

IN THE COURT OF COMMON PLEAS FOR ALLEGHENY COUNTY,
PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
OFFICE OF ATTORNEY GENERAL,
ACTING BY ATTORNEY GENERAL JOSH
SHAPIRO,

Petitioner,

v.

Aptive Environmental, LLC,

Respondent.

CIVIL ACTION

Case No.

5641 of 2019

**ASSURANCE OF VOLUNTARY
COMPLIANCE**

Filed on Behalf of Plaintiff:

COMMONWEALTH OF
PENNSYLVANIA, OFFICE
OF ATTORNEY GENERAL

Counsel of Record for this Party:

Jill Ambrose
Deputy Attorney General
PA Attorney I.D. No. 323549

Office of Attorney General
Bureau of Consumer Protection
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FILED

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SHAPIRO
JOSH
ATTORNEY GENERAL

**IN THE COURT OF COMMON PLEAS FOR ALLEGHENY COUNTY,
PENNSYLVANIA**

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| COMMONWEALTH OF PENNSYLVANIA, | : | CIVIL ACTION |
| OFFICE OF ATTORNEY GENERAL, | : | |
| ACTING BY ATTORNEY GENERAL JOSH SHAPIRO, | : | |
| | : | |
| Petitioner, | : | |
| | : | |
| v. | : | Case No. _____ |
| | : | |
| Aptive Environmental, LLC, | : | |
| | : | |
| Respondent. | : | |

ASSURANCE OF VOLUNTARY COMPLIANCE

AND NOW, comes the Commonwealth of Pennsylvania, Office of Attorney General, by Attorney General Josh Shapiro, through the Bureau of Consumer Protection (hereinafter "Commonwealth" or "Petitioner"), which has caused an investigation to be made into the business practices of Aptive Environmental, LLC (hereinafter "Respondent") pursuant to the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (hereinafter "Consumer Protection Law"), and states the following:

WHEREAS, Petitioner is the Commonwealth of Pennsylvania, Office of Attorney General, through the Bureau of Consumer Protection, with offices located at 1251 Waterfront Place, Mezzanine Level, Pittsburgh, Pennsylvania 15222; and, 15th Floor, Strawberry Square, Harrisburg, Pennsylvania 17120;

WHEREAS, Respondent is a limited liability company registered with the State of Utah with a business address of 5132 N 300 W #150 Provo Utah 84604;

WHEREAS, Respondent is registered as a Foreign Association with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations: Corporations Section, with a business address of 2650 Eisenhower Ave., Suite A103, Trooper, Pennsylvania, 19403;

BACKGROUND

WHEREAS, Respondent has engaged in trade or commerce within the Commonwealth by advertising, marketing, offering to sell, selling, and/or providing pest control services to Pennsylvania consumers;

WHEREAS, Respondent engaged in door-to-door solicitation of Pennsylvania consumers for contracts for pest control services with a sales price of twenty-five dollars (\$25) or more;

WHEREAS, while engaging in the aforementioned door-to-door solicitation, it is alleged that Respondent did not comply with certain requirements of Section 201-7 of the Consumer Protection Law, including the requirements to provide Pennsylvania consumers with a fully completed copy of the contract at the time of the contract or sale and the requirement to provide Pennsylvania consumers with the statutory Notice of Cancellation form;

WHEREAS, on more than one occasion in which Respondent engaged in door-to-door solicitation, it is alleged that Respondent did not comply with the requirements of local peddling and solicitation ordinances within the Commonwealth;

WHEREAS, with respect to Pennsylvania consumers who cancelled Respondent's contracts before the termination of the initial one-year contractual period, Respondent is alleged to have collected cancellation fees from some consumers amounting to the difference between two hundred and twenty-nine and 00/100 dollars (\$229.00) and the consumers' contractual price

of the initial treatment, as provided in Respondent's contracts. Respondent has agreed to refund these customers the cancellation fees;

WHEREAS, it is alleged that on at least three occasions Respondent continued to service and bill Pennsylvania consumers who notified Respondent that they were cancelling their contracts with Respondent;

WHEREAS, based upon its investigation, Petitioner alleges that Respondent has engaged in conduct which violates the Consumer Protection Law, as more fully set forth below by:

1. Failing to provide Pennsylvania consumers with a completed copy of their contracts at the time of the sale or contract of goods or services having a sale price of twenty-five dollars (\$25) or more sold or contracted to be sold to consumers, as a result of, or in connection with, contact with the consumers at their residences, in violation of Section 201-7(b)(1) of the Consumer Protection Law, 73 P.S. § 201-7(b)(1);
2. Failing to provide Pennsylvania consumers with the required statutory notifications of their right of rescission under Section 201-7(b) of the Consumer Protection Law, 73 P.S. § 201-7(b), which notifications must be:
 - a. In the body of the contract, as set forth in Section 201-7(b)(1), 73 P.S. § 201-7(b)(1);
 - b. In a completed form in duplicate, called the "Notice of Cancellation," as set forth in Section 201-7(b)(2), 73 P.S. § 201-7(b)(2); and
 - c. Provided verbally, as set forth in Section 201-7(d), 73 P.S. § 201-7(d);

3. Continuing to service, on at least three occasions, Pennsylvania consumers who notified Respondent that they were cancelling their contracts with Respondent, in violation of Section 201-3 of the Consumer Protection Law, 73 P.S. § 201-3; and
4. Engaging in door-to-door solicitation without complying with the requirements of local peddling and solicitation ordinances within the Commonwealth, in violation of Section 201-3 of the Consumer Protection Law, 73 P.S. § 201-3.

