

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

FILED

DEC 13 2012

Division of Consumer Affairs

By: Jeffrey Koziar
Deputy Attorney General
(973) 648-7819

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

In the Matter of

POWDER MILL TOWING, INC.

Respondents

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 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 Powder Mill Towing, Inc. (“Powder Mill” or “Respondent”) as well by as its owners, officers, directors, managers, employees, representatives, agents, subsidiaries, successors and/or assigns,(hereinafter referred to as the “Investigation”);

WHEREAS the Division alleges that Respondent has engaged in unlawful towing practices including, but not limited to, non-consensual towing without having contracts with the private

property owners; not complying with the signage requirements; failing, when so requested by the owner or operator of a Motor Vehicle subject to Non-consensual Towing, to release a Motor Vehicle to the owner or operator that has been, or is about to be, hooked or lifted but has not actually been moved or removed from the property when the Motor Vehicle owner or operator returns to the Motor Vehicle;

WHEREAS Respondent denies having committed any violation of the PTPA, the PTPA Regulations and/or the CFA;

WHEREAS the Division and Respondent (collectively, "Parties") have reached an amicable agreement thereby 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 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 "Additional Consumer" shall refer to any Consumer who submits to the Division directly or through another agency, after the Effective Date, a written Consumer complaint concerning Respondent's business practices.

- 2.2 “ADR Unit” shall refer to the Alternate Dispute Resolution Unit of the Division.
- 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 “Basic Towing Services ”shall be defined in accordance with N.J.S.A. 56:13-9.
- 2.5 “Consumer” shall be defined in accordance with N.J.S.A. 56:13-9. For purposes of the PTPA Regulations, “Consumer” shall be defined in accordance with N.J.A.C. 13:45A-31.2.
- 2.6 “Motor Vehicle” shall be defined in accordance with N.J.S.A. 56:13-9. For purposes of the PTPA Regulations, “Motor Vehicle” shall be defined in accordance with N.J.A.C. 13:45A-31.2.
- 2.7 “Non-consensual Towing” shall be defined in accordance with N.J.S.A. 56:13-9. For purposes of the PTPA Regulations, “Non-consensual Towing” shall be defined in accordance with N.J.A.C. 13:45A-31.2.
- 2.8 “Restitution” shall refer to all methods undertaken by Respondent to resolve Consumer complaints including, but not limited to, the issuance of credits or refunds or the reversal or credit card or debit card charges.
- 2.9 “State” and “New Jersey” mean the State of New Jersey.
- 2.10 “Towing” shall be defined in accordance with N.J.S.A. 56:13-9. For purposes of the PTPA Regulations, “Towing” shall be defined in accordance with N.J.A.C. 13:45A-31.2.

3. BUSINESS PRACTICES AND INJUNCTIVE RELIEF

- 3.1 Respondent shall not engage in any unlawful acts or unconscionable practices in the conduct of their 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 any Motor Vehicle 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 they comply with the following requirements set forth in N.J.S.A. 56:13-13(a):

- (1) Respondent shall have entered into a contract for private property Towing with the owner of the property;
- (2) There is posted in a conspicuous place at all vehicular entrances to the property which can easily be seen by the public, a sign no smaller than 36 inches high and 36 inches wide stating:
 - (a) the purpose or purposes for which parking is authorized and the times during which such parking is permitted;
 - (b) that unauthorized parking is prohibited and unauthorized Motor Vehicles will be towed at the owner's expense;
 - (c) Powder Mill's name, address, and telephone number;
 - (d) Powder's charges for the towing and storage of towed Motor Vehicles;
 - (e) the street address of the storage facility where the towed vehicles can be redeemed after payment of the posted charges and the times during which the vehicle may be redeemed; and
 - (f) the Division telephone number (1-800-242-5846; prompt number 4);
- (3) the property owner has authorized to remove the particular Motor Vehicle; and
- (4) Powder Mill tows the Motor Vehicle to a secure storage facility that is located within a reasonable distance of the property from which the Motor Vehicle was towed.

