

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Division of Law - 5th floor
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Newark, New Jersey 07101
By: James J. Savage
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FILED

MAR 24 2010

Division of Consumer Affairs

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

**IN THE MATTER OF AN INVESTIGATION
BY THE NEW JERSEY DIVISION OF
CONSUMER AFFAIRS**

Administrative Action

of

CONSENT ORDER

Mark Sheppard
Kodiak Construction, LLC
32 Harrison Avenue
Waldwick, NJ 07463

and

Mark Sheppard
Individually and as owner
and operator of Kodiak Construction LLC

This matter having been opened by the Division of Consumer Affairs, Office of Consumer Protection (hereinafter referred to as "Consumer Affairs" or "Division"), as an investigation to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

(hereinafter referred to as "CFA" or the "Act"), the Contractor Registration Act, N.J.S.A. 56:8-136 et seq. (hereinafter referred to as "CRA"), the Home Improvement Contractor Registration Regulations N.J.A.C. 13:45A-17.1 et seq., (hereinafter "Home Improvement Contractor Registration Regulation") and the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq., (hereinafter "Home Improvement Regulations") have been or are being committed by Mark Sheppard, Kodiak Construction, located at 32 Harrison Avenue, Waldwick, NJ, 07463, its principals, officers, directors, employees, representatives, agents and assigns and Mark Sheppard individually and owner and operator of Kodiak Construction (hereinafter collectively referred to as "Respondents") more specifically: whether Respondent...(state unlawful conduct alleged) and it appearing that the parties have reached an amicable agreement thereby resolving the issues in controversy and in correction concluding this matter without the need for further action with home improvement services rendered to the consumer, and Respondents having voluntarily cooperated and consented to the entry identified in schedule A of the within order and for good cause shown,

IT IS on this 24 day of March, 2009 ORDERED and AGREED as follows:

BUSINESS PRACTICES

1. Respondents, their principals, officers, agents, representatives and employees shall not engage in any unfair or deceptive acts or practices in the conduct of their business in the State of New Jersey and shall comply with such state laws, rules and regulations as now constituted or as may hereafter be amended, including but not limited to, the CFA, the CRA, the Home Improvement Contractor Registration Regulations and the Home Improvement Regulations in connection with home improvement contracting.

2. Respondents shall cease and desist from engaging in the following:

- (A) Failing to include the "Notice to Consumer" in home improvement contracts in violation of N.J.S.A. 56:8-151.b;
- (B) Failing to provide a copy of Respondents' certificate of commercial general liability insurance to consumers along with the home improvement contract in violation of N.J.S.A.56:8-151.a.(2); and
- (C) Failing to honor warranties in the home improvement contracts without cause in violation of N.J.S.A.56:8-2.

3. Specifically, Respondents shall comply with the following business practices:

- (A) Include the "Notice to Consumer" in all home improvement contracts as required by N.J.S.A. 56:8-151.b;
- (B) Provide a copy of their certificate of commercial general liability insurance to all consumers along with all home improvement contracts as required by N.J.S.A.56:8-151.a.(2); and
- (C) Honor warranties in home improvement contracts as required by N.J.S.A.56:8-2.

EXISTING CONSUSMER COMPLAINTS

4. The Division has provided Respondent with the name of the consumer who has filed a complaint with the Division. This consumer is identified on Schedule A, attached hereto and made a part hereof. The Respondent's mason shall return to the consume's home and repair the culture stones that were installed at the front stairs by June 1, 2010.

PAYMENT TO THE STATE

5. Respondents shall pay the Division of Consumer Affairs the sum of \$1500.00 as a civil

penalty pursuant to N.J.S.A. 56:8-13 and \$401.77 as reimbursement for the Division's costs pursuant to N.J.S.A. 56:8-11. The aforesaid amounts, totaling \$1,901.77 shall be submitted together with this Consent Order fully executed by Respondents.

