

ROBERT T. LOUGY  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for Division of Consumer Affairs

**FILED**

MAY 16 2016

**Division of Consumer Affairs**

By: Alina Wells  
Deputy Attorney General  
(973) 648-3070

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

In the Matter of

A and J Fireplaces, LLC,

Respondent.

Administrative Action  
No. NOV 1600085

**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”), the Contractors’ Registration Act, N.J.S.A. 56:8-136 et seq., the Regulations Governing Home Improvement Contractor Registration, N.J.A.C. 13:45A-17.1 et seq. (“Contractor Registration Regulations”) and the Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 et seq. (“Home Improvement Regulations”), have been or are being committed by A and J Fireplaces, LLC, as well as by its owners, officers, directors, managers, employees,

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

**WHEREAS** Respondent, with a main business address of 681 Route 23 South, Pompton Plains, New Jersey 07444, is engaged in the Advertisement and Sale of Home Improvements to Consumers in the State of New Jersey;

**WHEREAS** the Division's investigation concerned a complaint filed by Consumer \_\_\_\_\_, in connection with the Home Improvement Contract entered into with Respondent on or about December 9, 2014, for the latter's performance of Home Improvements in New Jersey, hereinafter referred to as the "Investigation");

**WHEREAS** on February 26, 2016, the Division served Respondent with 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** on November 30, 2016, the Division received from Respondent written documentation concerning mitigating circumstances;

**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 “Additional Consumer” shall refer to any Consumer who submits to the Division directly or indirectly, after the Effective Date, a written complaint concerning Respondent’s business practices.

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 “ADR Unit” shall refer to the Alternative Dispute Resolution Unit of the Division.

2.4 “Affected Consumer” shall refer to

2.5 “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.

2.6 “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, defined in accordance with N.J.S.A. 56:8-1(e).

2.7 “Home Improvement Contract” shall be defined: (a) for purposes of the Contractors’ Registration Act, in accordance with N.J.S.A. 56:8-137; and (b) for purposes of the Contractor Registration Regulations, in accordance with N.J.A.C. 13:45A-17.2.

2.8 “Home Improvement Contractor” or “Contractor” shall be defined: (a) for purposes of the Contractors’ Registration Act, in accordance with N.J.S.A. 56:8-137; and (b) for purposes of the Contractor Registration Regulations, in accordance with N.J.A.C. 13:45A-17.2.

2.9 “Home Improvement” shall be defined: (a) for purposes of the Contractors’ Registration Act in accordance with N.J.S.A. 56:8-137; and (b) for purposes of the Contractor Registration Regulations in accordance with N.J.A.C. 13:45A-17.2.

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

2.11 “Restitution” shall refer to all methods undertaken by Respondent to resolve Consumer complaints including, but not limited to, the issuance of refunds or the reversal of credit card or debit card charges.

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

### **3. REQUIRED AND PROHIBITED BUSINESS PRACTICES**

3.1 Respondent shall not engage in any unfair or deceptive acts or 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 CFA, the Contractors’ Registration Act, the Contractor Registration Regulations and/or the Home Improvement Regulations.

3.2 Respondent shall provide a copy of his certificate of commercial general liability insurance to the Consumer, as required by the Contractors' Registration Act, specifically, N.J.S.A. 56:8-151(a)(2).

3.3 Respondent shall include in the Home Improvement Contract the "Notice to Consumer" in 10-point bold-face type, as required by the Contractors' Registration Act, specifically, N.J.S.A. 56:8-151(b).

3.4 Respondent shall provide signatures of all parties on the Home Improvement Contract, as required by the Home Improvement Regulations, specifically, N.J.A.C. 13:45A-16.2(a)(12).

3.5 Respondent shall provide the dates or time period on or within which work is to begin or be completed as required by the Home Improvement Regulations, specifically, N.J.A.C. 13:45A-16.2(a)(12)(iv).

3.6 Respondent shall include work description, principal products and materials to be used/installed in performance of contract, as required by the Home Improvement Regulations, specifically, N.J.A.C. 13:45A-16.2(a)(12)(ii).

