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Division of Law
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FILED

FEB 08 2013

Division of Consumer Affairs

By: Martin B. Gandelman
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(973) 648-7811

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

In the Matter of

MOLFETTA PIZZA INC.
d/b/a MOLFETTA PIZZERIA,

Respondent.

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”), have been committed by Molfetta Pizza Inc. d/b/a Molfetta Pizzeria as well as by its owners, officers, directors, managers, agents, representatives, employees, successors, assigns, subsidiaries and/or independent contractors (collectively, “Respondent”) (hereinafter referred to as the “Investigation”);

WHEREAS Respondent, located at 1122 Washington Street, Hoboken, New Jersey 07030, is engaged in the advertisement and sale of pizza, salad, pasta and sandwiches to consumers;

WHEREAS the Division alleges that Respondent advertised, offered for sale and/or sold merchandise that is consumed or used as a direct result of an emergency or which is consumed or used to preserve, protect, or sustain the life, health, safety or comforts of persons for a price that constitutes an excessive price increase during a State of Emergency or within thirty (30) days of the termination of a State of Emergency; and

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 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

2.1 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:

2.2 “Advertisement” shall be defined in accordance with N.J.S.A. 56:8-1(c). This definition applies to other forms of the word “Advertisement” including, without limitation, “Advertise.”

2.3 “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.

2.4 “Consumer” shall refer to any Person, who is offered Merchandise for Sale.

2.5 “Excessive Price Increase” shall be defined in accordance with N.J.S.A. 56:8-108.

2.6 “Hoboken Shelter” shall be defined as Communities of Faith for Housing, Inc. d/b/a The Hoboken Shelter, located at 300 Bloomfield St., Hoboken, New Jersey 07030.

2.7 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c) and includes, but is not limited to, pizza, salads, pasta and sandwiches.

2.8 “Merchandise Pricing Statute” shall refer to the portion of the CFA making it an unlawful practice to sell without a Total Selling Price in the manner provided by the statute, N.J.S.A. 56:8-2.5 et seq.

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

2.10 “Price Gouging Statute” shall refer to the portion of the CFA making it an unlawful practice to sell Merchandise at an Excessive Price Increase during a State of Emergency, N.J.S.A. 56:8-107 et seq.

2.11 “Prepared Food” shall be defined in accordance with N.J.S.A. 54:32B-3.

2.12 “Record Keeping Statute” shall refer to the portion of the Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq., concerning records required to be kept, N.J.S.A. 54:32B-16.

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

2.14 “State” shall refer to the State of New Jersey.

2.15 “State of Emergency” shall be defined in accordance with N.J.S.A. 56:8-108.

3. REQUIRED AND PROHIBITED BUSINESS PRACTICES

3.1 Respondent shall not engage in any unfair acts or deceptive 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 and the Price Gouging Statute.

3.2 Respondent shall conspicuously post the selling price of all Merchandise Advertised, offered for Sale and/or sold, as required by the Merchandise Pricing Statute, N.J.S.A. 56:8-2.5.

3.3 Respondent shall collect sales tax on the sale of all Prepared Food, as required by N.J.S.A. 54:32B-3.

3.4 Respondent shall maintain, for a period of four (4) years, records of every Sale of Prepared Food including, but not limited to, true copies of each sales slip, invoice, receipt, statement or memorandum upon which sales tax is collected, as required by the Record Keeping Statute, N.J.S.A. 54:32B-16.

4. SETTLEMENT PAYMENT

4.1 On a date and time to be determined by the Executive Director of the Hoboken Shelter or her designee, Respondent shall provide the Hoboken Shelter with no fewer than seventy-five (75) large cheese pizzas free of charge in settlement of the Investigation (“Settlement Donation”).

4.2 On or before the Effective Date, Respondent shall contact the Executive Director of the Hoboken Shelter at (201) 656-5069, to establish the date and time for delivery of the Settlement Donation.

4.3 Within one (1) day of the delivery, Respondent shall provide written notice to the Division of the delivery of the pizzas to the Hoboken Shelter.

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 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 Division and Respondent.

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 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.

5.8 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 its acts or practices described in or prohibited by this Consent Order are unfair, or deceptive or violate the CFA, Price Gouging Statute, Merchandise Pricing Statute and/or the Record Keeping Statute. 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.

5.9 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 of the matters contained herein.

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 that 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 it has fully read and understands this Consent Order, that it understands 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 relief, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent making the Settlement Donation 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 CFA, Price Gouging Statute, Merchandise Pricing Statute and/or the Record Keeping Statute, 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 injunctive provisions of this Consent Order, the CFA, Price Gouging Statute, and/or Merchandise Pricing Statute 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

9.1 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.

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 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:

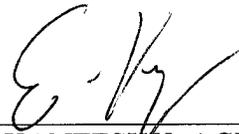
Assistant Deputy of Enforcement, Office of Consumer Protection
Division of Consumer Affairs State of New Jersey
Office of the Attorney General, Department of Law and Public Safety
124 Halsey Street - 7TH Floor
P.O. Box 45028
Newark, New Jersey 07101

For the Respondent:

Molfetta Pizza Inc.
d/b/a Molfetta Pizzeria
1122 Washington Street
Hoboken, New Jersey 07030

IT IS ON THE 8th DAY OF February, 2013 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 BESIDE THEIR RESPECTIVE SIGNATURES.**

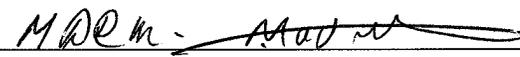
JEFFREY S. CHIESA
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Telephone: (973) 648-7811

Dated: ~~January~~ ^{February} 4, 2013

FOR THE RESPONDENT:

MOLFETTA PIZZA INC.
d/b/a MOLFETTA PIZZERIA

By: 
Sign Name

Dated: January 29, 2013

Name: MARIM-MOUSSAD
Print Name

Title: OWNER
Print Title