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FILED

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Division of Consumer Affairs

By: Patricia Schiripo
Deputy Attorney General

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

In the Matter of

BROTHERS MOTORSPORTS, LLC A/K/A
BMS TOWING AND RECOVERY A/K/A
BMS PARKING MANAGEMENT D/B/A
BROTHERS AUTOMOTIVE A/K/A
BROTHERS AUTOMOTIVE & SALES,

Respondent.

Administrative Action

CONSENT ORDER

WHEREAS this matter was 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 Brothers Motorsports, LLC a/k/a BMS Towing and Recovery a/k/a BMS Parking Management d/b/a Brothers Automotive a/k/a Brothers Automotive & Sales, with a main business

address of 240 West Route 130, Burlington New Jersey 08016, as well by as its owners, principals, officers, directors, members, managers, employees, representatives, agents, subsidiaries, successors and/or assigns (“Respondent”) (hereinafter referred to as the “Investigation”);

WHEREAS the Division alleges, among other things, the Respondent has: (1) charged unauthorized fees, such as administrative, special equipment and yard fees; (2) engaged in Private Property Towing without having entered into a written contract with the private property owner; (3) failed to arrange for after-hours release of stored motor vehicles; and (4) failed to maintain a business office open to the public between 8 a.m. and 6 p.m. at least five (5) days a week.

WHEREAS the Division and Respondent (collectively, “Parties”) have reached an amicable agreement resolving the issues in controversy and concluding the Investigation without the need for further action, and Respondent has 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, and shall be defined in accordance with N.J.A.C. 13:45A-31.2, for purposes of the PTPA Regulations.

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

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

2.5 “Person” shall be defined in accordance with N.J.A.C. 13:45A-31.2.

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

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

2.8 “Storage Facility” shall be defined in accordance with N.J.A.C. 13:45A-31.2.

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

3. REQUIRED AND PROHIBITED BUSINESS PRACTICES

3.1 Respondent shall not engage in any unlawful acts or deceptive or unconscionable 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 PTPA, the PTPA Regulations and the CFA.

3.2 Respondent shall not tow the Motor Vehicle of a Consumer 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 it has entered into a written contract for Private Property Towing with the owner of the property as required by N.J.S.A. 56:13-13(a).

3.3 Respondent shall not charge any unauthorized fees in violation of N.J.A.C. 13:45A-31.4(a) and (e) (e.g., administrative fees, special equipment fees, yard fees, paperwork fees and gate fees).

3.4 Respondent shall only calculate storage fees based upon full 24-hour periods a Motor Vehicle is in its Storage Facility pursuant to N.J.A.C. 13:45A-31.4 (d).

3.5 Respondent shall remove any references on its signs, invoices, or other documents indicating that a storage fee calculation is based on the calendar day and not full 24-hour periods.

3.6 Respondent shall include the time at which a towed Motor Vehicle was delivered to a Storage Facility on all bills and/or invoices for all Private Property Towing or other Non-consensual Towing pursuant to N.J.A.C. 13:45A-31.4(i).

3.7 Respondent shall maintain a Storage Facility that has a business office open to the public between 8:00 a.m. and 6:00 p.m. at least five (5) days a week, as set forth in N.J.S.A. 56:13-15a(1) and N.J.A.C. 13:45A-31.7(a)1.

3.8 Respondent shall remove any references on its signs, invoices or other documents that it has a business office open to the public between 9:00 a.m. and 6:00 p.m.

3.9 Respondent shall provide or arrange for after-hours release of stored Motor Vehicles whenever it has engaged in Private Property Towing or other Non-consensual Towing pursuant to N.J.A.C. 13:45A-31.7.

3.10 Respondent shall not conduct Non-consensual Towing from private property locations where the signage on the property refers to another entity, pursuant to N.J.S.A. 56:8-2 (e.g., conducting Non-consensual Towing from a private property location where the signage states “WCA Towing”).

3.11 Respondent shall not issue invoices to consumers bearing the name of another entity, pursuant to N.J.S.A. 56:8-2.

3.12 For a period of two (2) years, Respondent shall forward to the Division copies of any consumer complaints it receives from any source.

4. SETTLEMENT AMOUNT

4.1 The Parties have agreed to a settlement in the amount of Thirty-One Thousand Nine Hundred Nineteen and 01/100 Dollars (\$31,919.00) (“Settlement Amount”).

