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**RULE ADOPTIONS**  
**Law And Public Safety**  
**Division Of Consumer Affairs**

39 N.J.R. 495(b)

Readoption with Amendments: N.J.A.C. 13:45  
Adopted Repeals: N.J.A.C. 13:45-4.5, 4.6 and 4.7  
Adopted Repeal and New Rule: N.J.A.C. 13:45-5.5

Administrative Hearings in the Division of Consumer Affairs

Proposed: October 16, 2006 at 38 N.J.R. 4400(a).

Adopted: December 19, 2006 by the New Jersey Division of Consumer Affairs, Stephen B. Nolan, Acting Director.

Filed: December 22, 2006 as R.2007 d.32, without change.

Authority: N.J.S.A. 56:8-4 and 45:14D-6 and Reorganization Plan No. 008-1998, and N.J.S.A. 45:17A-21 and 34:8-54.

Effective Date: December 22, 2006, Readoption;

February 5, 2007, Amendments, Repeals and New Rule.

Expiration Date: December 22, 2011.

Summary of Public Comment and Agency Response:  
The Division did not receive any comments.

### **Federal Standards Statement**

A Federal standards analysis is not required because the rules readopted with amendments, repeals and new rule are subject to State statutory requirements and are not subject to any Federal requirements.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 13:45.

Full text of the adopted amendments and new rule follows:

## **SUBCHAPTER 1. GENERAL PROVISIONS**

### **13:45-1.1 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Act" means the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. as amended and/or supplemented, or any regulation adopted thereunder.

"Administrative charges" means a formal complaint or such other pleading, including, but not limited to, a notice of violation, provisional orders of discipline or uniform penalty letters.

"Advertisement" means the attempt directly or indirectly by publication, dissemination, solicitation, endorsement or

circulation or in any other way to induce directly or indirectly any person to enter or not enter into any obligation or acquire any title or interest in any merchandise or to increase the consumption thereof or to make any loan.

"Attorney for the Division" means an attorney appointed or assigned by the Attorney General of New Jersey to represent and render legal services to the Division.

"Complainant" means the party who requests action or relief by filing a complaint.

"Consumer complaint" means the letter, e-mail, telephone call or other means by which a consumer reports to the Division a violation of the Act or other statutory schemes covered by these rules.

"Contested case" means an adversary proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing. The required hearing must be designed to result in an adjudication concerning the rights, duties, obligations, privileges, benefits or other legal relations of specific parties over which there exist disputed questions of fact, law or disposition relating to the past, current or proposed activities or interests. Contested cases are not informational nor intended to provide a forum for the expression of public sentiment on a proposed agency action or broad policy issues affecting entire industries or large, undefined classes of people.

"Director" means the Director of the Division.

"Final decision" means a decision by the Director after a hearing conducted in accordance with the rules under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

"Formal complaint" means administrative charges pursued in a pleading asserting an allegation of a violation requiring a form answer.

"Merchandise" means any objects, wares, goods, commodities, services or anything offered, directly or indirectly, to the public for sale.

"Person" means any natural person or his or her legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestuis que trustent thereof.

"Respondent" means the party who answers or responds to a request for relief or action.

"Sale" means any sale, rental or distribution, offer for sale, rental or distribution or attempt directly or indirectly to sell, rent or distribute.

### **13:45-1.2 Scope**

The following rules shall govern the commencement, pleadings and final decision in all contested cases before the Division.

### **13:45-1.3 Construction**

(a) These rules shall be liberally construed to permit the Division to discharge its statutory functions.

(b) Except as stated in (c) below, the Director may, upon notice to all parties, relax or disregard the application of these rules if the Director determines that adherence would result in unfairness or injustice. The Director shall make such determinations and state the reasons for doing so on the record.

(c) The burden of proof shall not be relaxed. Statutory procedural requirements shall not be relaxed or disregarded except when permitted by the controlling Federal or State statutes.

### **13:45-1.4 Practice where rules do not govern**

- (a) The Director may rescind, amend or expand these rules from time to time, provided the same is effected in accordance with the provisions of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.
- (b) In any matter not expressly controlled by these rules or by statute, the Director shall exercise discretion.

