

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. VERNA L. SAUNDERS, JSC. PART 36

Justice

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INDEX NO. 450545/2022

THE PEOPLE OF THE STATE OF NEW YORK, by Letitia James, Attorney General of the State of New York,

MOTION SEQ. NO. 001

Plaintiff,

- v -

DECISION + ORDER ON MOTION

COLUMBIA UTILITIES, LLC and COLUMBIA UTILITIES POWER, LLC,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5 were read on this motion to/for

MONEY JUDGMENT

This motion is resolved in accordance with the Consent Order and Judgment, annexed hereto. This matter is hereby disposed.

March 10, 2022

HON. VERNA L. SAUNDERS, JSC.

CHECK ONE:

X

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

X

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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THE PEOPLE OF THE STATE OF NEW YORK,
by **Letitia James, Attorney General of the**
State of New York,

Petitioner,

-against-

Columbia Utilities, LLC and
Columbia Utilities Power, LLC

Respondents.

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Petitioner, the People of the State of New York by Letitia James, Attorney General of the State of New York ("NYAG"), commenced this proceeding (the "Proceeding") in New York County Supreme Court on February 11, 2022 to obtain injunctive and monetary relief and civil penalties from the named Respondents, Columbia Utilities, LLC and Columbia Utilities Power, LLC, (collectively, "Columbia") for their alleged violations of Assurance of Discontinuance #10-120 with the NYAG, which Columbia entered into on April 12, 2011, (the "AOD") and which was subsequently modified and extended on February 28, 2014 (the "Amended AOD").¹

NOW, upon the Petition dated February 11, 2022, and the Consent and Stipulation (filed contemporaneously herewith), the NYAG and Columbia (collectively, the "Parties," and each, a "Party") agree to the entry of this Consent Order & Judgment (the "Consent Order") to settle and

¹ The Amended AOD is a part of the AOD #10-120 but is referred to herein as Amended AOD for purposes of clarity.

Index No. 450545/22
IAS Part 36
HON. VERA L. SAUNDERS
Hon. _____ J.S.C.
~~PROPOSED~~ CONSENT
ORDER & JUDGMENT

resolve all claims raised against Columbia in this Proceeding. Columbia agrees to the terms of this Consent Order. Accordingly, it is hereby:

PARTIES SUBJECT TO JUDGMENT

1. **ORDERED, ADJUDGED AND DECREED** that this Consent Order shall extend to Columbia Utilities, LLC and Columbia Utilities Power, LLC, or anyone acting on their behalf, including but not limited to their principals, directors, officers, shareholders, employees, parents, successors, assignees, and agents.

DEFINITIONS

2. **ORDERED, ADJUDGED AND DECREED** that the following definitions apply to this Consent Order.

- a. **"Columbia"** or **"Respondents"** means Columbia Utilities, LLC and/or Columbia Utilities Power, LLC or anyone acting on their respective behalves, including but not limited to their principals, directors, officers, shareholders, employees, successors, parents, assignees, and agents acting in concert or in participation with them who are involved in the conduct of business which is the subject of this litigation.
- b. **"Consumer"** means an individual or an agent, trustee, or representative acting on behalf of an individual.
- c. **"Commodity Services Charges"** means the charges pertaining to the electricity or natural gas product supplied by an ESCO.
- d. **"Distribution Utility"** means an electricity or natural gas corporation owning, operating or managing electric or natural gas facilities for the purpose of distributing natural gas or electricity to end users in New York.

- e. **“Door-to-Door Marketing”** means the in-person solicitation of consumers at their residences.
- f. **“Energy Service Company”** or **“ESCO”** shall mean an entity that sells electricity and/or natural gas to end user customers using the transmission or distribution system of a Distribution Utility.
- g. **“Effective Date”** shall be the date the County Clerk enters this Consent Order & Judgment.
- h. **“Person”** means any individual.

