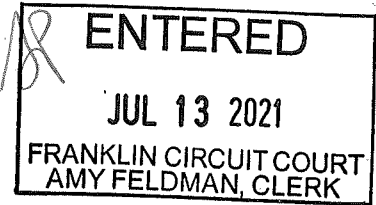


COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION
CIVIL ACTION NO. 21MSC 661



IN THE MATTER OF:

**RADHEY PROPERTIES LLC
d/b/a BROTHERS MARKET**

RESPONDENT

ASSURANCE OF VOLUNTARY COMPLIANCE

* * * * *

This Assurance of Voluntary Compliance is entered into between the Commonwealth of Kentucky, ex rel. Daniel Cameron, Attorney General of the Commonwealth of Kentucky, and Radhey Properties LLC d/b/a Brothers Market, a Kentucky limited liability company that maintains its principal office at 219 Bucktail Drive, Middletown, Delaware 19709. Radhey Properties LLC does business in Kentucky as Brothers Market located at 5400 KY-11, Girdler, Kentucky 40943.¹

I. PARTIES

1. Petitioner Daniel Cameron is the duly elected Attorney General of the Commonwealth of Kentucky and is responsible for the enforcement and administration of Kentucky law, including the Consumer Protection laws set forth in Kentucky Revised Statutes (KRS) Chapter 367.

2. Respondent is engaged in the retail petroleum fuel sales business.

II. JURISDICTION

¹ Radhey Properties LLC filed its articles of organization on January 30, 2021. Radhey Properties LLC purchased the business entity, Brothers Market, from Carnes Bros. Inc. and currently operates Brothers Market located at 5400 KY-11, Girdler, Kentucky 40943.

3. This Court has jurisdiction over the parties and the subject matter of this Assurance of Voluntary Compliance (AVC) pursuant to KRS 367.230 and pursuant to the agreement of the parties.

III. DEFINITIONS

4. “Assurance” means this Assurance of Voluntary Compliance.

5. “Commonwealth” means the Commonwealth of Kentucky represented by the Attorney General of Kentucky.

6. “Consumer” means any person to whom Fuel was marketed, advertised, or made available for sale, and also any person who purchased Fuel from Respondent at its Station from May 11, 2021 through May 13, 2021.

7. “Covered Conduct” means the conduct described in Paragraph 20. Covered Conduct does not include acts or omissions, including all communication, arising out of the sale of Fuel or the offer of sale of Fuel that occurred at any other retail location owned or operated by Respondent. The Commonwealth expressly reserves the right to investigate and seek enforcement against Respondent for any acts or omissions, including all communication, arising out of the sale of Fuel or the offer of sale of Fuel that occurred at any other retail location owned or operated by Respondent.

8. “Effective Date” means the date of the Court’s written Order approving this Assurance.

9. “Fuel” means all fuel grades of gas and diesel sold by Respondent including, but not limited to, 87 octane gasoline, whether conventional or reformulated; 89 octane gasoline, whether conventional or reformulated; 91 octane gasoline, whether conventional or reformulated; ethanol; and diesel.

10. "KCPA" means the Kentucky Consumer Protection Act, Ky. Rev. Stat. § 367.110, *et seq.* and the regulations promulgated thereunder, other statutes, and common law under which the Attorney General has or could have conducted the investigation.

11. "Parties" means Respondent and the Attorney General of Kentucky.

12. "Respondent" means (i) Radhey Properties LLC, a Kentucky limited liability company with its principal office located at 219 Bucktail Drive, Middletown, Delaware 19709, and doing business in Kentucky as "Brothers Market" located at 5400 KY-11, Girdler, Kentucky 40943; and (ii) all of its officers, directors, shareholders, employees, contractors, representatives, agents (including those making decisions regarding the sale and pricing of Fuel), affiliates, parents, subsidiaries, operating companies, assigns, and successors.

13. "Station" means Respondent's retail location at 5400 KY-11, Girdler, Kentucky 40943 that is currently doing business as "Brothers Market."

IV. LEGAL ALLEGATIONS

14. KRS 367.170(1) provides, "[u]nfair, false, misleading, or deceptive acts or practices in the conduct of trade or commerce are hereby declared unlawful."

15. If the Commonwealth has reason to believe that a person has engaged in an act that KRS 367.170 declares unlawful, "and that the proceedings would be in the public interest," pursuant to KRS 367.190(1), the Attorney General:

... may immediately move in the name of the Commonwealth in a Circuit Court for a restraining order or temporary or permanent injunction to prohibit the use of such method, act or practice. The action may be brought in the Circuit Court of the county in which such person resides or has his principal place of business or in the Circuit Court of the county in which the method, act or practice declared by KRS 367.170 to be unlawful has been committed or is about to be committed; or with consent of the parties may be brought in the Franklin Circuit Court.

