

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

**FILED**

MAR - 8 2012

**Division of Consumer Affairs**

By: Jeffrey Koziar  
Deputy Attorney General  
(973) 648-7819

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

In the Matter of  
  
TRUCHAN BROS. AUTO & TOWING, INC.  
  
Respondents

Administrative Action

**CONSENT ORDER**

**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 Predatory Towing Prevention Act, N.J.S.A. 56:13-7 et seq. (“PTPA”), the Regulations promulgated under the PTPA, N.J.A.C. 13:45A-31.1 et seq. (“PTPA Regulations”) as well as the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), have been or are being committed by Truchan Bros. Auto & Towing, Inc. (“Truchan Bros” or “Respondent”) as well by as its owners, officers, directors, managers, employees, representatives, agents, subsidiaries, successors and/or assigns,(hereinafter referred to as the “Investigation”);

**WHEREAS** on November 22, 2011, the Division issued a Notice of Violation (“NOV”) which found that Respondent had violated the PTPA and PTPA Regulations by engaging in private

property towing, non-consensual towing without having contracts with the private property owners and by not complying with the signage requirements;

**WHEREAS** on December 6, 2011, Respondent filed an Answering Certification in which it contested the charges in the NOV;

**WHEREAS** the Division and Respondent (collectively, "Parties") have reached an amicable agreement thereby resolving the issues in controversy and concluding the Investigation 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") without having admitted any violation of law and for good cause shown,

**IT IS ORDERED AND AGREED** as follows:

**1. EFFECTIVE DATE**

1.1 This Consent Order shall be 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 "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.

2.2 "Consumer" shall be defined in accordance with N.J.S.A. 56:13-9. For purposes of the PTPA Regulations, "Consumer" shall be defined in accordance with N.J.A.C. 13:45A-31.2.

2.3 “Motor Vehicle” shall be defined in accordance with N.J.S.A. 56:13-9. For purposes of the PTPA Regulations, “Motor Vehicle” shall be defined in accordance with N.J.A.C. 13:45A-31.2.

2.4 “Non-consensual Towing” shall be defined in accordance with N.J.S.A. 56:13-9. For purposes of the PTPA Regulations, “Non-consensual Towing” shall be defined in accordance with N.J.A.C. 13:45A-31.2.

2.5 “State” and “New Jersey” mean the State of New Jersey.

2.6 “Towing” shall be defined in accordance with N.J.S.A. 56:13-9. For purposes of the PTPA Regulations, “Towing” shall be defined in accordance with N.J.A.C. 13:45A-31.2.

### **3. BUSINESS PRACTICES AND INJUNCTIVE RELIEF**

3.1 Respondent shall not engage in any unlawful acts or unconscionable practices in the conduct of their business 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 PTPA, the PTPA Regulations and the CFA.

3.2 Respondent shall not tow any Motor Vehicle parked for an unauthorized purpose or during a time at which such parking is not permitted from any privately owned parking lot, from other private property or from any common driveway without the consent of the Motor Vehicle owner or operator, unless they comply with the following requirements set forth in N.J.S.A. 56:13-13(a):

- (1) Respondent shall have entered into a contract for private property towing with the owner of the property;

- (2) There is posted in a conspicuous place at all vehicular entrances to the property which can easily be seen by the public, a sign no smaller than 36 inches high and 36 inches wide stating:
  - (a) the purpose or purposes for which parking is authorized and the times during which such parking is permitted;
  - (b) that unauthorized parking is prohibited and unauthorized Motor Vehicles will be towed at the owner's expense;
  - (c) Truchan Bros.' name, address, and telephone number;
  - (d) Truchan Bros.' charges for the towing and storage of towed Motor Vehicles;
  - (e) the street address of the storage facility where the towed vehicles can be redeemed after payment of the posted charges and the times during which the vehicle may be redeemed; and
  - (f) the Division telephone number (1-800-242-5846; prompt number 4);
- (3) the property owner has authorized to remove the particular Motor Vehicle; and
- (4) Truchan Bros. tows the Motor Vehicle to a secure storage facility that is located within a reasonable distance of the property from which the Motor Vehicle was towed.