ORDER

CONTINUING OBLIGATIONS

3. **ORDERED, ADJUDGED AND DECREED** that the AOD, which is attached as Exhibit A, and the Amended AOD, which is attached as Exhibit B, are incorporated by reference herein, and all continuing obligations remain in full force and effect, with the following adjustments:

- a. Paragraph 7 of the Amended AOD shall require quarterly rather than monthly reporting;
- b. Paragraph 54(f) of the AOD, referenced in paragraphs 4 and 8 of the Amended AOD, shall not require “the standard written questionnaire” described in paragraph 54(f) of the AOD or the “Checklist information” described in paragraph 8 of the Amended AOD, and Columbia shall, annually, following the resumption of Door-to-Door Marketing, submit a certification of compliance to the NYAG confirming that it has met the requirements of paragraph 54(f) of the AOD.

INJUNCTIVE RELIEF

4. **ORDERED, ADJUDGED AND DECREED** that, in addition to the ongoing obligation under paragraph 1 of the Amended AOD that Columbia will not resume Door-to-Door Marketing without first consulting and obtaining approval from the NYAG, which is in full force and effect pursuant to paragraph 3, *supra*, Columbia is also prohibited from resuming Door-to-Door Marketing for three (3) months after the Effective Date. Notwithstanding the foregoing, the parties anticipate that Columbia may provide the NYAG with its proposed Door-to-Door Marketing plan during the three (3) months after the Effective Date, and Columbia and the NYAG agree to reasonably cooperate to develop during that period a Door-to-Door Marketing Plan that is acceptable to the NYAG, such that Columbia would, upon such approval, and upon expiration of the three-month period, be able to resume Door-to-Door Marketing.

AFFIRMATIVE RELIEF

5. **ORDERED, ADJUDGED AND DECREED** that Columbia shall cancel all contracts with New York Consumers achieved through Door-to-Door Marketing and return the Consumers to their contracts with the appropriate Distribution Utilities, unless a Consumer affirmatively opts to maintain the contract(s) with Columbia, in the manner described below.

6. **ORDERED, ADJUDGED AND DECREED** that within thirty (30) days of the Effective Date, Columbia shall notify by certified mail and e-mail, when e-mail is available, those New York Consumers who enrolled with Columbia after Door-to-Door Marketing to inform them of the entry of this Consent Order; that Columbia engaged in Door-to-Door Marketing, which the NYAG alleges constituted a violation of the AOD and Amended AOD; that, as a result of the alleged violation, Columbia is paying restitution to those New York

Consumers who enrolled with Columbia after Door-to-Door Marketing; and that Consumers' contracts will terminate, unless they affirmatively opt to continue their contract(s) with Columbia, as described below. Included in the notice to Consumers, both those who are no longer enrolled with Columbia at the time of this Consent Order and those who are still enrolled with Columbia at the time of this Consent Order, Columbia shall state that it is paying restitution by check included with the certified mail notification, in the total amount outlined below, and include such check. With respect to notice for those Consumers who are still enrolled with Columbia at the time of this Consent Order, Columbia shall state that it will, within sixty (60) days of the Effective Date, request that the Distribution Utility switch the Consumer back to the applicable Distribution Utility or Utilities, unless the Consumer affirmatively opts to maintain the contract(s) with Columbia via first class mail response card or email reply. The notice shall state that Consumers have twenty-one (21) days from the date of the notice to opt to maintain the contract, if they so choose. The NYAG shall review and approve the aforementioned notification and response card, in advance.

MONETARY RELIEF

7. **ORDERED, ADJUDGED AND DECREED** that Columbia shall pay in restitution for each New York Consumer who enrolled with Columbia for retail natural gas service or for retail electric service after being contacted through Door-to-Door Marketing between February 28, 2014, the date of the Amended AOD, until the Effective Date, the difference between Columbia's Commodity Services Charges paid by the Consumer for the period enrolled and what the consumer would have paid the Distribution Utility under that Distribution Utility's rates during the same period, for a total of \$57,856.63. Columbia will use all reasonable efforts, for a

period of two (2) years from the Effective Date, to tender restitution payments to such Consumers.

8. **ORDERED, ADJUDGED AND DECREED** that all restitution funds unclaimed by Consumers two (2) years from the Effective Date shall be escheated to the New York State Comptroller's office as abandoned property for the benefit of the relevant Consumer.

9. **ORDERED, ADJUDGED AND DECREED** that Columbia shall pay \$500,000 for penalties and costs within five (5) days of execution of the Consent and Stipulation.

