

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 12-521B

COMMONWEALTH OF MASSACHUSETTS

Plaintiff,

v.

BURGESS AND CAPEWAY PEST CONTROL,

and

EDWARD S. BURGESS,

Defendants.

**FINAL JUDGMENT AND CONSENT DECREE AS TO DEFENDANTS
BURGESS AND CAPEWAY PEST CONTROL AND EDWARD S. BURGESS**

Contemporaneously with the filing of this Final Judgment and Consent Decree, the Commonwealth of Massachusetts, by and through its Attorney General, Martha Coakley, filed a Complaint alleging that the Defendants Burgess and Capeway Pest Control and Edward S. Burgess violated the Massachusetts Consumer Protection Act, G.L. c. 93A §§ 2(a) and 4, by contacting officials in Plymouth County government, obtaining material non-public information on competing quotes from other companies for the provision of pest control services, and submitting a revised quote for such services to Plymouth County based thereon.

A TRUE COPY ATTEST

[Signature]
Clerk of Courts

It appearing to the Court that the Defendants have consented, by the attached Consent, to the entry of this Final Judgment and Consent Decree; that the Defendants have waived all rights of appeal without trial or adjudication of any issue of fact or law in this action; and that the Court has subject matter and personal jurisdiction over the parties;

Now, with the consent of the parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

I. JURISDICTION

- A. This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states claims upon which relief may be granted against the Defendants under M.G.L. c. 93A, § 2.
- B. The Attorney General has the authority to bring this action pursuant to M.G.L. c. 93A § 4.
- C. Venue is proper in Plymouth County Superior Court.

II. DEFINITIONS

- A. "Burgess Pest Control" means Burgess and Capeway Pest Control, a privately held company with a principal place of business located at 240 West Center Street, Bridgewater, MA 02379, and any and all of Burgess Pest Control's divisions, subsidiaries, partnerships, joint ventures, successors, assigns, directors, officers, employees, agents, and representatives.
- B. "Burgess" means Edward S. Burgess, an individual with a principal place of residence at 89 Fairway Drive, Halifax, MA, 02338, and who owns and operates Burgess Pest Control.

- C. "Defendants" means Burgess Pest Control and Burgess.
- D. "Complaint" refers to the complaint by the Commonwealth of Massachusetts filed contemporaneously with this Final Judgment and Consent Decree.
- E. "Government Entity" or "Government Entities" refer to any state or local government agency of or within the Commonwealth of Massachusetts.

III. ORDER

- A. From the date of entry of this Final Judgment and Consent Decree, Defendants, directly or indirectly, shall not:
 - a. Solicit, from persons administering a bidding or quoting process on behalf of any Government Entity, material non-public knowledge regarding the bids or quotes submitted by other companies to the Government Entity.
 - b. Submit bids or quotes to any Government Entity, based upon material non-public knowledge regarding the bids or quotes submitted by other companies to the Government Entity and received from persons administering a bidding or quoting process on behalf of Government Entities.

IV. PAYMENT

- A. In complete settlement of Plaintiff's claims set forth in the Complaint, Defendants shall pay to Plaintiff a sum total of seven thousand five hundred dollars (\$7,500), consisting of a \$5,000 penalty and \$2,500 as partial reimbursement of the cost of its investigation and reasonable attorneys fees.
- B. Defendants shall pay \$5,000 via certified check or money order within ten (10) business days after Defendants receive notice of the Court's entry of this Final

Judgment and Consent Decree. Defendants shall pay the remaining \$2,500 via certified check or money order within sixty (60) days following payment of the penalty. All such certified checks or money orders shall be delivered to Assistant Attorney General Michael Franck at the Massachusetts Office of the Attorney General, and shall be made payable to "The Commonwealth of Massachusetts."

V. RELEASE AND LIABILITY

- A. Compliance with this Final Judgment and Consent Decree resolves and settles the Plaintiff's claims that were alleged in the Complaint.
- B. Defendants' agreement to the provisions of this Final Judgment and Consent Decree does not constitute an admission of liability or fact related to any of the violations alleged in the Complaint.

