

**PAULAT.DOW**

~~ANNE MIEGRAM~~

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**

**MAR 22 2010**

**Division of Consumer Affairs**

By: Jennifer Dougherty  
Deputy Attorney General  
(973) 648- 7819

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

**In the Matter of:**

Administrative Action

**BARNEGAT PROJECT PLAYGROUND, INC.**

**CONSENT ORDER**

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 Charitable Registration and Investigation Act, N.J.S.A. 45:17A-18 et seq. (CRIA”), and the Regulations Governing Charitable Fundraising, N.J.A.C. 13:48:1-1 et seq. (“Charities Regulations”) have been or are being committed by Barnegat Project Playground, Inc. (“Respondent” and “Barnegat Project Playground”), located at 400 North Main Street, Manahawkin, New Jersey 08050, as well as its trustees, officers, directors, managers, employees, representatives and agents (“Investigation”);

**WHEREAS** the Division and Respondent (collectively, "Parties") have reached an amicable agreement thereby resolving the issues in controversy and concluding this matter without the need for further action; and

**WHEREAS** Thomas Kostka, President of Barnegat Project Playground and Linda Muniak, CPA, Treasurer of Barnegat Project Playground have voluntarily and fully cooperated with the Investigation;

**WHEREAS** Thomas Kostka, President and Linda Muniak, Treasurer deny having committed any violation of law;

**WHEREAS** Respondent consented to the entry of the within order ("Consent Order") and for good cause shown,

**IT IS** on this 22<sup>nd</sup> day of March, 2010 **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.

**2. DEFINITIONS**

As used in this Consent Order, the following words or terms shall have the following meanings:

2.1 "Attorney General" shall refer to the Attorney General of the State of New Jersey (or designated representative) and the Office of the Attorney General.

2.2 "CRIA" shall refer to the New Jersey Charities Registration and Investigation Act, N.J.S.A. 45:17A-18 et seq.

2.3 “Charitable Organization” shall be defined pursuant to N.J.S.A. 45:17A-20 and mean (1) any person determined by the federal Internal Revenue Service to be a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code; or (2) any person who is, or holds himself out to be, established for any benevolent, philanthropic, humane, social, welfare, public health, or other eleemosynary purpose, or for the benefit of law enforcement personnel, firefighters or other persons who protect the public safety, or any person who in any manner employs a charitable appeal as the basis of any solicitation, or an appeal which has a tendency to suggest there is a charitable purpose to any such violation.

2.4 “Division” shall refer to the New Jersey Division of Consumer Affairs.

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

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

### **3. BUSINESS PRACTICES, INJUNCTIVE RELIEF AND REPRESENTATIONS**

3.1 Respondent represents that it has completed its goal and purpose for incorporation and, thus, Respondent shall file the appropriate documents pursuant to N.J.S.A. 15A:12-1 et seq. with the Secretary of State to dissolve Barnegat Project Playground, Inc. The dissolution process shall be completed on or before March 1, 2010.

3.2 Respondent represents and the Division agrees that Respondent shall use its remaining \$600.00 in assets to complete the dissolution process.

3.3 Respondent shall keep complete and accurate records pursuant to N.J.S.A. 45:17A-31.

3.4 Respondent shall provide a Certified Audit for fiscal year ending June 30, 2005 pursuant to N.J.S.A. 45:17A-24.

3.5 For a period of five (5) years from the Effective Date, Thomas Kostka, President of Barnegat Project Playground, shall not be a signatory for any Charitable Organization on any monetary payment instrument including, but not limited to, personal and/or corporate checks.

3.6 For a period of five (5) years from the Effective Date, Linda Muniak, CPA, Treasurer of Barnegat Project Playground, shall not be a signatory for any Charitable Organization on any monetary payment instrument including, but not limited to, personal and/or corporate checks.

#### **4. SETTLEMENT PAYMENT**

4.1 Respondent shall pay to the Division of Consumer Affairs the sum of Ten Thousand and 00/100 Dollars (\$10,000.00) as a civil monetary penalty pursuant to N.J.S.A. 45:17A-33. The Parties have agreed that this penalty shall be suspended provided Respondent complies with the terms of this Consent Order, specifically, Sections 3.1 and 3.2.

4.2 Upon the completion of the dissolution process, the suspended penalty shall be automatically vacated.

4.3 In the event that Respondent fails to comply with the foregoing provisions, the entire suspended amount of Ten Thousand and 00/100 Dollars (\$10,000.00) shall be due and immediately payable upon notice by the Division.

#### **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 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 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.

5.5 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 or the people of the State.

5.6 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.

5.7 This Consent Order shall be binding upon the Respondent(s) as well as their 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.

5.8 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 be used to avoid compliance with this Consent Order.

5.9 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(s); and (b) an admission

by Respondent(s) that any of their acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CRIA and/or the Charities Regulations.

5.10 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.

5.11 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.

5.12 Respondent acknowledges that this Consent Order is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 to -13.

## **6. RELEASE**

6.1 In consideration of the undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Barnegat Project Playground's compliance with the CRIA and the Charities Regulations, the Division hereby agrees to release Respondent from any and all civil 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 CRIA and the Charities Regulations, as well as the matters specifically addressed in this Consent Order (the "Released Claims").

6.2 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 of New Jersey.

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 Parties 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 tracking services and identification of Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

a. All notices directed to the Division shall be sent to:

Jennifer Dougherty, Deputy Attorney General  
State of New Jersey, Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

b. All notices directed to Respondents shall be sent to:

Thomas Kostka - President  
36 Anchor Road  
Barnegat, NJ 08005

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

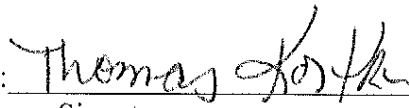
PAULA T. DOW  
~~ANNE MILGRAM~~  
ATTORNEY GENERAL OF NEW JERSEY

By:   
David Szuchman, DIRECTOR

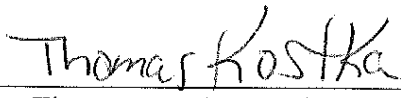
Dated: March 22, 2010

SARON JOYCE, DIVISION OF CONSUMER AFFAIRS  
ACTING DIRECTOR

BARNEGAT PROJECT PLAYGROUND, INC.  
RESPONDENT

By:   
Signature

Dated: January 10, 2010

  
Thomas Kostka, President

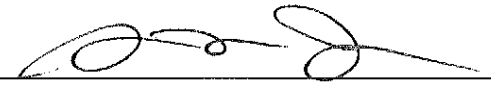
By: \_\_\_\_\_  
Signature

Dated: \_\_\_\_\_, 2010

\_\_\_\_\_  
Linda Muniak, CPA, Treasurer

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

**ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY**

By:   
Sharon Joyce, Actm David Szaehman, DIRECTOR  
DIVISION OF CONSUMER AFFAIRS

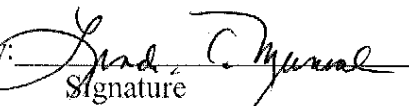
Dated: 1/26/10, 2010

**BARNEGAT PROJECT PLAYGROUND, INC.  
RESPONDENT**

By: \_\_\_\_\_  
Signature

Dated: \_\_\_\_\_, 2010

\_\_\_\_\_  
Thomas Kostka, President

By:   
Signature

Dated: 1-12-, 2010

\_\_\_\_\_  
Linda Muniak, CPA, Treasurer