

PAULA T. DOW
ACTING ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for Division of Consumer Affairs

FILED

FEB 04 2010

Division of Consumer Affairs

By: Jah-Juin Ho
Deputy Attorney General
(973) 877-1280

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

In the Matter of

VINCENT GALDIERI d/b/a VINCENT
GALDIERI PAINTING & WALLPAPER,

Respondent.

Administrative Action

CONSENT ORDER

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”), the Contractors’ Registration Act, N.J.S.A. 56:8-136 et seq., the Regulations Governing Home Improvement Contractor Registration, N.J.A.C. 13:45A-17.1 et seq. (“Contractor Registration Regulations”), and the Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 et seq. (“Home Improvement Regulations”), have been or are being committed by Vincent Galdieri d/b/a Vincent Galdieri Painting & Wallpaper (“Respondent”), with a business address of 822 Sterling Drive, Brick, New Jersey 08807 (hereinafter the “Investigation”);

WHEREAS the Division found that Respondent Advertised, offered for Sale, sold and/or performed Home Improvements in the State, without registering as a Contractor with the Division,

as required by the Contractors' Registration Act, N.J.S.A. 56:8-138, and the Contractor Registration Regulations, N.J.A.C. 13:45A-17.3;

WHEREAS the Division found that Respondent failed to include in his Home Improvement Contracts, for purchases in excess of \$500.00, among other things, the dates or time period on or within which Home Improvements were to begin and/or be completed, as required by N.J.A.C. 13:45A-16.2(a)(12)(iv), the legal name and business address of the seller, as required by N.J.A.C. 13:45A-16.2(a)(12)(i), and the signatures of all parties, as required by N.J.S.A. 56:8-151a and N.J.A.C. 13:45A-16.2(a)(12);

WHEREAS the Division found that Respondent failed to provide Consumers with a copy of his certificate of commercial general liability insurance, as required by N.J.S.A. 56:8-151(a)(2);

WHEREAS the Respondent denies that he has committed any violations of the CFA, the Contractors' Registration Act, the Contractor Registration Regulations and the Home Improvement Regulations; and

WHEREAS the Division and Respondent (collectively, the "Parties") having reached an amicable agreement resolving the issues in controversy and concluding this matter without the need for further action, and Respondent having voluntarily cooperated and consented to the entry of the within order (hereinafter "Consent Order") without having admitted any fact or violation of law, and for good cause shown:

IT IS ORDERED and **AGREED** 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 “Advertise,” “Advertisement” or “Advertising” shall mean any written, oral or electronic statement, illustration or depiction that is designed to create interest in the purchase of, impart information about the attributes of, publicize the availability of, or effect the sale or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, free-standing inset, bill board, circular, mailer, package insert, package label, product instructions, electronic mail, website, homepage, television, cable television, radio, commercial or any other medium. For purposes of the Contractor Registration Regulations, “Advertise” shall be defined in accordance with N.J.A.C. 13:45A-17.2.

2.2 “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.

2.3 “Consumer” shall refer to any Person who is offered Merchandise, defined in accordance with N.J.S.A. 56:8-1(d), for Sale.

2.4 “Contractor” shall be defined in accordance with N.J.S.A. 56:8-137.

2.5 “Home Improvement” shall be defined in accordance with N.J.S.A. 56:8-137, N.J.A.C. 13:45A-16.1 and/or N.J.A.C. 13:45A-17.2.

2.6 “Home Improvement Contract” shall be defined in accordance with N.J.S.A. 56:8-137, N.J.A.C. 13:45A-16.1 and N.J.A.C. 13:45A-17.2.

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

2.8 "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.

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

2.10 "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 his business in the State 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, the Contractors' Registration Act, the Contractor Registration Regulations and/or the Home Improvement Regulations.

3.2 Respondent shall not Advertise, offer to perform, engage in or attempt to engage in the Sale or performance of any Home Improvement, unless and until Respondent is registered as a Contractor with the Division in accordance with the Contractors' Registration Act, N.J.S.A. 56:8-138, and the Contractor Registration Regulations, N.J.A.C. 13:45A-17.3.

