

VT SUPERIOR COURT
WASHINGTON UNIT

**STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT**

2014 FEB 19 P 3:13

In Re: Cota & Cota Inc.

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CIVIL DIVISION

Docket No. 94-2-14 Wncw

ASSURANCE OF DISCONTINUANCE

The State of Vermont, by and through Vermont Attorney General William H. Sorrell, 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 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, 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. Some of the relevant provisions of CP 111 to promote fair business practices and protect consumers include: cash sales when the consumer has a delinquency (see CP 111.04 & 111.06, described below in ¶¶ 4-6); collection of security deposits for consumers who purchase on credit (see CP 111.05, described below in ¶ 7); standardized disclosure of fees for new and existing customers (see CP 111.03 & 111.09, described below in ¶ 8); and a one-year time limit for assessing termination fees (see CP 111.09, described below in ¶ 9).
4. CP 111.04(c) states that “except as provided in CP 111.06(a)(2), a seller that changes a consumer’s credit status from credit terms to cash-on-delivery shall not make continued propane service contingent upon immediate payment in full of any remaining balance due for propane delivered under the previous credit terms, but may require payments toward the balance under the 75-25 rule.”
5. The “75-25” rule is a method of allocating funds received from a consumer who is: 1) a cash-on-delivery consumer; 2) has a delinquency; and 3) makes a cash payment for propane to be delivered. A seller may deliver no less propane that can be purchased with 75% of the cash payment and may apply no more than 25% of the cash payment toward the delinquency. *See* CP 111.02(a).
6. CP 111.06(a) states that “a seller shall deliver propane to a consumer in its geographic service area, according to the seller’s standard contractual terms, if the consumer is ready, willing, and able to make, in a manner determined by the seller, payment in advance or at the time of delivery.”

7. CP 111.05(a) states that “[a] seller may require a security deposit only if the seller extends credit to the consumer.” In such cases, the security deposit may not exceed two-twelfths (2/12) of the consumer’s estimated annual bill, *see* CP 111.05(b).
8. 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.
9. CP 111.09(f)(5) states that a seller shall not “collect from a consumer [who] has received propane service from the seller for less than 12 months, a fee related to termination of service that exceeds the price of labor and materials disclosed on a Fee Disclosure Form or in a contract.”
10. 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.
11. 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).
12. Propane is covered by Vermont’s Unsolicited Goods or Services statute, 9 V.S.A. § 4401, which defines “unsolicited goods” as “any personal property or services delivered, rendered, or caused to be delivered or rendered by a seller to a recipient that are not requested by the recipient, whether or not the recipient and the seller have an existing business relationship.” 9 V.S.A. § 4401(c)(3). Thus, a delivery of propane without the

consumer's consent falls under the provisions of this statute, whereby the consumer may:

“(1) refuse the unsolicited goods; or (2) deem the unsolicited goods to be a gift and dispose of them in any manner without obligation to the seller.” 9 V.S.A. § 4401(a).

13. If the propane seller notifies the non-business consumer within 20 days, or before the consumer has used or disposed of the propane, whichever is sooner, then:

- a. “The seller shall provide, within 20 days of the notification of error, for the pick-up or return shipment of any remaining portion of the unsolicited goods at the seller's expense and risk, during which time the recipient shall take reasonable care of the remaining unsolicited goods. The recipient need not tender the remaining goods at any place other than the place of delivery or the location of the remaining goods at the time of the notification of error and shall have no further obligation to accommodate the seller's schedule for pick-up or return shipment or otherwise to facilitate the recovery of the item beyond the requirements of this section. If the recipient refuses to relinquish any remaining portion of the unsolicited goods to the seller, or agrees to relinquish the remaining unsolicited goods to the seller and fails to do so, the recipient shall be liable for the cost of the unsolicited goods not relinquished to the seller.” 9 V.S.A. § 4401(b)(1).

Cota & Cota's Propane Practices

14. On November 25, 2013, a Vermont consumer complained to the Attorney General's Consumer Assistance Protection (“CAP”) regarding Cota & Cota. The consumer complained about: not receiving propane unless her account was paid in full; being required to maintain a credit on her account in the amount of \$350 at all times; and unauthorized automatic deliveries.
15. In investigating this complaint, Cota & Cota provided copies of its current FDF and Service Policy Brochure, describing the company's propane practices, including those summarized in ¶¶ 16-20 below.
16. Cota & Cota demands full payment from cash-on-delivery customers with an outstanding balance before providing future propane deliveries.

17. Cota & Cota requires all customers to be a credit customer, or to maintain a "\$350 credit ahead" status. As stated in Cota & Cota's Service Policy Brochure, customers must maintain a \$350 credit on their account to prevent a lapse in delivery. As of February 2014, Cota & Cota has identified 70 customers on "credit ahead" status.
18. Cota & Cota's Service Policy Brochure requires all customers who possess a company tank to have at least one delivery per year at the company's discretion.
19. Cota & Cota's Service Policy Brochure lists a disconnection fee at a minimum of two (2) hours labor for a customer with a company-owned tank who terminates service in less than one calendar year.
20. Cota & Cota's FDF, dated January 1, 2014, does not list any amounts or duration of fees. All fees are listed as "variable – see Service Policy Brochure." The FDF also lists both an "Equipment Removal Charge" and "Early Service Termination Fee."
21. Cota & Cota admits the truth of all facts described in ¶¶ 1 and 14-20.

