

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 Plaintiffs

FILED

JUL 23 2014

JUDGE TRAVIS L. FRANCIS

By: Jeffrey Koziar (015131999)
Deputy Attorney General
[REDACTED]

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY
DOCKET NO.: MID-C-30-14

JOHN J. HOFFMAN, Acting Attorney General
of the State of New Jersey and STEVE C. LEE,
Acting Director of the New Jersey Division of
Consumer Affairs.

Plaintiffs,

v.

SCOTT FLOWERS' TOWING, INC. d/b/a
SCOTT'S TOWING; JANE AND JOHN
DOES 1-10, individually and as owners,
officers, directors, shareholders, founders,
managers, agents, servants, employees,
representatives and/or independent contractors
of SCOTT FLOWERS' TOWING, INC. d/b/a
SCOTT'S TOWING and XYZ
CORPORATIONS 1-10

Defendants.

Civil Action

FINAL CONSENT JUDGMENT

The Parties to this Action and Final Consent Judgment (the "Parties") are plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey ("Attorney General"), and Steve C. Lee, Acting Director of the New Jersey Division of Consumer Affairs ("Director") (collectively

“Plaintiffs”)¹, and Scott Flowers’ Towing, Inc., d/b/a Scott’s Towing (“Defendant” or “Scott’s Towing”). As evidenced by their signatures below, the Parties do consent to the entry of this Final Consent Judgment (hereinafter “Consent Judgment”) and its provisions without trial or adjudication of any issue of fact or law, and without an admission of any liability or wrongdoing of any kind.

PRELIMINARY STATEMENT

On February 26, 2014, Plaintiffs commenced this Action, alleging that Defendant engaged in towing practices in violation of the Predatory Towing Prevention Act, N.J.S.A. 56:13-17 et seq. (“PTPA”), and its accompanying regulations, 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”). Specifically, Plaintiffs alleged that Defendant, among other things, : (1) engaged in non-consensual private property towing without having contracts with the private property owners; (2) charged excessive towing and storage fees; and (3) engaged in non-consensual private property towing in locations lacking proper signage. Defendant denied the allegations.

IT IS HEREBY ORDERED, ADJUDGED AND AGREED AS FOLLOWS:

1. JURISDICTION

1.1 The Parties admit jurisdiction of this Court over the subject matter and over the Parties for the purpose of entering into this Consent Judgment. The Court retains jurisdiction for the purpose of enabling the Parties to apply to this Court at any time for such further orders and relief as may be necessary for the construction, modification, enforcement, execution or satisfaction of this Consent Judgment.

¹ This action was commenced on behalf of Eric T. Kanefsky, former Director of the New Jersey Division of Consumer Affairs. Pursuant to R. 4:34-4, the caption has been revised to reflect the current Acting Director.

2. VENUE

2.1 Pursuant to N.J.S.A. 56:8-8, venue as to all matters between the Parties hereto relating to or arising out of this Consent Judgment shall lie exclusively in the Superior Court of New Jersey, Chancery Division, Middlesex County.

3. EFFECTIVE DATE

3.1 This Consent Judgment shall be effective on the date that it is entered with the Court ("Effective Date").

4. DEFINITIONS

As used in this Consent Judgment, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Order:

4.1 "Action" refers to the action entitled John J. Hoffman, et al. v. Scott Flowers' Towing, Inc., Superior Court of New Jersey, Chancery Division, Middlesex County, Docket No. C-30-14, and all pleadings and proceedings related thereto.

4.2 "Consumer" shall refer to any Person whose Motor Vehicle has been subject to Non-Consensual Towing.

4.3 "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.

4.4 "Basic Towing Services" shall be defined in accordance with N.J.S.A. 56:13-9.

4.5 "Division" shall refer to the Division of Consumer Affairs in the Department of Law and Public Safety.

4.6 "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.

4.7 "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.

4.8 "Person" shall be defined in accordance with N.J.S.A. 56:13-9.

4.9 "State" means the State of New Jersey.

4.10 "Towing" shall be defined in accordance with N.J.S.A. 56:13-9.