#### **4. AFFECTED CONSUMER COMPLAINT RESOLUTION**

4.1 The Affected Consumer's complaint shall be forwarded to the ADR Unit to reach a resolution of the complaint through 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 in writing the Affected 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 which is attached hereto as Exhibit A).

4.2 If Respondent fails or refuses to participate in the ADR program, the arbitrator may enter a default against Respondent. Unless otherwise specified in the arbitration award, Respondent shall pay the arbitration award within forty-five (45) days of the arbitrator's decision. Respondent's failure to pay an arbitration award in a timely manner shall constitute a violation of this Consent Order.

4.3 If the Affected Consumer fails or refuses to participate in the ADR program, the Affected Consumer's complaint shall be deemed closed for purposes of this Consent Order.

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

## **5. ADDITIONAL CONSUMER COMPLAINTS**

5.1 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.

5.2 After forwarding to Respondent the complaint of an Additional Consumer, the Division shall notify the Additional Consumer, in writing, of the following: (a) that his/her complaint has been forwarded to Respondent; (b) that he/she should expect a response from Respondent within thirty (30) days from the date of this notice; and (c) the right to refer his/her complaint to the ADR Unit for binding arbitration if Respondent disputes the complaint and/or requested relief.

5.3 Within thirty (30) days of receiving the Additional Consumer complaint from the Division, Respondent shall send a written response to the Additional Consumer, with a copy sent by first class mail, fax or email to the following:

Alina Wells, Deputy Attorney General  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Consumer Affairs  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

5.4 If Respondent does not dispute the Additional Consumer's complaint and requested relief, Respondent shall provide written notification to the Additional Consumer. Where Restitution concerns a refund or other payment, such shall be made to the Additional Consumer by check.

5.5 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.

5.6 Within forty-five (45) days of receiving from the Division the Additional Consumer's complaint, Respondent shall provide the Division with written notification whether the Additional Consumer's complaint has been resolved. Such notification shall include the following:

- (a) The Additional Consumer's name and address;
- (b) Whether the Additional Consumer's complaint has been resolved;
- (c) The Restitution provided to the Additional Consumer;

- (d) Copies of all documents evidencing Restitution provided to the Additional Consumer;
- (e) Confirmation that Respondent sent all mailings to the Additional Consumer as required by this Section; and
- (f) In the event Respondent's written response and/or Restitution to the Additional Consumer was returned as undeliverable, the efforts Respondent has undertaken to locate the Additional Consumer.

5.7 Following the Division's receipt and verification that an Additional Consumer's complaint has been resolved, the Additional Consumer's complaint shall be deemed closed for purposes of this Consent Judgment.

5.8 If within sixty (60) days of Respondent's receipt of the Additional Consumer's complaint: (a) Respondent has not notified the Division that the Additional Consumer's complaint has been resolved; (b) Respondent has notified the Division that the Additional Consumer's complaint has not been resolved; or (c) Respondent has notified the Division that the Additional Consumer refuses Respondent's offer of Restitution, the Division shall forward such Additional Consumer 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 and Respondent of the referral of the complaint to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines (a copy of which is attached as Exhibit A).

5.9 If Respondent refuses to participate in the ADR program, the arbitrator may enter a default against Respondent. Unless otherwise specified in the arbitration award, Respondent shall pay all arbitration awards within thirty (30) days of the arbitrator's decision.

5.10 Respondent's failure or refusal to comply with the requirements of Sections 3.1 through 3.6, 5.3 through 5.6 and/or participate in the arbitration process or pay an arbitration award timely shall constitute a violation of this Consent Order. Under these circumstances, the Division may unilaterally discontinue the Additional Consumer complaint resolution process upon notice to Respondent.

5.11 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.

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

## **6. SETTLEMENT AMOUNT**

6.1 The Parties have agreed to a settlement of the Investigation in the amount of Two Thousand Two Hundred Fifty and 00/100 Dollars (\$2,250.00) ("Settlement Amount") which consists of a civil penalty pursuant to N.J.S.A. 56:8-13.

6.2 One Thousand and 00/100 Dollars (\$1,000.00) of the Settlement Amount ("Settlement Payment"), shall be paid contemporaneously with the signing of this Consent Order due June 1, 2016.

