

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for Plaintiffs

FILED & RECEIVED #2

2012 NOV -8 P 4:11

CIVIL OFFICE
MIDDLESEX COUNTY

By: Jeffrey Koziar
Deputy Attorney General
[REDACTED]

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY
DOCKET NO. MID-C- 234 -12

JEFFREY S. CHIESA, Attorney General of the State of New Jersey, ERIC T. KANEFISKY, Acting Director of the New Jersey Division of Consumer Affairs, and ROBERT J. CAMPANELLI, Acting Superintendent of the State of New Jersey, Office of Weights and Measures.

Civil Action

Plaintiffs,

v.

PERTH AMBOY NJPO, LLC, d/b/a BP; JANE AND JOHN DOES 1-10, individually and as owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of PERTH AMBOY NJPO, LLC, d/b/a BP and XYZ CORPORATIONS 1-10,

COMPLAINT

Defendant.

Plaintiffs Jeffrey S. Chiesa, Attorney General of the State of New Jersey ("Attorney General"), with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, Eric T. Kanefsky, Acting Director of the New Jersey Division of Consumer Affairs ("Director"), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, and Robert J.

Campanelli, Acting Superintendent of the New Jersey Office of Weights and Measures (“Superintendent”), with offices located at 1261 Routes 1 & 9 South, Avenel, New Jersey, by way of Complaint state:

PRELIMINARY STATEMENT

1. During emergencies and major disasters, such as hurricanes, tropical storms, earthquakes, fires and floods, some merchants have taken unfair advantage of consumers by greatly increasing prices for certain merchandise, which are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect or sustain the life, health or safety or comfort of persons or their property, a practice commonly known as “price gouging.” When a declared state of emergency results in abnormal disruptions of the market, the New Jersey Legislature has found it in the public interest that excessive and unjustified price increases in the sale of these types of merchandise, price gouging, be prohibited. See N.J.S.A. 56:8-107.

2. On October 27 2012, just prior to Tropical Storm Sandy (“Sandy”) reaching the State of New Jersey (“State” or “New Jersey”), Governor Chris Christie (“Governor Christie”) declared a State of Emergency. In the wake of the State of Emergency and Sandy, defendant Perth Amboy NJPO, LLC, d/b/a BP (“Defendant”) engaged in price gouging in the sale of motor fuel. In so doing, Defendant committed numerous violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”). Defendant also violated the Motor Fuels Act, N.J.S.A. 56:6-1 et seq., (“Motor Fuels Act”) and the regulations promulgated thereunder, N.J.A.C. 18:19-1.1 et seq. (“Motor Fuel Regulations”) by failing to provide access to books and records.

PARTIES AND JURISDICTION

3. The Attorney General is charged with the responsibility of enforcing the CFA. The Director is charged with the responsibility of administering the CFA on behalf of the Attorney General.

4. Pursuant to N.J.S.A. 51:1-42, the New Jersey Office of Weights and Measures (“Office of Weights and Measures”) in the Department of Law and Public safety, is charged with the responsibility, among other things, of establishing a uniform standard of weights and measures and to provide penalties for the use of other than standard or legal weights and measures, as provided in the Weights and Measures Act, N.J.S.A. 51:1-1.

5. The Superintendent is charged with the responsibility of administering the Weights and Measures Act, N.J.S.A. 51:1-1 et seq. and all the regulations promulgated thereunder. Pursuant to N.J.S.A. 56:6-4-1, the Superintendent may recover penalties for violations of the Motor Fuels Act and the Motor Fuels Regulations.

6. By this action, the Attorney General, Director and Superintendent (collectively, “Plaintiffs”) seek injunctive and other relief for violations of the CFA, Motor Fuels Act and the Motor Fuels Regulations. Plaintiffs bring this action pursuant to their authority under the CFA and/or the Motor Fuels Act, specifically N.J.S.A. 56:8-8, 56:8-11, 56:8-13 and/or 56:6-4.1. Venue is proper in Middlesex County, pursuant to R. 4:3-2, because it is the county in which Defendant has conducted business.

7. On November 21, 2006, Defendant was established as a limited liability company in the State. Upon information and belief, at all relevant times, Defendant has maintained a business address of 163 Fayette Street, Perth Amboy, New Jersey 08861.

8. Upon information and belief, the registered agent for Defendant is Adnan Kiriscioglu, who maintains a mailing address of 8012 Tonnelle Avenue, North Bergen, New Jersey 07047.