3.3 Respondent shall include in any Home Improvement Contract for a purchase price in excess of \$500.00 the dates or time period on or within which the Home Improvement is to begin and/or be completed, in accordance with N.J.A.C. 13:45A-16.2(a)(12)(iv).

3.4 Respondent shall include in any Home Improvement Contract for a purchase price in excess of \$500.00 the legal name and business address of the seller, including the legal name and business address of the sales representative or agent who solicited or negotiated the Home Improvement Contract for the seller, in accordance with N.J.A.C. 13:45A-16.2(a)(12)(i).

3.5 Respondent shall have all Home Improvement Contracts for a purchase price in excess of \$500.00 signed by all parties thereto, in accordance with N.J.S.A. 56:8-151a. and N.J.A.C. 13:45A-16.2(a)(12).

3.6 Respondent shall include in any Home Improvement Contract for a purchase price in excess of \$500.00 the conspicuous notice printed in at least 10-point bold-faced type set forth in N.J.S.A. 56:8-151(b).

3.7 For any Home Improvement Contract for a purchase price in excess of \$500.00, Respondent shall provide Consumers with a copy of his certificate of commercial general liability insurance pursuant to N.J.S.A. 56:8-151(a)(2).

~~3.8 Respondent shall not Represent or imply that any Advertisement or other act or practice hereinafter used or engaged in by Respondent has been required or approved, in whole or part, by the Attorney General or the Division or any of the State's agencies or agents.~~

4. SETTLEMENT PAYMENT

4.1 The Parties have agreed to a settlement of the Investigation in the amount of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) ("Settlement Payment"), which constitutes a civil penalty, pursuant to N.J.S.A. 56:8-13.

4.2 Respondent shall make the Settlement Payment in ten (10) monthly installments as follows:

- a. One Hundred Fifty and 00/100 Dollars (\$150.00) shall be paid on or before the Effective Date.
- b. The remaining One Thousand Three Hundred Fifty and 00/100 Dollars (\$1,350.00) shall be paid in nine (9) equal installments of One Hundred Fifty and 00/100 Dollars (\$150.00) with each installment due on the first day of

each month, beginning February 15, 2010, with the final installment due on October 1, 2010.

4.3 The payments referenced in Section 4.2 shall be made by certified check, attorney trust account check, or other guaranteed funds made payable to the "New Jersey Division of Consumer Affairs" and forwarded to the undersigned:

Attention: Supervisor
Case Management Tracking
New Jersey Department of Law and Public Safety
Division of Consumer Affairs
124 Halsey Street
P.O. Box 45025
Newark, New Jersey 07101

4.4 Upon making the payments referenced in Section 4.2, Respondent shall immediately be fully divested of any interest in, or ownership of, the moneys paid. All interest in the moneys, 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 the 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 among 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 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.

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 his agents, employees, successors and assigns, and any entity or device through which he may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct his 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 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 be construed as: (a) an approval, sanction or authorization by the Division or any other governmental unit of the State of any act or practice of Respondent; or (b) an admission by Respondent that any of his acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CFA, the Contractor's Registration Act, the Contractor Registration Regulations and/or the Home Improvement Regulations. Neither the existence of, nor the terms of this Consent Order shall 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 7) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

5.10 This Consent Order is a public document subject to the New Jersey Open Public Records Act.

5.11 This Consent Order constitutes a final agency action and shall be effective upon filing.

5.12 Unless otherwise prohibited by law, any signatures by the Parties required for filing 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.

6. HOME IMPROVEMENT REGISTRATION

6.1 Respondent shall comply with the requirements of the Contractor's Registration Act and the Contractor Registration Regulations and, among other things, prior to Advertising, offering for Sale, selling and/or performing any Home Improvement, Respondent shall register with the Division as a Contractor.

6.2 While registered as a Contractor, Respondent shall have a continuing duty to provide assistance and/or information as requested by the Division as well as to cooperate in any inquiry, investigation or hearing conducted by the Division, as required by N.J.S.A. 56:8-141(d) and 13:45A-17.8.

