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OCT 5 2009

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Division of Consumer Affairs

By: Jah-Juin Ho
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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of:

:
: Administrative Action
:

ANIMAL AND THINGS, INC.

:
: **CONSENT ORDER**
:

Respondent.

:

WHEREAS this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), as an investigation to ascertain whether violations of the of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), and the Regulations Concerning the Sale of Animals, N.J.A.C. 13:45A-12.1 et seq. (“Pet Regulations”), have been or are being committed by Animals and Things, Inc. (“Respondent”), with a business location of 1040 Route 1 North Woodbridge, NJ 07095(hereinafter referred to as the “Investigation”);

WHEREAS the Division and Respondent (collectively, the “Parties”) have reached an amicable agreement resolving the issues in controversy and concluding this matter without the need for further action, and the Respondent having voluntarily cooperated with the Division’s Investigation and consented to the entry of the within order (“Consent Order”) without having admitted any violation of law or finding of fact, and for good cause shown:

IT IS on this 5th day of October, 2009 **ORDERED** and **AGREED** as follows:

1. EFFECTIVE DATE

1.1 This Consent Order is effective on the date that it is filed with the Division (“Effective Date”).

2. DEFINITIONS

As used in this Consent Order, the following words or terms shall have the following meanings, which meanings shall apply wherever the words appear in this Consent Order:

- 2.1 “Animal” shall be defined in accordance with N.J.A.C. 13:45A-12.1.
- 2.2 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.
- 2.3 “Animal History & Health Certificate” shall mean the certificate provided to the Consumer by the Pet Dealer prior to the Sale of an Animal, as required by N.J.A.C. 13:45A-12.2(a)(1)(i-ix).
- 2.4 “Consumer” shall be defined in accordance with N.J.A.C. 13:45A-12.1.
- 2.5 “Division” shall mean the New Jersey Division of Consumer Affairs.
- 2.6 “Notification of Consumer Rights Form” shall refer to the notification form referenced in N.J.A.C. 13:45A-12.3(a)(10).
- 2.7 “Person(s)” shall be defined in accordance with N.J.S.A. 56:8-1(d).
- 2.8 “Pet Dealer” shall be defined in accordance with N.J.A.C. 13:45A-12.1.
- 2.9 “Represent” means to state or imply through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages, or any other manner

or means by which meaning might be conveyed. This definition applies to other forms of the word “Represent” including, without limitation, “Representation.”

2.10 “Sale” shall be defined in N.J.S.A. 56:8-1(e).

2.11 “State” shall refer to the State of New Jersey.

2.12 “Veterinarian” means a veterinarian licensed to practice in the State.

3. INJUNCTIVE RELIEF AND BUSINESS PRACTICES

3.1 Respondent shall not engage in any unfair and/or deceptive acts or practices in the conduct of its business in the State and shall comply with such State and/or Federal laws, rules and regulations as now constituted or as may hereinafter be amended, which are applicable to the conduct of its business including, but not limited to, the CFA and the Pet Regulations.

3.2 Prior to the Sale of an Animal to a Consumer, Respondent shall provide to the Consumer an Animal History and Health Certificate signed by the Pet Dealer, which shall contain the information set forth in N.J.A.C. 13:45A-12.2(a)(1)(vii - viii).

3.3 Prior to the delivery of an Animal, Respondents shall give to the Consumer a Notification of Consumer Rights Form. The language in the Notification of Consumer Rights Form shall not deviate from the language set forth in N.J.S.A. 56:8-95(f) and N.J.A.C. 13:45A-12.3(a)(4).

4. RESTITUTION

4.1 On or before the Effective Date, Respondent shall provide to the Division restitution for Consumer Maribel Hernandez (“Consumer Hernandez”), which the Division shall forward to Consumer Hernandez. Payment to Consumer Hernandez shall be in the amount of Four Hundred and 00/100 Dollars (\$400.00), payable to “Maribel Hernandez.” Respondent shall make such

restitution payments by means of a certified check, attorney trust account check, or other guaranteed funds.

5. SETTLEMENT PAYMENT

5.1 The Parties have agreed to a settlement of the Investigation in the amount of One Thousand Fifty-One and 72/100 Dollars (\$1,051.72) (“Settlement Payment”).

5.2 The Settlement Payment consists of a civil penalty of Five Hundred and 00/100 Dollars (\$500.00), pursuant to N.J.S.A. 56:8-13, and Five Hundred Fifty-One and 72/100 Dollars (\$551.72), as reimbursement of the Division’s attorneys’ fees and investigative costs, pursuant to N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19.