VI. APPLICABILITY

- A. The provisions of this Final Judgment and Consent Decree shall apply to Defendants, their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents, and employees.
- B. To the extent that it is within its control, Burgess Pest Control shall require, as a condition of the sale or other disposition of the company or substantially all of their assets, that the purchaser agrees to be bound by the provisions of this Final Judgment and Consent Decree.
- C. Plaintiff and Defendants agree and represent that any persons signing this Final Judgment and Consent Decree are authorized by proper authorities to execute it on their behalf.

VII. COMPLIANCE WITH MASSACHUSETTS AND FEDERAL LAWS

- A. Nothing in this Final Judgment and Consent Decree shall relieve Defendants of their obligations to comply with applicable Massachusetts and Federal statutes and regulations.

VIII. ENFORCEMENT

- A. Jurisdiction is retained by this Court during the term of this Final Judgment and Consent Decree for the purpose of enabling any party to this Final Judgment and Consent Decree to apply at any time for such further orders and directions as may be necessary or appropriate, including orders and directions for the construction of any of the provisions of this Final Judgment and Consent Decree, for the enforcement of compliance with this Final Judgment and Consent Decree, and for the punishment of violations hereof, or for modification.
- B. Defendants shall notify the Attorney General in writing at least thirty (30) days prior to any proposed change or event that may affect their compliance obligations under this Final Judgment and Consent Decree, such as dissolution, assignment, or sale resulting in emergence of a successor entity. A copy of this Final Judgment and Consent Decree shall be given to any successor entity.

IX. COMPLETE AGREEMENT OF THE PARTIES

- A. This Final Judgment and Consent Decree contains the complete agreement between the Parties. No promises, representations, or warranties other than those set forth in this Final Judgment and Consent Decree have been made by the Plaintiff or Defendants. This Final Judgment and Consent Decree supersedes all

prior communications, discussions, or understandings, if any, of the Parties, whether oral or in writing.

X. WAIVER OF APPEAL OF FINDINGS AND RULINGS

- A. Defendants waive all rights of appeal they have, and also waive the requirements of Rule 52 of the Massachusetts Rules of Civil Procedure.

XI. NOTIFICATIONS

- A. Any notices or communications required to be transmitted between Defendants and the Commonwealth pursuant to this Final Judgment and Consent Decree shall be provided in writing by first class mail to the parties or their successors as follows:

To the Attorney General:

Michael P. Franck
Assistant Attorney General
Antitrust Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 963-2200

To Defendants:

John F. Creedon
Silverstein & Creedon
71 Legion Parkway, 3rd Floor
Brockton, MA 02301
(508) 587-0121

XII. CONTINUING JURISDICTION

- A. The Superior Court of the Commonwealth retains jurisdiction of this action for the purpose of carrying out or modifying the terms of this Final Judgment and Consent Decree, or granting such further relief as the Court deems just and

proper, and the provisions of and enforcement of this Final Judgment and Consent Decree shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

XIII. MISCELLANEOUS

- A. The provisions of this Final Judgment and Consent Decree shall be severable and should any provision be declared by a court of competent jurisdiction to be unenforceable, the other provisions of this Final Judgment and Consent Decree shall remain in full force and effect.
- B. Under no circumstances shall this Final Judgment and Consent Decree or the name of Plaintiff or any of Plaintiff's employees be used by Defendants as an endorsement or approval of Defendants' acts, practices, or conduct of business.
- C. This Final Judgment and Consent Decree may not be changed, altered, or modified, except by further Order of the Court.

XIV. EXPIRATION OF FINAL JUDGMENT AND CONSENT DECREE

- A. Unless this Court grants an extension, this Final Judgment and Consent Decree shall expire ten (10) years from the date of its entry.

APPROVED:

PLAINTIFF, THE COMMONWEALTH
OF MASSACHUSETTS, by
MARTHA COAKLEY
Attorney General of Massachusetts

By: Michael Franck
Dated: 4-26-2012
Michael P. Franck, BBO No. 668132
Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 963-2200

DEFENDANTS, Burgess and
Capeway Pest Control
Edward S. Burgess

By: John F. Creedon
Dated: 3-28-2012
John F. Creedon, BBO No. 104780
Silverstein & Creedon
Counsel for Defendants

IT IS SO ORDERED AND ENTERED:

HON. Frank M. Dwyer
Justice of the Superior Court

Dated: 4.27.12