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Division of Consumer Affairs

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Division of Law
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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of

GUY MOVING CORPORATION, and
JOSEPH RUSSO, individually and as owner,
officer, director, manager, employee,
representative and/or agent of GUY MOVING
CORPORATION,

Respondents.

Administrative Action

CONSENT ORDER

WHEREAS this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (the "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 Public Movers & Warehousemen Licensing Act, N.J.S.A. 45:14D-1 et seq. ("Public Movers Licensing Act"), as well as the Regulations Governing Public Movers and Warehousemen, N.J.A.C. 13:44D-1 et seq. and N.J.A.C. 13:45C-1 et seq. ("Public Movers Regulations"), have been or are being committed by Guy Moving Corporation, a New Jersey corporation with its principal place of business at 240 Boundary Road, Marlboro, New Jersey 07746, and Joseph Russo, individually and as owner, officer, director, manager, employee, representative and/or agent of Guy Moving Corporation, having a

business address at 240 Boundary Road, Marlboro, New Jersey 07746 (collectively, "Respondents") (hereinafter referred to as the "Investigation"); and

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

IT IS on this 3rd day of August 2010, **ORDERED AND AGREED** as follows:

1. EFFECTIVE DATE

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 words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Order:

2.1 "Additional Consumer" shall refer to any Consumer who submits to the Division directly or through another agency, after the Effective Date, a written Consumer complaint concerning Respondents' business practices.

2.2 "Additional Consumer Complaint" shall refer to any complaint against Respondents by an Additional Consumer for alleged violations of the Public Movers Licensing Act, the Public Movers Regulations, the CFA and/or related Consumer protection statutes and regulations.

2.3 "ADR Unit" shall refer to Alternative Dispute Resolution Unit of the Division.

2.4 “Affected Consumer” shall refer to any Consumer who directly or through another agency submitted to the Division up to the Effective Date a written Consumer complaint concerning Respondents’ business practices, which complaint remains outstanding.

2.5 “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.

2.6 “Bill of Lading” shall be defined in accordance with N.J.A.C. 13:44D-1.1.

2.7 “Binding Estimate” shall be defined in accordance with N.J.A.C. 13:44D-1.1.

2.8 “Brochure” shall be defined in accordance with N.J.A.C. 13:44D-1.1.

2.9 “CALA” shall refer to Consumer Affairs Local Assistance offices located within counties and/or municipalities in the State.

2.10 “Consumer” shall be defined in accordance with N.J.A.C. 13:44D-1.1.

2.11 “Estimate” shall be defined in accordance with N.J.A.C. 13:44D-1.1.

2.12 “License” shall be defined in accordance with N.J.S.A. 45:14D-2(g).

2.13 “Mover’s Services” shall be defined in accordance with N.J.S.A. 45:14D-2(l).

2.14 “Order for Service” shall be defined in accordance with N.J.A.C. 13:44D-1.1.

2.15 “Person[s]” shall be defined in accordance with N.J.S.A. 56:8-1(d). “Person[s]” shall be defined in accordance with N.J.S.A. 45:14D-2(l), for purposes of the Public Movers Licensing Act.

2.16 “Place of Business” shall be defined in accordance with N.J.S.A. 45:14D-2(m).

2.17 “Property” shall be defined in accordance with N.J.S.A. 45:14D-2(n).

2.18 “Public Mover” shall be defined in accordance with N.J.S.A. 45:14D-2(p), for purpose of the Public Movers Licensing Act. “Public Mover” shall be defined in accordance with N.J.A.C. 13:44D-1.1, for purposes of the Public Movers Regulations.

2.19 “Represent” means 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.

2.20 “Restitution” shall refer to all methods undertaken by Respondents to resolve Affected Consumer Complaints and Additional Consumer Complaints including, but not limited to, the issuance of credits or refunds and the reversal of credit card or debit card charges.

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

2.22 “Storage” shall be defined in accordance with N.J.S.A. 45:14D-2(r).

2.23 “Storage Services” shall be defined in accordance with N.J.S.A. 45:14D-2(j).

2.24 “Tariff” shall be defined in accordance with N.J.S.A. 45:14D-2(s), for purpose of the Public Movers Licensing Act. “Tariff” shall be defined in accordance with N.J.A.C. 13:44D-1.1, for purpose of the Public Movers Regulations.

2.25 “Warehouseman” shall be defined in accordance with N.J.S.A. 45:14D-2(t).

3. INJUNCTIVE RELIEF AND BUSINESS PRACTICES

3.1 Respondents shall not engage in any unfair or deceptive acts or practices in the conduct of their business in the State and shall comply with all such applicable State and/or Federal laws, rules and regulations as now constituted or as may hereinafter be amended, including, but not limited to, the Public Movers Licensing Act, the Public Movers Regulations and the CFA.

