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Division of Law
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FILED

FEB - 8 2012

Division of Consumer Affairs

By: Nicholas Kant
Deputy Attorney General
(973) 648-3441

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of

Administrative Action

CLIFTON N.J. FITNESS, L.L.C.;
LRHC DEPTFORD N.J., L.L.C.;
LRHC FAIRLAWN, NJ, L.L.C.;
LRHC HAMILTON NJ, L.L.C.;
LRHC IRVINGTON NJ, L.L.C.;
LRHC JERSEY CITY, NJ, L.L.C.;
LRHC KEARNY N.J., L.L.C.;
LRHC LINDEN N.J., L.L.C.; and
130 FITNESS DELRAN, L.L.C.,

CONSENT ORDER

Respondents.

WHEREAS this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), as an investigation in order to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), the Health Club Provisions of the CFA, N.J.S.A. 56:8-39 et seq. (“Health Club Provisions”), and the Regulations Governing Sellers of Health Club Services, N.J.A.C. 13:45A-25.1 et seq. (“Health Club Regulations”), have been or are being committed by Clifton N.J. Fitness, L.L.C. (“Lucille Roberts Clifton”); LRHC Deptford N.J., L.L.C.; LRHC Fairlawn, NJ, L.L.C.; LRHC Hamilton NJ, L.L.C.;

LRHC Irvington NJ, L.L.C.; LRHC Jersey City, NJ, L.L.C.; LRHC Kearny N.J., L.L.C.; LRHC Linden N.J., L.L.C.; and 130 Fitness Delran, L.L.C.; as well as their owners, officers, directors, managers, employees, representatives, agents, subsidiaries, successors and assigns (collectively, "Respondents"), (hereinafter referred to as the "Investigation");

WHEREAS the Division and Respondents (collectively, "Parties") have reached an amicable agreement thereby resolving the issues in controversy and concluding this matter without the need for further action, and Respondents having voluntarily cooperated with the Investigation and consented to the entry of the within order ("Consent Order") and for good cause shown,

IT IS on this 8th day of February, 2012 **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 and terms appear in this Consent Order:

2.1 "Additional Consumer" shall refer to any Consumer who submits to the Division directly or through another agency, a written Consumer complaint concerning Respondent's business practices after the Effective Date.

2.2 "ADR Unit" shall refer to the Alternative Dispute Resolution Unit of the Division.

2.3 "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.

2.4 “Clearly and Conspicuously” shall mean a statement that, regardless of the medium in which it is made, is presented in such type, size, color, contrast, duration, location and audibility, compared to the other information with which it is presented, that it is readily apparent and understandable and in language and terms used in accordance with their common or ordinary usage and meaning. If such statement modifies, explains or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, explains or clarifies and in a manner that is readily apparent and understandable.

2.5 “Consumer” shall refer to any Person who is offered Merchandise for Sale.

2.6 “Director” shall be defined in accordance with N.J.S.A. 56:8-39(a).

2.7 “Health Club” shall be defined in accordance with N.J.S.A. 56:8-39(b). For purposes of the Health Club Regulations, “Health Club” shall be defined in accordance with N.J.A.C. 13:45A-25.1(a).

2.8 “Health Club Services” shall be defined in accordance with N.J.S.A. 56:8-39(c).

2.9 “Health Club Services Contract” shall be defined in accordance with N.J.S.A. 56:8-39(d).

2.10 “Lucille Roberts Website(s)” shall refer to <http://www.lucilleroberths.com/> and any other website owned, operated, managed, used or otherwise controlled by Respondents.

2.11 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c) and includes, but is not limited to, Health Club Services and Health Club Services Contracts.

2.12 “Person” shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.13 “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, “Misrepresent.”

2.14 “Restitution” shall refer to all methods undertaken by Respondents to resolve Consumer complaints including, but not limited to, the issuance of credits or refunds or the reversal of credit card or debit card charges.

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

2.16 “State” means the State of New Jersey.

3. INJUNCTIVE RELIEF AND BUSINESS PRACTICES

3.1 Respondents shall not engage in any unfair acts or deceptive practices in the conduct of their businesses in the State and shall comply with all applicable State and/or Federal laws, rules and regulations, as now constituted or as may hereafter be amended, including, but not limited to, the CFA, the Health Club Provisions and the Health Club Regulations.

