

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

IN RE: Staffing Solutions of Vermont) CIVIL DIVISION
) Docket No. _____
)

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General Susanne R. Young (“the Attorney General”), Staffing Solutions of Vermont (“SSVT”), and Ms. Kelly Smithson agree to this Assurance of Discontinuance (“AOD”) pursuant to 9 V.S.A. § 2459.

REGULATORY FRAMEWORK

1. Vermont’s Consumer Protection Act (“CPA”) prohibits “unfair or deceptive acts or practices in commerce.” 9 V.S.A. § 2453.
2. Also relevant here, Vermont laws prohibit long-term care facilities from employing any individual who:
 - a. Has had a charge of “abuse, neglect, or exploitation substantiated against them” (by Vermont Adult Protective Services) as defined in 33 V.S.A. Chapter 69. *See* 12-4 Vt. Code R. § 202 (regarding residential care homes and assisted living residences); 12-4 Vt. Code R. § 200 (regarding nursing homes); or
 - b. Has been convicted of an offense “for actions related to bodily injury, theft or misuse of funds or property, or other crimes inimical to the public welfare.” *See* 12-4 Vt. Code R. § 202 (regarding residential care homes and assisted living residences); 12-4 Vt. Code R. § 200:3 (regarding nursing homes).

BACKGROUND

3. SSVT is a Limited Liability Company organized under the laws of New Hampshire with its principal place of business listed as 87 Main Street, Building #2, Suite #2, West Lebanon, NH, 03784.
4. SSVT is registered with the Office of the Vermont Secretary of State as a Foreign Limited Liability Company.
5. SSVT is owned and controlled by Ms. Kelly Smithson of Knoxville, Tennessee.
6. SSVT is a direct care staffing agency. It employs and provides temporary caregivers—like Licensed Nursing Aides (LNAs) and Personal Care Attendants (PCAs)—to its clients, which, historically, have included Vermont long-term care facilities and Vermont residents in their homes.
7. Under SSVT's written agreements with its clients, SSVT is responsible for screening the caregivers it employs to ensure that they are qualified to serve the given client as needed, including performing background checks on prospective caregivers and maintaining records of those background check results. After SSVT's initial background check of a prospective caregiver, it might perform subsequent background checks on that same caregiver either as part of screening the caregiver for a new client or as a matter of routine.
8. In 2007, SSVT employed an individual named Ms. Lisa Foster Lafoe ("Ms. Lafoe") to serve as a temporary caregiver for its Vermont clients. At the time, Ms. Lafoe held a Vermont LNA license.
9. On October 14, 2015, Vermont Adult Protective Services ("APS") substantiated that Ms. Lafoe had financially exploited and neglected an elderly resident of a long-term care facility to which SSVT had employed her ("SSVT-Client 1"). Accordingly, on that date, APS placed Ms.

Lafoe on the Vermont Adult Abuse Registry. As of the date of this substantiation, Ms. Lafoe was legally prohibited from employment in any Vermont long-term care facility.

10. On March 10, 2016, SSVT ran an inquiry on Ms. Lafoe in the Vermont Adult Abuse Registry. In response, APS reported to SSVT¹ that Ms. Lafoe was a registered Adult Abuse Offender substantiated as having financially exploited and neglected a vulnerable adult (SSVT-Client 1).

11. After March 10, 2016, despite knowing that Ms. Lafoe was a registered Adult Abuse Offender, SSVT continued to employ Ms. Lafoe to Vermont long-term care facilities and Vermont residents in their private homes.

12. On June 29, 2016, SSVT again ran an inquiry on Ms. Lafoe in the Vermont Adult Abuse Registry. In response, APS again reported to SSVT² that Ms. Lafoe was a registered Adult Abuse Offender substantiated as having financially exploited and neglected a vulnerable adult (SSVT-Client 1).