3.3 Respondents shall cease and desist from any conduct in violation of N.J.S.A. 56:13-16 in their performance of Basic Towing including, but not limited to:

- (1) Giving any benefit or advantage, including a pecuniary benefit, to any Person for providing information about Motor Vehicles parked for unauthorized purposes on privately owned property or otherwise in connection with private property Towing of Motor Vehicles parked without authorization or during a time at which such parking is not permitted;
- (2) Failing, when so requested by the owner or operator of a Motor Vehicle subject to Non-consensual Towing, to release a Motor Vehicle to the owner or operator that has been, or is about to be, hooked or lifted but has not actually been moved or removed from the property when the Motor Vehicle owner or operator returns to the Motor Vehicle, or to charge the owner or operator requesting release of the Motor Vehicle an unreasonable or excessive decoupling fee.
- (3) Charging a fee for a private property or other Non-consensual Towing or related storage service not in accordance with the schedule of services for which a fee may be charged as established by N.J.A.C. 13:45A-31.4;
- (4) Charging an unreasonable or excessive fee or a presumptively unreasonable or excessive fee as set forth in N.J.A.C. 13:45A-31.5;
- (5) Refusing to accept for payment in lieu of cash or an insurance company check for towing or storage services a debit card, charge card or credit card if Powder Mill ordinarily accepts these cards at its place of business, unless Powder Mill's refusal is authorized in accordance with N.J.S.A. 56:13-4; and
- (6) Monitoring, patrolling or otherwise surveilling private property for the purposes of identifying Motor Vehicles parked for unauthorized purposes and towing a Motor Vehicle parked for an unauthorized purpose from such private property without having been specifically requested to tow such Motor Vehicle by the owner of the property.

3.4 Respondent shall retain and make available for inspection by the Division for a period of three (3) years invoices, job orders, logs, claims for reimbursement from insurance companies and other documentation relating to all consensual and Non-consensual Towing services performed and rates charged for the services, in accordance with N.J.S.A. 56:13-17.

4. ADDITIONAL CONSUMER COMPLAINTS

4.1 For a period of one (1) year from the Effective Date, the Division shall forward to Respondent copies of any Additional Consumer complaints. The Division shall forward to Respondent such complaints within thirty (30) days of the Division's receipt thereof.

4.2 After forwarding to Respondent the complaints of the Additional Consumers, the Division shall notify the Additional Consumers, in writing, of the following: (a) that their complaints have been forwarded to Respondent; (b) that they should expect a response from Respondent within thirty (30) days from the date of this notice; and (c) their right to refer their complaints to the ADR Unit for binding arbitration if Respondent disputes the complaint and/or requested relief.

4.3 Within thirty (30) days of receiving the Additional Consumer complaint from the Division, Respondent shall send a written response to each Additional Consumer, with a copy sent by first class mail, fax or email to the following: New Jersey Division of Consumer Affairs, Office of Consumer Protection, Case Management Tracking Supervisor, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101, fax number: 973-648-3139, cmt@dca.lps.state.nj.us.

4.4 If Respondent does not dispute the Additional Consumer's complaint and requested relief, Respondent's written response shall so inform the Additional Consumer. Respondent shall forward to such Additional Consumer the appropriate Restitution upon receipt of the Additional Consumer's release of his or her claims against Respondent arising out of or relating to such complaint. Where Restitution concerns the reversal of credit or debit card charges, Respondent shall include documents evidencing that such adjustments have been made. Where Restitution concerns

a refund or other payment, such shall be made by bank check, money order or other guaranteed funds made payable to the Additional Consumer.

4.5 If Respondent disputes the Additional Consumer's complaint and/or requested relief, Respondent's written response shall include copies of all documents concerning Respondent's dispute of the complaint.

4.6 Within forty-five (45) days of receiving from the Division an Additional Consumer complaint, Respondent shall provide the Division with written notification of each Additional Consumer whose complaint has been resolved. Such notification shall also include the following:

- (a) The Restitution provided as to each such Additional Consumer;
- (b) The efforts Respondent has undertaken to locate an Additional Consumer whose Restitution was returned as undeliverable; and
- (c) Confirmation that Respondent sent all mailings to the Additional Consumer as required by this Section.

Following the Division's receipt of such notification, the complaint of each Additional Consumer who received Restitution shall be deemed closed for purposes of this Consent Order.