3.2 Lucille Roberts Clifton shall not sell or offer for Sale Health Club Services in the State without being registered with the Director, in accordance with N.J.S.A. 56:8-40.

3.3 Lucille Roberts Clifton shall not charge and accept a down payment exceeding 25% of the total price of a Health Club Services Contract prior to opening a Health Club, in accordance with N.J.S.A. 56:8-44.

3.4 Respondents shall not state in Health Club Services Contracts a “Total Membership Cost” that is less than the total amount that the Consumer will actually be charged.

3.5 Respondents shall not Misrepresent the “Total Membership Cost” in Health Club Services Contracts.

3.6 In each and every Health Club Services Contract, Respondents shall Clearly and Conspicuously include on the first page of the Health Club Services Contract the Consumer's total payment obligation for Health Club Services to be provided, as required by N.J.S.A. 56:8-42(b).

3.7 Respondents shall Clearly and Conspicuously disclose, at the point of sale for all Health Club Services Contracts, what amenities, benefits and/or privileges are included with the Consumer's membership (e.g., "gold" membership includes access to all Lucille Roberts health clubs in New Jersey).

3.8 Respondents shall Clearly and Conspicuously disclose, on the Lucille Roberts Website(s), what amenities, benefits and/or privileges are included with a Consumer's membership (e.g., "gold" membership includes access to all Lucille Roberts health clubs in New Jersey).

4. RESTITUTION

4.1 Consumers, who are or were members of Respondents' Health Clubs, and who were provided Health Club Services Contracts for one (1) or two (2) year terms of membership, that state a "Total Membership Cost" that is less than the total amount that the Consumers actually were or would be charged according to their Health Club Services Contracts shall receive Restitution from Respondents, as follows: (a) Consumers who have been billed and paid for the full term of their Health Club Services Contracts shall receive, on or before the Effective Date, refund checks in the amount of the difference between the stated "Total Membership Cost" and the amount billed and paid; (b) Consumers who have been billed for the full term of the their Health Club Services Contracts, but have not yet paid for the full term of their Health Club Services Contracts, shall receive on or before the Effective Date, an adjustment to their accounts in the amount of the difference between the stated "Total Membership Cost" and the amount billed; and (c) Consumers

who have not yet been billed for the full term of their Health Club Services Contracts shall not be billed for the final month of their contracts.

4.2 On or before the Effective Date Respondents shall provide the Division with a "Package Summary", which states the applicable names, dollar amounts and total number of Consumers for each of the three categories stated in Section 4.1.

5. ADDITIONAL CONSUMER COMPLAINTS

5.1 For a period of one (1) year from the Effective Date, the Division shall forward to Respondents copies of any Additional Consumer complaints. The Division shall forward to Respondents the Additional Consumer complaint within thirty (30) days of the Division's receipt thereof. Such Additional Consumer complaints shall be sent to Respondent: (a) by first-class mail to Lucille Roberts Customer Service, Attn: NJ/AG Liaison, Box 333, 1202 Lexington Avenue, New York, New York 10028; (b) by e-mail to kirk@lucillerobersts.com; and (c) by e-mail to cherri@lucillerobersts.com.

5.2 The Division shall notify the Additional Consumers, in writing, of the following: (a) that the Additional Consumer's complaint has been forwarded to Respondents; (b) that he/she should expect a response from Respondents within thirty (30) days; and (c) the right to refer the Additional Consumer's complaint to the ADR Unit for binding arbitration if Respondents dispute the Additional Consumer's complaint and/or requested relief.

5.3 Within thirty (30) days of receiving the Additional Consumer's complaint from the Division, Respondents shall send a written response to each Additional Consumer, with a copy to one of the following: (a) The New Jersey Division of Consumer Affairs, Office of Consumer

Protection, Attention: Case Management Tracking Supervisor, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101; or (b) cmt@dca.lps.state.nj.us.