Further, KRS 367.190(3) eliminates the requirement for the Commonwealth to prove that an adequate remedy of law does not exist to obtain a temporary or permanent injunction. The Commonwealth, similarly, is not required to prove irreparable injury, loss, or damage would occur if the Court denied its motion for injunctive relief.

16. The Commonwealth alleges that Respondent violated KRS 367.170 through the actions alleged in this Assurance.

17. KRS 367.990 (2) provides:

In any action brought under KRS 367.190, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by KRS 367.170, the Attorney General, upon petition to the court, may recover, on behalf of the Commonwealth, a civil penalty of not more than two thousand dollars (\$2,000) per violation, or where the defendant's conduct is directed at a person aged sixty (60) or older, a civil penalty of not more than ten thousand dollars (\$10,000) per violation, if the trier of fact determines that the defendant knew or should have known that the person aged sixty (60) or older is substantially more vulnerable than other members of the public.

18. Respondent owns and operates a retail petroleum fuel sales business under the name "Brothers Market" located at 5400 KY-11, Girdler, Kentucky 40943. Respondent, its officers, employees, and agents, are in the retail petroleum fuel sales business selling Fuel to Consumers at its Station.

19. On or about May 7, 2021, the Colonial Pipeline experienced a cyberware attack that forced operators to shut down the system.²

20. The Commonwealth alleges that thereafter, on May 11, 2021 to May 13, 2021, Respondent raised its retail price on regular 87 octane gasoline charged to Consumers at Respondent's Station, and that such price increase was unconscionable, as it was grossly in

² <https://www.washingtonpost.com/business/2021/05/18/colonial-pipeline-computer/>

excess of and unrelated to any increased cost to Respondent for Fuel during the time period following the Colonial Pipeline shutdown. Further, this unconscionable price increase deceptively induced consumers to believe a shortage of gas existed, and encouraged consumers to buy Fuel that they otherwise would not have purchased. This resulted in Respondent obtaining windfall profits in violation of the KCPA, at Consumers' expense. (All conduct described in this paragraph is the "Covered Conduct").

21. The Commonwealth alleges that the Covered Conduct violated the KCPA.

22. The Commonwealth alleges that under the KCPA, and as a result of the Covered Conduct, the Commonwealth is entitled to recover civil penalties from Respondent in the amount of \$41,160.24 and a disgorgement of profits in the amount of \$5,666.40.

23. Respondent is entering into this Assurance for the purpose of settlement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing. Respondent does not admit any violation of the KCPA, and does not admit any wrongdoing that was or could have been alleged by the Attorney General or any other individual or official before the date of the Assurance under the KCPA. No part of this Assurance, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by Respondent.

24. This Assurance shall not be construed or used as a waiver or limitation of any defense otherwise available to Respondent in any other action, or of Respondent's right to defend itself from, or make any arguments in, any other private individual, regulatory, governmental, or class claims or suits relating to the subject matter or terms of this Assurance. This Assurance is made without trial or adjudication of any issue of fact or law or finding of

liability of any kind. Notwithstanding the foregoing, the Commonwealth may file an action to enforce the terms of this Assurance.

25. No part of this Assurance shall create a private cause of action or confer any right to any third party for violation of any federal or state statute except that the Commonwealth may file an action to enforce the terms of this Assurance. It is the intent of the Parties that this Assurance shall not be binding or admissible in any other matter, including but not limited to, any investigation or litigation, other than in connection with the enforcement of this Assurance.

26. So long as Respondent complies with this Assurance, then this Assurance resolves with prejudice all claims which could have been raised by the Commonwealth against Respondent under the KCPA arising out of or relating to the Covered Conduct and acts and commissions in connection with this Assurance. If there is a material failure to comply with this Assurance by Respondent then this Assurance shall permit the Attorney General of Kentucky to take such further action against Respondent as provided herein.

27. In the administration of the KCPA, the Attorney General may accept an Assurance of Voluntary Compliance with respect to any act deemed to be in violation of KRS Chapter 367, pursuant to KRS 367.230.

V. PROVISIONS

28. The terms of this Assurance shall be governed by the laws of the Commonwealth of Kentucky.

29. Entry of this Assurance is in the public interest of the Commonwealth and reflects a negotiated agreement between the Parties.

30. The Parties have agreed to resolve the claims resulting from the Covered Conduct by entering into this Assurance.

31. This Assurance is entered into pursuant to the KCPA. This Assurance shall apply to and bind the Respondent its owners, stockholders, directors, agents, contractors, successors, or assigns, or through any other individual or entity under their supervision, direction, or control.

