

VT SUPERIOR COURT
WASHINGTON UNIT
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**STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT**

In Re: Rymes Heating Oils, Inc.

) CIVIL DIVISION
) Docket No. _____

FILED

ASSURANCE OF DISCONTINUANCE

The State of Vermont, by and through Vermont Attorney General William H. Sorrell, and Rymes Heating Oils, Inc. (“Rymes” or “Respondent”), hereby enter into this Assurance of Discontinuance (“AOD”) pursuant to 9 V.S.A. § 2459.

Background

Rymes Propane

1. Rymes Heating Oils, Inc. is a corporation with its principal place of business at 802 Soucook Lane, Pembroke, NH 03275.
2. Rymes’ operations include retail marketing, sale, and distribution of propane to residential, commercial, and industrial customers in Vermont. Since 2010, Rymes has provided propane service to approximately 2,600 customers in Vermont.

Regulatory Framework

3. 9 V.S.A. § 2453(a) prohibits “[u]nfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce.”
4. 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

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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, 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).

5. CP 111.03 & 111.09(a)(2) require disclosure of all fees on a Fee Disclosure Form (“FDF”), including the amount and duration of all fees. The FDF is a standardized form mandated by CP 111 to provide consumers with advance notice of fees charged by a propane seller, and with the means to compare the fees charged by different sellers. CP 111 provides for an Initial FDF to be used with a potential consumer upon inquiry or when establishing service, and an Existing Customer FDF to provide consumers with at least 60 days’ notice of new or increased fees. *See* CP 111.03.
6. 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.
7. In addition, Vermont law requires that all retail charge agreements meet certain requirements, including: providing notices to the consumer regarding payments for goods and services as required by 9 V.S.A. § 2406(a), providing notice to any co-borrower as required by 9 V.S.A. § 102, and limiting the finance charges to a maximum of 21% per annum as set forth in 9 V.S.A. § 41(b)(9).
8. 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).

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Rymes' Propane Practices

9. The Vermont Attorney General's Consumer Assistance Program received consumer complaints about Rymes' propane practices. In investigating those complaints, Rymes acknowledged its practices as follows.
10. Since 2010, Rymes has collected \$15,287 in fees from 187 consumers without prior disclosure of these fees in an FDF.
11. Since 2010, Rymes has charged 140 customers a 24% per annum finance charge in its Credit Application and Charge Agreement, for a total amount of approximately \$16,662 in overcharges above the legal limit of 21% per annum. Rymes' Credit Application and Charge Agreement also did not contain the notices required by Vermont law (described in ¶ 7).
12. In response to the Attorney General's investigation of the above, Rymes provided prompt and compliant responses, and immediately changed its practices to disclose all fees in FDFs and revised its retail charge agreement.
13. Rymes admits the truth of the facts described in ¶¶ 1-2; 10-12.

The State's Allegations

14. The Vermont Attorney General's Office alleges that:
 - a. charging consumers fees without disclosure on an FDF violates the Vermont Consumer Protection Act and Propane Rule; and
 - b. charging consumers a 24% annual finance charge and failing to include required notices in a retail charge agreement violates 9 V.S.A. § 2406(a), 9 V.S.A. § 102, and 9 V.S.A. § 41(b)(9).

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

Assurances and Relief

In lieu of instituting litigation, the Attorney General and Rymes are willing to accept this AOD pursuant to 9 V.S.A. § 2459 as a just resolution of this matter. Agreeing to the terms of this Assurance of Discontinuance for purpose of settlement does not constitute an admission by Rymes to a violation of any law, rule, or regulation. Accordingly, the parties agree as follows:

