 2) has lodged a complaint or has testified, assisted, or participated in any manner with the attorney general or a state’s attorney in an investigation of acts or practices which are collusive or in restraint of trade; 3) is known by the person to be about

to lodge a complaint or testify, assist, or participate, in any manner in an investigation of acts or practices which are collusive or in restraint of trade, or 4) is believed by the person to have acted as described in subsection (1), (2), or (3) of this subsection.”

- 6 Violations of the Consumer Protection Act are subject to a civil penalty of up to \$10,000.00 per violation. 9 V.S.A. § 2458(b)(1)

***Cota & Cota's Propane Practices***

- 7 On November 25, 2013, Marianne Oakes, a Vermont consumer, complained to the Attorney General's Office, Consumer Assistance Program (“CAP”) regarding Cota & Cota's propane practices.
- 8 On February 18, 2014, Cota & Cota entered into an Assurance of Discontinuance with the Attorney General's Office (“February 18, 2014 AOD”) regarding modifications of the company's propane practices to comply with CP 111 and Vermont's Consumer Protection Act.
- 9 On the same day, February 18, 2014, Cota & Cota sent a letter to Marianne Oakes, stating that Cota & Cota was “transferring ownership of the propane tank at [her] location” to Ms. Oakes, and Cota & Cota had “suspended her delivery [and] account status.” The letter and bill of sale for the tank was signed by “Chris Cota, VP” for Cota & Cota, Inc.
- 10 On February 18, 2014, Chris Cota sent a similar letter and bill of sale transferring ownership of another propane tank to Ms Oakes' landlord, John Aufmuth. In that letter, Cota & Cota stated that transferring the tank was “a consequence of a directive by the Vermont Attorney General's Office ” The

letter also stated that “we no longer provide propane” and “will not be available to service the appliances in your house.”

11 After receiving the letter, Mr Aufmuth called Cota & Cota and spoke with Chris Cota. In that phone conversation, Chris Cota made clear that he decided to stop providing propane service to Mr Aufmuth and to Ms Oakes because of Ms. Oakes, her complaint to the Attorney General’s Office, and the resulting February 18, 2014 AOD. Chris Cota further indicated that if Ms Oakes were no longer a tenant at the property, Cota & Cota would resume propane service at that location.

12 Neither the Attorney General’s Office nor the February 18, 2014 AOD required Cota & Cota to transfer ownership of propane tanks, or suspend or otherwise cancel, or refuse to provide, propane service, as described in ¶¶ 9-11.

13 Cota & Cota admits the truth of the facts described above in ¶¶ 1, 8-12.

***The State’s Allegations***

14 The Vermont Attorney General’s Office alleges that the following behavior (as described in ¶¶ 8-12 above) violates the Vermont Consumer Protection Act and Propane Rule

- a. Failing to follow CP 111 regarding disconnection of service;
- b. Retaliating against a consumer for filing a complaint with the Attorney General’s Office; and
- c. Informing a consumer that a certain action is a consequence of a directive by the Vermont Attorney General’s Office when it was not.

15 The State of Vermont alleges that the above behavior constitutes unfair and deceptive acts and practices under 9 V.S.A. § 2453, and retaliation under 9 V.S.A. § 2453b.

### Assurances and Relief

In lieu of instituting litigation, the Attorney General and Cota & Cota are willing to accept this AOD pursuant to 9 V.S.A. § 2459 as a just resolution of this matter

Accordingly, the parties agree as follows.

- 16 Cota & Cota Inc. shall comply with the Vermont Consumer Protection Act, 9 V.S.A. Chapter 63, and CP 111, as they may from time to time be amended.
17. Starting immediately, Chris Cota shall not have any authority over decisions related to Cota & Cota providing or disconnecting propane service to Vermont consumers.
- 18 Cota & Cota agrees to take the following actions with regard to the following consumers:
  - a. For John Aufmuth, Cota & Cota shall pay to Mr Aufmuth (i) the amount of any fees necessary to establish new propane service (such as any initial leak and/or pressure tests if he keeps the tank, or the first year's tank rental fee if he returns the tank); payment shall be made by check and within 10 days of Mr Aufmuth providing confirmation to Cota & Cota of the applicable fees; and (ii) payment by Company check in the amount of \$1,250 as restitution, which shall be paid within 10 days of the execution of this AOD

b. For Marianna Oakes, Cota & Cota shall pay to Ms. Oakes. (i) the amount of any fees necessary to establish new propane service (such as any initial leak and/or pressure tests if she keeps the tank, or the first year's tank rental fee if she returns the tank), payment shall be made by check and within 10 days of Ms. Oakes providing confirmation to Cota & Cota of the applicable fees; and (ii) payment by Company check in the amount of \$1,250 as restitution, which shall be paid within 10 days of the execution of this AOD