5.4 If Respondent do not dispute the Additional Consumer's complaint and requested relief, Respondents' written response shall so inform the Additional Consumer. Respondents shall contemporaneously forward to such Additional Consumer the appropriate Restitution. Where Restitution concerns the reversal of credit or debit card charges, Respondents shall include documents evidencing that such adjustments have been made. Where Restitution concerns a refund or other payment, such shall be made by check, money order or other guaranteed funds made payable to the Additional Consumer.

5.5 If Respondents dispute the Additional Consumer's complaint and/or requested relief, Respondents' written response shall include copies of all documents concerning Respondents' dispute of the complaint.

5.6 Within sixty (60) days of Respondents' receipt of the Additional Consumer's complaint, Respondents shall notify the Division as to whether such Additional Consumer's complaint has been resolved. Such notification shall include the following:

- (a) The name and address of the Additional Consumer;
- (b) Whether or not the Additional Consumer's complaint has been resolved;
- (c) An identification of any Restitution provided to the Additional Consumer;
- (d) Copies of all documents evidencing any Restitution;
- (e) In the event Respondents' written response was returned as undeliverable, the efforts Respondent had undertaken to locate the Additional Consumer; and
- (f) Confirmation that Respondents sent all mailings to the Additional Consumer as required by this Section.

Following the Division's receipt and verification that an Additional Consumer's complaint has been resolved, the Additional Consumer's complaint shall be deemed closed for purposes of this Consent Order.

5.7 If within sixty (60) days of Respondents' receipt of the Additional Consumer's complaint: (a) Respondents have not notified the Division that the Additional Consumer's complaint has been resolved; (b) Respondents have notified the Division that the Additional Consumer's complaint has not been resolved; or (c) Respondents have notified the Division that the Additional Consumer refuses Respondents' offer of Restitution, the Division shall forward such Additional Consumer's complaint to the ADR Unit to reach a resolution of the complaint through binding arbitration. Respondents agree herein to consent to this arbitration process and to be bound by the arbitrator's decision. Respondents further agree to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. The Division shall notify in writing the Additional Consumer of the referral of the complaint to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines (a copy of which is attached as Exhibit A).

5.8 If Respondents refuse to participate in the ADR program, the arbitrator may enter a default against Respondents. Unless otherwise specified in the arbitration award, Respondents shall pay all arbitration awards within forty-five (45) days of the arbitrator's decision. Respondents' failure or refusal to participate in the arbitration process or to pay an arbitration award timely shall constitute a violation of this Consent Order.

5.9 If an Additional Consumer refuses to participate in the ADR program, that Additional Consumer's complaint shall be deemed closed for the purposes of this Consent Order.

5.10 The complaint resolution process described in this Section may be extended for additional one (1) year periods upon written notice by Respondents, provided thirty (30) days prior to the expiration of the initial or subsequent one (1) year period.

5.11 The Parties may agree in writing to alter any time periods or deadlines set forth in this Section.

6. SETTLEMENT PAYMENT

6.1 On or before the Effective Date, Lucille Roberts Clifton shall make a payment in the amount of Ten Thousand Three Hundred Fifty-Nine and 76/100 Dollars (\$10,359.76) ("Settlement Payment"). The Settlement Payment comprises Five Thousand and 00/100 Dollars (\$5,000.00) in civil penalties, pursuant to N.J.S.A. 56:8-13; Two Thousand Eight Hundred Sixty and 00/100 Dollars (\$2,860.00) as reimbursement of the Division's attorneys' fees, pursuant to N.J.S.A. 56:8-19; and Two Thousand Four Hundred Ninety-Nine and 76/100 Dollars (\$2,499.76) as reimbursement of the Division's investigative costs, pursuant to N.J.S.A. 56:8-11.

6.2 The Settlement Payment shall be made by check made payable to "New Jersey Division of Consumer Affairs" and shall be forwarded to the undersigned:

Nicholas Kant, Deputy Attorney General
Consumer Fraud Prosecution Section
State of New Jersey
Department of Law and Public Safety
Division of Law
124 Halsey Street- 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

6.3 Upon making the Settlement Payment, Lucille Roberts Clifton shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and

any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

7. GENERAL PROVISIONS

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

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

7.3 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.

