

IN THE COURT OF COMMON PLEAS
OF CENTRE COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
By JOSH SHAPIRO, ATTORNEY GENERAL, :

Petitioner, :

v. :

MCKINNEY PROPERTIES, INC. :

Respondent. :

Docket No. 2022-287

CIVIL DIVISION

ASSURANCE OF VOLUNTARY
COMPLIANCE

Filed on Behalf of Plaintiff:

COMMONWEALTH OF
PENNSYLVANIA

BY JOSH SHAPIRO,
ATTORNEY GENERAL

Counsel of Record for this Party:

John M. Abel
Senior Deputy Attorney General
P.A. Attorney I.D. No. 47313

Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
jabel@attorneygeneral.gov
(717) 783-1439

FILED FOR RECORD
FILED BY EMAIL

2022 FEB -8 A 10:52

JEREMY S. BREON
PROTHONOTARY
CENTRE COUNTY, PA

ASSURANCE OF VOLUNTARY COMPLIANCE

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

PARTIES

WHEREAS, the Petitioner is the Commonwealth of Pennsylvania, Office of Attorney General, with offices located at 15th Floor, Strawberry Square, Harrisburg, Pennsylvania 17120.

WHEREAS, Respondent McKinney Properties, Inc. is a Florida Corporation, with a registered agent name and address of CT Corporation System, 1200 South Pine Island Road, Plantations, Florida 33324.

WHEREAS, Respondent is registered as a Foreign Corporation with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations, with a registered place of business located at 1717 Penn Avenue, Suite 5006, Pittsburgh, Pennsylvania 15221.

BACKGROUND

WHEREAS, Respondent is engaged in trade and commerce in the Commonwealth of Pennsylvania by leasing and managing residential real estate.

WHEREAS, many of the tenants who enter into residential leases with Respondent are college students who attend The Pennsylvania State University in State College, Pennsylvania ("tenants").

WHEREAS, Respondent manages three apartment buildings in State College, Pennsylvania, which include Calder Commons ("Calder"), Meridian on College Avenue

FILED FOR RECORD
FILED BY EMAIL
2022 FEB - 8 AM 10:52
JEREMY S. BLOOM
PROTHONOTARY
CENTRE COUNTY, PA

("Meridian"), and The Heights at State College ("The Heights").

WHEREAS, Respondent only collected security deposits from State College tenants who leased units at Calder and Meridian.

WHEREAS, Respondent's business practices with tenants are subject to the requirements of the Landlord Tenant Act of 1951, 68 P.S. §§ 250.101 *et seq.* ("*Landlord Tenant Act*").

WHEREAS, based upon its investigation, the Commonwealth believes Respondent has engaged in conduct which violates the *Consumer Protection Law* and the *Landlord Tenant Act*, as more fully set forth below;

WHEREAS, Respondent believes that it, at all times, acted lawfully and denies Petitioner's allegations and any violation of the law, as more fully set forth below:

Administrative Charges

1. Petitioner alleges from at least August 2010 through August 2016, Respondent charged tenants a 15% "Administrative Charge" on top of all damage/cleaning/painting charges assessed against the security deposit.
2. Petitioner alleges Respondent deducted the "Administrative Charge" from tenants' security deposits upon termination of their lease.
3. Petitioner alleges from January 2014 through December 2016, Respondent collected administrative charges from tenants.
4. Section 250.512(a) of the *Landlord Tenant Act* permits the landlord to withhold "the payment of damages to the leasehold premises and the actual amount of damages to the leasehold premises caused by the tenant." 68 P.S. § 250.512(a).

5. Petitioner alleges that the imposition and collection of "Administrative Charges" from tenants' security deposits bears no relation to "actual amount of damages" and is merely a surcharge added to the purported damages and is therefore illegal under the *Landlord Tenant Act*.
6. Respondent alleges that "actual amount of damages" includes not only the materials to complete repairs but also the labor costs, collected as administrative fees incurred by or on behalf of the landlord to remedy the damages to the leasehold premises caused by the tenant.
7. Respondent alleges that the administrative charge is a fair percentage to recover the costs incurred by Respondent to repair damages to tenants' rental units.
8. Respondent asserts that administrative charges therefore bear a direct relation to actual damages to the leasehold premises and are, thus, not a violation of the *Landlord Tenant Act*.