10. **ORDERED, ADJUDGED AND DECREED** that Columbia shall pay the \$500,000, as provided in the Consent and Stipulation, by wire transfer payable to the "State of New York." The wire transfers shall reference this Consent Order and be addressed to the attention of Jason L. Meizlish, Assistant Attorney General at the New York State Attorney General's Office, Bureau of Consumer Frauds and Protection, 28 Liberty Street, New York, New York 10005. Confirmatory emails shall also be sent to Jason.Meizlish@ag.ny.gov on the transfer dates.

MONEY JUDGMENT

11. **ORDERED, ADJUDGED AND DECREED** that in the event that Columbia fails to pay \$500,000 to the State of New York and the required restitution to New York Consumers, as provided in the Consent and Stipulation and this Consent Order, the Court shall direct that a money judgment be docketed in favor of Petitioner, the People of the State of New York, by Letitia James, Attorney General of the State of New York, at the Bureau of Consumer Frauds and Protection, 28 Liberty Street, New York, New York against Respondents in the amount of \$557,856.63, less any money already paid in penalties and costs to the NYAG and less any money paid in restitution to New York Consumers. The NYAG shall be permitted to execute on

the judgment immediately upon the entry of the money judgment and engage in discovery in aid of execution.

12. **ORDERED, ADJUDGED AND DECREED** that in the event of any default on Columbia's obligations to make payment under this Consent Order, interest computed under CPLR § 5004 shall accrue on any outstanding amounts not paid from the date of default to the date of payment and will immediately become due and payable.

COMPLIANCE PROVISIONS

Reporting Requirements and Compliance Monitoring

13. **ORDERED, ADJUDGED AND DECREED** that within thirty-five (35) days of the Effective Date, Columbia shall provide the NYAG with an affirmation that all restitution checks have been sent to New York Consumers via certified mail, as provided in this Consent Order.

14. **ORDERED, ADJUDGED AND DECREED** that within seventy (70) days of the Effective Date, Columbia shall provide the NYAG with data from Columbia's electronic database listing all New York Consumers who enrolled with Columbia through Door-to-Door Marketing, between February 28, 2014, the date of the Amended AOD, and the Effective Date that contains the following information as to each listed Consumer: (a) name and address; (b) the type or types of contract(s) that the Consumer entered into with Columbia; (c) the inception date of each contract; (d) the termination date of each contract (if applicable); (e) the date upon which Columbia received notice that the Consumer affirmatively opted to maintain each contract with Columbia (if applicable); (f) the date that Columbia requested that the relevant Distribution Utility or Utilities switch the Consumer back to the appropriate Distribution Utility or Utilities (if applicable); (g) the date that the Distribution Utility or Utilities successfully switched the

consumer back to the appropriate Distribution Utility or Utilities (if applicable); (h) the date that restitution payment via check was mailed; and (i) the date that restitution payment via check cleared. Every sixty (60) days thereafter, Columbia shall update this database until all restitution payments, or a substantial majority of restitution payments, as determined by the NYAG, have cleared, or until two (2) years after the Effective Date, when, after Columbia uses all reasonable efforts to make restitution payments, all unclaimed restitution funds will escheat to the New York State Comptroller's office as abandoned property for the benefit of the identified consumers, consistent with paragraphs 7 and 8.

15. **ORDERED, ADJUDGED AND DECREED** that, for three (3) years from the Effective Date, Columbia shall notify the NYAG of any development that may affect compliance obligations arising under this Consent Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Order; the filing of any bankruptcy or insolvency proceeding by or against Columbia; or a change in Columbia's name or address.

16. **ORDERED, ADJUDGED AND DECREED** that within ten (10) days of the Effective Date, Columbia shall:

- a. designate at least one telephone number, one email, and one physical address as points of contact, which the NYAG may use to communicate with Columbia; and
- b. identify all businesses for which Columbia is the majority owner, or that Columbia directly or indirectly controls, by all of their names, telephone numbers, and physical, email, and Internet addresses.

17. **ORDERED, ADJUDGED AND DECREED** that Columbia shall report any change in the information required to be submitted under paragraphs 15 and 16 at least thirty (30) days before the change occurs or as soon as practicable after learning about the change, whichever is sooner.

