

**THE STATE OF NEW HAMPSHIRE**

ROCKINGHAM, SS.

SUPERIOR COURT  
09-E-0521

The State of New Hampshire

v.

Michael P. Flynn

and

Flynn's Oil Company, LLC

and

94 Portsmouth Avenue Trust (Trustee Defendant)

**STIPULATION AND REQUEST FOR ENTRY OF FINAL ORDER**

The State of New Hampshire, by and through its attorneys, the Office of the Attorney General, (hereinafter "State") and Michael P. Flynn, Flynn's Oil Company, I,LC, and 94 Portsmouth Avenue Trust (hereinafter "Respondents"), and John W. Flynn III (together, the "Flynn Parties"), by and through their attorneys, hereby enter into this Stipulation and Request for Entry of Final Order by which they agree to resolve the Petition for Preliminary and Permanent Injunctive Relief, Civil Penalties and Costs (the "Petition"), as follows:

1. The Flynn Parties represent and certify that they owe a total of \$554,603.08 to consumers who prepaid for their home heating oil for the fall/winter seasons of 2009/2010 (the "Obligation"). The parties agree to verify and confirm the amount of the Obligation no later than July 1, 2010. If the confirmation reveals that the Obligation should be higher or lower, then the

Flynn Parties' obligations hereunder shall be deemed adjusted to account for the greater or lesser amount owed.

2. As described in the Letter of Intent, dated March 15, 2010 (hereinafter "Letter of Intent"), between Fred Hilton of Hilton Family Oil, Inc. (hereinafter "Hilton") and Michael P. Flynn and John W. Flynn, III of Flynn's Oil, LLC, the Flynn Parties agree to pay to the State, for distribution to consumers, the amounts set forth in that Letter of Intent and in the time frames set forth in the Letter of Intent. The Letter of Intent is attached hereto as Exhibit A and incorporated herein by reference. Upon execution of the purchase and sale agreement, which shall be fully consistent with the Letter of Intent and the terms of this Stipulation, the Flynn Parties shall pay the State an initial payment in the minimum amount of \$36,882.15 and a maximum of \$50,000, plus the other sale proceeds of the oil business as described in the relevant paragraphs of the Letter of Intent. Payment shall be made by certified or bank check, made payable to "Treasurer, State of New Hampshire." Payment of the initial payment shall be received by the State no later than 5:00 p.m. on April 22, 2010

3. Should the Flynn Parties, or any of them, enter into an agreement with any entity which results in the sale of the real estate at 94 Portsmouth Avenue (hereinafter the "Property") and a lease agreement by which the Flynn Parties or any of them leases back and operates any business on any portion of the Property, the Flynn Parties shall pay the State 50% of earnings before interest, taxes, depreciation and amortization ("EBITDA") from the car wash business or any other business conducted by any of the Flynn Parties, or any entity under their control at the Property. The Flynn Parties shall pay the State's portion of the EBITDA to the State, for distribution to consumers, on the first of each month commencing no more than one month after

the close of such a sale, and shall continue until such time as the entire amount of money owed to consumers is paid.

4. Michael P. Flynn, and John W. Flynn, III shall each give a personal guarantee to the State, in form satisfactory to the State, unconditionally promising to pay any deficiency between the amount of the Obligation, and the amounts actually recovered by the State pursuant to the provisions of this Stipulation. Such guarantees shall be executed by the Flynns not later than April 16, 2010, shall be filed with the Court and shall become a part of this Stipulation and the Court's order approving it.

5. The State agrees that it will not pursue personal criminal liability against Michael P. Flynn and/or John W. Flynn, III.

6. Respondents agree that Flynn's Oil Company, LLC will plead guilty to a felony charge of a violation of RSA 339:79 which is a violation of RSA 358-A:2, the Consumer Protection Act. In exchange for Flynn's Oil Company, LLC's guilty plea, the State agrees to recommend to the court a fine, all of which is suspended upon compliance with the terms of this Agreement, and restitution which shall be concurrent with the amount owed to consumers pursuant to this Agreement.

7. The parties agree that this Agreement will settle all claims, including fines, costs and attorneys fees.

8. In the event of any breach by any of the Flynn Parties of any of their obligations hereunder, the State may submit an order to the Court requesting the immediate appointment of a receiver over all the assets of Flynn's Oil, LLC, 94 Portsmouth Avenue Trust, Flynn's Carwash, Inc. and any other business subsequently conducted by any of the Flynn Parties at the Property.

The parties agree that they waive the right to any hearing on the appointment of a receiver or the right to appeal the entry of such an order by the Court.