Common Area Damages

9. Petitioner alleges Respondent's lease states that "landlords shall have the right to apply up to \$100.00 of each tenant's share of the security deposit towards costs incurred by landlord" to remedy damages to common areas of the leasehold premises ("Common Area Charges").
10. Petitioner alleges Respondent requires all tenants on the lease to equally divide and pay any "Common Area Charges" assessed to the tenants' security deposits, unless one or more individuals accept responsibility for the charges.
11. Petitioner alleges from at least August 2010, it has been Respondent's practice to

charge all tenants on the lease a pro rata share of the "Common Area Charges" (up to \$100.00 total) when Respondent cannot establish tenant responsibility.

12. Petitioner alleges Respondent charged many tenants "Common Area Charges" without proof that the charged tenant caused any of the purported damages to common areas.
13. Petitioner alleges Respondent deducted "Common Area Charges" from tenants' security deposits upon termination of their lease.
14. Petitioner alleges from August 2013 through August 2014, Respondent collected "Common Area Charges" from tenants.
15. Section 250.512(a) of the *Landlord Tenant Act* permits the landlord to withhold from the security deposit "the payment of damages to the leasehold premises and the actual amount of damages to the leasehold premises caused by the tenant." 68 P.S. § 250.512(a).
16. Under Section 250.512(c) of the *Landlord Tenant Act*, "[t]he burden of proof of actual damages caused by the tenant to the leasehold premises shall be on the landlord." 68 P.S. § 250.512(c).
17. Petitioner alleges that the imposition and collection of charges for damages to common areas of the leasehold premises is impermissible without proof that the purported damage was "caused by the tenant" and is therefore illegal under the *Landlord Tenant Act*.
18. Petitioner alleges that some tenants may have been charged "Common Area Charges" in instances where proof of causation could not be established.
19. Respondent alleges that Section 250.512(a) of the *Landlord Tenant Act* permits the

landlord to withhold the return of security deposit funds for damages to the leasehold premises, including common areas.

20. Respondent alleges the broader common areas of its rental properties are part of the leased premises, as those terms are defined in Sections 1 and 9 of Respondent's lease.
21. Respondent alleges the "Common Area Charges" include the costs incurred by or on behalf of the landlord to remedy damages to common areas of the leasehold premises, with a cap on damage recovery of no more than \$100.00 per tenant per year.

Restriction on Purchase of Goods and Services

22. Petitioner alleges Respondent's "Move-Out Packet" and lease agreement required tenants to have carpets professionally cleaned by a company approved by Respondent upon vacating the rental unit.
23. Section 250.504-A of the *Landlord Tenant Act* prohibits a landlord from "restrict[ing] the tenant's right to purchase goods, services and the like from a source of the tenant's choosing," and any attempt to do so by written agreement is "void and unenforceable in the courts of this Commonwealth." 68 P.S. § 250.504-A.
24. Petitioner alleges Respondent's restrictions on the tenant's selection of carpet cleaning companies impermissibly "restrict the tenant's right to purchase goods, services and the like from a source of the tenant's choosing."
25. Respondent alleges Section 250.504-A of the *Landlord Tenant Act* does not apply to limiting a tenant's selection of professional cleaning providers.

WHEREAS, Petitioner alleges the aforesaid violations of the *Landlord Tenant Act* constitute "unfair methods of competition" and/or "unfair or deceptive acts or practices," as

prohibited by Section 201-3 of the Consumer Protection Law, as defined by Section 201-2(4)(xxi), which prohibits engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, 73 P.S. § 201-2(4)(xxi).

WHEREAS, Respondent does not believe that its business practices are a violation of the aforementioned provisions of the *Landlord Tenant Act* or the *Consumer Protection Law*, but does agree to modify its practices to forgo the cost of litigation and to ensure compliance with the laws of the Commonwealth of Pennsylvania.

WHEREAS, this Assurance of Voluntary Compliance is accepted by the Commonwealth pursuant to Section 201-5 of the *Consumer Protection Law*, in lieu of commencing statutory proceedings provided under Section 201-4. 73 P.S. §§ 201-4 and 201-5; and

WHEREAS, under Section 201-5 of the *Consumer Protection Law*, this Assurance of Voluntary Compliance shall not be considered an admission of a violation for any purpose. 73 P.S. § 201-5.

SETTLEMENT TERMS

NOW THEREFORE, having conducted trade and commerce within the Commonwealth, Respondent agrees for itself, its officers, partners, agents, representatives, employees and all other persons acting on its behalf, directly or indirectly, or through any corporate or other business device, as follows:

I. The above recitals are incorporated herein as though fully set forth.

II. Injunctive and Affirmative Relief

A. Respondent shall cease and is permanently enjoined from charging and deducting from tenant security deposits any administrative costs or fees associated with remedying damages, general maintenance and repair work, painting and/or cleaning the

tenant's rental unit upon move-out ("Administrative Charge"). Nothing in this paragraph shall preclude the Respondent from deducting from security deposits any costs for labor and/or materials directly incurred by Respondent to remedy actual damages beyond normal wear and tear to the leased premises.