3.2 Respondents shall not perform or contract to perform any Mover's Service and/or Storage Service if they have not obtained the License required by N.J.S.A. 45:14D-9(a).

3.3 Respondents shall comply in all respects with N.J.A.C. 13:44D-2.1(b) in order to obtain and maintain the proper Licenses to provide Mover's Services and/or Storage Services.

3.4 Respondents shall not Represent to Consumers that they are licensed to provide Mover's Services and/or Storage Services if they are not licensed to do so in accordance with the Public Movers Licensing Act and the Public Movers Regulations.

3.5 Respondents shall comply in all respects with the License renewal requirements set forth in N.J.A.C. 13:44D-2.1(d) and N.J.A.C. 13:44D-2.4(a).

3.6 Respondents shall file a Tariff semiannually with the Director, as required by N.J.S.A. 45:14D-14(a) and N.J.A.C. 13:44D-3.1(a).

3.7 Respondents shall comply in all respects with N.J.A.C. 13:44D-2.2 and shall notify the Director in writing of any change in their mailing address, permanent Place of Business address, business name or business telephone number, within thirty (30) days following any such change.

3.8 Respondents shall comply in all respects with N.J.A.C. 13:44D-2.3(b) and shall properly designate an agent upon whom service of process, notices and/or orders may be made.

3.9 Respondents shall not perform services beyond those which Respondents are properly licensed.

3.10 Respondents shall not engage in any unlicensed warehousing and/or Storage in violation of N.J.S.A. 45:14D-9.

4. FUTURE CONSUMER COMPLAINTS

4.1 For a period of one (1) year from the Effective Date, the Division shall forward to Respondents copies of any Additional Consumer Complaints received by the Division or forwarded to the Division by any CALA office. The Division shall forward to Respondents any Additional Consumer Complaint within thirty (30) days of the Division's receipt thereof.

4.2 After forwarding the Additional Consumer Complaint to Respondents, the Division shall provide the Additional Consumer with written notification of the following: (a) that the Additional Consumer Complaint has been forwarded to Respondents; (b) that he/she should expect a response from Respondents within thirty (30) days; and (c) the right to refer the Additional Consumer Complaint to the ADR Unit for binding arbitration if Respondents dispute the Additional Consumer Complaint and/or requested relief.

4.3 Within thirty (30) days of receiving an Additional Consumer Complaint from the Division, Respondents shall send a written response to the Additional Consumer, with a copy to the following: New Jersey Division of Consumer Affairs, Office of Consumer Protection, Attention: Case Management Tracking Supervisor, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101.

4.4 If Respondents do not dispute the Additional Consumer Complaint and requested relief, then Respondents' written response shall so inform the Additional Consumer. Respondents shall contemporaneously forward to such Additional Consumer the appropriate Restitution as well as all necessary documents. Where Restitution concerns the reversal of credit card or debit card charges, Respondents shall include documents evidencing that such adjustments have been made. Where Restitution concerns a refund or other payment, such shall be by certified check, money order or other guaranteed funds made payable to the Additional Consumer.

4.5 If Respondents dispute the Additional Consumer Complaint and/or the requested relief, then Respondents' written response shall include copies of all documents concerning Respondents' dispute of the Additional Consumer Complaint.

4.6 Within forty-five (45) days of Respondents' receipt of the Additional Consumer Complaint, Respondents shall notify the Division as to whether such Additional Consumer Complaint has been resolved. Such notification shall include the following:

- (a) The name and address of the Additional Consumer;
- (b) Whether or not the Additional Consumer Complaint has been resolved;
- (c) An identification of any Restitution provided to the Additional Consumer;
- (d) Copies of all documents evidencing any Restitution;
- (e) In the event Respondents' written response was returned as undeliverable, the efforts Respondents had undertaken to locate the Additional Consumer; and
- (f) Confirmation that Respondents sent all mailings to the Additional Consumer as required by this Section.

Following the Division's receipt and verification that an Additional Consumer Complaint has been resolved, that Additional Consumer Complaint shall be deemed closed for purposes of this Consent Order.

4.7 If within sixty (60) days of Respondents' receipt of the Additional Consumer Complaint: (a) Respondents have not notified the Division that the Additional Consumer Complaint has been resolved; (b) Respondents have notified the Division that the Additional Consumer Complaint has not been resolved; or (c) Respondents have notified the Division that the Additional Consumer refuses Respondents' offer of Restitution, the Division shall forward the Additional Consumer complaint to the ADR Unit to reach a resolution of the Additional Consumer Complaint

through binding arbitration. Respondents agree herein to consent to this arbitration process and to be bound by the arbitrator's decision. Respondents further agree to be bound by the immunity provision of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14 and the New Jersey Tort Claims Act, N.J.S.A. 59:10A-1 et seq. The Division shall notify in writing the Additional Consumer of the referral of the complaint to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines.