18. **ORDERED, ADJUDGED AND DECREED** that Columbia shall submit a certification of compliance to the NYAG upon entry of this Consent Order, and on a yearly basis for five (5) years thereafter, affirming that Columbia has not resumed Door-to-Door Marketing, unless and until the NYAG has otherwise approved of such marketing, in accordance with paragraph 4, and affirming compliance with any and all remaining requirements of the AOD and Amended AOD, consistent with paragraph 3, *supra*.

Order Distribution and Acknowledgement

19. **ORDERED, ADJUDGED AND DECREED** that, within thirty (30) days of the Effective Date, Columbia shall deliver a copy of this Consent Order to each of its board members and executive officers, as well as to any managers, employees, service providers, or other agents and representatives who have responsibilities related to Door-to-Door Marketing. For the avoidance of doubt, Columbia shall not be required to deliver a copy of this Consent Order to temporary employees who do not have responsibilities related to Door-to-Door Marketing.

20. **ORDERED, ADJUDGED AND DECREED** that, for three (3) years from the Effective Date, Columbia shall deliver a copy of this Consent Order to any business entity resulting from any change in structure described in paragraph 15, any future board members and executive officers, as well as to any managers, employees, service providers, or other agents and representatives who will have responsibilities related to Door-to-Door Marketing no later than

the day that they assume their responsibilities. For the avoidance of doubt, Columbia shall not be required to deliver a copy of this Consent Order to temporary employees who do not have responsibilities related to Door-to-Door Marketing.

21. **ORDERED, ADJUDGED AND DECREED** that Columbia shall secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, within thirty (30) days of delivery, from all Persons receiving a copy of this Consent Order under paragraph 19 or 20.

Record Keeping

22. **ORDERED, ADJUDGED AND DECREED** that Columbia shall create, for at least five (5) years from the Effective Date, the following business records, whether in electronic or paper form:

- a. All documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including all submissions to the NYAG; and
- b. Copies of all contracts, training materials, websites, and audio recordings, such as third-party verification, as described in Section 5, Attachment I of the Uniform Business Practice rules for ESCOs adopted by the New York State Public Service Commission.

23. **ORDERED, ADJUDGED AND DECREED** that Columbia shall retain the documents identified in paragraph 22 for at least five (5) years after their creation. Columbia shall make such documents available to the NYAG upon request within thirty (30) days of receiving such request.

Notices

24. **ORDERED, ADJUDGED AND DECREED** that, unless otherwise directed in writing by the NYAG, Columbia shall provide all submissions, requests, communications, or other

documents relating to this Consent Order in writing, with the subject line, "People v. Columbia Utilities, LLC, Index No. _____" and send them by email to Jason.Meizlish@ag.ny.gov and by overnight courier or first-class mail to the below address:

New York Attorney General's Office
Bureau of Consumer Frauds and Protection
Attention: Jason L. Meizlish
28 Liberty Street, 20th Floor
New York, NY 10005.

Miscellaneous

25. **ORDERED, ADJUDGED AND DECREED** that if any clause, provision or section of this Consent Order shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other clause, provision, or section of this Consent Order and this Consent Order shall be construed and enforced as if such invalid, illegal, or unenforceable clause, provision, or section had not been contained herein.

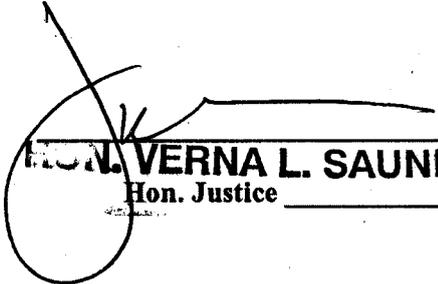
26. **ORDERED, ADJUDGED AND DECREED** that nothing contained herein shall be construed to deprive any Person of any private right under the law.

Retention of Jurisdiction

27. **ORDERED, ADJUDGED AND DECREED** that the Court will retain jurisdiction of this matter for the purpose of enforcing this Consent Order.

IT IS SO ORDERED.

DATED this 10th day of March, 2022.


HON. VERNA L. SAUNDERS
Hon. Justice _____ J.S.C.