5. INJUNCTIVE RELIEF

5.1 Defendant is permanently enjoined from engaging in any unlawful acts 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 CFA, the PTPA and the PTPA Regulations.

5.2 Defendant is permanently enjoined from towing 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 it complies with the following requirements set forth in N.J.S.A. 56:13-13(a):

- (1) Defendant 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) Scott's Towing's name, address, and telephone number;
 - (d) Scott's Towing's charges for the towing and storage of towed Motor Vehicles;
 - (e) the street address of the storage facility where the towed Motor Vehicles can be redeemed after payment of the posted charges and the times during which the Motor Vehicle may be redeemed; and
 - (f) the Division of Consumer Affairs' telephone number (1-800-242-5846; prompt number 4);
- (3) The property owner has authorized Scott's Towing to remove the particular Motor Vehicle; and
 - (4) Scott's Towing 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.

5.3 Defendant is permanently enjoined from engaging in any conduct in violation of N.J.S.A. 56:13-16 including, but not limited to charging an unreasonable or excessive towing fee or a presumptively unreasonable or excessive towing fee as set forth in N.J.A.C. 13:45A-31.5.

5.4 Defendant is permanently enjoined from charging an unreasonable or excessive storage fee or a presumptively unreasonable or excessive storage fee as set forth in N.J.A.C. 13:45A-31.4(d).

6. MONETARY RELIEF

6.1 The Parties have agreed to a settlement of the action in the amount of Twelve Thousand Nine Hundred Five and 00/100 Dollars (\$12,905.00) ("Settlement Payment"). The

Settlement Payment comprises civil penalties of Eight Thousand Fifty and 00/100 Dollars (\$8,050.00), pursuant to N.J.S.A. 56:8-13 and N.J.S.A. 56:13-21, Two Thousand Three Hundred Fifty-Five and 00/100 Dollars (\$2,355.00) in consumer restitution pursuant to N.J.S.A. 56:8-8 and N.J.S.A. 56:13-21(b), Two Thousand and 00/100 Dollars (\$2,000.00) in reimbursement of the Division's attorneys' fees, pursuant to N.J.S.A. 56:8-19 and Five Hundred and 00/100 Dollars (\$500.00) in reimbursement of the Division's investigative costs, pursuant to N.J.S.A. 56:8-11.

6.2 The Settlement Payment will be made according to the following schedule:

- (a) Defendant shall pay Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) on or before the Effective Date;
- (b) Defendant shall pay Three Thousand Five Hundred and 00/100 Dollars (\$3,500.00) on or before October 15, 2014.
- (c) Defendant shall Three Thousand Five Hundred and 00/100 Dollars (\$3,500.00) on or before February 15, 2015.
- (d) Defendant shall pay Three Thousand Four Hundred Five and 00/100 Dollars (\$3,405.00) on or before May 15, 2015.

6.3 All payments made in satisfaction of the Settlement Payment shall be made by certified or cashier's check, money order, credit card or wire transfer 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

6.4 Upon making the Settlement Payment, Defendant 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.

7. GENERAL PROVISIONS

7.1 This Consent Judgment 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.

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

7.3 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 Judgment.

7.4 This Consent Judgment contains the entire agreement between the Parties. Except as otherwise provided herein, this Consent Judgment shall be modified only by a written instrument signed by or on behalf of the Parties.

7.5 Except as otherwise explicitly provided in this Consent Judgment, nothing in this Consent Judgment shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

7.6 If any portion of this Consent Judgment is held invalid or unenforceable by operation of law, the remaining terms of this Consent Judgment shall not be affected.

7.7 This Consent Judgment shall be binding upon the Defendant 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.

7.8 This Consent Judgment 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 Judgment be used to avoid compliance with this Consent Judgment.

7.9 This Consent Judgment is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Judgment 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 Defendant; and (b) an admission by that any of its acts or practices described in or prohibited by this Consent Judgment are unlawful or unconscionable or violate the CFA, the PTPA and/or the PTPA Regulations. Neither the existence of, nor the terms of this Consent Judgment, 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 8) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

7.10 The Parties represent and warrant an authorized representative of each has signed this Consent Judgment with full knowledge, understanding and acceptance of its terms and that the representative has done so with authority to legally bind the respective Party.

