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

STATE'S PETITION FOR SHOW CAUSE HEARING

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, (hereinafter "State"), and asks this Honorable Court to schedule a show cause hearing to determine why John W. Flynn, III should not be held in contempt and in support thereof offers the following:

1. Flynn's Oil Company, LLC (hereinafter "Flynn's") sold home heating oil to consumers pursuant to prepaid contracts. Consumers paid Flynn's in full for a season's heating oil. Subsequently, Flynn's was unable to provide the heating oil for which it had been prepaid.

2. The State of New Hampshire filed a Petition for Injunctive Relief against Michael P. Flynn and Flynn's Oil Company, dated December 22, 2009, Merrimack County Superior Court Docket No. 09-E-0521. The Petition alleged that the respondents had violated RSA 358-A, New Hampshire's Consumer Protection Act, by failing to provide the contracted for heating oil for which consumer had prepaid. It also alleged that the respondents had violated RSA

339:79 because they failed to include language in their pre-buy contract explaining how the oil was secured.

3. On March 30, 2010, Flynn's and Hilton Family Oil (hereinafter "Hilton") entered into a Letter of Intent. Pursuant to the Letter of Intent, Hilton Family Oil agreed to purchase Flynn's Oil and operate its own business at the Flynn's Oil location in Exeter. The total amount of the proceeds of the sale would be paid to the State for the benefit of consumers. In addition, the Letter of Intent provided a formula which, depending upon the total number of gallons of oil that Hilton Family Oil sold in the three years subsequent to the execution of the purchase and sale agreement, Hilton would pay to the State, in monthly payments, additional funds, which would be distributed to consumers. Finally, the Letter of Intent provides: "Balance due on three year anniversary of P&S Agreement." The purchase and sale agreement was executed on April 15, 2010.

4. On April 8, 2010, the parties filed a Stipulation and Request for Entry of Final Oder (hereinafter "Stipulation") in the above-captioned matter, which this Honorable Court approved on that same date. The Stipulation provided that "[T]he Flynn Parties represent 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")."[1]

5. Paragraph 2 of the Stipulation provides, in relevant part, as follows: "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

[1] This amount was later changed to $578,070.95 pursuant to an Amendment to Stipulation and Request for Entry of Final Order which was approved by the court on October 1, 2010.

consumers, the amounts set forth in that Letter of Intent and in the time frames set forth in the Letter of Intent."

6. Paragraph 4 of the Stipulation requires Michael P. Flynn and John W. Flynn, III to provide a personal guaranty 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." The Stipulation also provided that the guarantees "shall become a part of this Stipulation and the Court's order approving it."

7. On April 20, 2010, Michael P. Flynn and John W. Flynn, III each executed a personal guaranty to the State obligating them to pay the entire amount of money owed to consumers, if the provisions of the Stipulation failed to result in the full amount of restitution due to consumers. The Guaranty requires, *inter alia*, that the Flynns

> "annually deliver to State on or before April 15th of each year financial statements in form and content satisfactory to Sate accurately reflecting all changes in net worth for the preceding year and, as soon as practicable after filing with the Internal Revenue Service, each year, Guarantors' [John W. Flynn and Michael P. Flynn] complete federal income tax return with the schedules thereto."

8. As of the date of this pleading, and despite requests, John W. Flynn, III has failed to provide the State with a complete copy of his 2012 federal income tax return.

In light of the above, the State asks this Honorable Court to do the following:

A. Schedule a hearing on the State's Motion for Show Cause Hearing to determine why John W. Flynn, III should not be held in contempt for his failure to provide the State with a complete copy of his 2012 federal income tax return; and

B. Grant any other and further relief this Honorable Court deems just and equitable.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

Ann M. Rice
Deputy Attorney General

Date: May 14, 2013

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CERTIFICATION

I hereby certify that a copy of the within motion has been mailed this date, postage prepaid, first-class mail, to John W. Flynn, III, 52 Deep Meadow, Exeter, NH 03833.

Constance N. Stratton

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