

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for Division of Consumer Affairs

FILED

FEB 10 2015

Division of Consumer Affairs

By: Natalie Serock
Deputy Attorney General
(973) 648-3070

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

In the Matter of

ROBERT FITZGERALD, Individually,
and d/b/a PLANTWURX LLC,

Respondent.

Administrative Action
No. NOV 1300151

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 Public Movers and Warehousemen Licensing Act, N.J.S.A. 45:14D-1 et seq. (“Public Movers Licensing Act”), and the Regulations Governing Public Movers and Warehousemen, N.J.A.C. 13:44D-1 et seq. (“Public Movers Regulations”), have been or are being committed by Robert Fitzgerald, Individually, and d/b/a Plantwurx LLC, with an address of 229 Main Street, Fort Lee, New Jersey 07024, as well as by his owners, officers, directors,

managers, employees, representatives and/or agents (collectively, "Respondent"), (hereinafter referred to as the "Investigation");

WHEREAS as a result of the Investigation, the Division alleges that Respondent Advertised, engaged in and/or attempted to engage in Mover's Services without being properly licensed as a Public Mover in violation of the Public Movers Licensing Act and the Public Movers Regulations;

WHEREAS on December 20, 2013, the Division sent Respondent a Notice of Violation and Offer of Settlement ("NOV"), by Certified and Regular Mail, which included the findings of the Investigation and gave Respondent notice and an opportunity to be heard as to the alleged violations;

WHEREAS the Division and Respondent (collectively, "Parties") have reached an amicable agreement hereby resolving the issues in controversy and concluding this 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 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. “Advertise” shall be defined in accordance with N.J.A.C. 13:45A-17.2. This definition applies to other forms of the word “Advertise” including, without limitation, “Advertised.”

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, 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.

2.4 “Mover’s Services” shall be defined in accordance with N.J.S.A. 45:14D-2(i).

2.5 “New Jersey” and “State” shall refer to the State of New Jersey.

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

2.7 “Public Mover” shall be defined: (a) for purposes of the Public Movers Licensing Act in accordance with N.J.S.A. 45:14D-2(p); and (b) for purposes of the Public Movers Regulations in accordance with N.J.A.C. 13:44D-1.1.

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

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 Public Movers Licensing Act and/or the Public Movers Regulations.

3.2 Respondent shall not Advertise, engage in and/or attempt to engage in Mover's Services in New Jersey, unless and until Respondent is licensed as a Public Mover with the Division, in accordance with the Public Movers Licensing Act and the Public Movers Regulations.

4. SETTLEMENT AMOUNT

4.1 The Parties have agreed to a settlement of the Investigation in the amount of One Thousand Two Hundred Fifty and 00/100 Dollars (\$1,250.00) ("Settlement Amount").

4.2 The Settlement Amount shall be paid in the following manner: (1) Six Hundred Twenty-Five and 00/100 Dollars (\$625.00) on or before the Effective Date; and (2) Six Hundred Twenty-Five and 00/100 Dollars (\$625.00) on or before December 17, 2014

4.3 The Settlement Amount referenced in Section 4.1 shall be made by certified check, money order, credit card or wire transfer made payable to the "New Jersey Division of Consumer Affairs" and forwarded to:

Case Management Tracking
New Jersey Department of Law and Public Safety
Division of Consumer Affairs
124 Halsey Street
P.O. Box 45025
Newark, New Jersey 07101
Attention: Van Mallet, Supervisor

4.4 Upon making any payment in satisfaction of the Settlement Amount, in the manner specified in Sections 4.2 and 4.3, 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.

5. GENERAL PROVISIONS

5.1 This Consent Order is entered into by the Parties of 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 his managers, agents, employees, successors and assigns, and any Person through which Respondent may now

or hereafter act, as well as any Person who has authority to control or who, in fact, controls and directs Respondent's 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 Respondent; or (b) an admission by Respondent that any of his acts or practices described in or prohibited by this Consent Order are unfair, or deceptive or violate the Public Movers Licensing Act and/or the Public Movers Regulations.

5.10 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.

5.11 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 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 Respondent represents and warrants that he has fully read and understands this Consent Order, 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 Respondent represents and warrants that he will not Advertise in a manner that would indicate to the public that Respondent is a Public Mover in New Jersey, unless and until Respondent is licensed as a Public Mover with the Division in accordance with N.J.S.A. 45:14D-9 and N.J.A.C. 13:44D-2.1(b).

6.4 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.

7. RELEASE

7.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent making the Settlement Amount in the manner 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 against Respondent for violations of the

Public Movers Licensing Act and/or the Public Movers Regulations, prior to the Effective Date arising out of the Investigation as well as the matters addressed in this Consent Order (“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 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 Public Movers Licensing Act and/or the Public Movers 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.

9. COMPLIANCE WITH ALL LAWS

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

- a. Relieving Respondent of his 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:

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 Respondent:

Robert Fitzgerald
229 Main Street
Fort Lee, New Jersey 07024

IT IS ON THE 10th DAY OF February, ²⁰¹⁵~~2014~~ 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 ADJACENT TO THEIR RESPECTIVE
SIGNATURES.

FOR THE DIVISION:

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 
Natalie A. Serock
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

Dated: 2/9, ~~2014~~
2015

FOR RESPONDENT:

ROBERT FITZGERALD, Individually, and d/b/a PLANTWURX LLC

By: 
Robert Fitzgerald
229 Main Street
Fort Lee, New Jersey 07024

Dated: 11/17, 2014