7.4 This Consent Order contains the entire agreement between 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.

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

7.6 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.

7.7 This Consent Order shall be binding upon Respondents as well as their owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, successors and assigns, and any entity or device through which they may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct their business.

7.8 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 be used to avoid compliance with this Consent Order.

7.9 This Consent Order is entered into by the Parties 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 Attorney General, the Division or any other governmental unit of the State of any act or practice of Respondents; and (b) an admission by Respondents that any of their acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CFA, the Health Club Provisions and/or the Health Club Regulations. Neither the existence of, nor the terms of this Consent Order, shall be deemed to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms herein; or (b) any action or proceeding involving a Released Claim (as defined in Section 9) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

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

8. REPRESENTATIONS AND WARRANTIES

8.1 The Parties Represent and warrant an authorized representative of each has signed this Consent Order with full knowledge, understanding and acceptance of its terms and that the representative has done so with authority to legally bind the respective Party.

8.2 Respondents Represent and warrant the they have fully read and understand this Consent Order, that they understand the legal consequences involved in signing the Consent Order and that there are no other Representations or agreements not stated in writing herein.

8.3 Respondents Represent and warrant that they have been advised by the Division to seek legal counsel to review this Consent Order and that they have voluntarily chosen not to do so.

8.4 Respondents Represent and warrant that, where Restitution is to be provided on or before the Effective Date, Consumers have received the applicable Restitution set forth in Sections 4.1 and 4.2.

9. RELEASE

9.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Lucille Roberts Clifton making the Settlement Payment as specified in Section 6, the Division hereby agrees to release Respondents from any and all civil claims or Consumer-related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Respondents for violations of the CFA, the Health Club Provisions and the Health Club Regulations arising from the Investigation, as well as the matters specifically addressed in this Consent Order (the “Released Claims”).

9.2 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 Respondents by any other agency or subdivision of the State.

10. PENALTIES FOR FAILURE TO COMPLY

10.1 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.

10.2 The Parties agree that any future violations of the injunctive provisions of this Consent Order, the CFA, the Health Club Services Provisions and/or the Health Club Regulations shall constitute a second or succeeding violation pursuant to N.J.S.A. 56:8-13 and that Respondents may be liable for enhanced civil penalties.

11. COMPLIANCE WITH ALL LAWS

11.1 Except as provided in this Consent Order, no provision herein shall be construed as:

- (a) Relieving Respondents of their 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 Respondents 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 Respondents 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.

12. NOTICES UNDER THIS CONSENT ORDER

12.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondents 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. The notices and/or documents shall be sent to the following addresses:

For the Division:

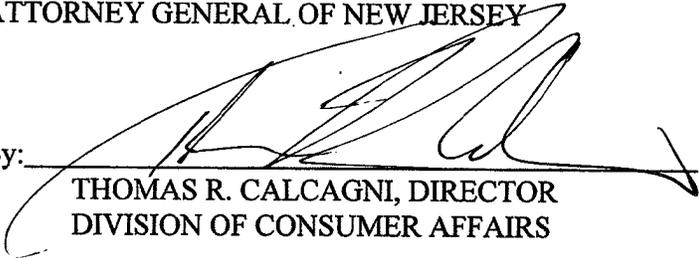
Assistant Deputy of Enforcement, Office of Consumer Protection
Division of Consumer Affairs, State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
124 Halsey Street - 7TH Floor
P.O. Box 45028
Newark, New Jersey 07101

For the Respondents:

Kirk Roberts
President
Lucille Roberts Health Clubs
4 East 80th Street
New York, New York 10075

IT IS ON THE 8th DAY OF February, 2012 SO ORDERED.

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By: 

THOMAS R. CALCAGNI, DIRECTOR
DIVISION OF CONSUMER AFFAIRS

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

FOR THE DIVISION:

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

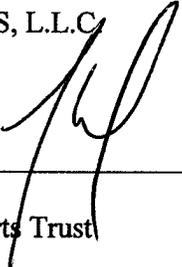
By: 

Nicholas Kant
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

Dated: February 8, 2012

FOR RESPONDENTS:

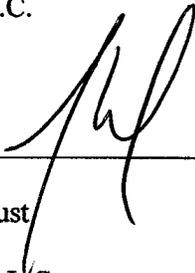
CLIFTON N.J. FITNESS, L.L.C.

