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Division of Law
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FILED

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Division of Consumer Affairs

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

In the Matter of COMFORT DESIGNS, L.L.C. and PHILLIP DONAGHUE, individually, 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 to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq., the Regulations Governing Home Improvement Contractor Registration, N.J.A.C. 13:45A-17.1 et seq. ("Contractor Registration Regulations"), and the Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 et seq. ("Home Improvement Regulations"), have been or are being committed by Comfort Designs, L.L.C. and Phillip Donaghue, individually, as well as their managers, agents, representatives, employees, successors, assigns, subsidiaries and/or independent contractors (collectively, "Respondents");

WHEREAS Respondents, with a main business address of 8 Bayard Avenue, Kearny, New Jersey 07032 , are engaged in the Advertisement and Sale of Home Improvements to Consumers in the State of New Jersey;

WHEREAS the Division's investigation concerned the complaint filed by Consumer

in connection with the Home Improvement Contract she entered into with Respondents on March 23, 2009 for the latter's performance of Home Improvements ("Investigation");

WHEREAS as a result of the Investigation, the Division alleges that Respondents offered to perform, engaged in and/or attempted to engage in the Sale or performance of Home Improvements in New Jersey, on a date on which they were not registered with the Division;

WHEREAS the Division and Respondents (collectively, "Parties") have reached an amicable agreement hereby resolving the issues in controversy and concluding this 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 fact or violation of law, and for good cause shown:

IT IS 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 "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 refer to any Person, defined in accordance with N.J.S.A. 56:8-1(d), who is offered Merchandise, defined in accordance with N.J.S.A. 56:8-1(c), for Sale, defined in accordance with N.J.S.A. 56:8-1(e).

2.3 "Contractor" or "Home Improvement Contractor" shall be defined in accordance with N.J.S.A. 56:8-137 and/or N.J.A.C. 13:45A-17.2.

2.4 "Home Improvement" shall be defined: (a) for purposes of the Contractors' Registration Act in accordance with N.J.S.A. 56:8-137; (b) for purposes of the Home Improvement Regulations in accordance with N.J.A.C. 13:45A-16.1A; and (c) for purposes of the Contractor Registration Regulations in accordance with N.J.A.C. 13:45A-17.2.

2.5 "Home Improvement Contract" shall be defined: (a) for purposes of the Contractors' Registration Act in accordance with N.J.S.A. 56:8-137; (b) for purposes of the Home Improvement Regulations in accordance with N.J.A.C. 13:45A-16.1A; and (c) for purposes of the Contractor Registration Regulations in accordance with N.J.A.C. 13:45A-17.2.

2.6 "Person[s]" shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.7 "Represent" shall mean 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."

2.8 "State" shall refer to the State of New Jersey.

3. REQUIRED AND PROHIBITED BUSINESS PRACTICES

3.1 Respondents shall not engage in any unfair or deceptive acts or 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 CFA, the Contractors' Registration Act, the Contractor Registration Regulations and/or the Home Improvement Regulations.

3.2 Respondents shall not offer to perform, engage in or attempt to engage in the Sale or performance of any Home Improvements in New Jersey, unless and until Respondents are registered with the Division in accordance with the Contractors' Registration Act and the Contractor Registration Regulations.

3.3 Respondents shall provide to Consumers with whom they contract a written Home Improvement Contract for Home Improvement work in excess of $500, in accordance with requirements of N.J.S.A. 56:8-151(a) and N.J.A.C. 13:45A-16.2(a)(12).

3.4 Respondents shall use invoices, Home Improvement Contracts and/or correspondence that include the informational statement and toll-free telephone set forth in N.J.A.C. 13:45A-17.11(f).

3.5 Respondents shall not include an expired Contractor registration number on any invoices, Home Improvement Contracts and/or correspondence that are given to Consumers.

4. SETTLEMENT AMOUNT

4.1 The Parties have agreed to a settlement of the Investigation in the amount of Seven Thousand Two Hundred and 00/100 Dollars ($7, 200.00) ("Settlement Amount").