16. Rymes 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. Rymes shall immediately provide Initial or Existing Customer FDFs to all potential or existing customers before collecting any fees as required by CP 111.03 & 111.09.
18. Rymes shall immediately revise the terms and notices of its Credit Application and Charge Agreement to comply with 9 V.S.A. § 2406(a), 9 V.S.A. § 102, and 9 V.S.A. § 41(b)(9).
19. Within 30 days of entry of this AOD, Rymes shall refund all 187 consumers identified in ¶ 10 the fees that were improperly collected, totaling \$15,287 in restitution. Rymes shall mail a check to all former customers along with any explanatory letter in an envelope provided by the Attorney General's Office. For current customers, Rymes, at its election, may mail a check or offer a credit to their account or a reduction of any outstanding balance.
20. Within 30 days of entry of this AOD, Rymes shall pay all 140 consumers identified in ¶ 11 the difference between the 24% finance charge and the 21% legal limit, totaling \$16,662 as restitution. Rymes shall mail a check to all former customers along with any

explanatory letter in an envelope provided by the Attorney General's Office. For current customers, Rymes may, at its election, mail a check or offer a credit to their account or a reduction of any outstanding balance.

21. Within 30 days of signing this AOD, Rymes shall pay to the State of Vermont \$15,000 in civil penalties and costs. Payment shall be made to the "State of Vermont" and shall be sent to the Vermont Attorney General's Office at the following address: Justin E. Kolber, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.

Other Terms

22. Acceptance of this AOD by the Vermont Attorney General's Office shall not be deemed approval by the Attorney General of any practices or procedures of Respondent not required by this AOD, and Respondent shall make no representation to the contrary.
23. This AOD shall be binding on Rymes, all of its affiliate companies doing business in Vermont, its officers, directors, owners, managers, successors and assigns. The undersigned authorized agent of Rymes 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.
24. This AOD resolves all existing claims the State of Vermont may have against Rymes stemming from the conduct described in this document, as of December 1, 2015.
25. 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

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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.

26. Communications related to this AOD shall be given to Rymes at:

- a. Robert H. Miller (rmiller@sheehan.com), Sheehan Phinney Bass & Green P.A.
1000 Elm Street 17th Floor, Manchester, New Hampshire 03105.

27. Communications and notices related to this AOD shall be given to the Attorney General's Office to the undersigned Assistant Attorney General.

Violations and Stipulated Penalties

28. In the event that Rymes 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 Rymes unrelated to the conduct described in this AOD.

29. If the Superior Court of the State of Vermont, Washington Unit enters an order finding Rymes to be in violation of this AOD, then the parties agree that penalties to be assessed by the Court for each act in violation of this Assurance of Discontinuance shall be \$5,000. For purposes of this paragraph 29, it shall not apply to a *de minimis* violation and the term "each act" shall mean: (i) collecting a fee without prior disclosure in an FDF; (ii) imposing a retail finance charge higher than that allowed by Vermont law; and (iii) failing to provide the required notices for retail charge agreements under Vermont law.

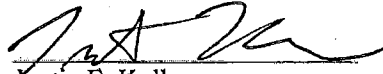
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SIGNATURES APPEAR ON NEXT PAGE

DATED at Montpelier, Vermont this 9th day of March 2016.

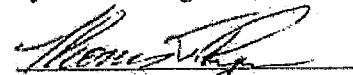
STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

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

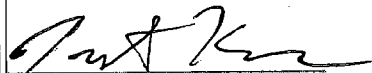
DATED at Pembroke, New Hampshire this 8th day of March, 2016.

Rymes Heating Oils, Inc.

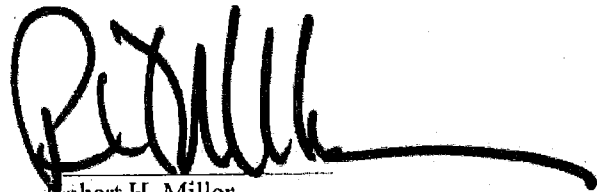
By: 
Its Authorized Agent

THOMAS J. RYMES, MANAGER
Name and Title of Authorized Agent

APPROVED AS TO FORM:


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

For the State of Vermont


Robert H. Miller
Sheehan Phinney Bass & Green P.A.
100 Elm Street
17th Floor
Manchester, NH 03105

For Rymes Heating Oils, Inc.

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