By: 

Kirk Roberts
The Kevin Roberts Trust
Member
Clifton N.J. Fitness, L.L.C.
4 East 80th Street
New York, New York 10075

Dated: 2/3/12

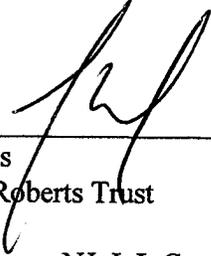
LRHC DEPTFORD N.J., L.L.C.

By: 

Kirk Roberts
The Kevin Roberts Trust
Member
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4 East 80th Street
New York, New York 10075

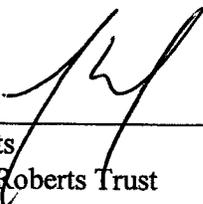
Dated: 2/3/12

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By: 
Kirk Roberts
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LRHC Fairlawn, NJ, L.L.C.
4 East 80th Street
New York, New York 10075

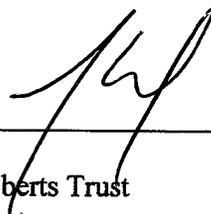
Dated: 2/3/12

LRHC HAMILTON NJ, L.L.C.

By: 
Kirk Roberts
The Kevin Roberts Trust
Member
LRHC Hamilton NJ, L.L.C.
4 East 80th Street
New York, New York 10075

Dated: 2/3/12

LRHC IRVINGTON NJ, L.L.C.

By: 
Kirk Roberts
The Kevin Roberts Trust
Member
LRHC Irvington NJ, L.L.C.
4 East 80th Street
New York, New York 10075

Dated: 2/3/12

LRHC JERSEY CITY, NJ, L.L.C.

By: 
Kirk Roberts
The Kevin Roberts Trust
Member
LRHC Jersey City, NJ, L.L.C.
4 East 80th Street
New York, New York 10075

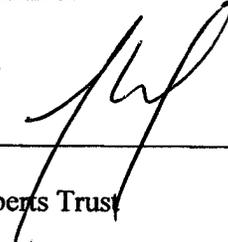
Dated: 2/3/12

LRHC KEARNY N.J., L.L.C.

By: 
Kirk Roberts
The Kevin Roberts Trust
Member
LRHC Kearny N.J., L.L.C.
4 East 80th Street
New York, New York 10075

Dated: 2/3/12

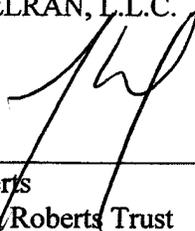
LRHC LINDEN N.J., L.L.C.

By: 
Kirk Roberts
The Kevin Roberts Trust
Member
LRHC Linden N.J., L.L.C.
4 East 80th Street
New York, New York 10075

Dated: 2/3/12

130 FITNESS DELRAN, L.L.C.

By: _____


Kirk Roberts
The Kevin Roberts Trust
Member
130 Fitness Delran, L.L.C.
4 East 80th Street
New York, New York 10075

Dated: _____

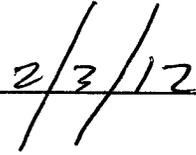


EXHIBIT A

**NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
ALTERNATIVE DISPUTE RESOLUTION UNIT**

ADR UNIT GUIDELINES

INTRODUCTION

The Division of Consumer Affairs ("Division") started the Alternative Dispute Resolution ("ADR") Unit in May 1992 as an independent, non-advocacy unit within the Division. It was designed to offer a method of resolving problems without using the court system, thereby avoiding the time and expense of court cases. Two programs are available for settling disputes: mediation and arbitration. In the mediation program, the parties involved work directly with a mediator who, as an uninvolved third party, helps to create an atmosphere that is conducive to resolving the issues. In arbitration, the parties present their problem to a neutral individual who analyzes the presentations and then issues a final decision that all parties must follow. Both approaches use trained volunteers and are generally available to the parties at no cost. Originally, the Division made these services available only for settling disputes between businesses and consumers. Over time, however, the focus has been expanded and this assistance is now available to various State agencies.

