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ATTORNEY GENERAL OF NEW JERSEY
Division of Law
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FILED

SEP 27 2011

Division of Consumer Affairs

By: Patricia A. Schiripo
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(973) 648-7819

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
Docket No.: 10-055

PAULA T. DOW, Attorney General of the
State of New Jersey,

Administrative Action

Complainant,

v.

DAVID HEITMAN t/a RAMAPO RIVER
RENOVATIONS,

CONSENT ORDER

Respondent.

WHEREAS this matter having been opened by Paula T. Dow, Attorney General of the State of New Jersey (“Complainant”), as an Administrative Complaint alleging that 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 David Heitman t/a Ramapo River Renovations (“Respondent”) with a business location of 12 Hines Avenue, Mahwah New Jersey 07430 (hereinafter the “Action”);

WHEREAS the Complainant alleges that Respondent, among other things, failed to perform the contracted for home improvement work and failed to include in the home improvement contract: (1) the date or time period within which work was to commence and/or be completed; (2) the appropriate signatures; (3) a copy of the certificate of commercial general liability insurance; and (4) proper cancellation language;

WHEREAS the Respondent denies that he has committed any violation of the CFA, Contractors’ Registration Act, Contractor Registration Regulations or the Home Improvement Regulations;

WHEREAS the Complainant and Respondent (collectively, the “Parties”) have reached an amicable agreement hereby resolving the issues in controversy and concluding this Action without need for further action, and Respondent having voluntarily cooperated and consented to the entry of the within order (hereinafter “Consent Order”) 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 “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 “Consumer” shall refer to any Person who is offered Merchandise, defined in accordance with N.J.S.A. 56:8-1(d), for Sale, defined in accordance with N.J.S.A. 56:8-1(e).

2.3 “Division” shall refer to the New Jersey Division of Consumer Affairs.

2.4 “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.

2.5 “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.

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

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

3. REQUIRED AND PROHIBITED BUSINESS PRACTICES

3.1 Respondent shall not engage in any unfair or deceptive acts or practices in the conduct of 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 include the “Notice to Consumer” in all Home Improvement Contracts pursuant to N.J.S.A. 56:8-151b.

3.3 Respondent shall provide a copy of his certificate of commercial general liability insurance to Consumers along with all Home Improvement Contracts pursuant to N.J.S.A. 56:8-151a(2).

3.4 Respondent shall include the start and completion dates on all Home Improvement Contracts pursuant to N.J.S.A. 13:45-16.2(a)12.iv.

3.5 Respondent shall include his signature and that of the Consumer on all Home Improvement Contracts pursuant N.J.A.C. 13:45A-16.2(a)12.

3.6 Respondent shall refrain from requesting that any Consumer sign a certificate of completion or make a final payment on a Home Improvement Contract before work is completed in accordance with the terms of the Home Improvement Contract as required by N.J.A.C. 13:45A-16.2(a)6v.

3.7 Respondent shall verify that all applicable permits are issued prior to commencement of any Home Improvement work pursuant to N.J.A.C. 13:45A-16.2(a)10i.

3.8 Respondent shall complete the Home Improvement work on the date or within the time period specified in the Home Improvement Contract pursuant to N.J.A.C. 13:45A-16.2(a)7ii.

3.9 Respondent shall ascertain that all Home Improvement Contracts, and all changes in the terms and conditions thereof, be in writing and signed by all parties as required by N.J.A.C. 13:45A-16.2(a)12.

3.10 Respondent shall provide timely written notice to Consumers of the reasons for any delay in performance, as required by N.J.A.C. 13:45A-16.2(a)7iii.

3.11 Respondent shall furnish to the Consumer all guarantees and warranties as required by N.J.A.C. 13:45A-16.2(a)11i.

3.12 Respondent shall respond to Consumer inquiries regarding progress of the work under the Home Improvement Contract in a timely manner.

4. SETTLEMENT AMOUNT

4.1 The Parties have agreed to a settlement of this Action in the amount of Sixty Thousand and 00/100 Dollars (\$60,000.00) (“Settlement Amount”).

4.2 The Settlement Amount consists of a civil penalty of Nine Thousand and 00/100 Dollars (\$9,000.00), pursuant to N.J.S.A. 56:8-13, and consumer restitution of Fifty-One Thousand and 00/100 Dollars (\$51,000.00), pursuant to N.J.S.A. 56:8-15.

4.3 The Complainant agrees to suspend the civil penalty portion of the Settlement Amount subject to the conditions set forth in Sections 4.4 through 4.7.

4.4 Respondent shall pay a total of Fifty-One Thousand and 00/100 Dollars (\$51,000.00) (“Settlement Payment”) in Restitution to the following Consumers, [REDACTED] and [REDACTED] in forty-eight (48) installments as follows:

- a. On or before October 1, 2011, Respondent shall pay Four Thousand and 00/100 Dollars (\$4,000.00), in the manner set forth in Section 4.5; and
- b. The remaining Forty-Seven Thousand and 00/100 Dollars (\$47,000.00) shall be paid in installments of One Thousand and 00/100 Dollars (\$1,000.00) on or before the first day of each of the next forty-seven (47) months in the manner set forth in Section 4.6.