6.3 The Settlement Payment amounts referenced in Section 6.2 shall be made by certified check, cashier's check, money order, credit card or wire transfer payable to the "New Jersey Division of Consumer Affairs" and forwarded to:

Alina Wells, Deputy Attorney General  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Consumer Affairs  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

6.4 Upon payment of the Settlement Payment referenced in Section 6.2, 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.

6.5 The balance of the Settlement Amount totaling One Thousand Two Hundred and 00/100 Dollars (\$1,250.00) shall be suspended and automatically vacated (“Suspended Penalty”) at the expiration of one (1) year from the Effective Date provided:

- a) Respondent signs and returns this Consent Order by June 1, 2016;
- b) Respondent complies in all material respects with the terms and conditions set forth in this Consent Order; and
- c) Respondent does not engage in any acts or practices in violation of the CFA, the Contractors’ Registration Act, the Contractor Registration Regulations, or the Home Improvement Regulations.

6.6 In the event Respondent fails to comply with the requirements of Section 6.5, the Division shall provide it with notice seeking payment of the Suspended Penalty, as well as any unpaid portion of the Settlement Amount payments. Respondent shall be afforded a fifteen (15) day period from receipt of such notice within which to cure any noncompliance (“Cure Period”). In the event that Respondent cures the noncompliance within the Cure Period, the suspended portion of the Settlement Amount shall return to its suspended status. In the event that

Respondent fails to cure the noncompliance within the Cure Period, the Division will file a Certificate of Debt for the balance of the Settlement Amount.

## 7. GENERAL PROVISIONS

7.1 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.

7.2 This Consent Order 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 Order.

7.4 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.

7.5 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.

7.6 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.

7.7 This Consent Order shall be binding upon Respondent as well as its managers, agents, employees, successors and assigns, and any Person through which it may now or

hereafter act, as well as any Person who has authority to control or who, in fact, controls and directs its business.

7.8 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.

7.9 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 the acts or practices described in or prohibited by this Consent Order are unfair, or deceptive or violate the CFA, the Contractors' Registration Act, the Contractor Registration Regulations and/or the Home Improvement Regulations.

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

7.11 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.

## **8. REPRESENTATIONS AND WARRANTIES**

8.1 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.

8.2 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.

## **9. RELEASE**

9.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent making the Settlement Payment in the manner specified in Section 6.2, 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, the Contractors' Registration Act, and/or the Contractor Registration Regulations, prior to the Effective Date arising out of the Investigation as well as the matters addressed in this Consent Order (the "Released Claims").

9.2 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.

## **10. PENALTIES FOR FAILURE TO COMPLY**

10.1 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.

10.2 The Parties agree that any future violations of the provisions of Section 3 of this Consent Order, the CFA, the Contractors' Registration Act, the Contractor Registration Regulations and/or the Home Improvement 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

## **11. COMPLIANCE WITH ALL LAWS**

11.1 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.

## **12. NOTICES UNDER THIS CONSENT ORDER**

12.1 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:

Alina Wells, Deputy Attorney General  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Consumer Affairs  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

For Respondent:

A and J Fireplaces, LLC  
681 Route 23 South  
Pompton Plains, New Jersey 07444

IT IS ON THE 16<sup>th</sup> DAY OF May, 2016 SO ORDERED.

ROBERT T. LOUGY  
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:

ROBERT T. LOUGY  
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: Alina wells

Alina Wells  
Deputy Attorney General  
Consumer Fraud Prosecution Section

124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Telephone: (973) 648-3070

Dated: May 13, 2016

FOR RESPONDENT:

TWW LAW PROFESSIONAL ASSOCIATION

By: [Signature]

Thomas W. Williams, Esq.

220 Franklin Turnpike  
Mahway, New Jersey 07430  
(201) 529-4420

Dated: 4/25/16

A AND J FIREPLACES, LLC

By: [Signature]

Juan Huerta, Member  
A and J Fireplaces, LLC

681 Route 23 South  
Pompton Plains, NJ 07444  
(973) 513-9521

Dated: 4/25/16

# **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*