I. DEFINITIONS

Listed below are definitions for terms used in these Guidelines and in the various ADR processes:

(1) **"Arbitration"** is a voluntary means of settling a disagreement in which an arbitrator assigned by the ADR Unit reviews the facts of the case, meets with the parties, and issues a final non-reasoned award that is binding on everyone involved. (A "non-reasoned award" means the parties receive the decision reached by the arbitrator but not the rationale that went into reaching that decision.) Once such a decision is issued, the parties' right to seek further review through the court system is very limited.

If necessary, however, the terms of the award can be enforced by the courts. (See discussion below). For the purposes of these Guidelines, an arbitration begins at the time the parties sign the arbitration agreement. (See section VI below.)

(2) An **"arbitrator"** is a volunteer trained by the Division who reviews the facts of the case, meets with the parties and issues a final and binding decision.

(3) A **"complaint"** is a dispute arising out of an interaction between a business and a consumer or between an individual and a State agency, as well as from cases referred by a State agency.

(4) A **"complainant"** is the person who brings the dispute to the attention of the Division or the Unit.

(5) **"Mediation"** is the process by which a mediator works with the parties in an effort to help them craft and agree upon a solution to the dispute. For the purposes of these Guidelines, a mediation begins at the time the parties agree to mediate. That settlement, once reached, is binding on the parties. (See section VI below.)

(6) A **"mediation document"** is any written material prepared before or during the mediation for purposes of the mediation. Such papers may include, but are not limited to, memoranda, notes, files and records.

(7) A **"mediator"** is a volunteer trained by the Division to serve as a neutral third party to help settle disputes brought to the ADR Unit. The mediator does not have the authority to impose a resolution upon the parties.

(8) A **"party"** is a complainant or respondent and may be an individual, corporation, association or other legal entity.

(9) A **"respondent"** is the party against whom the complaint is filed.

II. WHAT IS MEDIATION?

In mediation, through one or more sessions, the mediator encourages the parties to explain their positions about the dispute and helps them develop a solution that is acceptable to them. This is a voluntary procedure that, when successful, quickly turns a dispute into a winning situation for both parties; as a result, long and costly litigation can be avoided.

The mediator may conduct joint and separate meetings with the parties and may propose oral and written suggestions for settlement. (At the discretion of the mediator, the mediation may be conducted by telephone.) The mediator determines when each party may speak during a mediation conference. The mediator may also decide whether the party's representative may speak during the conference. If necessary, the mediator may obtain expert advice concerning technical aspects of the dispute. When appropriate, and when they agree, the parties will jointly pay for such advice. Arrangements for obtaining that input will be made by the mediator or by agreement of all parties.

It is important to note that although mediation is non-binding, once a resolution is reached and agreed upon by the parties, it is binding on all involved, as would any agreed upon contract.

III. WHAT IS ARBITRATION?

The arbitration process also uses trained volunteers to resolve disputes. The arbitrator reviews the facts and issues of the dispute, hears testimony, accepts evidence and evaluates the positions of the parties. Unlike mediation where the parties have agreed to a resolution, in arbitration the arbitrator issues a binding decision. That decision is in the form of a non-reasoned award; that is, no findings of fact and no opinion or rationale are provided by the arbitrator. Additionally, arbitration is not as formal as a court

proceeding. For example, evidence often unacceptable in a court proceeding may be admissible in an arbitration. The parties are bound by and must follow the decision. This process is also faster and less costly than taking a case to court, and the arbitrator's award is viewed as an end to the case. Arbitration awards cannot be challenged in court except under very limited circumstances. For example, in order to overturn a decision, there must be a showing of favoritism, prejudice, fraud, misconduct, or blatant disregard of the rules and procedures in relation to the process of the arbitration. Once a dispute has been submitted for arbitration and an award is issued, neither party can later choose to resolve the dispute again in any other manner, including use of the court system. Please note that if any party to the dispute fails to comply with the arbitrator's decision, the offended party may apply to a court of appropriate jurisdiction to have the decision enforced pursuant to N.J.S.A. 2A:23B-22.

