

VT SUPERIOR COURT  
WASHINGTON UNIT  
CIVIL DIVISION

STATE OF VERMONT

2016 JUL 26 A 9:53

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
Docket No. 456-7-15 *Wren*

In Re: ZENVESCO, INC.  
d/b/a E.A. CAREY'S SMOKESHOP

FILED

**ASSURANCE OF DISCONTINUANCE**

Vermont Attorney General William H. Sorrell (“the Attorney General”) and Zenvesco, Inc., d/b/a E.A. Carey’s Smokeshop (“Respondent”) hereby agree to this Assurance of Discontinuance (“AOD”) pursuant to 9 V.S.A. § 2459.

**Background**

1. Respondent Zenvesco, Inc., d/b/a E.A. Carey’s Smokeshop, is an online retailer of tobacco products with a physical address at 7090 Whipple Avenue W, North Canton, Ohio. It held a tobacco wholesale dealer’s license from the Vermont Department of Taxes from August 11, 2010, through September 30, 2015.

**Regulatory Framework**

2. In Vermont, tobacco products may only be sold to individual consumers in face-to-face retail transactions. Vermont’s tobacco delivery sales statute, 7 V.S.A. § 1010 (b), provides that “[n]o person shall cause cigarettes, roll-your-own tobacco, little cigars, or snuff, ordered or purchased by mail or through a computer network, telephonic network, or other electronic network, to be shipped to anyone other than a licensed wholesale dealer, distributor, or retail dealer in this state.” This provision is known as “the delivery sales ban.”

3. A person who violates 7 V.S.A. § 1010 engages in an unfair and deceptive trade practice in violation of the state's Consumer Protection Act, 9 V.S.A. §§ 2451-2466. 7 V.S.A. § 1010(d)(5).

4. The State of Vermont, through Attorney General William H. Sorrell, is charged, inter alia, with the enforcement of the Vermont Consumer Protection Act, 9 V.S.A. §§ 2451-66, and Vermont's delivery sales ban, 7 V.S.A. § 1010.

5. Violations of Vermont's delivery sales ban are subject to civil penalties of up to \$5,000.00 per violation in addition to any other remedy provided by law. 7 V.S.A. § 1010 (d)(2).

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).

7. The Attorney General may also seek injunctive relief under both the tobacco law, and under the Consumer Protection Act. 7 V.S.A. § 1010(d)(3); 9 V.S.A. § 2458(a).

#### **Respondent's Actions**

8. Respondent Zenvesco, Inc., d/b/a E.A. Carey's Smokeshop, during seventeen months between the years of 2010 and 2014, shipped roll-your-own tobacco ordered from its website on at least seventeen separate occasions to individual consumers in Vermont.

9. Respondent admits the truth of all facts set forth in paragraphs 1 and 8 above.

#### **The State's Allegations**

10. The Attorney General alleges that the above conduct violated Vermont's tobacco delivery sales ban, 7 V.S.A. § 1010, and Vermont's Consumer Protection Act, 9 V.S.A. §§ 2451-2466.

**Assurances and Relief**

11. In lieu of instituting an action or litigation, the Attorney General and Respondent are willing to accept this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459 as a just resolution of this matter. The parties agree as follows:

**Injunctive Relief**

12. Respondent, its agents, employees, and all other person and entities, corporate or otherwise, acting in concert or in participation with any of them, is permanently restrained and enjoined from engaging, directly or through any third party, in any conduct which violates Vermont's tobacco products delivery sales ban, 7 V.S.A. §1010.

13. Respondent, its agents, employees, and all other persons and entities, corporate or otherwise, in concert or participation with any of them, is permanently restrained and enjoined from engaging in unfair and deceptive conduct in violation of 9 V.S.A. §§ 2451-2466.

14. Respondent shall notify the Office of the Attorney General should Respondent obtain a wholesale dealer's license from the Vermont Department of Taxes.

**Payment to the State of Vermont**

15. Within ten (10) days of signing this Assurance of Discontinuance, Respondent shall commence payment of a total of \$34,000.00 (thirty-four thousand dollars) to the State of Vermont, as civil penalties and costs. Payments shall be made in eleven monthly installments of \$ 2,833.34 (two thousand eight hundred thirty-three dollars and thirty-four cents) and one monthly installment of \$2,833.26 (two thousand eight hundred thirty-three dollars and twenty-six cents), to be paid on the first of each month, commencing July 15, 2016, and ending June 15, 2017. Payment shall be made to the "State of Vermont" and shall be sent to the Vermont

Attorney General's Office at the following address: Helen E. Wagner, Assistant Attorney General, 109 State Street, Montpelier, VT 05609.

**Other Terms**

16. Respondent agrees that this AOD shall be binding on Respondent and its successors and assigns.

17. This AOD resolves all existing claims under 7 V.S.A. § 1010 and 9 V.S.A. §§ 2451-2466 that the State of Vermont may have against Respondent, its directors, officers, and employees stemming from the specific conduct described in this document.

18. 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 push violations of its provisions.

19. 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 representations to that effect.

**Violations and Stipulated Penalties**

20. If the Superior Court of the State of Vermont, Washington Unit enters an Order finding Respondent to be in violation of this AOD, then the parties agree that penalties to be assessed by the Court of each act in violation of this Assurance of Discontinuance shall be \$10,000.00. For purposes of this section, the term "each act" shall mean each sale of tobacco products into Vermont in violation of 7 V.S.A. § 1010.

21. In the event that the Attorney General alleges that Respondent has violated any of the terms of this AOD, then the parties agree that the Attorney General shall be entitled to bring any other matters to the Court's attention involving potential violations of law by Respondent, and that the Attorney General shall not have waived any of its rights to assert and prove any violations of law by Respondent.

**SIGNATURE**

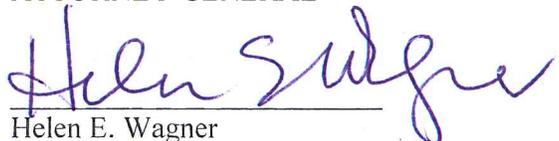
In lieu of instituting an action or proceeding against Respondent, the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance. By signing below, Respondent voluntarily agrees with and submits to the terms of this Assurance of Discontinuance.

DATED at Montpelier, VT, this 20<sup>th</sup> day of July, 2016.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By:



Helen E. Wagner  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001  
Telephone: 802-828-2508  
helen.wagner@vermont.gov

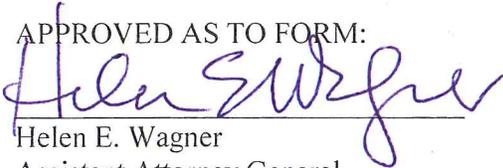
DATED this 15 day of July, 2016

Zenvesco, Inc., d/b/a E.A. Carey's  
Smokeshop

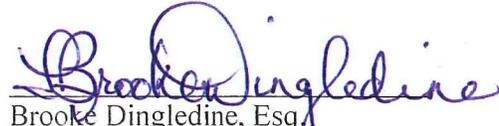
By:   
Its Authorized Agent

WILLIAM MURPHY PRESIDENT  
Name and Title of Authorized Agent

APPROVED AS TO FORM:



Helen E. Wagner  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001  
Telephone: 802-828-2508



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