9. John and Jane Does 1 through 10 are fictitious individuals meant to represent the owners, officers, directors, shareholders, founders, managers, agents, servants, employees, and/or representatives of Defendant who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

10. XYZ Corporations 1 through 10 are fictitious corporations meant to represent any additional corporations who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS:

A. Sandy and Executive Order No. 104 Declaring a State of Emergency

11. In late October 2012, Sandy was approaching New Jersey.

12. Tropical storms have the potential to cause severe weather conditions, including heavy rains, high winds, main stream and river flooding, and progressing runoff that may threaten homes and other structures, and endanger lives in the State.

13. On October 27, 2012 at approximately 11:30 a.m., due to the approach of Sandy, Governor Christie issued Executive Order No. 104, which immediately declared a State of Emergency in New Jersey ("State of Emergency").

14. Upon information and belief, on October 28, 2012, President Obama signed an emergency disaster declaration for New Jersey.

15. Upon information and belief, Governor Christie ordered the evacuation of all New Jersey barrier islands by 4:00 p.m. on October 28, 2012.

16. Upon information and belief, on October 29, 2012, Sandy made landfall in New Jersey and resulted in severe weather conditions of an unprecedented magnitude, including enormous storm surges, devastating winds and widespread flooding throughout the State.

17. Upon information and belief, while moving ashore at Atlantic City, Sandy brought winds in excess of 80 miles per hour, and heavy rainfall that reached almost 12 inches.

18. Sandy resulted in severe wind and water damage, among other things, to the New Jersey shoreline, homes and businesses. Residents were forced to evacuate their homes which, in many instances, were completely destroyed.

19. Sandy produced winds that toppled trees and downed power lines throughout New Jersey, causing widespread power outages that affected at least 2.4 million households and countless businesses.

20. Upon information and belief, at least twenty-three (23) New Jersey residents have died as a result of Sandy.

21. As a result of the power outages caused by Sandy, many New Jersey residents resorted to the use of generators that were powered by gasoline.

22. The widespread flooding and power outages forced the closure of motor fuel retailers in the State as well as prevented fuel deliveries to many of those retailers as well as retailers who otherwise could have been open for business. Such resulted in widespread and lingering shortages of motor fuel.

23. This situation left many New Jersey residents without an available source of motor fuel not only for transportation but also for other essential services, such as the operation of generators. Those New Jersey residents who were fortunate enough to find a retailer that was open and had fuel were forced to wait in line for several hours in lines that stretched for blocks.

24. On November 5, 2012, Governor Christie issued Executive Order No. 108 which declared that a limited state of energy emergency with regard to the supply of motor fuel existed in Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Monmouth, Passaic, Somerset, Sussex, Union and Warren Counties and implemented an odd-even gas rationing system.

25. Upon information and belief, deliveries of motor fuel to retailers in the State did not resume until several days following Sandy.

26. Upon information and belief, there was no appreciable increase in the cost of motor fuel delivered to retailers in the State following Sandy.

B. Defendant's Business Generally

27. Upon information and belief, at all relevant times, Defendant has been engaged in the advertisement, offering for sale and/or sale of motor fuel to consumers.

28. At all relevant times, Defendant received deliveries of motor fuel, specifically gasoline and diesel fuel, from suppliers.

29. At all relevant times, Defendant advertised, offered for sale and/or sold motor fuel at a higher price for credit card purchases compared to cash purchases.

C. Defendant's Excessive Prices For Regular Gasoline

30. At all relevant times, Defendant received from its suppliers and advertised, offered for sale and/or sold to consumers unleaded 87 octane gasoline, commonly known as "regular gasoline" ("Regular Gasoline").

31. On October 31, 2012, after the State of Emergency had been declared and Sandy made landfall in New Jersey, Defendant's price for Regular Gasoline purchased with cash rose from \$3.899 per gallon to \$4.399 per gallon, which is an increase of 13%.

32. From November 1, 2012 to November 5, 2012, the Division of Consumer Affairs received approximately nineteen (19) consumer complaints regarding the prices charged by Defendant. Eight (8) of these consumers specifically stated that they recalled that Defendant was charging prices between \$3.31 to \$3.60 per gallon for Regular Gasoline immediately prior to the State of Emergency. As stated below, Defendant has refused to produce documents in response to a lawful subpoena seeking documents which reflect the prices charged by Defendant immediately prior to the State of Emergency. However, assuming the consumers' recollections are accurate, Defendant raised the price per gallon for Regular Gasoline following the State of Emergency between 22% and 33%. Upon information and belief, the documents which would establish the exact amount of the increase are in Defendant's possession.

