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COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

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

COMMONWEALTH OF MASSACHUSETTS

Plaintiff,

v.

TIMOTHY MCMULLEN,

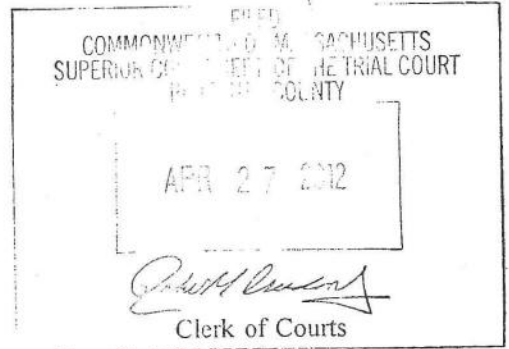
BURGESS AND CAPEWAY PEST CONTROL,

and

EDWARD S. BURGESS,

Defendants.

COMPLAINT



INTRODUCTION

1. This is an action by the Commonwealth of Massachusetts for injunctive and other relief brought by the Attorney General pursuant to Massachusetts General Laws, c. 93A, § 4 for the violation of G.L. c. 93A, § 2, the Massachusetts Consumer Protection Act. Defendants engaged in unfair methods of competition and unfair or deceptive acts or practices by attempting to rig or subvert a G.L. c. 30B § 4 public quoting process.

JURISDICTION

2. This court has jurisdiction over the subject matter and defendants of this action pursuant to G.L. c. 93A, § 4 and G.L. c. 223A, §§ 2, 3(a) and (b). In accordance with G.L. c. 93A, § 4 and G.L. c. 223, § 5, venue is proper in this Court.

THE PARTIES

3. The plaintiff is the Commonwealth of Massachusetts, represented by the Attorney General who brings this action in the public interest pursuant to G.L. c. 93A, §4 and G.L. c. 12, § 10.

4. Defendant Burgess and Capeway Pest Control (“Burgess Pest Control”) is a privately held for-profit company that sells pest control services. Burgess Pest Control has a principal place of business located at 240 West Center Street, Bridgewater, MA 02379.

5. Defendant Edward S. Burgess (“Burgess”) is an individual who owns and operates Burgess Pest Control. Burgess has a principal place of residence at 89 Fairway Drive, Halifax, MA, 02338.

6. Defendant Timothy McMullen (“McMullen”) is an individual with a principal place of residence at 28 Benjamins Path, Pembroke, and who was a Plymouth County Commissioner during the events at issue in the Complaint.

FACTS

7. Burgess Pest Control offers pest control services to private and public clients in Massachusetts. Burgess Pest Control had a contract with Plymouth County for many years up to and until 2010.

8. In January 2010, Plymouth County decided to put its pest control contract, then held by Burgess Pest Control, out for a procurement process. The relevant contract is for the provision of pest control services to seven buildings managed by Plymouth County.

9. Given the annual value of the pest control contract, Plymouth County was required to follow, and did follow, the procurement processes mandated by G.L. c. 30B § 4. Under G.L. c. 30B § 4, Plymouth County was required to obtain at least three quotations and to award the contract to whichever company supplied the service at the lowest quotation.

10. A Plymouth County employee contacted Burgess Pest Control, along with other companies that provide pest control services, and requested a quotation. Shortly thereafter, Plymouth County received a faxed quote from Burgess Pest Control.

11. In January - February 2010, Plymouth County received three quotations for the pest control contract. Burgess Pest Control's quote was not the low quotation. Burgess Pest Control's quotation proposed \$90 per month for each of four buildings, and \$45 per month for each of three other buildings.

12. The low quotation was provided by Griggs & Browne, a competing pest control company. Griggs & Browne's quotation proposed \$45 per month for all seven Plymouth County buildings.

13. The Plymouth County Commissioners were scheduled to vote on the Pest Control contract during a meeting on February 24, 2010. During the days leading up to that meeting, Burgess spoke on multiple occasions with then Plymouth County Commissioner Timothy McMullen via telephone.

14. Importantly, during at least one of their phone conversations Commissioner McMullen informed Burgess that Burgess Pest Control did not submit the lowest quotation. This constituted material non-public inside information. No other competitors for the Plymouth County pest control contract were given similar inside information.

15. Utilizing this material non-public information, Burgess and Burgess Pest Control submitted a new quotation to Plymouth County. This new quote, for \$45 per month for all seven buildings, exactly matched the earlier, low quotation submitted by Griggs & Browne. G.L. c. 30B § 4(b) mandates that the contract go to the company providing the necessary service “at the lowest quotation.” Following its non-lowest quotation, Burgess Pest Control was not eligible to win the contract. Burgess and Burgess Pest Control attempted to rig or subvert the Plymouth County Pest Control procurement process by submitting this revised bid based on material non-public inside information.