IV. GENERAL GUIDELINES FOR DISPUTE RESOLUTION

Standard for Participation

The Director of the ADR Unit accepts referrals from State agencies for mediation or arbitration of complaints that are appropriate for those types of dispute resolution. Such complaints include, among others, requests for restitution, replacements or exchanges of merchandise, warranty claims, and specific performance under a contract.

The Director of the Unit may, in his discretion, decline to accept matters for dispute resolution if the matter is not suitable for arbitration or mediation. In making that determination, the Director shall consider the nature of the relief sought by the complainant (money damages or other relief that can be awarded) and whether the responding party continues to exist or has the resources to address the complaint (for example, the company is bankrupt). If the referral is made pursuant to a Consent Order from a State Agency, any decision to decline to attempt dispute resolution shall be promptly conveyed to that agency along with the reasons for the decision.

Complaint Review

~~The ADR Unit reviews the complaints it receives to determine their suitability for the Unit's dispute resolution processes. If the Unit finds that a complaint is appropriate for resolution, either through mediation or arbitration, it will offer those services to the parties involved. Though the ADR Unit and/or the parties decide if mediation or arbitration will be used, generally, unless otherwise required by consent order, matters will be mediated.~~

If the ADR Unit considers a complaint inappropriate for its dispute resolution procedures, it will return the complaint to the agency that initially referred it to the Unit.

Beginning the Process

Once a complaint has been accepted by the ADR Unit, a letter is sent to all parties. When

mediation is the proposed process, the letter to the complainant says that the complaint has been received and that the other party, the respondent, is being contacted. The letter to the respondent offers a brief description of the complaint. The letters to both parties name the neutral third party appointed and state how to best contact that person.

In matters to be arbitrated, both parties will be informed of the date of the hearing through ADR Unit staff. In arbitration, ex parte communication, that is contact by one party without the presence of the other, is strictly prohibited. Once the parties agree to participate in dispute resolution, the process is started. Should an arbitrator or mediator become unwilling or unable to serve, the ADR Unit will appoint an alternate.

Representation

Any party may be represented by an attorney during dispute resolution proceedings. In mediation, any individual designated by a party may accompany the party to and participate in a mediation.

Date, Time and Place of Mediation or Arbitration

The mediator shall set the date and time of each conference. In the case of an arbitration, the ADR Unit staff, will fix the date and time of the hearing. Unless the parties are notified otherwise, sessions are held at the offices of the ADR Unit, located at 153 Halsey Street, 7th floor, Newark, New Jersey. In mediation, the mediator and the parties may decide that the sessions will be conducted over the telephone. In arbitration, telephone hearings will only be conducted under extenuating circumstances. The Unit attempts to arrange convenient dates and times for all sessions. In the case of an arbitration, if necessary, the date and time of the hearing may be imposed by the ADR Unit staff. Parties failing to cooperate in setting a date and time or failing to appear when required, may forfeit the ability to present their case to the arbitrator and a decision may be rendered without their ability to offer testimony or evidence beyond those documents submitted to the Unit in advance of the arbitration.

Identification of Matters in Dispute

A) Mediation

~~During an initial telephone conference, the mediator and the parties will discuss what information~~ should be provided, including a brief description of the facts, issues and positions in dispute and the parties' desired outcome. That information and copies of any supporting documents must be produced at least five days before the first session. Documents may be exchanged between the parties if everyone expressly agrees to that process. The mediator may ask that additional information be provided before, during or after the sessions.

B) Arbitration

The ADR Unit will assign an arbitrator who will hear the matter. Once an arbitrator has been selected to hear the case, the arbitrator's curriculum vitae will be sent to each party to the dispute. (Please

see the Disclosure section - D, below, for the process used to challenge the selection of that arbitrator.) An ADR staff member will then contact the parties to establish a schedule. At least ten days before the first session, each party must provide the arbitrator, through the Unit staff, a brief written description of the facts and issues in dispute, all appropriate documents and background information that are relevant to the dispute and a statement of the relief sought through the arbitration process. Arbitration, through the ADR Unit will not award punitive or consequential damages. At any time during the process, the arbitrator may compel the production of additional information through documents or witnesses by way of subpoena.