D. Defendant's Excessive Prices For Premium Gasoline

33. At all relevant times, Defendant received from its suppliers and advertised, offered for sale and/or sold to consumers unleaded 93 octane gasoline, commonly known as “super gasoline” or “premium gasoline” (“Premium Gasoline”).

34. From October 31, 2012 to November 1, 2012, after the State of Emergency had been declared and Sandy made landfall in New Jersey, Defendant’s markup for Premium Gasoline purchased with cash rose from \$4.099 to \$4.599, which is an increase of 12%, and Defendant’s markup for Premium Gasoline purchased with a credit card rose from \$4.179 to \$4.679, which is an increase of 12%.

E. Defendant’s Excessive Prices For Plus Gasoline

35. At all relevant times, Defendant advertised, offered for sale and/or sold to consumers unleaded 89 octane gasoline, commonly known as “plus gasoline” (“Plus Gasoline”).

36. From October 31, 2012 to November 1, 2012, after the State of Emergency had been declared and Sandy made landfall in New Jersey, Defendant’s markup for Plus Gasoline purchased with cash rose from \$3.999 to \$4.499, which is an increase of 13%.

37. On November 1, 2012, the Director served Defendant with a subpoena demanding the production of documents reflecting any increased costs that would justify these price increases. Notwithstanding its having been given the opportunity to do so, Defendant has not produced any documents justifying these increases

F. Defendants Failure to Provide Access to Books and Records

38. On November 1, 2012, the Director served Defendant with a subpoena demanding the production of documents reflecting any increased costs that would justify these price

increases. Notwithstanding its having been given the opportunity to do so, Defendant has not produced any documents justifying these increases.

39. On or about November 2, 2012, an inspector from the Office of Weights and Measures requested access to Defendant's books and records.

40. Defendant failed to provide the inspector access to all the requested records.

COUNT I

VIOLATION OF THE CFA (N.J.S.A. 56:8-109) BY DEFENDANT (EXCESSIVE PRICES DURING EMERGENCIES)

41. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 40 as if more fully set forth herein.

42. The CFA defines "merchandise" as including "any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale." N.J.S.A. 56:8-1(c).

43. At all relevant times, Defendant has been engaged in the advertisement, offering for sale and/or sale of merchandise within the meaning of N.J.S.A. 56:8-1(c), specifically motor fuel.

44. The CFA states:

It shall be an unlawful practice for any person to sell or offer to sell during a state of emergency or within 30 days of the termination of a state of emergency, in the area for which the state of emergency has been declared, any merchandise which is consumed or used as a direct result of an emergency or which is consumed or used to preserve, protect, or sustain the life, health, safety or comfort of person or their property for a price that constitutes an excessive price increase.

[N.J.S.A. 56:8-109.]

45. At all relevant times, Defendant has been engaged in the advertisement, offering for sale and/or sale of merchandise consumed or used as a direct result of an emergency and/or which is consumed or used to preserve, protect, or sustain the life, health, safety or comfort of person or their property within the meaning of N.J.S.A. 56:8-109, specifically motor fuel.

46. An "excessive price increase" means:

A price that is excessive as compared to the price at which the consumer good or service was sold or offered for sale by the seller in the usual course of business immediately prior to the state of emergency. A price shall be deemed excessive if:

(1) The price exceeds by more than 10 percent the price at which the good or service was sold or offered for sale by the seller in the usual course of business immediately prior to the state of emergency, unless the price charged by the seller is attributable to additional costs imposed by the seller's supplier or other costs of providing the good or service during the state of emergency.

(2) In situations where the increase in price is attributable to additional costs imposed by the seller's supplier or additional costs of providing the good or services during the state of emergency, the price presents an increase of more than 10 percent in the amount of markup from cost, compared to the markup customarily applied by the seller in the usual course of business immediately prior to the state of emergency.

[N.J.S.A. 56:8-108]

47. On October 31, 2012 and November 1, 2012, after Sandy made landfall in New Jersey and within thirty (30) days after the State of Emergency had been declared, Defendant raised its prices for Regular Gasoline, Plus Gasoline and Premium Gasoline more than 10 percent during the State of Emergency, which constitutes excessive price increases.