4.8 In the event Respondents fail or refuse to participate in the ADR program, the arbitrator may enter a default against Respondents. Unless otherwise specified in the arbitration award, Respondents shall pay any and all arbitration awards within thirty (30) days of the arbitrator's decision. Respondents' failure or refusal to participate in the arbitration process or to timely pay an arbitration award shall constitute a violation of this Consent Order.

4.9 If an Additional Consumer refuses to participate in the ADR program, that Additional Consumer Complaint shall be deemed closed for the purposes of this Consent Order.

4.10 The Parties may agree in writing to alter any time periods or deadlines set forth in this Section.

5. SETTLEMENT AMOUNT

5.1 On or before the Effective Date, Respondent shall pay the amount of Two Thousand and 00/100 Dollars (\$2,000.00) (the "Settlement Payment"). The Settlement Payment comprises Two Thousand and 00/100 Dollars (\$2,000.00) in civil penalties, pursuant to N.J.S.A. 56:8-13.

5.2 The Settlement Payment shall be made by certified or cashier's check made payable to "New Jersey Division of Consumer Affairs" and shall be forwarded to the undersigned:

State of New Jersey

Department of Law and Public Safety
Division of Consumer Affairs
CMT
124 Halsey Street- 7th Floor
Newark, New Jersey 07101

5.3 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.

6. GENERAL PROVISIONS

6.1 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.

6.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State.

6.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of the 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.

6.4 This Consent Order sets forth 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 Division and Respondents.

6.5 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.

6.6 If any provision of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

6.7 This Consent Order shall be binding upon Respondents as well as their owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, successors and assigns, and any entity or device through which they may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct their business.

6.8 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.

6.9 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 Attorney General, the Division or any other governmental unit of the State of any act or practice of the Respondents; or (b) an admission by Respondents that any of their acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the Public Movers Licensing Act, the Public Movers Regulations and/or the CFA. 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 or affirm 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.

6.10 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 constitute one and the same Consent Order.

6.11 The Parties Represent and warrant that their signatories to this Consent Order have authority to act for and bind the respective Parties.

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 Respondents making the payments in the manner specified in Sections 4 and 5, the Division hereby agrees to release Respondents 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 arising out of the Investigation as well as the matters specifically 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 Respondents by any other agency or subdivision of the State.

8. FORBEARANCE ON EXECUTION AND DEFAULT

8.1 Respondents agree 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.

8.2 Respondents agree that if they default on making the payments under Section 5 or in the event they fail to make any Restitution payments under Section 4, the Division shall be able to seek any remedies available at law including, but not limited to, statutory interest.

8.3 Respondents further agree that if they default on making the payments under Section 5 as well as any arbitration award and/or Restitution under Section 4, the Division may revoke Respondents' License to operate as a Public Mover and/or Warehouseman.

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 by Respondents of the injunctive provisions of this Consent Order, the Public Movers Licensing Act, the Public Movers Regulations and/or the CFA shall constitute a second or succeeding violation pursuant to N.J.S.A. 45D-16 and N.J.S.A. 56:8-13, and that Respondents may be subjected to enhanced penalties, as provided therein, upon a Court's finding that Respondents have committed a violation of the injunctive provisions of this Consent Order, the Public Movers Licensing Act, the Public Movers Regulations and/or the CFA.

10. COMPLIANCE WITH ALL LAWS

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

- (a) Relieving Respondents of their obligations to comply with all State and Federal laws, regulations, rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by such laws, regulations or rules; or

- (b) Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondents 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 Respondents 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 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:

Gina M. Betts, Deputy Attorney General
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Consumer Fraud Prosecution Section
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

For the Respondents:

Joseph Russo, President
Guy Moving Corporation.
240 Boundary Road
Marlboro, New Jersey 07746

IT IS ON THE 3rd DAY OF August, 2010 SO ORDERED.

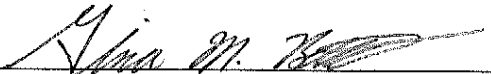
PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

By: 
THOMAS R. CALCAGNI, ACTING DIRECTOR
DIVISION OF CONSUMER AFFAIRS

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

FOR THE DIVISION:

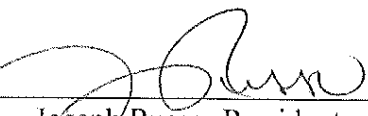
PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

By: 
Gina M. Betts
Deputy Attorney General
Consumer Fraud Prosecution Section

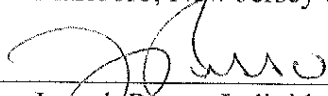
Dated: 8/4, 2010

124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

FOR THE RESPONDENTS:

By: 
Joseph Russo, President
Guy Moving Corporation.
240 Boundary Road
Marlboro, New Jersey 07746

Dated: 7/30, 2010

By: 
Joseph Russo, Individually
245 Winterberry Court
Howell, New Jersey 07731-3429

Dated: 7/30/10, 2010