

THE ATTORNEY GENERAL OF THE STATE OF NEW YORK

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In the Matter of
NAPCO OIL HEAT CORP.

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**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW § 63(15)**

Pursuant to the provisions of Article 22-A of the General Business Law and §63(12) of the Executive Law, ANDREW M. CUOMO, Attorney General of the State of New York caused an inquiry to be made into the business practices of NAPCO OIL HEAT CORP. ("NAPCO"), and based upon that inquiry makes the following findings:

FINDINGS

1. NAPCO is a New York corporation located at 133 Cortland Street, Lindenhurst, NY, 11757. NAPCO is engaged in the business of providing home heating oil and services in the State of New York.

2. NAPCO has been providing home heating oil and services for a number of years.

3. In conducting its home heating business, NAPCO uses various types of contracts. The Attorney General's inquiry relates to the home heating oil delivery for the 2008-2009 season. In setting its price for fuel oil, NAPCO regularly imposed a surcharge on consumers who chose to use a credit card as opposed to paying by cash or check.

4. Under General Business Law §518, no seller in any sales transaction may impose a surcharge on a purchaser who elects to use a credit card in lieu of payment by cash, check, or similar means. Complaints received by the Office of the Attorney

General reveal that consumers were regularly and routinely charged these illegal surcharges by NAPCO.

5. By reason of the foregoing, the Attorney General asserts that NAPCO has engaged in conduct which violates General Business Law §518.

ASSURANCE

6. IT NOW APPEARS that NAPCO desires to settle and resolve the investigation. Accordingly, the Attorney General and NAPCO hereby enter into this Assurance of Discontinuance.

7. IT IS HEREBY UNDERSTOOD AND AGREED by NAPCO, its officers, directors, agents, employees and assignees, and any individual or entity through which NAPCO may now or hereafter act without admitting liability, as follows:

8. NAPCO shall not enforce provisions of any contract or any contract that includes a credit card surcharge in violation of General Business Law §518. Furthermore, NAPCO shall not charge consumers a surcharge for payment by credit card.

9. In consideration of the making and execution of this Assurance, and within one-hundred and eighty days thereafter, NAPCO agrees that it will pay by wire transfer, certified check or bank check payable to the State of New York \$ 3,000 in penalties, fees and costs.

10. Subsequent to its initial meeting with the Office of the Attorney General, NAPCO ceased imposing a credit card surcharge on its customers, and has agreed to provide a refund to its customers of all previously imposed surcharges for the period of September 2008 to present within thirty days of the execution of this assurance. These

refunds will be made as a credit to the customers' home heating oil account and documentation of these refunds has been provided to the Office of the Attorney General.

11. NAPCO shall maintain, and upon request, make available to the Office of the Attorney General, for one year after the execution of this Assurance, copies of all contracts that will demonstrate compliance with the requirements of this Assurance.

12. This Assurance concludes the investigation, and precludes any action that the Office of the Attorney General could commence against NAPCO and its affiliates for the acts, omissions and practices which are stated in this Assurance, except nothing contained herein precludes the Office of the Attorney General from bringing an action and/or proceeding to enforce NAPCO's obligations arising out of or relating to this Assurance.

COMPLIANCE REPORT TO THE ATTORNEY GENERAL

13. IT IS FURTHER AGREED that NAPCO shall file with the Office of the Attorney General, no later than sixty days after executing this Assurance, an affidavit, sworn to by a knowledgeable employee of NAPCO, attesting that all required refunds have been made and demonstrating that it is in full compliance with the terms of this Assurance.

MISCELLANEOUS

14. Nothing contained herein shall be construed so as to deprive any person of any private right under the law.

15. Pursuant to Executive Law §63(15), evidence of a violation of this Assurance of Discontinuance shall constitute *prima facie* proof of a violation of the applicable statutes in any civil proceeding thereafter commenced by the Attorney General.

WHEREFORE, the following signatures affixed hereto this 25 day of June, 2009.

NAPCO OIL HEAT CORP.

By: 

Robert Nappe

~~Vice~~ - President

CONSENTED TO:

ANDREW M. CUOMO

Attorney General of the State of New York

By: 

Alan B. Berkowitz
Assistant Attorney General