13. After June 29, 2016, despite knowing that Ms. Lafoe was a registered Adult Abuse Offender, SSVT continued to employ Ms. Lafoe to Vermont long-term care facilities and Vermont residents in their private homes

14. On July 14, 2016, the Vermont Office of Professional Responsibility indefinitely suspended Ms. Lafoe's LNA license in light of Ms. Lafoe's exploitation and neglect of SSVT-Client 1.

15. Past that date, SSVT continued to employ Ms. Lafoe—now as a PCA instead of an LNA—to Vermont long-term care facilities and to Vermont residents in their private homes.

¹ Via same-day emails to Ms. Kelly Smithson and an SSVT administrative assistant.

² Via same-day emails to Ms. Kelly Smithson and an SSVT administrative assistant.

16. On May 22, 2018, APS substantiated that Ms. Lafoe had financially exploited another elderly individual while under SSVT's employment ("SSVT-Client 2"). Accordingly, APS placed Ms. Lafoe on the Vermont Adult Abuse Registry for a second time.
17. On June 18, 2019, Ms. Lafoe pled guilty in Windsor County Superior Court to felony financial exploitation of a vulnerable adult in relation to her financial exploitation of SSVT-Client 2.
18. On August 2, 2019, and January 31, 2020, SSVT again ran inquiries on Ms. Lafoe in the Vermont Adult Abuse Registry. On each of these occasions, APS reported to SSVT³ that Ms. Lafoe had twice been placed on the Adult Abuse Registry—once for the financial exploitation and neglect of a vulnerable adult (SSVT-Client 1), and again for the financial exploitation of a vulnerable adult (SSVT-Client 2).
19. Past those dates, despite knowing that Ms. Lafoe was a registered Adult Abuse Offender, SSVT continued to employ Ms. Lafoe to Vermont long-term care facilities and Vermont residents in their homes.
20. On March 11, 2021, SSVT performed a criminal background check on Ms. Lafoe which yielded Ms. Lafoe's felony conviction for financial exploitation of a vulnerable adult (SSVT-Client 1).
21. Past that date, SSVT employed Ms. Lafoe to another Vermont long-term care facility.

³ APS responded to SSVT's August 2, 2019, registry inquiry via August 6, 2019, email to Ms. Kelly Smithson and an SSVT administrative assistant. APS responded to SSVT's January 31, 2020, registry inquiry via February 11, 2020, email to Ms. Kelly Smithson and an SSVT administrative assistant.

22. Throughout SSVT's employment of Ms. Lafoe, SSVT failed to disclose to its clients that Ms. Lafoe was a registered Adult Abuse offender with a felony conviction for financial exploitation of a vulnerable adult.

23. SSVT profited from employing Ms. Lafoe despite her status as a registered Adult Abuse offender, billing Vermont clients up to \$32 per hour for Ms. Lafoe's "regular hour" services, and up to \$48 per hour for Ms. Lafoe's "overtime" services.

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

25. For purposes of this AOD, SSVT admits the truth of all facts set forth in this Background section.

26. In lieu of instituting an action or proceeding against SSVT, the Attorney General is willing to accept this AOD pursuant to 9 V.S.A. § 2459. Agreeing to the terms of this AOD for the purposes of settlement does not constitute an admission by SSVT or Ms. Kelly Smithson to a violation of any law or regulation. Accordingly, the parties agree as follows.

INJUNCTIVE RELIEF

Prohibition Against Violations of the Vermont Consumer Protection Act

27. SSVT shall cease and desist from any acts or practices that violate the CPA.

Reasonable background check practices

28. SSVT shall not employ a caregiver to a Vermont-based client (long-term care facility, individual, or otherwise) unless and until SSVT has completed a reasonable background check on the caregiver in question. This background check shall include, but not be limited to:

- a. Querying the Vermont Office of Professional Regulation regarding the status of the prospective caregiver's Vermont professional license;