48. By offering for sale and/or selling motor fuel, specifically Regular Gasoline, Plus Gasoline and Premium Gasoline on October 31, 2012 at prices constituting an excessive price increase during the State of Emergency, Defendant has engaged in unlawful practices in violation of the CFA, specifically N.J.S.A. 56:8-109.

49. Each instance of Defendant offering for sale and/or selling motor fuel at a price constituting an excessive price increase constitutes a separate violation of the CFA, N.J.S.A. 56:8-109.

COUNT II

VIOLATION OF THE CFA BY DEFENDANT (UNCONSCIONABLE COMMERCIAL PRACTICES)

50. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 49 as if more fully set forth herein.

51. The CFA prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby...

[N.J.S.A. 56:8-2.]

52. In the operation of its business, Defendant has engaged in the use of unconscionable commercial practices.

53. Defendant has engaged in unconscionable commercial practices and deception including, but not limited to, the following:

- a. Advertising, offering for sale and/or selling motor fuel, specifically Regular Gasoline, Plus Gasoline and Premium Gasoline on October 31, 2012 and December 1, 2012 at prices constituting an excessive price increase during the State of Emergency.

54. Each unconscionable commercial practice by Defendant constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT III

VIOLATIONS OF THE MOTOR FUELS ACT AND MOTOR FUELS REGULATIONS BY DEFENDANT (FAILURE TO PROVIDE ACCESS TO BOOKS AND RECORDS)

55. Plaintiffs repeat and rellaege the allegations contained in paragraphs 1 through 54 above as if more fully set forth herein.

56. The Motor Fuels Act governs the sale of motor fuels by retail dealers within the State.

57. To the extent it is engaged in the operation of service stations in the State, Defendant is a "retail dealer" within the definition of N.J.S.A. 56:6-1.

58. The Motor Fuels Act, N.J.S.A. 56:6-7, further provides that retail dealers provide access to their books and records as follows:

For the purpose of administering this act, the commissioner whenever he deems it expedient, may make or cause to be made by any employees of the State Tax Department engaged in the administration of this act as an audit, examination or investigation of the books, records, papers, vouchers, accounts and documents of any retail dealer. It shall be the duty of every retail dealer, his agents or employees, to exhibit to the commissioner or to any such employee of the State Tax Department, all such books, records, papers, vouchers, accounts and documents to the retail dealer and to facilitate any such audit, examination or investigation so far as it may be in his or their power to do so.

56. The Motor Fuels Regulations, N.J.A.C. 18:19-5.2, similarly requires that retail dealers make available their books and records and that they facilitate any such audit, examination or investigation.

57. On or about November 2, 2012, Defendant failed to provide an inspector of the Office of Weights and Measures with access to all of their books and records.

58. Defendant's conduct constitutes violations of the Motor Fuels Act, N.J.S.A. 56:6-7 and the Motor Fuels Regulations, N.J.A.C. 18:19-5.2.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment against Defendant:

- (a) Finding that the acts of Defendant constitute multiple violations of the CFA, the Motor Fuels Act and the Motor Fuels Regulations;
- (b) Permanently enjoining Defendant, along with its agents, employees, representatives, independent contractors, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under his control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, the Motor Fuels Act and the Motor Fuels Regulations;
- (c) Directing Defendant to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any practice alleged herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (d) Directing Defendant to pay the maximum statutory civil penalties for each violation of the CFA, in accordance with N.J.S.A. 56:8-13, the Motor Fuels Act, in accordance with N.J.S.A. 56:6-3 and the Motor Fuels Regulations, N.J.A.C. 18:19-3.1;
- (e) Directing Defendant to pay costs and fees, including attorneys' fees, for the use of the State, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (f) Granting such other relief as the interests of justice may require.

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Jeffrey Koziar
Jeffrey Koziar
Deputy Attorney General

Dated: November 8, 2012
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the CFA, is not the subject of any other action pending in any other court of this State. I further certify, to the best of my information and belief, that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party that should be joined in this action at this time.

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 

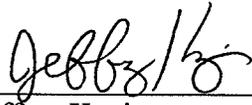
Jeffrey Koziar
Deputy Attorney General

Dated: November 8, 2012
Newark, New Jersey

RULE 1:38-7(c) CERTIFICATION OF COMPLIANCE

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Jeffrey Koziar
Deputy Attorney General

Dated: November 8, 2012
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Deputy Attorney General Jeffrey Koziar is hereby designated as trial counsel for the Plaintiffs in this action.

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Jeffrey Koziar
Deputy Attorney General

Dated: November 8, 2012
Newark, New Jersey