## **SUBCHAPTER 2. JURISDICTION**

### **13:45-2.1 Subject matter jurisdiction**

- (a) The jurisdiction of the Division shall extend to all sales or advertisements for the sale of merchandise or real estate, pursuant to the Act and to contested matters where the Director is authorized to proceed with administrative charges for violations of N.J.S.A. 34:8-43 et seq., 45:17A-18 et seq. or 45:14D-1 et seq.
- (b) Nothing in this chapter shall be construed to preclude the Attorney General from pursuing violations of law in any other forum.

### **13:45-2.2 Procedure where Division is without jurisdiction**

Whenever it shall appear that the Division is without jurisdiction as defined in N.J.A.C. 13:45-2.1, the party making the consumer complaint shall be so advised, and where possible, the consumer complaint shall be referred to the appropriate local, State or Federal agency for further action.

## **SUBCHAPTER 3. COMMENCEMENT OF FORMAL ADMINISTRATIVE PROCEEDINGS; PLEADINGS; SERVICE OF PLEADINGS; INITIATION OF ADMINISTRATIVE CHARGES**

### **13:45-3.1 Notice of hearing and complaint**

- (a) Whenever it shall appear to the Attorney General that a violation of law under one of the statutory schemes covered by N.J.A.C. 13:45-2.1 has occurred, is occurring or may occur and that the matter warrants a formal administrative hearing to effectuate the policies underlying the applicable statute, the Attorney General may cause to be issued a notice of hearing and complaint seeking any relief authorized by the applicable statute.
- (b) The complaint shall be answered within 35 days from the date of service thereof.
- (c) (No change.)
- (d) The notice of hearing shall contain:
  1. A statement that the respondent shall file an answer to the allegations in the complaint within 35 days of service of the complaint;
  2. A statement that the answer shall admit or deny each allegation in the numbered paragraphs of the complaint;Recodifying existing 1. and 2. as 3. and 4. (No change in text.)
  5. A statement that the respondent may present evidence in defense to the charges contained in the complaint, either through an attorney or personally;
  6. A statement that should the respondent fail to file an answer or appear at the hearing, a default will be entered and the complainant will proceed with proofs in support of the relief demanded; and
  7. A statement that adjournments will be granted where the party requesting the adjournment has conformed to the regulations set forth in N.J.A.C. 1:1-9.6. If the application for adjournment is untimely, the Director may order any sanctions provided in N.J.A.C. 1:1-14.14.

(e) A complaint shall contain:

1.-3. (No change.)

### **13:45-3.2 Service of notice of hearing and complaint**

(a) Service of a notice of hearing and complaint shall be made as follows:

1.-3. (No change.)

4. In lieu of the service set forth in (a)1 through 3 above, service may be made by sending a copy of the notice of hearing and complaint certified mail, return receipt requested to either the registered or principal place of business or to any agent authorized by law to accept service or to the last known address of the respondent.

(b) Service of any papers after an answer has been filed with the Director shall conform to the requirements of N.J.A.C. 1:1-7.1.

### **13:45-3.3 Answer**

(a) A respondent shall file an answer to the complaint with the Director within 35 days of service of the complaint, with a copy to the complainant.

(b) In the answer, the respondent shall admit or deny each allegation of the numbered paragraphs of the complaint.

(c) The respondent may assert any factual or legal defenses to the allegations made in the complaint.

(d) Filing of an answer shall be made by forwarding an original and two copies to the Director, with a copy to the complainant. Evidence of filing of the answer shall be a notation showing the date, time and place of filing.

(e) If the respondent submits a self-addressed, stamped envelope, the Division will return a copy of the answer to the respondent marked with the date of filing.

(f) The Director, upon receiving an answer for filing that does not conform to the requirements of these rules, may return the answer with instructions for refileing.

(g) The failure to file an answer shall be deemed a default, if service has been effectuated.

### **13:45-3.4 Amendment to pleadings**

A complaint may be amended as a matter of course at any time before an answer is filed with the Director. After the answer has been filed, any amendments to the pleadings shall be governed by N.J.A.C. 1:1-6.2.

### **13:45-3.5 Administrative charges**

Nothing in this subchapter shall preclude the Attorney General from initiating administrative charges through, but not limited to, a notice of violation, provisional order of discipline or uniform penalty letter. The respondent shall answer the administrative charges as directed by the pleadings.

