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IN CHAMBERS
VINCENT J. GRASSO, A.J.S.C.

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY
DOCKET NO.: C-164-12

JEFFREY S. CHIESA, Attorney General of New Jersey, on behalf of the Division of Consumer Affairs, Plaintiff, v. MARK ANTHONY NIEMCZYK, THOMAS SCALGIONE, d/b/a THE 9/11 GROUND ZERO TRUCK, Defendants.	**FINAL CONSENT JUDGMENT** (As to Mark Anthony Niemczyk)

THIS MATTER was presented to the Court by Attorney General Jeffrey S. Chiesa, on behalf of the New Jersey Division of Consumer Affairs ("DCA" or the "Plaintiff"), (Anna M. Lascurain, Deputy Attorney General appearing), by filing a Verified Complaint and an Order to Show Cause with Temporary Restraints, pursuant to R. 4:52-1, against Mark Anthony Niemczyk ("Niemczyk") Thomas

Scalgione("Scalgione"), (collectively "the Defendants"), (Defendants appearing Pro Se).

On August 3, 2012, the Court entered an Order granting, among other things, temporary restraints and a partial asset freeze against the Defendants for numerous violations of the Charitable Registration and Investigation Act, N.J.S.A. 45:17A-18 et seq. (the "Charities Act"). After the entry of the Order, the Plaintiff and the Defendants agreed to resolve any and all issues in controversy in this action on the terms set forth in this Final Judgment.

IT IS on this 24th day of October, 2012,

ORDERED, that the Court makes the following findings of fact, all of which are admitted by the Defendant Niemczyk:

FACTUAL FINDINGS

1. Niemczyk is the owner of the 9/11 Ground Zero Truck("the 9/11 Truck") bearing New Jersey license plate "911-GZT."
2. Niemcyzk appeared with the 9/11 Truck at military, veteran's and 9/11 memorial events, claiming to raise funds for 911 victims' families.
3. Niemczyk's 9/11 Truck is owned, operated, and controlled by Niemcyzk.
4. When the 9/11 Truck appeared at these events, Niemcyzk solicited and accepted donations from the public. He also sold tee shirts emblazoned with the logos of the New York City Police Department("NYPD"), the Fire Department of the City of

New York ("FDNY"), and the Port Authority Police Department ("PAPD").

5. Neither Niemcyzk or his partner, Scalgione, had permission or authority to replicate the logos of the NYPD, FDNY, or PAPD on their tee shirts or place those logos on the 9/11 Truck.

6. Niemczyk solicited and collected donations. ~~He represented to the public that the funds collected would be used to benefit survivors of the World Trade Center Attack on September 11, 2001 ("9/11 Attack"), and the families of survivors of the 9/11 Attack.~~

7. Instead the donations collected by Niemczyk were commingled with his personal funds. Niemczyk used the donations to pay for his personal expenses as well as truck maintenance and upkeep.

8. Niemczyk made untruthful statements in soliciting charitable contributions in violations of N.J.S.A 45:17A-32.

9. Niemczyk failed to file a charitable registration statement in violation of N.J.S.A. 45:17A-23 for the 9/11 truck charity.

10. Niemczyk failed to maintain and provide the Attorney General with complete and accurate records of donations received by the 9/11 truck charity in violation of N.J.S.A. 45:17A-31(a) and N.J.A.C. 13:48-12.2

11. Based on an analysis of Niemczyk's bank records and his limited record keeping provided to the DCA, it has been

determined that Niemczyk received approximately $121,116.95 in donations and tee shirt sales.

12. Although Niemczyk represented to donors that the collected funds would benefit victims of the 9/11 Attack, none of the approx $121,116.95 in donations and tee shirt sales that Niemczyk collected was used for the purpose of assisting 9/11 first responders or their families or any victims of the 9/11 Attack.

PERMANENT INJUNCTIVE RELIEF

AND IT IS FURTHER ORDERED, that:

13. The Defendant Niemczyk, and his agents, employees, partners, officers, directors, attorneys, and/or any person who is directly or indirectly under his control or direction, are permanently restrained and enjoined from directly or indirectly violating the Charities Act and from directly or indirectly engaging in the following conduct:

(a) soliciting or promoting any charities to, from, or within the State of New Jersey;

(b) acting as a charity or giving the impression that he is collecting on behalf of a charity to from or within the State of New Jersey;

(c) conducting any fund raising on behalf of any 9/11 responders, their families or any other charitable organization to, from, or within the State of New Jersey.

