

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

FILED

AUG 21 2009

Division of Consumer Affairs

By: Sabina P. McKinney
Deputy Attorney General
(973) 648-4584

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

In the Matter of

Administrative Action

AMERICAN MATTRESS &
FURNITURE WAREHOUSE,

CONSENT ORDER

Respondent.

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”), and the regulations promulgated thereunder, N.J.A.C. 13:45A-1 et seq. (“CFA Regulations”), have been or are being committed by American Mattress & Furniture Warehouse, with a main business address of 790 Broad Street, Newark, NJ, 07102, as well as its owners, officers, directors, managers, agents, servants, employees, representatives, independent contractors, subsidiaries, successors and assigns (collectively, “American Mattress” or “Respondent”), (hereinafter referred to as the “Investigation”);

WHEREAS Respondent denies that it has committed any violation of the CFA and/or the CFA Regulations;

WHEREAS the Division and Respondent (collectively, the “Parties”) having reached an amicable agreement resolving the issues in controversy and concluding this matter without the need for further action, and Respondent having voluntarily cooperated and consented to the entry of the within order (“Consent Order”) without having admitted violation of law or finding of fact, and for good cause shown:

IT IS on this 21st day of August, 2009 **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 “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.

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

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

2.4 “Refund Policy Act” shall refer to the Refund Policy Disclosure Act, N.J.S.A. 56:8-2.14 et seq.

2.5 “Refund Policy Regulations” shall refer to the Regulations Governing Disclosure of Refund Policy in Retail Establishment, N.J.A.C. 13:45A-15.1 et seq.

2.6 “Represent” shall mean to state or imply through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages or any other manner or means by which meaning might be conveyed. This definition applies to other forms of the word “Represent” including, without limitation, “Representation.”

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

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

3. INJUNCTIVE RELIEF AND BUSINESS PRACTICES

3.1 Respondent shall not engage in any unfair or deceptive acts or 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, Refund Policy Act and Refund Policy Regulations.

3.2 Respondent shall cease and desist from engaging in any practices in violation of the CFA, Refund Policy Act and Refund Policy Regulations.

3.3 Respondent shall conspicuously post any refund policy, as required by the Refund Policy Act, N.J.S.A. 56:8-2.14 et seq., and the Refund Policy Regulations, N.J.A.C. 13:45A-15.1 et seq.

4. SETTLEMENT PAYMENT

4.1 The Parties have agreed to a settlement of the Investigation in the amount of One Thousand Nine Hundred and Fifty 00/100 Dollars (\$1,950.00) (“Settlement Payment”).

4.2 The Settlement Payment consists of a civil penalty of One Thousand Seven Hundred and 00/100 Dollars (\$1,700.00), pursuant to N.J.S.A. 56:8-13, and investigative costs of Two Hundred and Fifty and 00/100 Dollars (\$250.00), pursuant to N.J.S.A. 56:8-11.

4.3 Respondent shall make the Settlement Payment in one sum on or before the Effective Date of this Order, and shall be made by certified check, attorney trust account check, or other guaranteed funds made payable to the “New Jersey Division of Consumer Affairs” and forwarded to the undersigned:

Attention: Supervisor
Case Management Tracking
New Jersey Department of Law and Public Safety
Division of Consumer Affairs
124 Halsey Street
P.O. Box 45025
Newark, New Jersey 07101

4.4 Upon making the payments referenced in Section 4.3, 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.

5. GENERAL PROVISIONS

5.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Order.

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

5.3 The Parties have negotiated, 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.

5.4 Respondent represents and warrants that it has been advised by the Division to seek legal counsel to review this Consent Order.

5.5 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.

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

5.7 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.

5.8 This Consent Order shall be binding upon Respondent as well as its owners, officers, directors, managers, agents, servants, employees, representatives, subsidiaries, 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.

5.9 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 avoid compliance with this Consent Order.

5.10 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 be construed as: (a) an approval, sanction or authorization by the Division or any other governmental unit of the State of any act or practice of Respondent; or (b) an admission by Respondent that any of its acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CFA, Refund

Policy Act and/or Refund Policy Regulations. 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) an action or proceeding by one of the Parties to enforce, rescind or otherwise implement any or all of the terms herein; or (b) an action or proceeding involving a Released Claim (as defined in Section 7) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

5.11 This Consent Order is a public document subject to the New Jersey Open Public Records Act.

5.12 This Consent Order constitutes a final agency action and shall be effective upon filing.

5.13 Unless otherwise prohibited by law, any signatures by the Parties required for filing of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Order.

6. REPRESENTATIONS AND WARRANTIES

6.1 The Parties Represent and warrant that their signatories to this Consent Order have authority to act for and bind the respective Parties.

6.2 Respondent represents and warrants that it has fully read this Consent Order, that it understands the legal consequences involved in signing the Consent Order and that there are no other Representations or agreements not stated in writing herein.

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 referenced in Section 4, the Division hereby agrees to release Respondent from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Division could have brought against Respondent for violations of the CFA, Refund Policy Act and/or Refund Policy Regulations, prior to the Effective Date for matters 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; (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.

8.2 The Parties agree that any future violations of the injunctive provisions of this Consent Order, the CFA, Refund Policy Act and/or Refund Policy Regulations shall constitute a violation under N.J.S.A. 56:8-18 and/or a second or succeeding violation under N.J.S.A. 56:8-13 and that Respondent may be liable for enhanced civil penalties.

9. COMPLIANCE WITH ALL LAWS

- 9.1 Except as provided in this Consent Order, no provision herein shall be construed as:
- a. Relieving Respondent of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or

- b. Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondent pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondent may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

10. NOTICES UNDER THIS CONSENT ORDER

10.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondent pursuant to this Consent Order shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

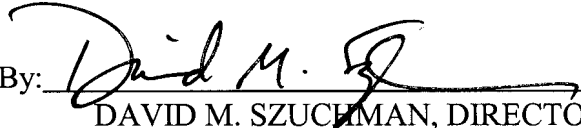
Bureau Chief, Office of Consumer Protection
Division of Consumer Affairs
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
124 Halsey Street - 7TH Floor
P.O. Box 45028
Newark, New Jersey 07101

For the Respondents:

Daniel Baum
American Mattress & Furniture Warehouse
790 Broad Street
Newark, New Jersey 07102

IT IS ON THE 21st DAY OF August, 2009 SO ORDERED.

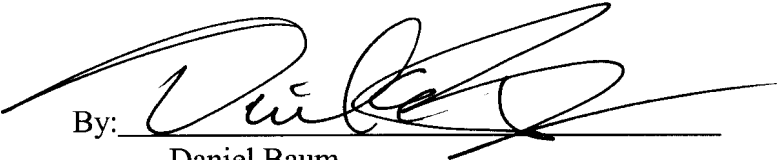
ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By: 
DAVID M. SZUCHMAN, DIRECTOR
DIVISION OF CONSUMER AFFAIRS

THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS CONSENT ORDER ON THE DATES UNDER THEIR RESPECTIVE SIGNATURES.

FOR RESPONDENT:

AMERICAN MATTRESS & FURNITURE WAREHOUSE:

By: 

Daniel Baum
American Mattress & Furniture Warehouse
790 Broad Street
Newark, New Jersey 07102

Dated: 8/15, 2009