

STATE OF MAINE  
KENNEBEC, SS

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. *CY03-194*

STATE OF MAINE, )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 NIKKI MARTIN, d/b/a OLD FOX FUEL, )  
 and )  
 )  
 GUY CARMEL, )  
 )  
 Defendants )

**CONSENT DECREE**

Plaintiff, State of Maine, having filed a Complaint against Defendants Nikki Martin, d/b/a Old Fox Fuel, and Guy Carmel on July 30, 2003, and Plaintiff and Defendants having agreed to the entry of this Consent Decree without trial or adjudication of any issue of fact or law raised by the Complaint and without any admission by Defendants with respect to such issues:

NOW THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law and upon consent of the parties hereto, it is hereby ORDERED and DECREED as follows:

**I. JURISDICTION**

1. This Court has jurisdiction of the subject matter of this action. The Complaint states a claim upon which relief may be granted against the Defendants under 5 M.R.S.A. § 207.

**II. INJUNCTION**

2. Defendants are hereby permanently enjoined from violating 5 M.R.S.A. § 207 and the Attorney General's Home Heating Rules, 3 CMR § 100.12, by failing to honor so-called

prebuy contracts for the purchase of fixed amounts of home heating oil in advance at fixed prices.

### **III. RESTITUTION AND COSTS**

3. Upon entry of this Consent Decree by the Court, Defendants shall make full restitution to all customers who were overcharged as a result of Defendants' breach of their prebuy contract commitments during the 2002 –2003 heating season, in the amounts shown in Exhibit A below. Defendants shall make such restitution by tendering checks payable to all affected customers, in the required amounts, to the Attorney General, who shall distribute them forthwith. Any customers not listed in Exhibit A below who were overcharged as a result of Defendants' breach of their prebuy contract commitments during the 2002- 2003 heating season may contact the Attorney General's Office which may seek modification of this Order to require restitution to them in addition to those listed in Exhibit A below.

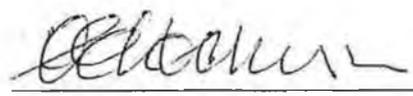
4. Defendants shall pay to the Attorney General his costs in this matter in the amount of \$177.60 immediately upon execution of the Consent Decree.

### **IV. RETENTION OF JURISDICTION**

Jurisdiction is retained by this Court for the purpose of enabling any party to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation or modification of any of the provisions of this Consent Decree, or the enforcement of compliance herewith and the punishment of any violations hereof.

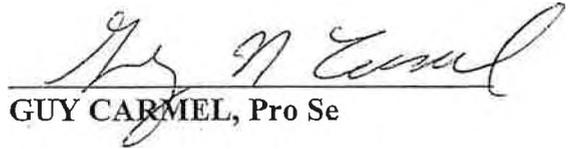
**G. STEVEN ROWE**  
Attorney General

Dated: 7/3/03



FRANCIS ACKERMAN  
Maine Bar No. 2125  
Assistant Attorney General  
Office of the Attorney General  
6 State House Station  
Augusta, Maine 04333-0006  
(207) 626-8847

Dated: July 3/03

  
GUY CARMEL, Pro Se

Dated: 7/24/03

  
NIKKI MARTIN  
d/b/a Old Fox Fuel, Pro Se

ORDER

IT IS HEREBY ORDERED AND DECREED, as set forth above.

Dated: July 31, 2003



JUSTICE, SUPERIOR COURT

**EXHIBIT A**

<b>Gregory Williams</b>	<b>\$104.62</b>
<b>Wes Dube</b>	<b>\$18.39</b>
<b>Noreene Laslow</b>	<b>\$29.78</b>
<b>Marius Picard</b>	<b>\$39.50</b>
<b>Mainly Flowers</b>	<b>\$234.30</b>
<b>Wendy Merrill</b>	<b>\$30.49</b>



3. Nikki Martin, d/b/a Old Fox Fuel, is a sole proprietorship with principal offices in Old Town, Maine, which conducts business as a retailer of home heating oil in the vicinity of Old Town and surrounding areas of Penobscot County.

4. Defendant Guy Carmel is the manager of Old Fox Fuel retail home heating oil business, and is responsible for its retail sales programs, including seasonal “prebuy” programs.