19 Within 10 days of the execution of this AOD, Cota & Cota shall pay the State of Vermont \$5,000 in civil penalties.

**Other Terms**

20 Acceptance of this AOD by the Vermont Attorney General's Office shall not be deemed approval by the Attorney General of any of the practices or procedures of Cota & Cota not required by this AOD, and Cota & Cota shall make no representation to the contrary

21 This AOD shall be binding on Chris Cota, and Cota & Cota, all of its affiliate companies doing business in Vermont, its officers, directors, owners, managers, successors and assigns. The undersigned authorized agent of Cota & Cota shall promptly take reasonable steps to ensure that copies of this document are provided to all officers, directors, owners and managers of the company, and all of its affiliate companies doing business in Vermont, but only to the extent such officers and managers are responsible for operations in the State of Vermont.

22. This AOD resolves all existing claims the State of Vermont may have against Cota & Cota stemming from the conduct described in this document, as of the date signed below
23. 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 any of the parties hereto to apply to this Court at any time for orders and directions as may be necessary or appropriate to carry out or construe this AOD, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.
24. Communications related to this AOD shall be given to Cota & Cota at
- a. Casey Cota, ( ) Cota & Cota Inc , 4 Green Street, Bellows Falls, Vermont 05101,
  - b. George W Nostrand, Esq. (nostrand@sover.net), Suite 300, Centennial Arcade, Bellows Falls, Vermont 05101-0535
25. Communications and notices related to this AOD shall be given to the Attorney General's Office to the undersigned Assistant Attorney General listed below.
26. Cota & Cota shall notify the Attorney General of any change of Cota & Cota's business name or address and of any change in contact information in ¶ 24 within 20 business days.
27. In the event that Cota & Cota violates any of the terms of this AOD, the Attorney General may pursue any remedies available under 9 V.S.A. Chapter 63, and the Attorney General shall not have waived any of its rights to assert and

prove any violations of law by Cota & Cota unrelated to the conduct described  
in this AOD

\*\*\* SIGNATURES APPEAR ON NEXT PAGE \*\*\*

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109 State Street  
Montpelier, VT  
05609




DATED at Montpelier, Vermont this 4<sup>th</sup> day of April, 2014.

**STATE OF VERMONT**

**WILLIAM H. SORRELL  
ATTORNEY GENERAL**

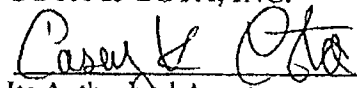
By

  
Justin E. Kolber  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609

DATED at Bellows Falls, Vermont, this 4<sup>th</sup> day of April, 2014.

**COTA & COTA, INC.**

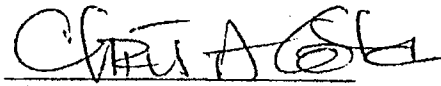
By

  
Its Authorized Agent

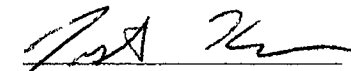
Casey Cota, President

**CHRIS COTA**

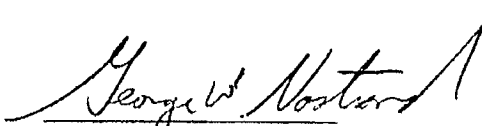
By:

  
Chris Cota

APPROVED AS TO FORM:

  
Justin E. Kolber  
Assistant Attorney General  
Office of Attorney General  
109 State Street  
Montpelier, VT 05609

For the State of Vermont

  
George W. Nostrand, Esq.  
Salmon & Nostrand  
Suite 300  
Centennial Arcade  
Bellows Falls, VT 05101

For Cota & Cota, Inc.

Office of the  
ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
05609