7.11 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Judgment 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 Judgment.

8. RELEASE

8.1 In consideration of the business practices relief, payments, undertakings, mutual promises and obligations provided for in this Consent Judgment and conditioned on Defendant making the Settlement Payment as specified in Section 6, the Division hereby agrees to release Defendant 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 Defendant for violations of the CFA, the PTPA and/or the PTPA Regulations, as well as the matters specifically addressed in this Consent Judgment ("Released Claims").

8.2 Notwithstanding any term of this Consent Judgment, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Consent Judgment; and (c) any claims against Defendant by any other agency or subdivision of the State.

9. PENALTIES FOR FAILURE TO COMPLY

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

9.2 The Parties agree that any future violations of the provisions of Section 5 of this Consent Judgment, 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 Defendant may be liable for enhanced civil penalties.

10. COMPLIANCE WITH ALL LAWS

10.1 Except as provided in this Consent Judgment, no provision herein shall be construed as:

- (a) Relieving Defendant 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 Defendant 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 Defendant 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.

11. NOTICES UNDER THIS CONSENT JUDGMENT

11.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Defendants pursuant to this Consent Judgment 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:

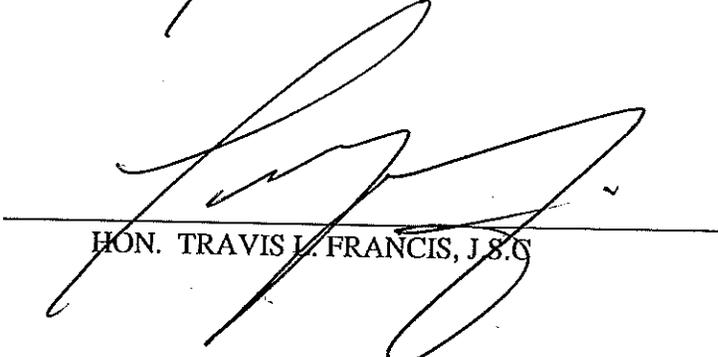
For the Division:

Jeffrey Koziar, Deputy Attorney General
Consumer Fraud Prosecution Section
State of New Jersey
Division of Law
124 Halsey Street-5th Floor
PO Box 45029
Newark, New Jersey 07101

For the Defendant:

Thomas J. Buck, Esq.
28 North Main Street
Milltown, New Jersey 08850

IT IS ON THE 23^d DAY OF July, 2014 SO ORDERED, ADJUDGED AND DECREED.

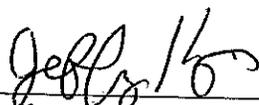


HON. TRAVIS L. FRANCIS, J.S.C.

JOINTLY APPROVED AND
SUBMITTED FOR ENTRY:

FOR THE PLAINTIFFS:

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

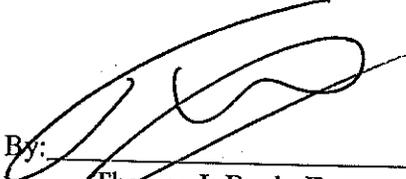
By:  _____

Jeffrey Koziar
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: 7/21, 2014

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


FOR DEFENDANT:

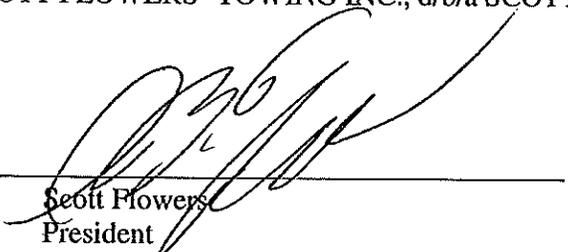
By:  _____

Thomas J. Buck, Esq.
28 North Main Street
Milltown, New Jersey 08850
(732) 247-9797

Dated: 7/7/14, 2014

SCOTT FLOWERS' TOWING INC., d/b/a SCOTT'S TOWING

By: _____



Scott Flowers
President
813 Rahway Avenue
Woodbridge, New Jersey 07095

Dated: _____, 2014

7/7/14