#### **4. SETTLEMENT PAYMENT**

4.1. The Parties have agreed to a settlement in the amount of Eight Thousand Six Hundred and 00/100 Dollars (\$8,600.00) ("Settlement Payment"). The Settlement Payment comprises civil penalties pursuant to N.J.S.A. 56:13-21 and N.J.S.A. 56:8-13, reimbursement of the Division's attorneys' fees, and reimbursement of the Division's investigative costs, pursuant to N.J.S.A. 56:8-19 and N.J.S.A. 56:8-11.

4.2 The Settlement Payment shall be made on or before the Effective Date by cashier's check, money order or other form of guaranteed funds payment made payable to "New Jersey Division of Consumer Affairs" and shall be forwarded to the undersigned:

Jeffrey Koziar, Deputy Attorney General  
Consumer Fraud Prosecution Section  
State of New Jersey  
Department of Law and Public Safety  
Division of Law  
124 Halsey Street- 5<sup>th</sup> Floor  
Newark, New Jersey 07101

4.3 Upon making the Settlement Payment, Respondent 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.

## **5. GENERAL PROVISIONS**

5.1 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.

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

5.3 The Parties have 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.

5.4 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.

5.5 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.

5.6 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.

5.7 This Consent Order shall be binding upon the Respondent as well as its owners, officers, directors, shareholders, founders, managers, agents, servants, 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 their business.

5.8 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.

5.9 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 Respondent; and (b) an admission by Respondent that any of their acts or practices described in or prohibited by this Consent Order are unlawful or unconscionable or violate the PTPA, the PTPA Regulations and/or the CFA. 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 6) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

5.10 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.

5.11 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.

## **6. RELEASE**

6.1 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 as specified in Section 4, 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 prior to the Effective Date against Respondent for violations of the PTPA, the PTPA Regulations and/or the CFA arising out of the Investigation, as well as the matters specifically addressed in this Consent Order (the "Released Claims").

6.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action, provided, however, that nothing herein shall prevent Respondents from raising the defense of set-off against a Consumer who has received Restitution; (b) actions to enforce this Consent Order; and (c) any claims against Respondent by any other agency or subdivision of the State.

## **7. PENALTIES FOR FAILURE TO COMPLY**

7.1 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.

## **8. COMPLIANCE WITH ALL LAWS**

- 8.1 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.

## **9. NOTICES UNDER THIS CONSENT ORDER**

9.1 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  
Officer of Consumer Protection  
New Jersey Division of Consumer Affairs  
124 Halsey Street - 7<sup>th</sup> Floor

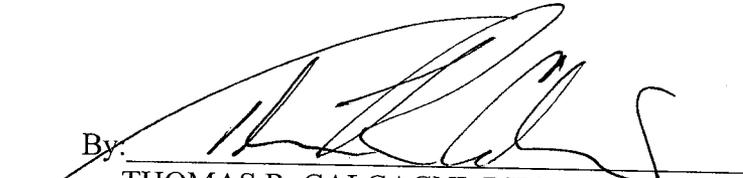
P.O. Box 45025  
Newark, New Jersey 07101

For the Respondent:

William J. Pollinger, Esq,  
Claridge Plaza  
302 Union Street  
Hackensack, New Jersey 07601

IT IS ON THE 8<sup>th</sup> DAY OF March, 2012 SO ORDERED.

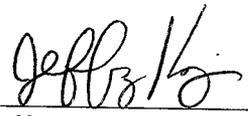
JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY

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 BESIDE THEIR RESPECTIVE SIGNATURES.**

FOR THE DIVISION:

JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY

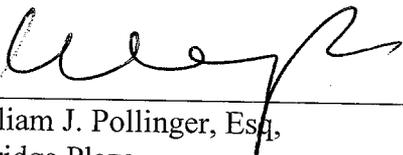
By:   
Jeffrey Koziar, Deputy Attorney General  
Consumer Fraud Prosecution Section

Dated: 3/7, 2012

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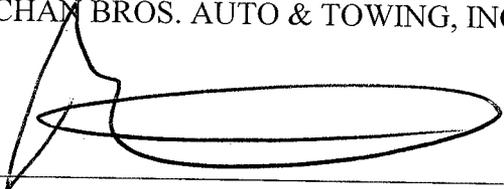
FOR RESPONDENT:

WILLIAM J. POLLINGER, P.A.

By:   
William J. Pollinger, Esq.  
Claridge Plaza  
302 Union Street  
Hackensack, New Jersey 07601

Dated: 3/5, 2012

TRUCHAM BROS. AUTO & TOWING, INC.

By: 

Dated: 3/5/, 2012