6.3 Respondent acknowledges and agrees that in addition to the requirements set forth in the Contractors' Registration Act and/or the Contractor Registration Regulations, the issuance and/or continuation of any registration of Respondent as a Contractor with the Division is contingent upon Respondent's compliance with the payment and other provisions of this Consent Order.

7. RELEASE

7.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent making the payments referenced in Section 4, 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 prior to the Effective Date against Respondent for violations of the CFA, the Contractors' Registration Act, the Contractor Registration Regulations and/or the Home Improvement Regulations arising out of the Investigation, as well as the matters addressed in this Consent Order (the "Released Claims").

7.2 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.

8. FORBEARANCE ON EXECUTION AND DEFAULT

8.1 In the event that Respondent fails to make any of the payments referenced in Section 4.2 within fifteen (15) days of their due date, all unpaid amounts due and payable under this Consent Order shall immediately be accelerated and due and payable without the need for notice and presentment, with interest calculated in accordance with R. 4:42-11 from the date of default, and with the Division's cost of collection. In any notice provided by this Section, the Division shall

provide Respondent with a fifteen (15) day period within which to cure any default. In addition to the relief provided for in this Section, this default shall also entitle the Division to make an application to the Court for an order directing compliance and any other relief in aid of litigant's rights including an award of attorneys' fees.

8.2 Respondent agrees to pay all reasonable attorneys' fees and costs including, but not limited to, Court costs, associated with any successful collection efforts by the Division pursuant to this Consent Order.

9. PENALTIES FOR FAILURE TO COMPLY

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

9.2 The Parties agree that any future violations of the injunctive provisions of this Consent Order as well as the CFA, the Contractors' Registration Act, the Contractor Registration Regulations, and/or the Home Improvement Regulations shall constitute a second or succeeding violation under N.J.S.A. 56:8-13 and that Respondent may be liable for enhanced civil penalties.

10. COMPLIANCE WITH ALL LAWS

10.1 Except as provided in this Consent Order, no provision herein shall be construed as:

- a. Relieving Respondent of his 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.

11. NOTICES UNDER THIS CONSENT ORDER

11.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondent 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 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
Newark, New Jersey 07101

For the Respondent:

Robert G. Alencewicz, Esq.
Hack, Piro, O'Day, Merklinger, Wallace & McKenna
30 Columbia Turnpike, 3rd Floor
P.O. Box 941
Florham Park, New Jersey 07932-0941

IT IS ON THE 4th DAY OF February, 2010 SO ORDERED.

PAULA T. DOW
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 

~~DAVID M. SZUCHMAN, DIRECTOR~~
DIVISION OF CONSUMER AFFAIRS

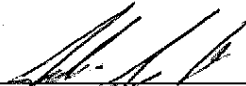
Sharon M. Joyce

Acting

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

FOR THE DIVISION

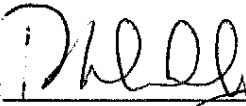
PAULA T. DOW
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 
Jah-Juin Ho
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

Dated: February 2, 2010

FOR THE RESPONDENT:

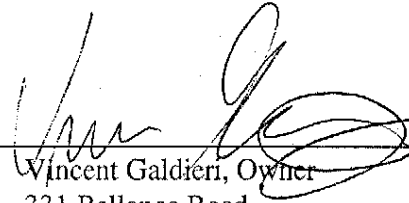
HACK, PIRO, O'DAY, MERKLINGER,
WALLACE & McKENNA

By: 
Robert G. Alenciewicz, Esq,
30 Columbia Turnpike, 3rd Floor
Florham Park, New Jersey 07932-0941

Dated: 1/25, 2010

FOR THE RESPONDENT:

VINCENT GALDIERI d/b/a VINCENT GALDIERI
PAINTING & WALLPAPER

By: 
Vincent Galdieri, Owner
331 Bellanca Road
Brick, New Jersey 08723-6801

Dated: 1/29/10, 2010