32. Acceptance of this Assurance by the Attorney General shall not be construed to prevent a private cause of action by any private party for any violation of the KCPA. However, this Assurance does not preclude Respondent from introducing this Assurance in any private cause of action with regard to the payment of civil penalties to the Commonwealth.

33. By agreeing to this Assurance, Respondent reaffirms and attests to the truthfulness, accuracy, and completeness in all material respects of: (i) all of the information Respondent provided to the Attorney General prior to the entry of this Assurance; and (ii) the representations made to the Attorney General concerning the ownership of "Brothers Market." If the Attorney General finds that Respondent intentionally failed to disclose material information or made an intentional misrepresentation of fact relevant to the resolution of the Attorney General's investigation, such finding or occurrence shall constitute a violation of this Assurance and shall be grounds for the filing of a court action.

34. Nothing in this Assurance shall relieve Respondent of its obligations to comply with all applicable state and federal law.

35. This Assurance shall be binding and effective as of the date of entry by the Clerk.

36. Respondent does not object to the Attorney General's *ex parte* submission and presentation of this Assurance to the Franklin Circuit Court for approval, and agrees that the Franklin Circuit Court has jurisdiction and is the proper venue for this action.

37. To resolve and dispose of the allegations that it may have violated the KCPA on May 11, 2021 to May 13, 2021, Respondent agrees to pay a disgorgement of profits, within five

(5) days of execution of this Assurance, in the amount of \$5,666.40. Additionally, Respondent agrees to comply with the KCPA and not sell or offer to sell Fuel at its Station or Fuel at any other station owned or operated by Respondent and located in Kentucky at unconscionable prices for a period of five (5) years that begins to run on the Effective Date of this Assurance.

38. So long as Respondent complies with this Assurance, the Attorney General will waive payment of the remaining \$41,160.24 of civil penalties that Respondent incurred as a result of its alleged violations of the KCPA.

39. If the Attorney General determines that Respondent has violated the terms of this Assurance, then the Attorney General shall notify Respondent in writing of that determination and give Respondent fourteen (14) days to respond in writing. If the Attorney General is unsatisfied with the written response, then the Attorney General may commence an action in any appropriate Kentucky court to seek remedies for (1) all prior violations that the Attorney General has elected not to pursue in return for this Assurance, and (2) the violation that caused the commencement of the action; consequently this will include an action for full payment of the remaining civil penalties detailed in this Assurance.

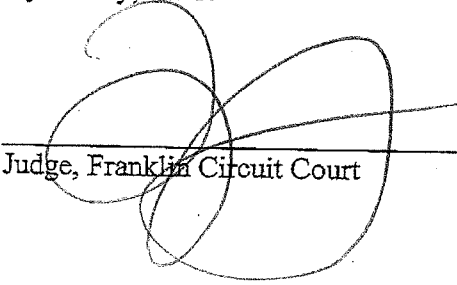
40. In addition, it is also understood that the Attorney General need not prove a violation of this Assurance in order to commence an enforcement action to enjoin and penalize any distinct and unknown conduct for any past or future violations of the KCPA other than the Covered Conduct.

41. **RELEASE:** In consideration of the stipulated relief and contingent upon the Court's entry of this Assurance and Respondent's compliance with this Assurance, the Attorney General, by execution of this Assurance, hereby fully and completely releases Respondent of any and all claims of the Attorney General under the KCPA for the Covered Conduct. The Attorney

General through this Assurance does not settle, release, or resolve any claim against Respondent or any other person or entity involving private causes of action, claims, and remedies, including, but not limited to, private causes of action, claims, or remedies provided for under the KCPA. This release does not apply in any way to claims of any other Kentucky state agency, department, official, or division.

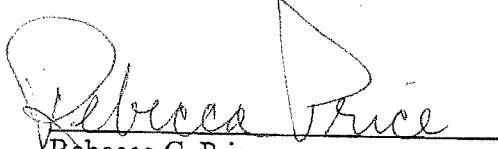
42. The Commonwealth agrees that the information provided to the Commonwealth by Respondent contains confidential and proprietary information, and the Commonwealth will not voluntarily make public or produce such information pursuant to KRS 367.250.

SO ORDERED this 7/13 day of July, 2021.

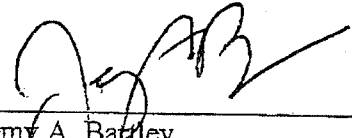


Judge, Franklin Circuit Court

Having seen to and agreed:



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