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Division of Law
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FILED

JUN 29 2015

Division of Consumer Affairs

By: Russell M. Smith, Jr. (014202012)
Deputy Attorney General
(973) 877-1280

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

In the Matter of

BIG ED'S AUTOMOTIVE, INC.,

Respondent.

Administrative Action
No. NOV 1500034

CONSENT ORDER

WHEREAS this matter was opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection ("Division"), as an investigation to ascertain whether Big Ed's Automotive, Inc. ("Respondent") has engaged in violations of New Jersey Consumer Fraud Act, ("CFA"), N.J.S.A. 56:8-1 et seq., including the provision concerning the Sale or attempted Sale of Merchandise without a tag or label with the total selling price, and the Refund Policy Disclosure Act ("Refund Act"), N.J.S.A. 56:8-2.14 et seq. (hereinafter referred to as the "Investigation");

WHEREAS on January 21, 2015, the Division inspected an automotive parts retailer owned and operated by Respondent located at 1225 St. Georges Avenue, Colonia, New Jersey 07067;

WHEREAS the Division alleges that Respondent was selling, attempting to sell or offering Merchandise without the total selling price of such Merchandise plainly marked by a

stamp, tag, label or sign either affixed to the Merchandise or located at the point where the Merchandise is offered for Sale;

WHEREAS the Division alleges that Respondent failed to conspicuously post its refund policy at one of the four required locations, or offer a refund policy that is exempt from the Refund Act;

WHEREAS on April 10, 2015, the Division served Respondent with a Notice of Violation and Offer of Settlement (“NOV”), by Certified and Regular Mail, which included the findings of the Investigation and gave Respondent notice and an opportunity to be heard as to the alleged violations;

WHEREAS on May 18, 2015, Respondent attended a conference with the Division at which it presented mitigating evidence;

WHEREAS the Division and Respondent (collectively, “Parties”) have reached an amicable agreement thereby resolving the issues in controversy and concluding the Investigation without the need for further action, and Respondent having voluntarily cooperated with the Investigation and consented to the entry of the within order (“Consent Order”) and for good cause shown:

IT IS 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 (“Effective Date”).

2. DEFINITIONS

As used in this Consent Order, the following capitalized 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 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c).

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

2.4 “Respondent” shall refer to Big Ed’s Automotive, Inc., as well as any and all automotive parts retailers it owns and/or operates within the State

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

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

3. PROHIBITED AND REQUIRED BUSINESS PRACTICES

3.1. Respondent shall not engage in any unfair or deceptive acts or practices in the conduct of any business in the State and shall comply with such State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended, including the CFA and the Refund Act.

3.2 Respondent shall not sell, or attempt to sell or offer for Sale Merchandise without the total selling price of the Merchandise plainly marked by a stamp, label or sign either affixed to the Merchandise at the point where the Merchandise is offered for Sale, in accordance with N.J.S.A. 56:8-2.5.

3.3 Respondent shall conspicuously post its refund policy at one of the four required locations, in accordance with N.J.S.A. 56:8-2.16, and/or offer a refund policy that is exempt

from the Refund Act, in accordance with N.J.S.A. 56:8-2.19.

4. SETTLEMENT PAYMENT

4.1. The Parties have agreed to a settlement of the Investigation in the amount of One Thousand Two Hundred Fifty and 00/100 Dollars (\$1,250.00) (“Settlement Payment”).

4.2 The Settlement Payment comprises One Thousand and 00/100 Dollars (\$1,000.00) in civil penalties assessed pursuant to N.J.S.A. 56:8-13, and Two Hundred Fifty and 00/100 Dollars (\$250.00) in investigative costs assessed pursuant to N.J.S.A. 56:8-11.

4.3 Respondent shall pay the entire Settlement Payment contemporaneously with the signing of this Consent Order.

4.4 The Settlement Payment shall be made by bank check, money order, wire transfer, or credit card made payable to the “New Jersey Division of Consumer Affairs,” and shall be forwarded to the undersigned:

Russell M. Smith, Jr., Deputy Attorney General
Division of Law, Consumer Fraud Prosecution
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

4.5 Upon making the Settlement Payment, Respondent shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, 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 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 of 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 Respondent as well as any Person 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.

5.8 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; and (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, and/or the Refund Act.

5.10 This Consent Order is not intended, and shall not 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 6) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

5.11 The Parties represent and warrant that 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.

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

5.13 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.

5.14 This Consent Order is a public document subject to the New Jersey Open Public

Records Act, N.J.S.A. 47:1A-1 et seq.

6. RELEASE

6.1 In consideration of the undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent making the Settlement Payment required by Section 4.3, 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 CFA and/or the Refund Act , as well as the matters specifically addressed in this Consent Order (“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.

7. PENALTIES FOR FAILURE TO COMPLY

7.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Order or to seek sanctions for violations hereof or both.

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

8. COMPLIANCE WITH ALL LAWS

8.1 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.

9. NOTICES UNDER THIS CONSENT ORDER

9.1 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:

For the Division:

Russell M. Smith, Jr., Deputy Attorney General
Division of Law, Consumer Fraud Prosecution
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

For the Respondent:

Big Ed's Automotive, Inc.
c/o Edward Sena, President
1225 St. Georges Avenue
Colonia, New Jersey 07067

IT IS ON THE 29th DAY OF June, 2015 SO ORDERED.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY


By: 

STEVE C. LEE, ACTING DIRECTOR
DIVISION OF CONSUMER AFFAIRS

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

FOR THE DIVISION:


JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 
Russell M. Smith, Jr.
Deputy Attorney General
Division of Law, Consumer Fraud Prosecution
124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
(973) 877-1280

Dated: 6/17, 2015

FOR THE RESPONDENT:

BIG ED'S AUTOMOTIVE, INC.

By:  (Pres)
Edward Sena, President
Big Ed's Automotive, Inc.
1225 St. Georges Avenue
Colonia, New Jersey 07067

Dated: 6-16-, 2015