PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for Plaintiffs

By: Gina M. Betts
Deputy Attorney General
(973) 648-3070

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
Docket No.: 05-009

PETER C. HARVEY, Attorney General of the State of New Jersey, Petitioner, v. SAMUEL CRUZ, individually and d/b/a RAINBOW PAINTING & REMODELING a/k/a RAINBOW GENERAL CONTRACTING, Respondents,	Administrative Action **COMPLAINT**

PETER C. HARVEY, Attorney General of the State of New Jersey, with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, by way of Complaint states:

PARTIES AND JURISDICTION

1. Pursuant to N.J.S.A. 52:17A-4, the Attorney General of the State of New Jersey ("Attorney General") is charged with the responsibility of enforcing the laws of the State of New Jersey (the "State"), including the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (the

"CFA"), and the regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq. (the "Regulations").

2. By this action, the Attorney General ("Petitioner") seeks injunctive and other relief for violations of the CFA and relevant Regulations. Petitioner brings this action pursuant to the authority under the CFA, specifically N.J.S.A. 56:8-3.1, N.J.S.A. 56:8-8, N.J.S.A. 56:8-11, N.J.S.A. 56:8-13 and N.J.S.A. 56:8-19.

3. Upon information and belief, Samuel Cruz ("Cruz") is the owner, manager, member, agent and/or employee of Rainbow Painting & Remodeling a/k/a Rainbow General Contracting. Upon information and belief, Cruz's last known and/or current home address is 3051 Pleasant Street, Apartment E12, Camden, New Jersey 08105.

4. Upon information and belief, Rainbow Painting & Remodeling a/k/a Rainbow General Contracting is not incorporated in the State or elsewhere. Upon information and belief, at all relevant times, Rainbow Painting & Remodeling a/k/a Rainbow General Contracting has maintained a principal place of business at 407 North 31st Street, Camden, New Jersey 08105 and 2107 N. 31st Street, Camden, New Jersey 08105.

5. Upon information and belief, on or about October 31, 2002, Cruz registered Rainbow Painting & Remodeling as a trade name in the Office of the Camden County Clerk.

6. Cruz, Rainbow Painting & Remodeling and Rainbow General Contracting are collectively referred to as "Respondents".

GENERAL ALLEGATIONS COMMON TO ALL COUNTS:

7. Upon information and belief, at least since October 31, 2002, Respondents have been engaged in the business of performing home improvements in the State including, but not limited to, window installation and replacement, painting and other interior and exterior work.

8. Upon information and belief, Respondents have advertised in the State as "Rainbow General Contracting, Samuel Cruz, Engineer."

9. At all relevant times, Respondents were not licensed as engineers in the State.

10. Upon information and belief, on or about March 23, 2004, Gladys and Alvin Doe (collectively "Consumer Doe") hired Respondents to perform renovations to their home which included the removal and replacement of windows, removal of asbestos, installation of vinyl siding and insulation and reconstruction of a front window.

11. The renovations to be performed by Respondents were memorialized in a contract, dated March 23, 2004 (the "Contract").

12. The Contract provided that Respondents would perform the home improvement work at a cost of $15,169.60.

13. Upon information and belief, Consumer Doe made payments to Respondents totaling $15,419.66, which represented the Contract price of $15,169.66, plus an additional payment of $250.00.

14. Upon information and belief, Respondents commenced the work on Consumer Doe's home on or about March 2004.

15. Upon information and belief, the Cherry Hill Township Department of Code Enforcement inspected Consumer Doe's home on April 27, 2004.

16. Upon information and belief, the Cherry Hill Township Department of Code Enforcement inspector found certain deficiencies in the work performed by Respondents and requested that certain corrective action be undertaken, which included: (a) the securing of all utility and electrical wires and conduits to the exterior of the home; and (b) the caulking and/or weather sealing of openings in the siding as well as of siding joints in the chimney.

17. Upon information and belief, Respondents have failed to undertake the corrective action requested by the Cherry Hill Township Department of Code Enforcement.

18. Upon information and belief, Consumer Doe advised Respondents of certain problems with the home improvement work performed, which included: (a) improper installation of siding and windows; and (b) installation of windows other than the contracted for type, model and size.