- b. Conducting a national criminal background check on the caregiver through a public or private service that bases such checks on the prospective caregiver's social security number and/or fingerprints;
 - c. Conducting a Vermont Adult Abuse Registry check on the prospective caregiver;
 - d. Conducting an Adult Abuse Registry check on the prospective caregiver with the following states, to the extent such states maintain registries and those registries are accessible to SSVT:
 - i. For SSVT's initial screening of the prospective caregiver, each state of the prospective caregiver's current and prior residence(s);
 - ii. For SSVT's subsequent screenings of the caregiver (per Paragraph 31 below), each state in which the caregiver in question resided or was employed since SSVT's prior background check of said individual.
 - e. Querying the U.S. Department of Health and Human Services Office of Inspector General List of Excluded Individuals/Entities (LEIE) regarding the prospective caregiver; and
 - f. Conducting a Vermont Child Protection Registry check on the prospective caregiver.
29. For each current employee, SSVT shall make these queries/checks within thirty (30) days of the date of execution of this AOD. To the extent the responding agency/service provider takes longer than this thirty (30) day period to respond to SSVT's query/check, SSVT is not liable for the same.
30. SSVT shall conduct such reasonable background check for each employee at least once every twelve (12) months.
31. SSVT shall not employ a caregiver to any Vermont-based client (long-term care facility, individual, or otherwise) unless and until SSVT has provided that client with prior written notice

of the results of SSVT's most recent background check regarding that prospective caregiver pursuant to Paragraphs 28 and 30 above.

Prohibition on employment of disqualified individuals

32. SSVT is prohibited from employing any individual whom SSVT discovers (through its background checks per Paragraphs 28 and 30 above or notification otherwise) is designated to a state adult abuse/protection registry, child abuse/protection registry, or the LEIE.

33. SSVT is prohibited from employing any individual whom SSVT discovers (through its background checks per Paragraphs 28 and 30 above or notification otherwise) has a prior criminal conviction or adverse civil finding for the abuse, exploitation, or neglect of a "vulnerable adult" per Titles 13 and 33 of the Vermont Statutes Annotated, or the equivalent laws of other states (regarding harms to individuals in legally protected classes vis-a-vis age or vulnerability).

34. SSVT is prohibited from employing any individual whom SSVT discovers (through its background checks per Paragraphs 28 and 30 above or notification otherwise) has criminal convictions related to bodily injury, theft or misuse of funds or property, or other crimes against the person.

Reasonable follow-up & suspension

35. If and when SSVT is notified that a prospective or current employee is under investigation by a federal or state law enforcement agency, the Adult Protective Services of any state, the Child Protective Services of any state, or a state's professional licensing body for either (1) the alleged abuse, exploitation, or neglect of a child, "vulnerable adult" or "elder"⁴ or (2)

⁴ Where the investigation regards the potential violation of state laws regarding individuals over a certain age (as a protected class).

bodily injury, theft or misuse of funds or property, or other crimes against the person, SSVT shall refrain from hiring the prospective employee, or shall immediately (within 24 hours) suspend a current employee until the government agency investigation is concluded. At that time, SSVT may employ the individual in question consistent with this AOD's terms.

Employee agreements

36. SSVT shall require that employees provide written notice to SSVT within 24 hours after the employee is notified by federal or state law enforcement, the adult or child protective services of any state, or a professional licensing body of any state, that the employee is under investigation for either (1) the alleged abuse, exploitation, or neglect of a child, "vulnerable adult" or "elder"⁵ or (2) "actions related to bodily injury" or "theft or misuse of funds or property."

Record retention

37. SSVT shall retain all records and correspondences reflecting its compliance with Paragraphs 28-36 above for at least two (2) years from the generation or obtaining of said records/correspondences.

Attorney General Monitoring

38. For a period of one (1) year from the date of the execution of this AOD, the Attorney General may monitor SSVT's compliance with the AOD Paragraphs 28-37 above through semiannual audits requiring SSVT to provide the Attorney General with information and supporting documentation at the Attorney General's reasonable request.

⁵ Where the investigation regards the potential violation of state laws regarding individuals over a certain age (as a protected class).