4.7 If Respondent has not notified the Division that an Additional Consumer's complaint has been resolved within sixty (60) days of receiving the Additional Consumer complaint from the Division or if an Additional Consumer refuses Respondent's offer of Restitution, the Division shall forward such complaint to the ADR Unit for binding arbitration. Respondent agrees herein to consent to this arbitration process and to be bound by the arbitrator's decision. Respondent further agrees to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. The Division shall notify any such Additional Consumer of the referral of the complaint to the ADR Unit. Thereafter, the arbitration

shall proceed in accordance with the ADR Guidelines. (A copy of the ADR Guidelines are attached as Exhibit A).

4.8 If an Additional Consumer refuses to participate in the ADR program, that Additional Consumer's complaint shall be deemed closed for the purposes of this Consent Order.

4.9 The Parties may agree in writing to alter any time periods or deadlines set forth in this Section.

5. SETTLEMENT PAYMENT

5.1. The Parties have agreed to a settlement in the amount of Fifty Thousand and 00/100 Dollars (\$50,000.00) ("Settlement Payment"). The Settlement Payment comprises Forty Six Thousand Six Hundred and 00/100 Dollars (\$46,600.00) in civil penalties pursuant to N.J.S.A. 56:13-21 and N.J.S.A. 56:8-13; Eight Hundred Seventy Five and 00/100 Dollars (\$875.00) in reimbursement of the Division's attorneys' fees pursuant to N.J.S.A. 56:8-19; and Two Thousand Five Hundred Twenty Five and 00/100 Dollars (\$2,525.00) in reimbursement of the Division's investigative costs, pursuant to N.J.S.A. 56:8-11.

5.2 The Settlement Payment shall be made on or before the Effective Date by cashier's check, money order or other form of guaranteed funds payment made payable to "New Jersey Division of Consumer Affairs" and shall be forwarded to the undersigned:

Jeffrey Koziar, 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

5.3 Upon making the Settlement Payment, 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.

6. GENERAL PROVISIONS

6.1 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.

6.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State.

6.3 Respondent has been advised by counsel for the Division to seek legal counsel to review this Consent Order and has voluntarily chosen not to do so.

6.4 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.

6.5 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.

6.6 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.

6.7 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.

6.8 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 their business.

6.9 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.

6.10 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 7) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

6.11 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.

6.12 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.

7. RELEASE

7.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent making the Settlement Payment as specified in Section 5, 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 (the "Released Claims").

7.2 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 Respondents 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.

8. PENALTIES FOR FAILURE TO COMPLY

8.1 The Attorney General (or designated representative) shall have the authority to enforce the injunctive provisions of this Consent Order or to seek sanctions for violations hereof or both.

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 Respondents 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
Officer of Consumer Protection
New Jersey Division of Consumer Affairs
124 Halsey Street - 7th Floor
P.O. Box 45025
Newark, New Jersey 07101

For the Respondent:

Earle M. Benson
Powder Mill Towing, Inc.
299 Littleton Road
Parsippany, New Jersey 07054

IT IS ON THE 13th DAY OF December, 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 BESIDE THEIR RESPECTIVE SIGNATURES.

FOR THE DIVISION:

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

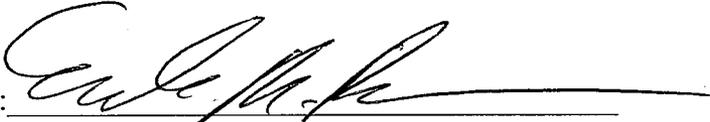
By: 
Jeffrey Koziar, Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: 12/13, 2012

124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
(973) 648-7819

FOR RESPONDENT:

POWDER MILL TOWING, INC.

By:  Dated: 11/21/12, 2012

Earle M. Benson
299 Littleton Road
Parsippany, New Jersey 07054
(973) 285-9282

EXHIBIT A

**NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
ALTERNATIVE DISPUTE RESOLUTION UNIT**

ADR UNIT GUIDELINES

INTRODUCTION

The Division of Consumer Affairs ("Division") started the Alternative Dispute Resolution ("ADR") Unit in May 1992 as an independent, non-advocacy unit within the Division. It was designed to offer a method of resolving problems without using the court system, thereby avoiding the time and expense of court cases. Two programs are available for settling disputes: mediation and arbitration. In the mediation program, the parties involved work directly with a mediator who, as an uninvolved third party, helps to create an atmosphere that is conducive to resolving the issues. In arbitration, the parties present their problem to a neutral individual who analyzes the presentations and then issues a final decision that all parties must follow. Both approaches use trained volunteers and are generally available to the parties at no cost. Originally, the Division made these services available only for settling disputes between businesses and consumers. Over time, however, the focus has been expanded and this assistance is now available to various State agencies.