4.2 The Settlement Amount is comprised of Eight Thousand Four Hundred Forty-Seven and 85/100 Dollars (\$8,447.85), in restitution, pursuant to N.J.S.A. 56:8-8, Eleven Thousand and 00/100 Dollars (\$11,000.00) in civil penalties, pursuant to N.J.S.A. 56:13-21 and N.J.S.A. 56:8-13, and Twelve Thousand Four Hundred Seventy-One and 16/100 Dollars (\$12,471.16) as reimbursement of the Division’s attorney’s fees and cost, pursuant to N.J.S.A. 56: 8-11 and 8-19.

4.3 Respondent shall pay Sixteen Thousand and 00/100 Dollars (\$16,000.00) of the Settlement Amount (“Settlement Payment”), which is comprised of Eight Thousand Four Hundred Forty-Seven and 85/100 Dollars (\$8,447.85) in restitution, pursuant to N.J.S.A. 56:8-8, and Seven Thousand Five Hundred Fifty-Two and 15/100 Dollars (\$7,552.15) as reimbursement of the Division’s attorney’s fees and cost, pursuant to N.J.S.A. 56: 8-11 and 8-19. The Settlement Payment shall be made as follows: Three Thousand and 00/100 Dollars (\$3,000.00) contemporaneously with the signing of this Consent Order, One Thousand One Hundred and 00/100 Dollars (\$1,100.00) on

December 15, 2015, January 15, 2016, February 15, 2016, March 15, 2016, April 15, 2016, May 15, 2016, June 15, 2016, July 15, 2016, August 15, 2016, September 15, 2016 and October 15, 2016 and Nine Hundred and 00/100 Dollars (\$900.00) on November 15, 2016.

4.4 The Settlement Payment installments shall be made by certified or cashier's check, money order, wire transfer or credit card payable to the "New Jersey Division of Consumer Affairs" and all payments shall be sent to:

Patricia Schiripo, 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
Newark, New Jersey 07101

4.5 Upon making the Settlement Payment installments, 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.

4.6 Based on Respondent's representations regarding its inability to pay, Fifteen Thousand Nine Hundred Nineteen and 01/100 Dollars (\$15,919.01) of the Settlement Amount shall be suspended ("Suspended Penalty"), subject to the conditions set forth in Section 4.7.

4.7 For a period of one (1) year from the Effective Date, the Suspended Penalty shall be suspended and automatically vacated at the end of the period, provided:

- a. Respondent complies in all material respects with the required and prohibited business practices set forth in Section 3;
- b. Respondent does not engage in any acts or practices in violation of the PTPA, the PTPA Regulations and/or the CFA; and
- c. Respondent makes the Settlement Payment in accordance with Section 4.3.

4.8 In the event Respondent fails to comply with Section 4.7, the Division shall provide Respondent with written notice seeking payment of the Suspended Penalty as well as any unpaid portion of the Settlement Payment (“Notice of Noncompliance”). In the Notice of Noncompliance, the Division shall provide Respondent with the specific details of the alleged noncompliance, as well as any supporting documents, and shall afford Respondent a fifteen (15) day period from receipt of the Notice of Noncompliance within which to cure the noncompliance. In the event of Respondent’s failure to cure the noncompliance, the Division shall file a Certificate of Debt for the Suspended Penalty, as well as any unpaid portion 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 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 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 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 its 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 Nothing contained in this Consent Order shall be construed to limit or otherwise affect the rights of any Persons who are not Parties to this Consent Order with respect to any matters contained herein.

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.

5.12 Respondent represents and warrants that he has been advised by the Division to seek legal counsel to review this Consent Order and that he has voluntarily chosen not to do so.

5.13 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.

5.14 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.

6. RELEASE

6.1 In consideration of the 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 (“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 Respondent 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 provisions 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 PTPA and/or the PTPA Regulations shall constitute a second or succeeding violation pursuant to 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:

Patricia Schiripo, 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
Newark, New Jersey 07101

For Respondent:

Nicholas Chianese
204 West Route 130
Burlington, New Jersey 08016

IT IS ON THE 24th DAY OF November, 2015 SO ORDERED.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 
STEVE C. LEE, ACTING 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:

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: Patricia Schiripo Dated: November 19, 2015
Patricia Schiripo
Deputy Attorney General
Consumer Fraud Prosecution Section

124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

FOR THE RESPONDENT:

BROTHERS MOTORSPORTS, LLC A/K/A BMS TOWING AND RECOVERY A/K/A BMS
PARKING MANAGEMENT D/B/A BROTHERS AUTOMOTIVE A/K/A BROTHERS
AUTOMOTIVE & SALES

By: Nicholas Chianese Dated: November 19, 2015
Nicholas Chianese
~~204 West Route 130~~ 7 Elbow Lane
Burlington, New Jersey 08016