14. At the time Niemczyk signs this agreement, Niemczyk under the supervision of DCA and at his own expense, shall remove the decals bearing the names or any references to deceased 9/11 responders, the NYPD, the FDNY or the PAPD from the 9/11 Truck. This shall include any insignia, emblems, badges, truck lights, or any other item which would give the impression that the vehicle is or is associated with law enforcement or the 9/11 tragedy.

15. Niemczyk shall surrender any items associated with this fraud including but not limited to, brochures, tee shirts, cds, decals, and emblems to the DCA for disposal.

16. ~~Should the 9/11 Truck be re-possessed by the company holding title to the vehicle, Niemczyk will not contest the repossession.~~ VJC

17. Niemczyk shall fully cooperate with the DCA in the recovery of monies donated to alleged First Responder Charles Giles.

SETTLEMENT PAYMENTS

AND IT IS FURTHER ORDERED THAT:

18. Niemczyk shall pay the sum of seventy five thousand dollars ($75,000.00) as a civil monetary penalty, in addition to attorney's fees of eight thousand three hundred ninety-two dollars and eighty-two cents ($8,392.82) and fifteen thousand six hundred one dollars and seven cents ($15,601.07) in investigative costs. Defendant shall also pay the sum of

$121,116.95 for disgorgement of unlawful gain, ("Disgorgement Amount").

19. Defendant shall make monthly disgorgement payment of three hundred fifty dollars per month ($350.00) commencing 30 days after the Defendant signs this Judgment. Should Defendant make disgorgement payments in a timely manner, the civil penalty, attorney's fees, and investigative costs shall be suspended. Should at anytime, Defendant's financial condition change or Defendant receives any proceeds from gambling activity, including but not limited to the State Lotteries, those winning shall be paid toward any unpaid disgorgement balance.

20. In the event that the Defendant defaults in making the disgorgement payment on time or in full, or fails to comply with any other provision of this Final Judgment, the entire unpaid portion of the total civil penalty, along with attorney's fees, and costs shall be immediately due and payable along with post judgment interest as set forth in R. 4:42-11.

21. All payments shall be made by attorney trust account check, bank check or other guaranteed funds and be sent to:

Mr. Van Mallett, Investigator
Office of Consumer Protection
Division of Consumer Affairs
124 Halsey Street - 7th Floor
P.O. Box 45025
Newark, NJ 07101

ASSET FREEZE AND RETURN OF PROPERTY

AND IT IS FURTHER ORDERED THAT:

22. Paragraph 7a of the Order Granting Preliminary Injunctive and Other Relief, entered on August 3, 2012, which provided for an asset freeze, is hereby vacated.

23. Upon signing of this agreement, Plaintiff shall return all personal items not related to the fraud to Niemczyk.

GENERAL PROVISIONS

In order to effect the terms of this Consent Order, the parties hereby agree as follows:

24. Defendant Niemczyk's liability to pay the civil monetary penalty, attorney's fees and costs pursuant to this Final Judgment, shall be non-dischargeable in bankruptcy.

25. The findings of fact and the terms of this Final Judgment may be disclosed and are admissible as evidence against Defendant Niemczyk in any subsequent civil, criminal, administrative or any other action or proceeding against him.

26. This Final Judgment applies to and is binding upon Defendant.

27. The parties acknowledge that for the purpose of enforcement of this Final Judgment, New Jersey Law shall govern the terms and provisions herein.

28. The parties represent that an authorized representative of each has signed this Final Judgment with full knowledge, understanding and acceptance of its terms and that this person

has done so with authority to legally bind the respective party.

29. This Final Judgment constitutes the entire agreement among the parties with respect to its subject matter. Any addition, deletion or change to this Final Judgment must be in writing and signed by all parties to be bound, approved, and signed by the Court.

30. This Final Judgment 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 Final Judgment.

31. The Parties have negotiated, jointly drafted and fully reviewed the terms of this Final Judgment and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Final Judgment.

32. As used in this Final Judgment, the plural shall include the singular and the singular shall include the plural. In addition, "or" and "and" shall be interpreted conjunctively.

33. Except as otherwise explicitly provided in this Final Judgment, 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.

The Honorable Vincent J. Grasso, A.J.S.C.

Dated: 10/24/12

We consent to the form and entry of this Final Judgment.

Dated: 10/26/12

By: _____
Mark Anthony Niemczyk
Defendant, Pro Se

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

Dated: 10-19-2012

By: _____
Anna M. Lascurain
Deputy Attorney General
On behalf of the Plaintiff