19. Upon information and belief, Respondents have failed to correct the deficiencies noted by Consumer Doe and to otherwise complete the contracted for renovation work in a satisfactory manner.

20. Upon information and belief Respondents have failed to provide Consumer Doe with a refund of the money paid for the work that Respondents performed unsatisfactorily and/or failed to complete.

COUNT I

VIOLATION OF THE CFA BY RESPONDENTS (UNCONSCIONABLE COMMERCIAL PRACTICES)

21. Petitioner repeats and realleges the allegations contained in paragraphs 1 through 20 above as if more fully set forth herein.

22. The CFA, N.J.S.A. 56:8-2, prohibits:

> The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing [ ] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise....

23. In the operation of their home improvement business, Respondents have engaged in the use of unconscionable commercial practices, false promises, misrepresentations and/or the knowing concealment, suppression or omission of material facts.

24. Respondents have engaged in unconscionable commercial practices including, but not limited to:

a. Installation of materials that did not conform to the requirements of the home improvement contract;

b. Performing work in an unsafe and/or unsatisfactory manner so that it failed inspection;

c. Failing to perform the requisite corrective action to ensure that the construction work passed inspection;

d. Failing to complete the work specified in the home improvement contract;

e. Demanding and accepting complete payment for renovations that Respondents never completed;

f. Failing to provide consumers with refunds for home improvement work that Respondents never completed; and

g. Failing to timely respond to consumer's telephone calls and/or correspondence in a timely fashion or at all.

25. Each unconscionable commercial practice by Respondents constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

COUNT II

VIOLATIONS OF THE CFA BY RESPONDENTS (FALSE PROMISES AND MISREPRESENTATIONS)

26. Petitioner repeats and realleges the allegations contained in paragraphs 1 through 25 above as if more fully set forth herein.

27. In the operation of their home improvement business, Respondents have made false promises and/or misrepresentations including, but not limited to, the following:

a. Misrepresenting that Respondents were licensed engineers in the State;

b. Misrepresenting the date or time period on or within which the home improvement work is to commence and be completed;

c. Misrepresenting that Respondents would furnish the window type, model and size requested by the consumer;

d. Misrepresenting that Respondents would correct all deficiencies in the home improvement work noted by the consumer; and

e. Misrepresenting that Respondents would undertake all corrective action to ensure that the home improvement work passed the requisite inspections.

28. Each false promise and misrepresentation by Respondents constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

COUNT III

VIOLATIONS OF THE CFA BY RESPONDENTS (KNOWING OMISSIONS OF MATERIAL FACT)

29. Petitioner repeats and realleges the allegations contained in paragraphs 1 through 28 above as if more fully set forth herein.

30. In the operation of their home improvement business, Respondents have engaged in knowing omissions of material fact including, but not limited to:

a. Failing to inform consumers that Respondents are not licensed engineers in the State;

b. Failing to include in home improvement contracts the date or time period within which work will commence;

c. Failing to include in home improvement contracts the date or time period within which work will be completed;

d. Failing to include in home improvement contracts a complete and accurate description of the products and materials to be used; and

e. Failing to advise consumers that Respondents will install materials that differed from the contracted for type, size or model.

31. Each knowing omission of material fact by Respondents constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

COUNT IV

VIOLATIONS OF THE HOME IMPROVEMENT PRACTICES REGULATIONS BY RESPONDENTS

32. Petitioner repeats and realleges the allegations contained in paragraphs 1 through 31 above as if more fully set forth herein.

33. The Regulations Governing Home improvement Practices, N.J.A.C. 13:45A-16.1 et seq. ("Home Improvement Regulations "), promulgated pursuant to the CFA, among other things, prohibit certain acts and practices of a seller in connection with the sale, advertisement or performance of home improvement contracts.

34. Respondents are "seller [s] within the definition of N.J.A.C. 13:45A-16.1.

35. At all relevant times, Respondents entered into "home improvement contract[s]" within the definition of N.J.A.C. 13:45A-16.1.

36. The Home Improvement Regulations prohibit certain practices with regard to the performance of home improvement contracts, as follows:

a. Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., utilization of a seller of the following acts and practices involving the sale, attempted sale, advertisement or performance of home improvements shall be unlawful hereunder:

. . . .