6. The payments for penalties and costs 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 shall be delivered to the following address:

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

7. If, after the signing of this Consent Order, Respondents engage in any acts or practices which constitute a violation of the Consumer Fraud Act, the CRA, the Home Improvement Contractor Registration Regulations, the Home Improvement Regulations, or this Consent Order, Respondents will be subject to the imposition of enhanced penalties pursuant to N.J.S.A. 56:8-13 or N.J.S.A. 56:8-18, without prejudice to Respondent's right to present evidence in mitigation and affirmative defenses.

8. Failure by Respondents to make the payment to the State in the time prescribed by this Consent Order shall constitute a breach of this Consent Order. In the event of such breach, the Division may take whatever additional action it deems necessary and appropriate under the circumstances, including, but not limited to, seeking an Order from the Superior Court compelling compliance and seeking additional penalties, costs and attorneys fees.

DUTY TO COOPERATE

9. Respondents acknowledge that home improvement contractors who sell or perform home

improvements are required to register with the Division in accordance with the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq. and Respondent is registered.

10. Respondent shall have a continuing duty to provide assistance and/or information as requested by the Division in connection with his home improvement activities. Respondents shall also have a continuing duty to cooperate in any inquiry, investigation or hearing conducted by the Division in connection with the advertising, selling or making of home improvements within this State.

11. Failure by Respondent to comply with any of the requirements of this Consent Order, including, but not limited to, the payment provisions of Paragraph 5 shall constitute grounds for the Division to deny Respondent application to register as a home improvement contractor.

GENERAL PROVISIONS

12. Nothing contained in this Consent Order shall be construed to limit or affect the rights of any persons or entities who are not parties to this Consent Order with respect to any of the matters contained herein.

13. Nothing contained herein shall in any manner or fashion be construed to limit or affect any position that the parties may take in any future or pending action not specifically encompassed herein.

14. If any provision of this Consent Order or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Consent Order or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision of this Consent Order shall be valid and enforced to the fullest extent permitted by law.

15. This Consent Order resolves all claims and causes of action against Respondent for violations of the CFA, The Contractors Registration Act and the regulations promulgated pursuant thereto, in particular, the Home Improvement Regulations, which were known by the Division's Office

of Consumer Protection through August 13, 2009.

16. The parties represent that an authorized representative of each has signed this Consent Order with full knowledge, understanding and acceptance of its terms and that this person has done so with the authority to legally bind the respective parties.

17. This Consent Order constitutes the entire agreement between the parties hereto and shall bind the parties hereto and their representatives, officers, directors, agents, employees, successors and assigns.

18. Respondent shall not represent or imply that any advertising procedure or other act or practice hereinafter used or engaged in by Respondents have been required or approved, in whole or part, by the Attorney General or the Division of Consumer Affairs or any of the State's agencies or agents.

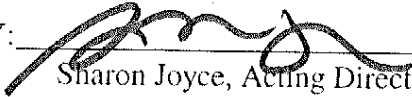
19. The Division has advised Respondent to seek the advise of an attorney before entering into this consent order.

20. The parties acknowledge that for purposes of enforcement of this Consent Order, New Jersey law shall govern the terms and provisions herein.

21. Respondent acknowledges that this Consent Order is a public document subject to the New Jersey Open Public Records Act.

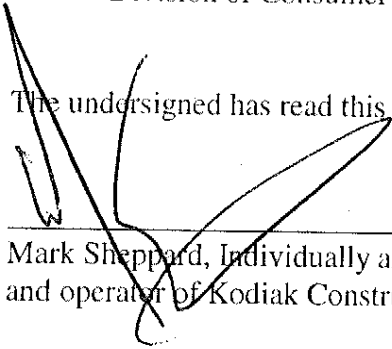
22. This Consent Order constitutes a final agency action and shall be effective upon filing.

~~ANNE MILGRAM~~ *Paula T. Dew*
ATTORNEY GENERAL OF NEW JERSEY

BY: 
Sharon Joyce, Acting Director
Division of Consumer Affairs

DATED: 3/24/10

The undersigned has read this Consent Order, understands it, and agrees to be bound by its terms.


Mark Sheppard, Individually and as Owner
and operator of Kodiak Construction

DATED 3/10/2010