Parties will be given the opportunity to present their case in its entirety, including all necessary documentation. However, unless otherwise expressly stated by the arbitrator, no evidence or testimony will be accepted by the arbitrator once the hearing has been concluded.

C) Written Requirements

Before starting a face-to-face mediation or an arbitration, parties must agree to certain terms. There are agreement forms that must be read, understood and signed before anyone can participate. Copies of those forms are provided to the parties prior to the initial mediation or arbitration session but are signed only in the presence of the mediator or arbitrator. (Generally parties who participate in telephone mediation are not required to sign the form. They will, however, be required to indicate acceptance of the terms governing the mediation during the telephone conference.)

D) Disclosure

A person appointed as an arbitrator shall disclose to the ADR staff and to the parties any circumstance likely to raise any question as to the arbitrator's impartiality or independence, including any bias or financial interest or past or present relationship with parties or their representatives. This shall remain a continuing obligation of the arbitrator. Notice of any challenge to the impartiality or independence of the arbitrator shall be made within five (5) days of becoming aware of circumstances giving rise to the challenge. This notice shall be in writing to the ADR Unit and shall set forth the facts and circumstances giving rise to the challenge.

V Privacy

All sessions are private and confidential. Only parties and their designated representatives may attend conferences and/or hearings. Other persons may attend only with the permission of the parties and with the consent of the mediator or arbitrator and the Unit Director.

VI CONFIDENTIALITY OF DISPUTE RESOLUTION SESSIONS

All information provided by parties during the mediation process is confidential. Success of mediation depends in large part on a free exchange of information, so it is important that parties feel free to discuss issues openly. Information provided by one party will not be revealed to the opposing party without the explicit authorization of the revealing side. Mediators cannot be forced to release any

information or to testify about the mediation in a lawsuit or court proceeding. All mediation documents are considered confidential. (For a full description of these rights and responsibilities please see N.J.S.A. 2A:23C-4, 5 and 6.)

In arbitrations, information provided to the arbitrator must also be given to the opposing party. Parties must maintain the confidentiality of the arbitration and may not disclose information except to the staff of the ADR Unit. Confidentiality as discussed in this section, takes effect upon the parties' agreement to participate in the ADR process. The following documents related to the arbitration proceeding are not considered confidential and may be available upon request to persons or entities:

- a) The complaint, with all its attachments, that initiated the arbitration;
- b) The response to the initial complaint, with all its attachments,; and
- c) The arbitrator's award.

All other documents submitted in the course of the arbitration are considered confidential and not available to any person or entity except the parties involved, the staff of the ADR Unit and its counsel.

No taped or stenographic record may be made of any dispute resolution process.

VII TERMINATION

A mediation will be concluded in one of the following ways:

- 1) the signing of a written settlement agreement by the parties;
- 2) an oral agreement between the parties;
- 3) a written or oral statement of the mediator saying that further efforts at mediation will not be productive; or
- 4) a statement by a party or parties withdrawing from the mediation proceedings.

An arbitration will be concluded in one of the following ways:

- 1) upon the issuance of a decision by the arbitrator;
- 2) a written agreement between the parties resolving the dispute; or
- 3) a written statement by all parties that they no longer wish to continue the arbitration.

VIII EXCLUSION OF LIABILITY

Neither the staff of the ADR Unit nor any mediator or arbitrator is a necessary party in a judicial proceeding related to the dispute that is being resolved. Parties to an arbitration expressly agree to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14 and the New Jersey Tort Claims Act, N.J.S.A. 59:10A-1 et seq. Parties to a mediation or arbitration shall be deemed to have consented that neither the staff of the ADR Unit nor any mediator or arbitrator shall be liable to any party in any way for damages or for injunctive relief for any act or omission in connection with any mediation or arbitration conducted under these rules.

IX INTERPRETATION AND APPLICATION OF RULES

Mediators and arbitrators shall interpret and apply these rules as they relate to their duties and responsibilities. All other rules shall be interpreted and applied by the Director of the ADR Unit.

Revised June 2008