9. Monetary distribution to consumers shall be made by the State at its discretion.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,  
STATE OF NEW HAMPSHIRE  
CONSUMER PROTECTION BUREAU

Dated: April 8, 2010

By:

  
Constance N. Stratton, Esquire (NHBA # 7939)  
Senior Assistant Attorney General  
33 Capitol Street  
Concord, NH 03301  
Tel.: 603-271-3643

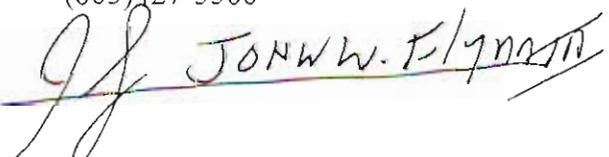
and

94 Portsmouth Avenue Trust  
Michael P. Flynn  
Flynn's Oil Company, LLC  
By their attorneys,  
Bosen & Springer, PLLC

Date: April 8, 2010

By:

  
John K. Bosen, Esquire  
NH Bar #8129  
One New Hampshire Ave, Ste 215  
Portsmouth NH 03801  
(603)427-5500

  
John W. Flynn

  
Mike Flynn

So Approved:

April 8, 2010

  
Rockingham County Superior Court

EXHIBIT A

LETTER OF INTENT

March 15, 2010

Flynn's Oil Company, LLC  
94 Portsmouth Avenue  
Exeter, NH 03833

and

John W. Flynn, III  
Michael P. Flynn  
c/o Christopher P. Mulligan, Esq.  
Bosen & Springer, P.L.L.C.

Via Email

Re: Letter of Intent to Purchase Assets of Flynn's Oil, LLC, and to  
contract with John W. Flynn, III and Michael P. Flynn, Individuals

Dear Attorney Mulligan:

This letter sets forth the terms and conditions under which my client, Hilton Family Oil, LLC (hereinafter "Hilton", or "Buyer") is willing to enter into a mutually acceptable Purchase and Sale Agreement (hereinafter "P&S Agreement") to purchase certain business assets owned by Flynn's Oil Company, LLC (hereinafter, "Flynn Oil" or "Seller"); and to contract with John W. Flynn, III and Michael P. Flynn as individuals, all being your clients. This letter does not attempt to define all the terms and conditions of the P&S Agreement which shall be subject to further agreement of the parties. Nonetheless, it sets forth the following specific terms to be included in the P&S Agreement at a minimum.

Assets to be purchased      2004 Peterbilt Oil Truck VIN:  
   2006 Peterbilt Oil Truck VIN:  
   2006 Peterbilt Oil Truck VIN:  
   Customer list  
   Software  
   Website  
   Telephone number(s)

Purchase Price :              \$325 per "account unit" defined as the total amount of gallons delivered by Family within three years of the execution of the P&S Agreement to either an existing Flynn's customer or one that originated in Flynn's existing territory, as specified herein, divided by 2,400.

- Payment terms:**
- a) \$50,000.00 payable upon execution of P&S Agreement;
  - b) Monthly payment of \$ .05 per gallon for all gallons sold to an existing Flynn's customer or one originated in Flynn's specific territory in the three years subsequent to the execution of the P&S Agreement;
  - c) Balance due on three year anniversary of P&S Agreement.
  - d) In the event insufficient account units are generated in three years to exceed the sums paid by the Buyer pursuant to a) and b) above, those sums paid by Buyer shall be non-refundable and Buyer shall have no further payment obligation whatsoever.
- Additional Terms:**
- a) Buyer will assume secured indebtedness relative to the trucks (which Seller represents stands at approximately \$80,000.00, to be fully documented upon acceptance of this Letter of Intent.
  - b) Michael P. Flynn and John W. Flynn, III, individuals, and as Manager/member of the Seller LLC, shall promote Buyer as successor oil company to Seller exclusively, throughout the three years of this contract, and for five years thereafter shall not engage, directly or indirectly, in the oil delivery business within the regions or areas specifically identified on the list appended hereto.

Subject to approval by NH Attorney General

*It is specifically understood and agreed that Buyer assumes no responsibility for any complaints pending or to arise in the future on account of pre-buy oil contracts entered into by Seller and/or by the individual members of Seller*

**Closing Date:** On or before March 31, 2010.

Time is of the essence throughout this agreement.

Upon the execution of this letter of intent by both parties, Buyers, its agents, employees and consultants may enter upon the Premises from time to time and upon reasonable notice to and agreement of the Seller, for the purpose of making measurements, surveys, studies, design and planning, testing and inspections of the oil trucks and of the website.

This letter of intent must be signed by both parties, with duplicate originals in the hands of both parties on or before March 19, 2010.

Buyer: Hilton Family Oil, Inc.

\_\_\_\_\_  
Witness

Fred Hilton 3-30-10  
Authorized Signature Date

Fred Hilton President  
Print Name/Title

Seller: Flynn's Oil, LLC

\_\_\_\_\_  
Witness

Mike Flynn 3-29-10  
Authorized Signature Date

Mike Flynn President  
Print Name/Title

JOHN W. FLYNN III VICE PRESIDENT  
3/29/2010

Existing Flynn Oil Territory

Durham  
Dover  
Newington  
Portsmouth  
Newcastle  
Newmarket  
Rye

Raymond  
Nottingham  
Epping  
Brentwood  
Kingston  
East Kingston  
Kensington

Exeter  
Newfields  
Stratbam  
Greenland  
North Hampton  
Hampton  
Scabrook