I. DEFINITIONS

Listed below are definitions for terms used in these Guidelines and in the various ADR processes:

(1) **"Arbitration"** is a voluntary means of settling a disagreement in which an arbitrator assigned by the ADR Unit reviews the facts of the case, meets with the parties, and issues a final non-reasoned award that is binding on everyone involved. (A "non-reasoned award" means the parties receive the decision reached by the arbitrator but not the rationale that went into reaching that decision.) Once such a decision is issued, the parties' right to seek further review through the court system is very limited. If necessary, however, the terms of the award can be enforced by the courts. (See discussion below). For the purposes of these Guidelines, an arbitration begins at the time the parties sign the arbitration agreement. (See section VI below.)

(2) An **"arbitrator"** is a volunteer trained by the Division who reviews the facts of the case, meets with the parties and issues a final and binding decision.

(3) A **"complaint"** is a dispute arising out of an interaction between a business and a consumer or between an individual and a State agency, as well as from cases referred by a State agency.

(4) A **"complainant"** is the person who brings the dispute to the attention of the Division or the Unit.

(5) **"Mediation"** is the process by which a mediator works with the parties in an effort to help them craft and agree upon a solution to the dispute. For the purposes of these Guidelines, a mediation begins at the time the parties agree to mediate. That settlement, once reached, is binding on the parties. (See section VI below.)

(6) A **"mediation document"** is any written material prepared before or during the mediation for purposes of the mediation. Such papers may include, but are not limited to, memoranda, notes, files and records.

(7) A **"mediator"** is a volunteer trained by the Division to serve as a neutral third party to help settle disputes brought to the ADR Unit. The mediator does not have the authority to impose a resolution upon the parties.

(8) A **"party"** is a complainant or respondent and may be an individual, corporation, association or other legal entity.

(9) A **"respondent"** is the party against whom the complaint is filed.

II. **WHAT IS MEDIATION?**

In mediation, through one or more sessions, the mediator encourages the parties to explain their positions about the dispute and helps them develop a solution that is acceptable to them. This is a voluntary procedure that, when successful, quickly turns a dispute into a winning situation for both parties; as a result, long and costly litigation can be avoided.

The mediator may conduct joint and separate meetings with the parties and may propose oral and written suggestions for settlement. (At the discretion of the mediator, the mediation may be conducted by telephone.) The mediator determines when each party may speak during a mediation conference. The mediator may also decide whether the party's representative may speak during the conference. If necessary, the mediator may obtain expert advice concerning technical aspects of the dispute. When appropriate, and when they agree, the parties will jointly pay for such advice. Arrangements for obtaining that input will be made by the mediator or by agreement of all parties.

It is important to note that although mediation is non-binding, once a resolution is reached and agreed upon by the parties, it is binding on all involved, as would any agreed upon contract.

III. **WHAT IS ARBITRATION?**

The arbitration process also uses trained volunteers to resolve disputes. The arbitrator reviews the facts and issues of the dispute, hears testimony, accepts evidence and evaluates the positions of the parties. Unlike mediation where the parties have agreed to a resolution, in arbitration the arbitrator issues a binding decision. That decision is in the form of a non-reasoned award; that is, no findings of fact and no opinion or rationale are provided by the arbitrator. Additionally, arbitration is not as formal as a court

proceeding. For example, evidence often unacceptable in a court proceeding may be admissible in an arbitration. The parties are bound by and must follow the decision. This process is also faster and less costly than taking a case to court, and the arbitrator's award is viewed as an end to the case. Arbitration awards cannot be challenged in court except under very limited circumstances. For example, in order to overturn a decision, there must be a showing of favoritism, prejudice, fraud, misconduct, or blatant disregard of the rules and procedures in relation to the process of the arbitration. Once a dispute has been submitted for arbitration and an award is issued, neither party can later choose to resolve the dispute again in any other manner, including use of the court system. Please note that if any party to the dispute fails to comply with the arbitrator's decision, the offended party may apply to a court of appropriate jurisdiction to have the decision enforced pursuant to N.J.S.A. 2A:23B-22.