Cessation of business

39. If SSVT ceases conducting business in Vermont (because SSVT has dissolved, decided to stop providing staffing services in Vermont indefinitely, or is otherwise unable to provide staffing services in Vermont indefinitely), it shall notify the AGO of the same within thirty (30) days of that occurrence (SSVT's "Business Cessation Date").

40. If SSVT's Business Cessation Date is within the one (1) year AGO monitoring period prescribed above in Paragraph 38, the Attorney General may only invoke its Paragraph 38 monitoring rights for a period of six (6) months after receiving notice from SSVT per Paragraph 39 above.

Provisions applicable to other similar businesses in Vermont

41. Ms. Kelly Smithson agrees that, if, within the next three (3) years, she engages in business providing direct staffing services in Vermont under the auspices of a business entity other than SSVT of which she has ownership and/or control, then:

- a. She shall provide the AGO with written notice of the same within thirty (30) days of registering said business with the Office of the Vermont Secretary of State and, in any event, at least thirty (30) days prior to providing said services; and
- b. That business entity shall comply with the requirements of Paragraphs 27-40 above, unless otherwise agreed in writing by the AGO.

PAYMENT TO THE STATE

42. SSVT shall pay \$100,000 to the State of Vermont as follows:

- a. SSVT shall pay \$20,000 to the State of Vermont within thirty (30) days of the execution of this AOD;

- b. If SSVT is not dissolved as of January 1, 2023, SSVT shall pay an additional \$10,000 to the State of Vermont by June 1, 2023. If SSVT has dissolved as of January 1, 2023, such payment is not required.
- c. If SSVT is not dissolved as of January 1, 2024, SSVT shall pay an additional \$10,000 to the State of Vermont by June 1, 2024. If SSVT has dissolved as of January 1, 2024, such payment is not required.
- d. The remaining \$60,000 is suspended in light of SSVT's cooperation with the AGO's investigation in this matter.

OTHER TERMS

- 43. SSVT agrees that this AOD shall be binding on it, and any current or subsequent owners, successors, and assigns.
- 44. The Attorney General hereby releases and discharges any and all claims arising under the Vermont Consumer Protection Act, 9 V.S.A. Chapter 63, that it may have against SSVT up to date of the execution of this AOD's in relation to the subject matter of this investigation and AOD.
- 45. 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 AOD.
- 46. Acceptance of this AOD by the Attorney General's Office shall not be deemed approval by the Attorney General of any practices or procedures of SSVT not required by this AOD, and SSVT shall make no representation to the contrary.

NOTICE

47. SSVT may be contacted by and through counsel at:

Bonnie J. Badgewick, Esq.
Woodstock Law, PC
43 Lincoln Corners Way- Suite 103
Woodstock, Vermont 05091
bbadgewick@woodstockvtlaw.com

with copy to:

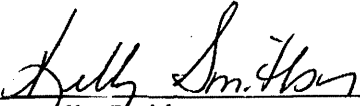
Ms. Kelly Smithson
Staffing Solutions of Vermont
87 Main Street, Building #2, Suite #2
West Lebanon, New Hampshire 03784
(802) 457-9995
ksmithson@staffingsolutionsofvermont.com

48. SSVT shall notify the Attorney General of any change to the method of contact described above.

SIGNATURE

In lieu of instituting an action or proceeding against SSVT, the Office of the Vermont Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance. By signing below, SSVT and Ms. Kelly Smithson individually (as to Paragraph 40 only) voluntarily agree with and submit to the terms of this Assurance of Discontinuance.

DATED at Knoxville, TN, this 22nd day of September, 2022.



Ms. Kelly Smithson
Owner, Staffing Solutions of Vermont


ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 22 day of September, 2022.

STATE OF VERMONT

SUSANNE R. YOUNG
ATTORNEY GENERAL

By:



Jamie Renner
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, Vermont 05609
Jamie.renner@vermont.gov
(802) 828-5947