B. Respondent shall cease and is permanently enjoined from deducting from tenant security deposits damages to the leasehold's common areas, without proof that the tenant caused the alleged damages ("Common Area Charge").

C. Respondent shall cease and is permanently enjoined from using the term "fine(s)" in its lease agreement including, but not limited to, using the term "fine(s)" to describe any penalties charged by Respondent for violations of Rules and Regulations attached to the lease. Further, Respondent must clearly and conspicuously disclose in its lease forms any and all fees or charges assessed to tenants for violating lease rules and regulations. To the extent this provision requires the modification of lease agreements, the Parties agree that this provision is applicable to lease agreements beginning in the 2023-2024 lease term.

D. Respondent shall not restrict the tenant's right to purchase goods and services, including, but not limited to, restricting the tenant's selection of cleaning providers when the tenant is required to have carpets in the rental unit professionally cleaned upon move-out; provided that nothing herein shall prohibit Respondent from providing a list of professional cleaning providers that have been pre-approved for use, upon request; provided further that nothing herein shall prohibit Respondent from incorporating into the lease agreement, as a separate up-front fee not included with the security deposit, the cost for Respondent to have carpets in the tenant's rental unit

professionally cleaned upon move-out. To the extent this provision requires the modification of lease agreements, the Parties agree that this provision is applicable to lease agreements beginning in the 2023-2024 lease term.

III. Monetary Relief

A. Respondents shall pay to the Commonwealth the sum of TWENTY-FIVE THOUSAND Dollars (\$25,000.00), which shall be distributed to the Commonwealth and be placed in an escrow account to be used for refunds of "Administrative Charges" and/or "Common Area Charges" paid by tenants to Respondent from January 1, 2014 through the "Effective Date" of this Assurance of Voluntary Compliance as set forth below.

1. **Eligibility** - To be eligible for a refund, consumers must: i) have paid Respondent an "Administrative Charge" or "Common Area Charge," as described herein, while leasing units at the Calder or Meridian properties from January 1, 2014 through the "Effective Date" of this Assurance of Voluntary Compliance; and ii) file a consumer complaint within three (3) months of the "Effective Date" of this Assurance of Voluntary Compliance as provided below. Any previously filed consumer complaints, relating to the acts and practices alleged herein, will automatically be included for return of funds pursuant to this paragraph.

B. **Administration** - The amount, manner and timing of distribution of restitution funds shall be within the sole discretion of the Commonwealth. Notwithstanding, and regardless of the number of claims received by the Commonwealth, Respondent shall not be liable for or pay restitution in any amount over or beyond the \$25,000 provided for in paragraph III.A above. In the event Respondent's restitution payment of \$25,000 exceeds the amount of consumer

claims for restitution, the remaining restitution funds, including interest, shall be paid to the Commonwealth to be used for future public protection and education purposes.

C. **Form of Payment** - All payments made by Respondent to the Commonwealth, pursuant to this Assurance of Voluntary Compliance, shall be in the form of a certified check, cashier's check, or money order made payable to the "Commonwealth of Pennsylvania, Office of Attorney General," and forwarded to John M. Abel, Senior Deputy Attorney General, Commonwealth of Pennsylvania, Office of Attorney General, Bureau of Consumer Protection, 15th Floor, Strawberry Square, Harrisburg, Pennsylvania 17120.

IV. Miscellaneous Terms

A. This Court shall maintain jurisdiction over the subject matter of this Assurance of Voluntary Compliance and over Respondent for the purpose of enforcing its terms.

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

C. Time shall be of the essence with regards to Respondent's obligations hereunder.

D. If the Commonwealth determines that Respondent has failed to comply with any of the terms of this Assurance, the Commonwealth will notify the Respondent in writing of such failure to comply and such Respondent shall then have fifteen (15) business days from receipt of such written notice to provide a good faith written response to the Commonwealth's determination. The response shall include an affidavit containing, at a minimum, either:

1. A statement explaining why such Respondent believes it is in full compliance with the Assurance; or
2. A detailed explanation of how the alleged violation(s) occurred; and

3. A statement that the alleged breach has been addressed and how; or
4. A statement that the alleged breach cannot be reasonably addressed within fifteen (15) business days from receipt of the notice, but (1) the Respondent has begun to take corrective action to cure the alleged breach; (2) the Respondent is pursuing such corrective action with reasonable due diligence; and (3) the Respondent has provided the Commonwealth with a detailed and reasonable time table for curing the alleged breach. This paragraph does not apply if the Commonwealth, in its judgment determines there is an imminent threat to the public health or safety.