4.2 The Settlement Amount consists of a civil penalty of Six Thousand Five Hundred and 00/100 Dollars ($6,500.00), pursuant to N.J.S.A. 56:8-13; and Consumer restitution of Seven Hundred and 00/100 Dollars ($700.00), pursuant to N.J.S.A. 56:8-8.

4.3 The Division agrees to suspend the civil penalty portion of the Settlement Amount subject to the conditions set forth in Sections 4.4 through 4.8.

4.4 Respondents shall pay Seven Hundred and 00/100 Dollars ($700.00) ("Settlement Payment") in Consumer restitution on or before the Effective Date.

4.5 The Settlement Payment referenced in Section 4.4 shall be made by bank check, attorney trust account check, or other guaranteed funds made payable to the "New Jersey Division of Consumer Affairs" and forwarded to:

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

4.6 Upon making the payment referenced in Section 4.4, Respondents 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.

4.7 The Six Thousand Five Hundred and 00/100 Dollars ($6,500.00) balance of the Settlement Amount ("Suspended Penalty") shall be automatically vacated after three (3) years, provided:

a. Respondents comply with the restraints and conditions set forth in this Consent Order;

b. Respondents do not engage in any acts or practices in violation of the CFA, the Contractors' Registration Act, the Contractor Registration Regulations and/ or the Home Improvement Regulations; and

c. Respondents make the Settlement Payment referenced in Section 4.4, either on or before the dates provided therein.

4.8 In the event Respondents fail to comply with Section 4.7, the entire Suspended Penalty shall be immediately due and payable upon written notice by the Division. In any such notice, however, the Division shall provide Respondents with the specific details of Respondents' alleged noncompliance and Respondents shall be afforded a fifteen (15) day period within which to cure any such noncompliance. In the event of Respondents' failure to cure any such noncompliance, the Division will file a Certificate of Debt for the Suspended Penalty as well as any unpaid balance of the Settlement Payment.

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 the 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 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.

5.4 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.

5.5 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.

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 Respondents as well as their managers, agents, employees, successors and assigns, and any Person through which they may now or hereafter act, as well as any Person who has authority to control or who, in fact, controls and directs 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 avoid compliance with this Consent Order.

5.9 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 Respondents; or (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 Contractors' Registration Act, the Contractor Registration Regulations and/or the Home Improvement 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 7) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

5.10 This Consent Order is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

5.11 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.

6. REPRESENTATIONS AND WARRANTIES

6.1 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.

6.2 Respondents Represent and warrant that 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.

6.3 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.

7. RELEASE

7.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondents making the Settlement Payment

in the manner specified in Section 4, 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 against Respondents for violations of the CFA, the Contractors' Registration Act, the Contractor Registration Regulations and/or the Home Improvement Regulations, prior to the Effective Date arising out of the Investigation as well as the matters addressed in this Consent Order (the "Released Claims").

7.2 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.

8. PENALTIES FOR FAILURE TO COMPLY

8.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of Section 3 of this Consent Order or to seek sanctions for violations hereof or both.

8.2 The Parties agree that any future violations of the provisions of Section 3 of this Consent Order, the CFA, the Contractors' Registration Act, the Contractor Registration Regulations and/or the Home Improvement 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.

9. COMPLIANCE WITH ALL LAWS

9.1 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.

10. NOTICES UNDER THIS CONSENT ORDER

10.1 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 Respondents:

Phillip Donaghue
8 Bayard Avenue
Kearny, New Jersey 07032

IT IS ON THE 16th **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 ADJACENT TO THEIR RESPECTIVE SIGNATURES.

FOR THE DIVISION:

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By:_____ Dated: March 14, 2012
Nicholas Kant
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Telephone: (973) 648-3441

FOR RESPONDENTS:

COMFORT DESIGNS, L.L.C.

By:_____ Dated: Feb 24, 2012
Phillip Donaghue, Managing Member
Comfort Designs, L.L.C.
8 Bayard Avenue
Kearny, New Jersey 07032

PHILLIP DONAGHUE, individually

By: _____ Dated: _____, 2012

Phillip Donaghue, individually
8 Bayard Avenue
Kearny, New Jersey 07032