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Division of Law
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FILED

JUN 25 2012

Division of Consumer Affairs

By: Sabina P. McKinney
Deputy Attorney General
(973) 648-3146

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

In the Matter of

Administrative Action

TOYO CONSTRUCTION, L.L.C.,

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 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., and the Regulations Governing Home Improvement Contractor Registration, N.J.A.C. 13:45A-17.1 et seq. (“Contractor Registration Regulations”), have been or are being committed by Toyo Construction, L.L.C., as well as by its owners, officers, directors, managers, members, agents, servants, employees, representatives, independent contractors, subsidiaries, successors and assigns (collectively, “Respondent”), (hereinafter referred to as the “Investigation”);

WHEREAS Respondent, with a main business address of 45 Early Street, Morristown, New Jersey, 07960, is engaged in the business of offering for Sale and selling Home Improvements;

WHEREAS the Division alleges that Respondent has committed violations of the CFA, the Contractors' Registration Act, and/or the Contractor Registration Regulations;

WHEREAS Respondent denies that it has committed any violations of the CFA, the Contractors' Registration Act, and/or the Contractor Registration Regulations;

WHEREAS the Division and Respondent (collectively, the "Parties") having reached an amicable agreement resolving the issues in controversy and concluding the Investigation without the need for further action, and Respondent 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 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 “Advertise” shall be defined in accordance with N.J.A.C. 13:45A-17.2.
- 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 “Consumer” shall refer to any Person, who is offered Merchandise, for Sale.
- 2.4 “Contractor” shall be defined in accordance with N.J.S.A. 56:8-137.
- 2.5 “Home Improvement” shall be defined in accordance with N.J.S.A. 56:8-137 and/or N.J.A.C. 13:45A-17.2.
- 2.6 “Home Improvement Contract” shall be defined in accordance with N.J.S.A. 56:8-137 and/or N.J.A.C. 13:45A-17.2.
- 2.7 “Home Improvement Contractor” shall be defined in accordance with N.J.A.C. 13:45A-17.2.
- 2.8 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c).
- 2.9 “Person[s]” shall be defined in accordance with N.J.S.A. 56:8-1(d).
- 2.10 “Sale” shall be defined in accordance with N.J.S.A. 56:8-1(e).
- 2.11 “Sales representative” shall be defined in accordance with N.J.A.C. 13:45A-16.1A.
- 2.12 “Seller” shall be defined in accordance with N.J.A.C. 13:45A-16.1A.
- 2.13 “State” shall refer to the State of New Jersey.

3. REQUIRED AND PROHIBITED BUSINESS PRACTICES

3.1 Respondent shall not engage in any unfair or deceptive acts or practices in the conduct of its 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 Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 et seq., and/or the Contractor Registration Regulations.

3.2 Respondent shall not engage in the business of making or selling Home Improvements in this State unless registered with the Division, in accordance with N.J.S.A. 56:8-138(a) and N.J.A.C. 13:45A-17.3(a)1.

3.3 Respondent shall not Advertise indicating that the Respondent is a Contractor in this State unless Respondent is registered with the Division, in accordance with N.J.A.C. 13:45A-17.3(a)2.

4. SETTLEMENT AMOUNT

4.1 The Parties have agreed to a settlement of the Investigation in the amount of Five Thousand and 00/100 Dollars (\$5,000.00) ("Settlement Amount"), which consists of a civil penalty, pursuant to N.J.S.A. 56:8-13.

4.2 The Division agrees to suspend Four Thousand and 00/100 Dollars (\$4,000.00) of the civil penalty portion of the Settlement Amount ("Suspended Penalty") subject to the conditions set forth in Sections 4.3, 4.4 and 4.6.

4.3 Respondent shall pay a total of One Thousand and 00/100 Dollars (\$1,000.00) ("Settlement Payment") of the Settlement Amount in two (2) equal \$500 installments as follows:

On or before the Effective Date of the Consent Order and on or before the first day of the next month.

4.4 The payments set forth in Section 4.3 shall be made by money order, bank check, or other guaranteed funds made payable to the "New Jersey Division of Consumer Affairs" and forwarded to:

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

4.5 Upon making the Settlement Payment, 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.

4.6 The Four Thousand and 00/100 Dollars (\$4,000.00) Suspended Penalty shall be automatically vacated one year from the Effective Date, provided:

- a. Respondent complies with the conditions set forth in this Consent Order;
- b. Respondent does not engage in any acts or practices in violation of the CFA, the Contractors' Registration Act and/or the Contractor Registration Regulations; and
- c. Respondent pays the sum of One Thousand and 00/100 Dollars (\$1,000.00) in the manner required in Sections 4.3 and 4.4.

4.7 In the event Respondent fails to comply with Section 4.6, the balance of the Suspended Penalty as well as any balance of the Settlement Payment shall be immediately due and payable upon written notice by the Division. In any such notice, the Division shall provide Respondent with the specific details of the alleged noncompliance and Respondent shall be afforded a fifteen (15) day period within which to cure the noncompliance. In the event of Respondent's failure to cure the noncompliance, the Division will file a Certificate of Debt for the Suspended Penalty as well as the balance of the Settlement Payment and will take all authorized action to collect unpaid sums due from the Respondent.

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 Respondent as well as its owners, officers, directors, managers, members, agents, servants, employees, representatives, subsidiaries, 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.

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 entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall 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, the Contractors' Registration Act, and/or the Contractor Registration 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) 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 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 that their signatories to this Consent Order have authority to act for and bind the respective Parties.

5.11 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.

5.12 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 together be one and the same Consent Order.

6. RELEASE

6.1 In consideration of the relief, payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent fulfilling the requirements of Sections 3, and making the Settlement Payment referenced 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 against Respondent for violations of the CFA, the Contractors' Registration Act, and/or the Contractor Registration Regulations, prior to the Effective Date for matters 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; (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 provisions of Section 3 of this Consent Order or to seek sanctions for violations hereof or both.

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

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 Respondent 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:

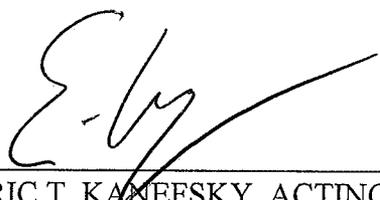
Sabina McKinney, Deputy Attorney General
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

For the Respondent:

Gustavo G. Garcia, Esq.
1182 Clinton Avenue
Irvington, New Jersey 07111
(973) 372-2300

IT IS ON THE 25th DAY OF June, 2012 SO ORDERED.

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By: 
ERIC T. KANEFSKY, ACTING 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: Patricia A. Schilipo
~~Sabina P. McKinney~~ PATRICIA A. Schilipo
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Telephone: (973) 648-3146

Dated: June 21, 2012

FOR THE RESPONDENT:

GUSTAVO G. GARCIA, ESQ.

By: [Signature]
Gustavo G. Garcia, Esq.
1182 Clinton Avenue
Irvington, New Jersey 07111
(973) 372-2300

Dated: 6-14-12, 2012

FOR THE RESPONDENT:

TOYO CONSTRUCTION, L.L.C.

By: [Signature]
George Armando Avila Rivera, President
Toyo Construction, L.L.C.
45 Earl Street
Morristown, New Jersey 07960
(862) 485-9486

Dated: 6-14-12, 2012