### III. JURISDICTION AND VENUE

5. This Court has jurisdiction of this action pursuant to 4 M.R.S.A. § 105, 5 M.R.S.A. § 209 and 14 M.R.S.A. § 6051 (13). Venue is proper in this Court pursuant to 14 M.R.S.A. § 501.

### IV. STATUTE AND RULES

6. The Unfair Trade Practices Act, 5 M.R.S.A. § 207, provides that unfair and deceptive acts and practices in the conduct of trade or commerce are unlawful.

7. The Attorney General’s Home Heating Rules, 3 CMR § 100.12, provide in pertinent part, that “[w]hen a dealer quotes to a person a specified heating oil price and the person places an order, the dealer must deliver the oil at that price unless the dealer has specifically stated to the person that: (A) The price per gallon is determined on the day the oil is actually delivered; (B) The price quoted on delivery day may be higher or lower than the quoted price.” A violation of the rule is *prima facie* evidence of an unfair trade practice.

### V. FACTS

8. In or about September, 2002, Defendants commenced a course of conduct whereby they sold fixed gallonages of home heating oil in advance on a “prebuy” basis at a fixed price to retail customers. For example:

- (a) Defendants contracted to deliver 600 gallons of home heating oil over the course of the season to Gregory Williams of Howland, Maine at an agreed-upon price of \$1.13 per gallon. Defendants did not inform Mr. Williams that the price was to be determined on the day of delivery or that the agreed-upon price was subject to change.
- (b) Defendants made similar agreements to deliver varying amounts of home heating oil to a number of other customers on a prebuy, fixed price basis, including without limitation, Mainly Flowers, Wes Dube, Noreen Laslow, Marius Picard, Gail Tuffley and Wendy Merrill.

9. On or about February 12, 2003, Defendants informed their retail home heating oil customers with prebuy contracts that they would no longer honor their prebuy per gallon prices, and would instead charge higher prices. For example, Defendants charged Gregory Williams \$1.50 per gallon for deliveries immediately subsequent to that date. Defendants engaged in similar practices towards other prebuy customers including without limitation those identified in paragraph 8(b) above and, similarly, charged increased prices. In some instances, Defendants failed to deliver fuel to prebuy customers, forcing them to cover by purchasing high-priced oil from other sources.

10. As a result of Defendants' actions in breach of their prebuy contracts, the affected customers, to the extent they have been identified, were overcharged or suffered contract damages in the following amounts:

<u>Name</u>	<u>Amount</u>
Gregory Williams	\$ 104.62
Wes Dube	\$ 18.39

<u>Name</u>	<u>Amount</u>
Noreen Laslow	\$ 29.78
Marius Picard	\$ 61.90
Mainly Flowers	\$ 234.30
Wendy Merrill	\$ 30.49
Gail Tuffley	\$ 34.94

Some additional affected customers, as yet unidentified, may have been overcharged in undetermined amounts.

#### **VI. CAUSE OF ACTION**

11. Defendant's actions in systematically breaching prebuy contracts with their home heating oil customers violate the Attorney General's Home Heating Rules, 3 CMR § 100.12, and constitute unfair and deceptive acts and practices in violation of Maine's Unfair Trade Practices Act, 5 M.R.S.A. § 207.

12. Defendants' violations as alleged in the foregoing paragraph were intentional.

#### **VII. PRAYER**

**WHEREFORE**, the State of Maine prays that this Court:

- A. Order Defendants to make full restitution to all customers who were Overcharged or suffered contract damages as a result of Defendants' breach of their prebuy contract commitments during the 2002 -2003 heating season.
- B. Order Defendants to pay the Attorney General his costs of investigation and suit in the amount of \$177.60.
- C. Permanently enjoin Defendants from failing to honor prebuy contracts for

the purchase of fixed amounts of home heating oil in advance at fixed prices, in violation of the Attorney General's Home Heating Oil Rules.

D. Award such further relief as the Court may deem just and proper.

**G. STEVEN ROWE**  
Attorney General

Dated:

7/3/03



---

**FRANCIS ACKERMAN**  
Maine Bar No. 2125  
Assistant Attorney General  
Office of the Attorney General  
6 State House Station  
Augusta, Maine 04333-0006  
(207) 626-8847