5.3 The Settlement Payment shall be made on or before the Effective Date by certified check, attorney trust account check, or other guaranteed funds made payable to the “New Jersey Division of Consumer Affairs” and forwarded to the undersigned:

Attention: Supervisor, Case Management Tracking
New Jersey Department of Law and Public Safety
Division of Consumer Affairs
124 Halsey Street - 7th Floor
P.O. Box 45025
Newark, New Jersey 07101

5.4 Upon making the Settlement Payment in the manner referenced in Section 5.3, Respondent shall immediately be fully divested of any interest in, or ownership of, the moneys paid. All interest in the moneys, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

6. GENERAL PROVISIONS

6.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Order.

6.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State.

6.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

6.4 This Consent Order contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Parties.

6.5 Except as otherwise explicitly provided in this Consent Order, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

6.6 If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

6.7 This Consent Order shall be binding upon Respondent as well as its owners, officers, directors, managers, agents, employees, representatives, successors and assigns, and any entity or device through which it may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct its business.

6.8 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order avoid compliance with this Consent Order.

6.9 This Consent Order is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall constitute or be construed as: (a) an approval, sanction or authorization by the Division or any other governmental unit of the State of any act or practice of Respondent; or (b) an admission by Respondent that any of its acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CFA and/or Pet Regulations. This Consent Order is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in: (a) an action or proceeding by one of the Parties to enforce, rescind or otherwise implement any or all of the terms herein; or (b) an action or proceeding involving a Released Claim (as defined in Section 8) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

6.10 Unless otherwise prohibited by law, any signatures by the Parties required for filing of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

7. REPRESENTATIONS AND WARRANTIES

7.1 The Parties Represent and warrant that their signatories to this Consent Order have authority to act for and bind the respective Parties.

7.2 Respondent Represents and warrants that it has fully read and understands this Consent Order, that it understands the legal consequences involved in signing the Consent Order and that there are no other Representations or agreements not stated in writing herein.

7.3 Respondent Represents and warrants that it is a Pet Dealer for purposes of the CFA, the Pet Regulations, and this Consent Order.

8. RELEASE

8.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent making the Settlement Payment in the manner specified in Section 5, the Division hereby agrees to release Respondent from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Division could have brought against Respondent for violations of the CFA and the Pet Regulations prior to the Effective Date for matters arising out of the Investigation as well as the matters addressed in this Consent Order (the "Released Claims").

8.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Consent Order; and (c) any claims against Respondent by any other agency or subdivision of the State.

9. PENALTIES FOR FAILURE TO COMPLY

9.1 The Attorney General (or designated representative) shall have the authority to enforce the injunctive provisions of this Consent Order or to seek sanctions for violations hereof or both.

9.2 The Parties agree that any future violations of the injunctive provisions of this Consent Order as well as the CFA and/or Pet Regulations shall constitute a second or succeeding violation under N.J.S.A. 56:8-13 and that Respondent may be liable for enhanced civil penalties.

10. COMPLIANCE WITH ALL LAWS

- 10.1 Except as provided in this Consent Order, no provision herein shall be construed as:
- (a) Relieving Respondent of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
 - (b) Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondent pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondent may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

11. NOTICES UNDER THIS CONSENT ORDER

11.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Consent Order shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the Person signing for the documents. Such notices and/or documents shall be sent to the following addresses:

For the Division:

Acting Executive Director, Office of Consumer Protection
Division of Consumer Affairs
124 Halsey Street - 7TH Floor
P.O. Box 45025
Newark, New Jersey 07101

For the Respondent:

Gordon McKay
Animals and Things
1040 Route 1
Woodbridge, NJ 07095

IT IS ON THE 5th DAY OF October, 2009 SO ORDERED.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By: David M Szuchman
DAVID M. SZUCHMAN, DIRECTOR
DIVISION OF CONSUMER AFFAIRS

THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS CONSENT ORDER ON THE DATES UNDER THEIR RESPECTIVE SIGNATURES.

FOR THE DIVISION

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By: Jah-Juin Ho
Jah-Juin Ho
Deputy Attorney General
124 Halsey Street - 5th Floor
Newark, New Jersey 07101

Dated: September 29, 2009

FOR THE RESPONDENT:

ANIMAL AND THINGS, INC.

By: Gordon McKay
Gordon McKay
1040 Route 1
Woodbridge, NJ 07095

Dated: 9/24/09, 2009