IV. GENERAL GUIDELINES FOR DISPUTE RESOLUTION

Standard for Participation

The Director of the ADR Unit accepts referrals from State agencies for mediation or arbitration of complaints that are appropriate for those types of dispute resolution. Such complaints include, among others, requests for restitution, replacements or exchanges of merchandise, warranty claims, and specific performance under a contract.

The Director of the Unit may, in his discretion, decline to accept matters for dispute resolution if the matter is not suitable for arbitration or mediation. In making that determination, the Director shall consider the nature of the relief sought by the complainant (money damages or other relief that can be awarded) and whether the responding party continues to exist or has the resources to address the complaint (for example, the company is bankrupt). If the referral is made pursuant to a Consent Order from a State Agency, any decision to decline to attempt dispute resolution shall be promptly conveyed to that agency along with the reasons for the decision.

Complaint Review

The ADR Unit reviews the complaints it receives to determine their suitability for the Unit's dispute resolution processes. If the Unit finds that a complaint is appropriate for resolution, either through mediation or arbitration, it will offer those services to the parties involved. Though the ADR Unit and/or the parties decide if mediation or arbitration will be used, generally, unless otherwise required by consent order, matters will be mediated.

If the ADR Unit considers a complaint inappropriate for its dispute resolution procedures, it will return the complaint to the agency that initially referred it to the Unit.

Beginning the Process

Once a complaint has been accepted by the ADR Unit, a letter is sent to all parties. When

mediation is the proposed process, the letter to the complainant says that the complaint has been received and that the other party, the respondent, is being contacted. The letter to the respondent offers a brief description of the complaint. The letters to both parties name the neutral third party appointed and state how to best contact that person.

In matters to be arbitrated, both parties will be informed of the date of the hearing through ADR Unit staff. In arbitration, ex parte communication, that is contact by one party without the presence of the other, is strictly prohibited. Once the parties agree to participate in dispute resolution, the process is started. Should an arbitrator or mediator become unwilling or unable to serve, the ADR Unit will appoint an alternate.

Representation

Any party may be represented by an attorney during dispute resolution proceedings. In mediation, any individual designated by a party may accompany the party to and participate in a mediation.

Date, Time and Place of Mediation or Arbitration

The mediator shall set the date and time of each conference. In the case of an arbitration, the ADR Unit staff, will fix the date and time of the hearing. Unless the parties are notified otherwise, sessions are held at the offices of the ADR Unit, located at 153 Halsey Street, 7th floor, Newark, New Jersey. In mediation, the mediator and the parties may decide that the sessions will be conducted over the telephone. In arbitration, telephone hearings will only be conducted under extenuating circumstances. The Unit attempts to arrange convenient dates and times for all sessions. In the case of an arbitration, if necessary, the date and time of the hearing may be imposed by the ADR Unit staff. Parties failing to cooperate in setting a date and time or failing to appear when required, may forfeit the ability to present their case to the arbitrator and a decision may be rendered without their ability to offer testimony or evidence beyond those documents submitted to the Unit in advance of the arbitration.

Identification of Matters in Dispute

A) Mediation

During an initial telephone conference, the mediator and the parties will discuss what information should be provided, including a brief description of the facts, issues and positions in dispute and the parties' desired outcome. That information and copies of any supporting documents must be produced at least five days before the first session. Documents may be exchanged between the parties if everyone expressly agrees to that process. The mediator may ask that additional information be provided before, during or after the sessions.

B) Arbitration

The ADR Unit will assign an arbitrator who will hear the matter. Once an arbitrator has been selected to hear the case, the arbitrator's curriculum vitae will be sent to each party to the dispute. (Please

see the **Disclosure** section - **D**, below, for the process used to challenge the selection of that arbitrator.) An ADR staff member will then contact the parties to establish a schedule. At least ten days before the first session, each party must provide the arbitrator, through the Unit staff, a brief written description of the facts and issues in dispute, all appropriate documents and background information that are relevant to the dispute and a statement of the relief sought through the arbitration process. Arbitration, through the ADR Unit will not award punitive or consequential damages. At any time during the process, the arbitrator may compel the production of additional information through documents or witnesses by way of subpoena.