16. The Plymouth County Commissioners postponed their deliberation on the pest control contract from their February 24, 2010 meeting to a subsequent meeting on March 16, 2010. In the interim, and during the March 16th meeting, questions were raised about Burgess Pest Control’s revised bid and the inside information that it was based upon. Due in part to these questions, the contract was ultimately awarded to Griggs & Browne.

CAUSE OF ACTION

17. The Commonwealth realleges paragraphs 1 through 16 of this Complaint, and incorporates them herein.

18. Defendants engaged in unfair methods of competition and unfair or deceptive acts or practices in trade or commerce, in violation of G.L. c. 93A, § 2(a) by attempting to rig or subvert Plymouth County's G.L. c. 30B § 4 procurement process in favor of Burgess Pest Control. Defendants Burgess Pest Control and Edward Burgess obtained, and Defendant Timothy McMullen provided, material non-public inside information regarding the competing pest control quotations. Defendants Burgess Pest Control and Edward Burgess then submitted a revised quotation based on this material non-public inside information. In so doing the Defendants attempted to make Burgess Pest Control the winning company for the Plymouth County contract despite the fact that Burgess Pest Control had not submitted the lowest quotation under G.L. c. 30B § 4. These actions subverted the competitive bidding process required by G.L. c. 30B § 4.

19. Defendants knew or should have known that their actions were in violation of G.L. c. 93A.

20. More than five days prior to the initiation of this action, the Commonwealth served a letter on Defendant Timothy McMullen at his principal place of business, informing him that the Attorney General intended to file suit, as required by c. 93A, § 4.

21. Defendants Burgess Pest Control and Edward Burgess have waived service of a letter from the Commonwealth more than five days prior to the initiation of this action informing them that the Attorney General intended to file suit pursuant to c. 93A, § 4.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth requests that this Honorable Court:

- a) Grant permanent injunctive relief prohibiting the Defendants, their agents, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in unfair or deceptive conduct;
- b) Order Defendants Burgess Pest Control and Edward Burgess to pay to the Commonwealth of Massachusetts, jointly or severally, civil penalties in the amount of \$5,000 for each violation of c. 93A found;
- c) Order Defendant McMullen to pay to the Commonwealth of Massachusetts Civil penalties in the amount of \$5,000 for each violation of c. 93A found;
- d) Order the Defendants to pay the Commonwealth the reasonable costs of its investigation and litigation of this matter, including reasonable attorney's fees, and
- e) Grant such other relief as the court deems equitable and just.

Respectfully Submitted,

COMMONWEALTH OF MASSACHUSETTS

MARTHA COAKLEY
ATTORNEY GENERAL

By: Michael Franck
Michael Franck, BBO #668132
Assistant Attorney General
One Ashburton Place, 19th Fl.
Boston, MA 02108
(617) 727-2200

April 27, 2012

CIVIL ACTION COVER SHEET	TRIAL COURT OF MASSACHUSETTS SUPERIOR COURT DEPARTMENT	DOCKET NO. <u>12-521B</u>
	COUNTY <u>PLYMOUTH</u>	
Commonwealth of PLAINTIFF(S) Massachusetts	OF	DEFENDANT(S) Timothy McMullen Burgess and Capeway Pest Control Edward S. Burgess

Type Plaintiff's Attorney name, Address, City/State/Zip Phone Number and BBO# Type Defendant's Attorney Name, Address, City/State/Zip Phone Number (If Known)

Michael Franck, AAG, Office of the Attorney General
1 Ashburton Place, 19th Floor, Boston, MA 02108
617-963-2613
BBO #: 668132

John F. Creedon Silverstein & Creedon 71 Legion Parkway, 3rd Floor Brockton, MA 02301 (508) 587-0121	Elizabeth M. Clague Attorney At Law 142 Main St., Suite 304 Brockton, MA 02301 (508) 587-1191
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CODE NO.	TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)	IS THIS A JURY CASE?
	TYPE OF ACTION (specify) TRACK	
	E99 Misc Other (specify) - X track <i>Complaint and Consent Decrees pursuant to G.L.c. 93A § 2</i>	<input type="radio"/> Yes <input checked="" type="radio"/> No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS
(Attach additional sheets as necessary)

A. Documented medical expenses to date:	
1. Total hospital expenses	\$ _____
2. Total doctor expenses	\$ _____
3. Total chiropractic expenses	\$ _____
4. Total physical therapy expenses	\$ _____
5. Total other expenses (describe)	\$ _____
Subtotal	\$ _____
B. Documented lost wages and compensation to date	\$ _____
C. Documented property damages to date	\$ _____
D. Reasonably anticipated future medical expenses	\$ _____
E. Reasonably anticipated lost wages and compensation to date	\$ _____
F. Other documented items of damages (describe)	\$ _____
G. Brief description of plaintiff's injury, including nature and extent of injury (describe)	
	Total \$ <u>N/A</u>

