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FILED

SEP 07 2010

Division of Consumer Affairs

By: Sabina P. McKinney
Deputy Attorney General
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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of

Administrative Action

ASHLEY FURNITURE HOME STORE

ASSURANCE OF VOLUNTARY
COMPLIANCE

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/or the regulations promulgated thereunder, N.J.A.C. 13:45A-1 et seq. (“CFA Regulations”), have been or are being committed by Ashley Furniture, Home Store, with business addresses of 1741 Route 1 & 9 North, Linden, New Jersey 07036 and 501 Route 9 South, Woodbridge, New Jersey 07095, as well as its owners, officers, directors, managers, agents, servants, employees, representatives, independent contractors, subsidiaries, successors and assigns (collectively, “Respondent”), (hereinafter referred to as the “Investigation”);

WHEREAS the Division and Respondent (collectively, the “Parties”) have reached an amicable agreement 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 this Assurance of Voluntary Compliance (“Assurance”) without having admitted any violation of law or finding of fact, the Parties hereby agree 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 through CALA or another agency, a written Consumer complaint concerning Respondent’s business practices after the Effective Date.

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

2.3 “Advertisement” shall be defined in accordance with N.J.A.C. 13:45A-9.1. This definition applies to other forms of the word “Advertisement” including, without limitation, “Advertise.”

2.4 “Advertising Regulations” shall refer to the Regulations Governing General Advertising Practices, N.J.S.A. 13:45A-9.2 et seq.

2.5 “Affected Consumer” shall refer to any Consumer who directly or indirectly submitted to the Division a complaint concerning Respondent’s business practices up to and including the Effective Date.

2.6 “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.

2.7 “CALA” shall refer to Consumer Affairs Local Assistance offices located within counties and/or municipalities in the State.

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

2.9 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c).

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

2.11 “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.”

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

2.13 “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 as defined in the CFA and CFA Regulations, 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 and/or the Advertising Regulations.

3.2 Respondent shall cease and desist from engaging in any practices in violation of the CFA and/or the Advertising Regulations.

4. AFFECTED CONSUMER COMPLAINTS

4.1 Attached as Exhibit A is a list that identifies each Affected Consumer.

4.2 Within thirty (30) days of the Effective Date, the Division shall notify the Affected Consumers, in writing of the following: (a) that their complaints have been forwarded to the Respondent; (b) that he/she should expect a response from the Respondent within thirty (30) days; 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.

4.3 Within sixty (60) days of the Effective Date, Respondent shall send a written response to the Affected Consumers, with a copy 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.

4.4 If Respondent does not dispute the Affected Consumer's complaint and requested relief, Respondent's written response shall so inform the Affected Consumer. Respondent shall contemporaneously forward to such Affected Consumer the requested relief. Where Restitution concerns the reversal of credit or debit card charges, Respondent shall include documents evidencing such adjustments have been made. Where Restitution concerns a refund or other payment, such shall be made by certified check, money order or other guaranteed funds made payable to the Affected Consumer.

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

4.6 Within ninety (90) days of the Effective Date, Respondent shall notify the Division as to whether each Affected Consumer's complaint has been resolved. Such notification shall include the following:

- (a) The name and address of the Affected Consumer;
- (b) Whether or not the Affected Consumer's complaint has been resolved;
- (c) An identification of any Restitution provided to the Affected Consumer;
- (d) Copies of all documents evidencing any Restitution;
- (e) In the event the Restitution was returned as undeliverable, the efforts Respondent had undertaken to notice the Affected Consumer; and
- (f) Confirmation that Respondent sent all mailings to the Affected Consumer as required by this Section.

4.7 Following the Division's receipt and verification that an Affected Consumer's complaint has been resolved, the complaint shall be deemed closed for purposes of this Assurance.

4.8 If within ninety (90) days of the Effective Date: (a) Respondent has not notified the Division that an Affected Consumer's complaint has been resolved; (b) Respondent has notified the Division that the Affected Consumer's complaint has not been resolved; or (c) Respondent has notified the Division that the Affected Consumer refuses Respondent's offer of Restitution, the Division shall forward such Affected Consumer complaint to the ADR Unit within fifteen days of notification from Respondent, 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 any such 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 as Exhibit B).

4.9 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 all arbitration awards within thirty (30) days of the arbitrator's decision. Respondent's failure or refusal to participate in the arbitration process or to timely pay an arbitration award shall constitute a violation of this Assurance.

4.10 If an Affected Consumer fails or refuses to participate in the ADR program, that Affected Consumer's complaint shall be deemed closed for purposes of this Assurance.

4.11 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 the Additional Consumer complaint within thirty (30) days of the Division's receipt thereof.

5.2 The Division shall notify the Additional Consumers, in writing, of the following: (a) that their complaints have been forwarded to the Respondent; (b) that he/she should expect a

response from Respondent within thirty (30) days; 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 each Additional Consumer, with a copy to the following: The New Jersey Division of Consumer Affairs, Office of Consumer Protection, Attention: Case Management Tracking Supervisor, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101.

5.4 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 contemporaneously forward to such Additional Consumer the appropriate Restitution. 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 certified check, money order or other guaranteed funds made payable to the Additional Consumer.