E. Rodd Werstil is the Vice President of Respondent and certifies that he is authorized to enter into and execute this Assurance of Voluntary Compliance on behalf of Respondent; 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.

F. Respondent further agrees to execute and deliver all authorizations, documents and instruments which are reasonably 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, as defined herein.

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

H. 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 as original counterpart hereof.

I. 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 of Voluntary Compliance that are not fully expressed herein or attached hereto. Each party specifically warrants that this Assurance of Voluntary Compliance is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

J. Respondent agrees by the signing of this Assurance of Voluntary Compliance that Respondents 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 seek penalties provided for under Sections 201-8(a) of the *Consumer Protection Law*, 73 P.S. §§ 201-8(a) subject to the notice and cure provisions contained in paragraph D.

K. 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.

L. The "Effective Date" of this Assurance of Voluntary Compliance shall be the

day it is filed with the Court.

M. 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 this Assurance of Voluntary Compliance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not be contained herein.

N. Except as provided herein, Respondent shall not represent or imply that the Commonwealth acquiesces in, or approves of, Respondent's past or current business practices, efforts to improve its practices, or any future practices that Respondents may adopt or consider adopting.

O. If any statute, rule or regulation pertaining to the subject matter of any provision of this Assurance of Voluntary Compliance is subsequently enacted, promulgated, modified, or interpreted by a court of competent jurisdiction having binding authority in Pennsylvania and/or whose decisions are binding in Pennsylvania to be in conflict with any provision of this Assurance of Voluntary Compliance, that provision shall be void and unenforceable as applied to Respondent.

{SIGNATURES ON THE 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: 1.24.22

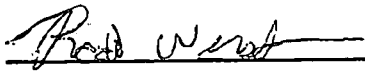
By: 


John M. Abel
Senior Deputy Attorney General
PA Attorney I.D. No. 47313

Office of Attorney General
Bureau of Consumer
Protection 15th Floor,
Strawberry Square Harrisburg,
Pennsylvania 17120
Email: jabel@attorneygeneral.gov
Phone: (717) 783-1439

For the Respondent:

MCKINNEY PROPERTIES, INC.

By: 
Rodd Werstil, Vice President

By: 
Susan A. Yocum

Date: January 17, 2022

Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
Email: syocum@eckertseamans.com
Phone: (717) 237-6023

Counsel for Respondent

IN THE COURT OF COMMON PLEAS
OF CENTRE COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
By JOSH SHAPIRO, ATTORNEY GENERAL,

Petitioner,

v.

MCKINNEY PROPERTIES, INC.

Respondent.

Docket No. 2022-287

CIVIL DIVISION

ASSURANCE OF VOLUNTARY
COMPLIANCE

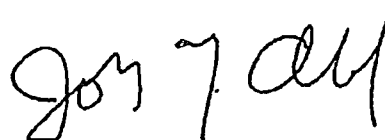
CERTIFICATE OF COMPLIANCE

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:

1-27-22

By:



John M. Abel
Senior Deputy Attorney General
PA ID # 47313
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
Telephone: (717) 783-1439
Email: jabel@attorneygeneral.gov

IN THE COURT OF COMMON PLEAS
OF CENTRE COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
By JOSH SHAPIRO, ATTORNEY GENERAL, :

Petitioner, :

v. :

MCKINNEY PROPERTIES, INC. :

Respondent. :

Docket No 2022-287

CIVIL DIVISION

ASSURANCE OF VOLUNTARY
COMPLIANCE

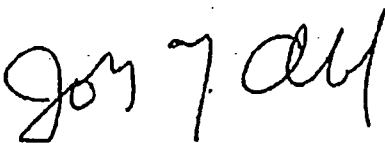
CERTIFICATE OF SERVICE

Undersigned counsel does hereby certify that a true and correct copy of the foregoing Assurance of Voluntary Compliance was served by means of First Class U.S. Mail, postage prepaid, on the date noted below:

Susan A. Yocum
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
Counsel for Respondent

Date: 2/8/22

By: _____


John M. Abel
Senior Deputy Attorney General
PA ID # 47313
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
Telephone: (717) 783-1439
Email: jabel@attorneygeneral.gov