The State's Allegations

22. The Vermont Attorney General's Office alleges that the following behavior (as also described in ¶¶ 16-20 above) constitutes unfair and deceptive acts and practices under 9 V.S.A. § 2453 in violation of Vermont law, the Vermont Consumer Protection Act, and Propane Rule:
 - a. Failing to follow CP 111 regarding credit customers and cash-on-delivery sales (including by requiring full payment of an outstanding balance for a cash delivery customer that had previous deliveries within 8 months, and requiring all customers to maintain a \$350 "credit" on their account);

- b. Failing to follow CP 111 by requiring delivery (and payment) of propane at least once a year at Cota & Cota's discretion;
- c. Failing to follow CP 111 regarding fee disclosure (including by not listing fee amounts and duration, and listing a flat fee of 2 hours labor for early termination);
and
- d. Making unwanted deliveries to a consumer without the consumer's consent violated the Unsolicited Merchandise statute.

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. Agreeing to the terms of this Assurance of Discontinuance for purpose of settlement does not constitute an admission by Cota & Cota to a violation of any law, rule, or regulation. Accordingly, the parties agree as follows:

- 23. 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.
- 24. Starting immediately, Cota & Cota shall not demand full payment from a consumer with an outstanding balance except as allowed in CP 111.04, 111.06, and in such instances, Cota & Cota shall follow the "75-25" rule under CP 111.02(a).
- 25. Cota & Cota shall immediately discontinue requiring all consumers to maintain a \$350 credit on their account and will update its Service Policy Brochure to reflect that change. Within 20 days of signing this AOD, Cota & Cota shall send a letter to the 70 current customers explaining the change in status, and offering the consumer the option to have

the \$350 credit applied to the next delivery, or refunded to them in a check – Cota & Cota may work with each consumer to decide which option shall apply.

- a. Should Cota & Cota decide to require consumers to maintain a security deposit, the company shall do so in accordance with CP 111.05.

26. Cota & Cota shall discontinue requiring all consumers who possess a company tank to have at least one delivery per year at Cota & Cota's discretion and will update its Service Policy Brochure within 30 days of this AOD to reflect that change.

- a. Cota & Cota may offer a minimum delivery once per year at the consumer's discretion.

27. Cota & Cota shall update its FDF, and Service Policy Brochure as necessary, within 90 days of signing this AOD to comply with CP 111 (including by removing the \$350 "credit ahead" status, listing all relevant fees, their amounts and duration; charging a single termination fee limited to the actual cost of labor and materials for removing a tank; disclosing the initial FDF to any new customer; and providing an updated, existing FDF 60 days in advance of any increased fee), and shall immediately provide a copy of the updated documents to the Attorney General's Office.

28. Cota & Cota shall pay to consumer Marianne Oakes \$2,250 as an offer of restitution (though consumer Oakes has the option to deny any payment and pursue her own claim). The payment may be made by check and/or by cancelling any outstanding balance and offering a credit for future propane.

29. Cota & Cota shall keep a copy of all service brochures and FDFs (both initial and existing FDFs) for six years from the date of this AOD, and provide a copy to the Attorney General's Office on a yearly basis on or before January 1, beginning January 1,

2015. Cota & Cota shall also provide a copy of its updated FDF and Service Policy Brochure as described in ¶ 26 above, to the Attorney General's Office within 90 days of signing this AOD.

Other Terms

30. Neither Cota & Cota nor anyone acting on its behalf shall state or infer that the Vermont Attorney General's Office approves any practices of Cota & Cota.
31. This AOD shall be binding on 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.
32. 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.
33. 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.
34. Communications related to this AOD shall be given to Cota & Cota at:
 - a. Chris Cota, (chris.cota@cotaoil.com) Cota & Cota Inc., 4 Green Street, Bellows Falls, Vermont 05101;

b. George Nostrand, Esq., Suite 300, Centennial Arcade, Bellows Falls, Vermont
05101-0535

35. Communications and notices related to this AOD shall be given to the Attorney General's Office to the undersigned Assistant Attorney General listed below.
36. 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 ¶ 30 within 20 business days.

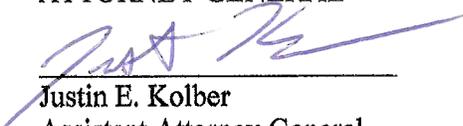
Violations and Stipulated Penalties

37. 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.
38. If the Superior Court of the State of Vermont, Washington Unit enters an order finding Cota & Cota 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 34, the term "each act" shall mean: (i) demanding full payment of an outstanding balance from a cash-on-delivery consumer unless there has been no payment from the consumer or delivery from the company in the previous 8 months; (ii) requiring a \$350 "credit ahead" from a consumer; (iii) charging an early termination fee that exceeds the price of labor and materials; and (iv) charging a fee that was not disclosed in an FDF or per the terms of CP 111.03 & 111.09.

DATED at Montpelier, Vermont this 18th day of February, 2014.

STATE OF VERMONT

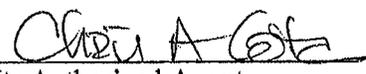
WILLIAM H. SORRELL
ATTORNEY GENERAL

By: 

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

DATED at BELLOWS FALLS, VT this 18th day of February, 2014.

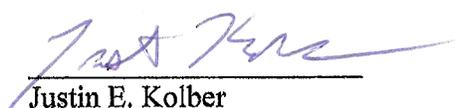
COTA & COTA, INC.

By: 

Its Authorized Agent

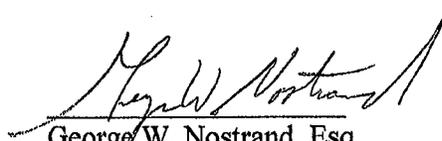
CHRIS A COTA, VP.
Name and Title of Authorized Agent

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



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For Cota & Cota, Inc.