WHEREAS, Respondent agrees to cease and desist from violating the Consumer Protection Law and desires to comply with the laws of the Commonwealth of Pennsylvania; and

WHEREAS, this Assurance of Voluntary Compliance is accepted by the Petitioner pursuant to Section 201-5 of the Consumer Protection Law, in lieu of commencing statutory proceedings provided under Section 201-4. *See* 73 P.S. §§ 201-4 and 201-5. Pursuant to Section 201-5 of the Consumer Protection Law, this Assurance of Voluntary Compliance shall not be considered an admission of violation for any purpose. *See* 73 P.S. § 201-5.

SETTLEMENT TERMS

NOW THEREFORE, having conducted trade and commerce within the Commonwealth, Respondent agrees for itself, its successors, assigns, officers, partners, agents, representatives (including but not limited to sales representatives), employees, and all other persons acting on their behalf, jointly or individually, directly or indirectly, or through any corporate or business device, as follows:

- I. The above recitals are incorporated herein as though fully set forth.**
- II. Injunctive and Affirmative Relief**

A. Respondent shall comply with all provisions of the Consumer Protection Law and any amendments thereto; and is permanently enjoined from any violation thereof.

B. When contracting for goods or services having a sale price of twenty-five dollars (\$25) or more as a result of, or in connection with, a contact with or call on a consumer at the consumer's residence, Respondent shall provide consumers with a fully completed copy of Respondent's contract and an attached notice of cancellation at the time of the sale or contract.

C. If Respondent seeks to fulfill the requirements of Paragraph II(B) by providing the required information to the consumer electronically, Respondent shall do so only in accordance with the requirements of the *Electronic Signatures in Global and National Commerce Act*, 15 U.S.C. § 7001, *et seq.* (the "E-Sign Act").

D. When contracting for goods or services having a sale price of twenty-five dollars (\$25) or more as a result of, or in connection with, a contact with or call on a consumer at the consumer's residence, Respondent shall utilize contracts and notices of cancellation that satisfy the requirements of Section 201-7(b) of the Consumer Protection Law.

E. Respondent shall utilize contracts that state the amount that the consumer will be obligated to pay Respondent (and the terms and conditions that may result in such payment) in the event of cancellation after the expiration of the aforementioned statutory three-day cancellation period provided for under Section 201-7 of the Consumer Protection Law in bold font of at least ten points and in immediate proximity to the consumer's initial or signature.

F. Respondent shall include in all training materials provided to Respondent's sales representatives instructions to the sales representatives to verbally inform consumers of the three-day right to cancel a contract at the time the contract is signed.

G. Respondent shall refund all payments made under a contract or sale upon the receipt of a valid three-day notice of cancellation from consumers.

H. Respondent shall honor all requests from consumers to cancel contracts as permitted by Section 201-7 of the Consumer Protection Law and/or the terms of Respondent's contracts, including but not limited to by discontinuing service for such consumers.

I. Respondent shall satisfy the requirements of all applicable local peddling and solicitation ordinances within the Commonwealth.

III. Monetary Relief – Respondent shall be responsible for and voluntarily agree to pay to the Commonwealth a total payment of ONE HUNDRED AND ONE THOUSAND FOUR HUNDRED AND THIRTY and 00/100 Dollars (\$101,430.00) (hereinafter “Voluntary Payment”) which shall be allocated as follows:

A. **Restitution**, pursuant to Section 201-4.1 of the Consumer Protection Law, in the amount of FIFTY-SEVEN THOUSAND SIX HUNDRED AND THIRTY-FIVE and 00/100 Dollars (\$57,635.00) to be paid to the Commonwealth for the benefit of consumers who have been harmed by the conduct of Respondent as alleged herein. The amount, timing, and manner of distribution to consumers shall be in the sole discretion of the Commonwealth.

B. **Civil Penalties** in the amount of TWENTY-THREE THOUSAND SEVEN HUNDRED AND NINETY-FIVE Dollars (\$23,795.00) to be distributed to the Commonwealth of Pennsylvania, Department of Treasury.

C. **Costs** in the amount of TWENTY THOUSAND and 00/100 Dollars (\$20,000.00), which shall be distributed to the Commonwealth of Pennsylvania, Office of Attorney General, to reimburse the costs incurred in pursuing this enforcement action, and which shall be deposited in

an interest-bearing account from which both principal and interest shall be expended for public protection and education purposes.

D. **Payment Terms** – Upon execution of this Assurance of Voluntary Compliance, Respondent shall submit the Voluntary Payment by certified check, cashier’s check, or money order, and made payable to the “Commonwealth of Pennsylvania, Office of Attorney General,” and forwarded to the Bureau of Consumer Protection, 1251 Waterfront Place, Mezzanine Level, Pittsburgh, Pennsylvania 15222.