CONTRACT CLAIMS
(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL \$ N/A

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record Michael Franck Date: April 27th, 2012

A.O.S.C. 3-2007

CIVIL ACTION COVER SHEET INSTRUCTIONS
SELECT CATEGORY THAT BEST DESCRIBES YOUR CASE

*** CONTRACTS**

*** REAL PROPERTY**

MISCELLANEOUS

A01 Services, Labor and Materials (F)	C01 Land Taking (eminent domain) (F)	E02 Appeal from Administrative Agency G.L. c. 30A (X)
A02 Goods Sold and Delivered (F)	C02 Zoning Appeal, G.L. c.40A (F)	E03 Claims against Commonwealth or Municipality (A)
A03 Commercial Paper (F)	C03 Dispute concerning title (F)	E05 Confirmation of Arbitration Awards (X)
A08 Sale or Lease of Real Estate (F)	C04 Foreclosure of mortgage (X)	E07 G.L. c.112, s.12S (Mary Moe) (X)
A12 Construction Dispute (A)	C05 Condominium Lien & Charges (X)	E08 Appointment of Receiver (X)
A99 Other (Specify) (F)	C99 Other (Specify) (F)	E09 General Contractor bond, G.L. c. 149, ss. 29, 29a (A)
E03 Claims against Commonwealth or Municipality (A)	E03 Claims against Commonwealth or Municipality (A)	E11 Worker's Compensation (X)
	EQUITABLE REMEDIES	E12 G.L.c.123A, s.12 (SDP Commitment) (X)
*TORT	D01 Specific Performance of Contract (A)	E14 G.L. c. 123A, s. 9 (SDP Petition)
B03 Motor Vehicle Negligence personal injury/property damage (F)	D02 Reach and Apply (F)	E15 Abuse Petition, G. L. c. 209A (X)
B04 Other Negligence- personal injury/property damage (F)	D06 Contribution or Indemnification (F)	E16 Auto Surcharge Appeal (X)
B05 Products Liability (A)	D07 Imposition of a Trust (A)	E17 Civil Rights Act, G.L. c.12, s. 11H (A)
B06 Malpractice-Medical (A)	D08 Minority Stockholder's Suit (A)	E18 Foreign Discovery Proceeding (X)
B07 Malpractice-Other (Specify) (A)	D10 Accounting (A)	E19 Sex Offender Registry G.L. c. 178M, s. 6 (X)
B08 Wrongful Death, G.L. c.229, s.2A (A)	D12 Dissolution of Partnership (F)	E25 Plural Registry (Asbestos cases)
B15 Defamation (Libel-Slander) (A)	D13 Declaratory Judgment G.L. c. 231A (A)	E95 **Forfeiture G.L. c. 94C, s. 47 (F)
B19 Asbestos (A)	D99 Other (Specify) (F)	E96 Prisoner Cases (F)
B20 Personal Injury- slip & fall (F)		E97 Prisoner Habeas Corpus (X)
B21 Environmental (F)		E99 Other (Specify) (X)
B22 Employment Discrimination (F)		
B99 Other (Specify) (F)		
E03 Claims against Commonwealth (A)		

*Claims against the Commonwealth or a municipality are type E03, Average Track, cases.

**Claims filed by the Commonwealth pursuant to G L c 94C, s 47 Forfeiture cases are type E95, Fast track.

TRANSFER YOUR SELECTION TO THE FACE SHEET.

EXAMPLE:

CODE NO.	TYPE OF ACTION (SPECIFY)	TRACK	IS THIS A JURY CASE?
B03	Motor Vehicle Negligence-Personal Injury	(F)	[X] Yes []

SUPERIOR COURT RULE 29

DUTY OF THE PLAINTIFF. The plaintiff or his/her counsel shall set forth, on the face sheet (or attach additional sheets as necessary), a statement specifying in full and itemized detail the facts upon which the plaintiff then relies as constituting money damages. A copy of such civil action cover sheet, including the statement as to the damages, shall be served on the defendant together with the complaint. If a statement of money damages, where appropriate is not filed, the Clerk-Magistrate shall transfer the action as provided in Rule 29(5)(C).

DUTY OF THE DEFENDANT. Should the defendant believe the statement of damages filed by the plaintiff in any respect inadequate, he or his counsel may file with the answer a statement specifying in reasonable detail the potential damages which may result should the plaintiff prevail. Such statement, if any, shall be served with the answer.

A CIVIL ACTION COVER SHEET MUST BE FILED WITH EACH COMPLAINT.

**FAILURE TO COMPLETE THIS COVER SHEET THOROUGHLY AND ACCURATELY
MAY RESULT IN DISMISSAL OF THIS ACTION.**