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 sixty (60) days of Respondent's receipt of the Additional Consumer complaint, Respondent shall notify the Division as to whether such Additional Consumer complaint has been resolved. Such notification shall include the following:

- (a) The name and address of the Additional Consumer;

- (b) Whether or not the Additional Consumer complaint has been resolved;
- (c) An identification of any Restitution provided to the Additional Consumer;
- (d) Copies of all documents evidencing any Restitution;
- (e) In the event Respondent's written response was returned as undeliverable, the efforts Respondent had undertaken to notice the Additional Consumer; and
- (f) Confirmation that Respondent sent all mailings to the Additional Consumer as required by this Section.

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

5.8 If within sixty (60) days of Respondent's receipt of the Additional Consumer complaint:: (a) Respondent has not notified the Division that an 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 within fifteen days of notification from Respondent, 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 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 which is attached as Exhibit B).

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. Respondent's failure or refusal to participate in the arbitration process or to pay an arbitration award timely shall constitute a violation of this Assurance.

5.10 If an Additional Consumer fails or refuses to participate in the ADR program, that Additional Consumer's complaint shall be deemed closed for the purposes of this Assurance.

5.11 The complaint resolution process in this Section may be extended for additional one (1) year periods upon written notice by Respondent provided thirty (30) days prior to the expiration of the initial or subsequent one (1) year period.

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

6. GENERAL PROVISIONS

6.1 This Assurance 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 Assurance.

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

6.3 Except as otherwise explicitly provided in this Assurance, 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.

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

6.5 This Assurance sets forth the entire agreement among the Parties. Except as otherwise provided herein, this Assurance shall be modified only by a written instrument signed by or on behalf of the Division and Respondent.

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

6.7 This Assurance shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Assurance avoid compliance with this Assurance.

6.8 This Assurance is agreed to by the Parties and entered by the Division for settlement purposes only. Neither the fact of, nor any provision contained in, this Assurance nor any action taken hereunder 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 the Respondent; and (b) an admission by Respondent that any of its acts or practices described in or prohibited by this Assurance are unfair or deceptive or violate any of the consumer protection laws of the State. This Assurance is not intended, and shall not 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 of this Assurance; 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.

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

6.10 The Parties represent and warrant that their signatories to this Assurance have authority to act for and bind the respective Parties.

7. RELEASE

7.1 In consideration of the injunctive relief, undertakings, mutual promises and obligations provided for in this Assurance and conditioned on Respondent providing Restitution as required pursuant to Sections 4 and 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 against Respondent for violations of the CFA and/or the Advertising Regulations, prior to the Effective Date for matters arising out of the Investigation as well as the matters specifically addressed in this Assurance (the "Released Claims").

7.2 Notwithstanding any term of this Assurance, 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. COMPLIANCE WITH ALL LAWS

- 8.1 Except as provided in this Assurance, 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.

9. NOTICES UNDER THIS ASSURANCE

9.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondent pursuant to this Assurance 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:

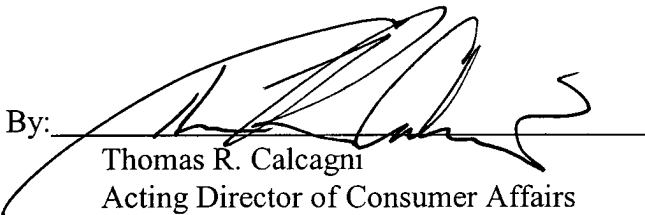
Bureau Chief, Office of Consumer Protection
Division of Consumer Affairs
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
124 Halsey Street - 7TH Floor
P.O. Box 45028
Newark, New Jersey 07101

For the Respondent:

Will Schafer
Ashley Furniture Home Store, Inc.
1741 Route 1 & 9 North
Linden, New Jersey 07036

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

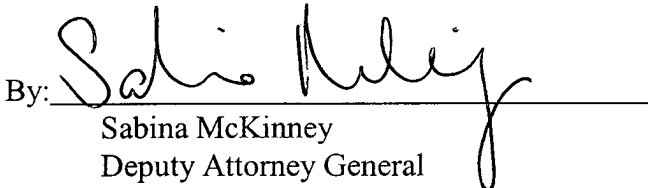
PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

By: 
Thomas R. Calcagni
Acting Director of Consumer Affairs

Dated: September 7, 2010

FOR THE DIVISION

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

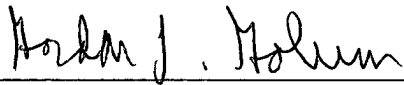
By: 
Sabina McKinney
Deputy Attorney General

Dated: September 2, 2010

Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Telephone: (973) 648-4584

FOR RESPONDENT:

GORDON J. GOLUM, ESQ.

By: 

Gordon J. Golum, Esq.
Wilentz Goldman & Spitzer P.A.
90 Woodbridge Center Drive
Suite 900 Box 10
Woodbridge, New Jersey 07095-0958

Dated: August 30, 2010

ASHLEY FURNITURE HOME STORE:

By: 

Will Schafer
Ashley Furniture Home Store
1741 Route 1 & 9 North
Linden, New Jersey 07036

Dated: 8/27/2010, 2010