IV. Miscellaneous Terms

A. The Court of Common Pleas of Allegheny County, Pennsylvania shall maintain jurisdiction over the subject matter of this Assurance of Voluntary Compliance and over Respondent for the purpose of enforcing this Assurance of Voluntary Compliance.

B. Time shall be of the essence with regards to Respondent’s obligations hereunder.

C. Nothing in this Assurance of Voluntary Compliance shall be construed to waive or limit any right of action by any individual, person or entity, or by any local, state, federal or other governmental entity.

D. Nathan Wilcox, as Chief Legal Officer of Respondent Aptive Environmental, LLC, hereby states that he is authorized to enter into and execute this Assurance of Voluntary Compliance on its behalf; and, further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance of Voluntary Compliance.

E. Respondent further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance of

Voluntary Compliance, whether required prior to, contemporaneous with, or subsequent to the Effective Date.

F. Any failure of the Commonwealth to exercise any of its rights under this Assurance of Voluntary Compliance shall not constitute a waiver of its rights hereunder.

G. This Assurance of Voluntary Compliance may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Assurance of Voluntary Compliance may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof.

H. This Assurance of Voluntary Compliance sets forth all of the promises, covenants, agreements, conditions and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied. There are no representations, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Assurance that are not fully expressed herein or attached hereto. Each party specifically warrants that this Assurance is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

I. Respondent understands and agrees that if any false statement in or related to this Assurance of Voluntary Compliance was made on its behalf, such statement is made pursuant to and under penalty of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities.

J. Respondent agrees by the signing of this Assurance of Voluntary Compliance that it shall abide by each of the aforementioned provisions and that the breach of any one of these terms shall be sufficient warrant for the Commonwealth of Pennsylvania to petition the Court of

Common Pleas of Allegheny County, or any court of competent jurisdiction, to seek the penalties provided for under Section 201-8(a) of the Consumer Protection Law, 73 P.S. § 201-8(a), and to seek any other equitable relief which the Court deems necessary or proper, up to and including forfeiture of the right to engage in trade or commerce within the Commonwealth of Pennsylvania.

K. The "Effective Date" of this Assurance of Voluntary Compliance shall be the day it is filed with the Court.

L. If any clause, provision or section of this Assurance of Voluntary Compliance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance of Voluntary Compliance and the Assurance of Voluntary Compliance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

M. Respondent shall not represent or imply that the Commonwealth acquiesces in, or approves of, Respondent's past or current business practices, efforts to improve their practices, or any future practices that Respondent may adopt or consider adopting.

(SIGNATURES ON FOLLOWING PAGES)

WHEREFORE, intending to be legally bound, the parties have hereto set their hands and seals.

FOR THE PETITIONER:

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

Date: 03/22/19

By: 

Jill Ambrose
Deputy Attorney General
PA Attorney I.D. No. 323549
Bureau of Consumer Protection
1251 Waterfront Place, Mezzanine Level
Pittsburgh, PA, 15222
Telephone: 412-565-3050
Facsimile: 412-880-0196

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FOR THE RESPONDENT:

APTIVE ENVIRONMENTAL, LLC

Date: _____



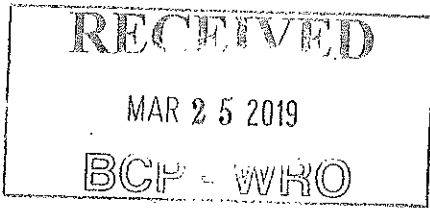
Nathan Wilcox
Chief Legal Officer

Date: _____

Adrian R. King, Jr.
Jenny N. Perkins
Ballard Spahr LLP
1735 Market St., 51st Floor
Philadelphia, PA 19103

Attorney for Respondent

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FOR THE RESPONDENT:

APTIVE ENVIRONMENTAL, LLC

Date: _____



Nathan Wilcox
Chief Legal Officer

Date: _____



Adrian R. King, Jr.
Jenny N. Perkins
Ballard Spahr LLP
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Attorney for Respondent

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CIVIL ACTION

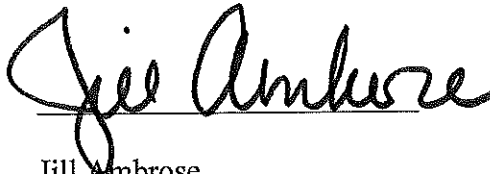
Case No. _____

CERTIFICATION

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: 4/16/19

By:



Jill Ambrose
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| | : | |
| Respondent. | : | |

CERTIFICATE OF SERVICE

I, Jill Ambrose, hereby certify that a true and correct copy of the foregoing Assurance of Voluntary Compliance was served by U.S. First Class Mail on April 16, 2019 upon the below:

Adrian R. King, Jr.
Jenny N. Perkins
Ballard Spahr LLP
1735 Market St., 51st Floor
Philadelphia, PA 19103



Jill Ambrose
Deputy Attorney General
Office of Attorney General
Bureau of Consumer Protection
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(412) 565-3050