4.5 The payment set forth in Section 4.4a shall be made as follows: (1) a check in the amount of Two Thousand Three Hundred Sixty and 00/100 Dollars (\$2,360.00) payable to [REDACTED]; and (2) a check in the amount of One Thousand Six Hundred Forty and 00/100 Dollars (\$1,640.00) payable to [REDACTED].

4.6 The payments set forth in Section 4.4b shall be made as follows: (1) for the payment due on November 1, 2011, a check in the amount of Six Hundred Forty and 00/100 Dollars (\$640.00) to [REDACTED] and a check in the amount of Three Hundred Sixty and

00/100 Dollars (\$360.00) to [REDACTED]; and (2) for the remaining forty-six (46) installment payments, a check in the amount of Five Hundred Ninety and 00/100 Dollars (\$590.00) to [REDACTED] and a check in the amount of Four Hundred Ten and 00/100 Dollars (\$410.00) to [REDACTED].

4.7 Accompanying each payment set forth in Sections 4.5 and 4.6 shall be two first class postage pre-paid envelopes addressed to [REDACTED], respectively.

4.8 The payments referenced in Section 4.4 through 4.6 shall be made by bank check, money order, or other guaranteed funds and shall be forwarded to:

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

4.9 Upon making each installment of 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.

4.10 The Nine Thousand and 00/100 Dollars (\$9,000.00) balance of the Settlement Amount ("Suspended Penalty") shall be automatically vacated after the final payment provided:

- a. Respondent complies with the provisions set forth in this Consent Order;

- b. Respondent does not engage in any acts or practices in violation of the CFA, Contractors' Registration Act, Contractor Registration Regulations and/or Home Improvement Regulations; and
- c. Respondent pays the sum of Fifty One Thousand and 00/100 Dollars in the manner required under Sections 4.4 through 4.7.

4.11 In the event Respondent fails to comply with Section 4.10, the balance of the Suspended Penalty as well as any balance of the Settlement Payment shall be immediately due and payable upon written notice by the Division. In any such notice, the Division shall provide Respondent with the specific details of the alleged noncompliance and Respondent shall be afforded a five (5) day period within which to cure his noncompliance. In the event of Respondent's failure to cure his noncompliance, the Division will file a Certificate of Debt for the Suspended Penalty as well as the balance of the Settlement Payment.

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 managers, agents, employees, successors and assigns, and any Person through which he may now or hereafter act, as well as any Person who has authority to control or who, in fact, controls and directs 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 agreed to by the Parties and entered into 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 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 Contractors' Registration Act, the Contractor Registration Regulations and/or the Home Improvement Regulations. 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 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, N.J.S.A. 47:1A-1 et seq.

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 constitute one and the same Consent Order.

5.13 Respondent represents and warrants that he has fully read and understands this Consent Order, that he understands the legal consequences involved in signing the Consent Order and that there are no other representations or agreements not stated in writing herein.

6. RELEASE

6.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent making the Settlement Payment in the manner specified 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 against Respondent for violations of the CFA, the Contractors' Registration Act, the Contractor Registration Regulations and/or the Home

Improvement Regulations, prior to the Effective Date arising out of this Action as well as the matters addressed in this Consent Order (the “Released Claims”).

6.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action, provided however, that nothing herein shall prevent Respondent from raising a defense of set-off against any Consumer who has received restitution; (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 or both.

7.2 The Parties agree that any future violations of the injunctive provisions of this Consent Order, the CFA, the Contractors’ Registration Act, the Contractor Registration Regulations and/or the Home Improvement Regulations 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 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.

9. NOTICES UNDER THIS CONSENT ORDER

9.1 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:

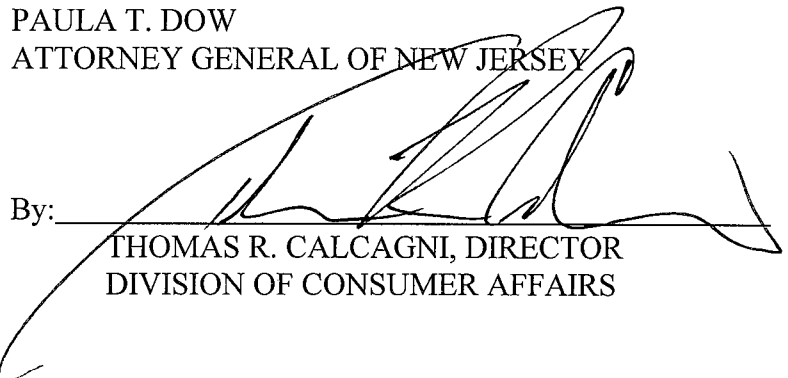
Assistant Deputy of Enforcement, Office of Consumer Protection
Division of Consumer Affairs, State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
124 Halsey Street - 7th Floor
P.O. Box 45028
Newark, New Jersey 07101

For the Respondent:

David Heitman
12 Hines Avenue
Mahwah, New Jersey 07430

IT IS ON THE 27th DAY OF September, 2011 SO ORDERED.

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

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

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

FOR THE DIVISION:

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

By: Patricia Schiripo
Patricia Schiripo
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Telephone: (973) 648-7819

Dated: September 26, 2011

FOR RESPONDENT:

DAVID HEITMAN t/a RAMAPO RIVER RENOVATIONS

By: 
David Heitman t/a Ramapo River Renovations
12 Hines Avenue
Mahwah, New Jersey 07430

Dated: Sept 20, 2011