7. Performance:

. . . .

ii. Fail to begin or complete work on the date or within the time period specified in the home improvement contract, or as otherwise represented, unless the delay is for reason of labor stoppage; unavailability of supplies or materials, unavoidable casualties, or any other cause beyond seller's control. Any changes in the dates or time periods stated in a written contract shall be agreed to in writing; or

iii. Fail to give timely written notice to the buyer of reasons beyond the seller's control for any delay in performance, and when the work will begin or be completed.

[N.J.A.C. 13:45A-16.2(a)(7).]

37. In addition, the Home Improvement Regulations deem it an unlawful practice for the seller to:

Request the buyer to sign a certificate of completion, or make final payment on the contract before the home improvement is completed in accordance with the terms of the contract. . . .

[N.J.A.C. 13:45a-16.2(a)(6)(v).]

38. Moreover, the Home Improvement Regulations include a writing requirement for contracts priced in excess of $200.00 and provide, in pertinent part:

12. Home improvement contract requirements - writing requirement: All home improvement contracts for a purchase price in excess of

$200.00, and all changes in the terms and conditions thereof shall be in writing. Home improvement contracts which are required by this subsection to be in writing, and all changes in the terms and conditions thereof, shall be signed by all parties thereto, and shall clearly and accurately set forth in legible form all terms and conditions of the contract, including, but not limited to, the following:

. . . .

ii. A description of the work to be done and the principal products and materials to be used or installed in performance of the contract. The description shall include, where applicable, the name, make, size, capacity, model, and model year of principal products or fixtures to be installed, and the type , grade, quality, size or quantity of principal building or construction material to be used.

. . . .

iv. The dates or time period on or within which the work is to begin and be completed by the seller;

. . . .

vi. A statement of any guarantee or warranty with respect to any products, materials, labor or services made by the seller.

[N.J.A.C. 13:45A-16.2(a)(12)(ii), (iv), (vi).]

39. Respondents violated the Home Improvement Regulations by engaging in certain conduct including, but not limited to:

a. Failing to provide consumers with timely notice of a delay in the commencement or completion of home improvement work as well as when the work will commence or be completed.

b. Failing to include all changes in the terms and conditions of the home improvement contracts in writing;

c. Requiring consumers to make final payment on the home improvement contract before the work was completed in accordance with the terms of the contract;

d. Failing to include in home improvement contracts the dates or time periods or on within which work is to commence;

e. Failing to include in home improvement contracts the dates or time periods on or within which work is to be completed;

f. Failing to include in home improvement contracts a clear, accurate and legible statement of all terms and conditions;

g. Failing to include in home improvement contracts a description of the work to be performed and the principal products and materials to be used or installed; and

h. Failing to include in home improvement contracts a statement of any guarantee or warranty concerning any products, materials, labor and/or services to be provided thereunder.

40. Respondents' conduct constitutes multiple violations of the Home Improvement Regulations, N.J.A.C. 13:45A-1.1 et seq. each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Petitioner respectfully requests the entry of an Order after a hearing as authorized by the CFA, N.J.S.A. 56:8-3.1:

(a) Finding that the acts and omissions of Respondents constitute multiple instances of unlawful practices in violation of the CFA, N.J.S.A., 56:8-1 et seq., and the Regulations promulgated thereunder, specifically the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq.;

(b) Permanently enjoining Respondents and their owners, agents, managers, employees and representatives and all other persons or entities directly under their control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., and the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq., including, but not limited to, the acts and practices alleged in this Complaint;

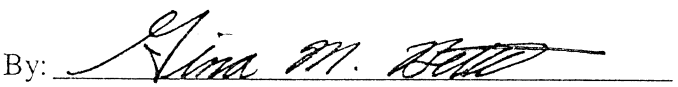
(c) Directing the assessment of restitution amounts against Respondents , jointly and severally, to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any alleged practice herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;

(d) Assessing the maximum statutory civil penalties against Respondents, jointly and severally, for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;

(e) Directing the assessment of costs and fees, including attorney's fees, against Respondents, jointly and severally, for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56: 8-11 and N.J.S.A. 56:8-19; and

(f) Granting such other relief as the interests of justice may require.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Petitioner

By: 
Gina M. Betts
Deputy Attorney General

Dated: October 27, 2005
Newark, New Jersey