Parties will be given the opportunity to present their case in its entirety, including all necessary documentation. However, unless otherwise expressly stated by the arbitrator, no evidence or testimony will be accepted by the arbitrator once the hearing has been concluded.

C) Written Requirements

Before starting a face-to-face mediation or an arbitration, parties must agree to certain terms. There are agreement forms that must be read, understood and signed before anyone can participate. Copies of those forms are provided to the parties prior to the initial mediation or arbitration session but are signed only in the presence of the mediator or arbitrator. (Generally parties who participate in telephone mediation are not required to sign the form. They will, however, be required to indicate acceptance of the terms governing the mediation during the telephone conference.)

D) Disclosure

A person appointed as an arbitrator shall disclose to the ADR staff and to the parties any circumstance likely to raise any question as to the arbitrator's impartiality or independence, including any bias or financial interest or past or present relationship with parties or their representatives. This shall remain a continuing obligation of the arbitrator. Notice of any challenge to the impartiality or independence of the arbitrator shall be made within five (5) days of becoming aware of circumstances giving rise to the challenge. This notice shall be in writing to the ADR Unit and shall set forth the facts and circumstances giving rise to the challenge.

V Privacy

All sessions are private and confidential. Only parties and their designated representatives may attend conferences and/or hearings. Other persons may attend only with the permission of the parties and with the consent of the mediator or arbitrator and the Unit Director.

VI CONFIDENTIALITY OF DISPUTE RESOLUTION SESSIONS

All information provided by parties during the mediation process is confidential. Success of mediation depends in large part on a free exchange of information, so it is important that parties feel free to discuss issues openly. Information provided by one party will not be revealed to the opposing party without the explicit authorization of the revealing side. Mediators cannot be forced to release any

information or to testify about the mediation in a lawsuit or court proceeding. All mediation documents are considered confidential. (For a full description of these rights and responsibilities please see N.J.S.A. 2A:23C-4, 5 and 6.)

In arbitrations, information provided to the arbitrator must also be given to the opposing party. Parties must maintain the confidentiality of the arbitration and may not disclose information except to the staff of the ADR Unit. Confidentiality as discussed in this section, takes effect upon the parties' agreement to participate in the ADR process. The following documents related to the arbitration proceeding are ***not*** considered confidential and may be available upon request to persons or entities:

- a) The complaint, with all its attachments, that initiated the arbitration;
- b) The response to the initial complaint, with all its attachments,; and
- c) The arbitrator's award.

All other documents submitted in the course of the arbitration are considered confidential and not available to any person or entity except the parties involved, the staff of the ADR Unit and its counsel.

No taped or stenographic record may be made of any dispute resolution process.

VII TERMINATION

A mediation will be concluded in one of the following ways:

- 1) the signing of a written settlement agreement by the parties;
- 2) an oral agreement between the parties;
- 3) a written or oral statement of the mediator saying that further efforts at mediation will not be productive; or
- 4) a statement by a party or parties withdrawing from the mediation proceedings.

An arbitration will be concluded in one of the following ways:

- 1) upon the issuance of a decision by the arbitrator;
- 2) a written agreement between the parties resolving the dispute; or
- 3) a written statement by all parties that they no longer wish to continue the arbitration.

VIII EXCLUSION OF LIABILITY

Neither the staff of the ADR Unit nor any mediator or arbitrator is a necessary party in a judicial proceeding related to the dispute that is being resolved. Parties to an arbitration expressly agree to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14 and the New Jersey Tort Claims Act, N.J.S.A. 59:10A-1 et seq. Parties to a mediation or arbitration shall be deemed to have consented that neither the staff of the ADR Unit nor any mediator or arbitrator shall be liable to any party in any way for damages or for injunctive relief for any act or omission in connection with any mediation or arbitration conducted under these rules.

IX INTERPRETATION AND APPLICATION OF RULES

Mediators and arbitrators shall interpret and apply these rules as they relate to their duties and responsibilities. All other rules shall be interpreted and applied by the Director of the ADR Unit.

Revised June 2008