## **SUBCHAPTER 4. CONDUCT OF HEARINGS**

### **13:45-4.1 Hearing to conform to law**

(a) After an agency proceeding has commenced, the Director shall promptly determine whether the matter is a contested case.

(b) If a party petitions the Director to determine whether a matter is contested, the Director shall make that determination within 30 days from receipt of the petition and inform all parties of his or her determination.

(c) The Director shall determine whether to retain jurisdiction of the contested case or refer the contested case to the Office of Administrative Law (OAL). The Director shall be the final decision maker in any contested case sent to the OAL.

(d) The conduct of all hearings shall conform to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

#### **13:45-4.2 Director's powers when hearing contested case**

(a) All hearings under these rules shall be conducted before the Director. When the hearing is conducted before the Director, the Director may exercise the powers and responsibilities of an administrative law judge, pursuant to N.J.A.C. 1:1.

(b) The Director may require the submission of proposed findings of fact and conclusions of law, written memoranda of law or briefs.

(c) The Director may dismiss any complaint or part thereof or any other administrative charges in any pending matter at any time as may be appropriate for good cause shown.

#### **13:45-4.3 Time and place of hearing**

(a) Hearings shall be held at a time and place designated by the Director, having due regard for the convenience of the parties and witnesses.

(b) The procedures for adjournments set forth under N.J.A.C. 1:1-9.6 shall govern all applications for adjournments in the Division. All applications for adjournments shall be made to the Director. The Director may order sanctions as set forth in N.J.A.C. 1:1-9.6(j).

#### **13:45-4.4 Appearance of attorneys**

Except as permitted by N.J.A.C. 1:1-5.4 and 1:1-5.6, a corporation shall not appear or file any paper in proceedings before the Director except through an attorney authorized to practice in this State.

### **SUBCHAPTER 5. ISSUANCE OF FINAL DECISION**

#### **13:45-5.1 Director's decision**

(a) The Director shall, not later than 45 days following the final day of hearing, receipt of the transcript or any required submissions, whichever is latest, issue a final decision and order.

(b) The Director's final decision and order shall include findings of fact and conclusions of law, separately stated.

(c) The Director's final decision and order shall include such remedies or conditions as may be authorized by law, including, but not limited to, the entry of a cease and desist order, the assessment of civil penalties, restitution, costs, including investigative costs, and attorneys' fees.

(d) The Director's final decision and order shall be in writing.

#### **13:45-5.2 Assessment of civil penalties, restitution and costs and other remedies under the law; second offenses**

(a) Upon a finding of a violation of any provision of law or any regulation promulgated thereunder, after a hearing, the Director may, order remedies consistent with the applicable statute, which may include registration suspension or revocation, the assessment of a civil penalty in an amount consistent with the statute, based on the findings, a cease

and desist directive or other remedial measures and a release from a bond to satisfy obligation, if one is required, restitution to consumers, costs and attorneys' fees.

(b) Whether a finding of an unlawful practice or practices in a second or subsequent transaction shall be deemed to be a second or subsequent offense in the same matter shall be controlled by the applicable statute. For the purpose of illustrating this provision, if a respondent in any administrative proceeding alleging violations of the Act or N.J.S.A. 45:17A-18 et seq. is found to have used or employed an unlawful practice in two separate transactions, the respondent shall be liable for a penalty of not more than \$ 10,000 for the first transaction and not more than \$ 20,000 for the second transaction. Under N.J.S.A. 45:14D-16, a second offense occurs in a proceeding only after entry of a prior order.

#### 13:45-5.3 Service of Director's decision

A final decision and order issued by the Director shall be served in conformance with N.J.A.C. 1:1-7.1.

#### **13:45-5.4 Payment of award**

(a) In any matter wherein payment of civil penalties, restitution and costs is ordered, payment thereof shall be made not later than 10 days following service of the Director's final decision and order or as directed by the terms of the order.

(b) Payment of assessed penalties and costs shall be by certified check or money order made payable to the New Jersey Division of Consumer Affairs by forwarding the same to the Division. Payment of restitution shall be by certified check or money order made payable to the appropriate consumer and forwarded to the Division.

#### **13:45-5.5 Effect of final order**

The final order shall be effective on the date of filing with the Division. Any appeal of the final order shall be made to the Appellate Division within 45 days from the date of service of the final order and decision, in accordance with the New Jersey Court Rules.