

FILED

AUG 6 2009

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

of

BROTHERS FURNITURE WAREHOUSE

Respondent.

Administrative Action
No. Z090013FTF

**FINAL ORDER
ON DEFAULT**

This matter was 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"), and the regulations promulgated thereunder, N.J.A.C. 13:45A-1 et seq., have been or are being committed by Brothers Furniture Warehouse ("Respondent") (hereinafter referred to as "Investigation"). That Investigation disclosed that:

Respondent, with a main business address of 357 Long Avenue Route 22 East, Hillside, New Jersey 07205, was found to have been in violation of the portion of the CFA concerning the **Sale or Attempted Sale of Merchandise without a Tag or Label with the Total Selling Price**, N.J.S.A. 56:8-2.5 ("Merchandise Pricing Statute"), the **Refund Policy Disclosure Act**, N.J.S.A. 56:8-2.14 et seq. ("Refund Policy Act"), the **Regulations Governing Disclosure of Refund Policy in Retail Establishment**, N.J.A.C. 13:45A-15.1 et seq. ("Refund Policy Regulations"), and the **Regulations Governing the Delivery of Household Furniture and Furnishings**, N.J.A.C. 13:45A-5.1 et seq. ("Furniture Regulations"). Specifically, Respondent was found to have not conspicuously posted the selling price of twenty-one (21) pieces of furniture and related merchandise offered for sale, as required by the **Merchandise Pricing Statute**. Moreover, the Investigation revealed that Respondent failed to post its refund policy, as required by the **Refund Policy Act** and the **Refund Policy Regulations**. Furthermore, Respondent's contract forms /sales documents were in violation of the **Furniture Regulations**, specifically N.J.A.C. 13:45A-5.1 et seq.

The **Merchandise Pricing Statute** expressly makes unlawful the attempt to sell or offer for sale any merchandise at retail unless the total selling price of such merchandise is 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. The **Refund Policy Disclosure Act** and the **Refund Policy Regulations** require every mercantile establishment to conspicuously post its refund policy on a sign in at least one of the following locations: (1) attached to the merchandise itself; (2) affixed to each cash register or point of sale; (3) so situated as to be clearly visible to the buyer from the cash register; or (4) posted at each store entrance used by the public.

Moreover, pursuant to **N.J.A.C. 13:45A-5.2(a)**, contract forms or sales documents for household furniture ordered for future delivery are required to show the date of the order and to contain the following sentence in ten-point bold face type:

The merchandise you have ordered is promised for delivery to you on or before
(insert date or length of time agreed upon).

N.J.A.C. 13:45A-5.3(a) further requires contract forms or sales documents to conspicuously disclose the seller's obligations in the case of delayed delivery in compliance with **N.J.A.C. 13:45A-5.1**, and to contain, on the first page of the contract form or sales document, the following notice in ten-point bold face type:

If the merchandise ordered by you is not delivered by the promised delivery date, (insert name of seller) must offer you the choice of (1) canceling your order with a prompt, full refund of any payments you have made, or (2) accepting delivery at a specific later date.

Finally, **N.J.A.C. 13:45A-5.3(c)** makes it unlawful for any person to use any contract or sales agreement that contains any terms, such as "all sales final" or "no cancellations," which violate or are contrary to the rights and responsibilities of the **Furniture Regulations**.

As such, pursuant to **N.J.S.A. 56:8-3.1**, the Director of the Division may: (1) order the Respondent to cease and desist from engaging in unlawful activity, pursuant to **N.J.S.A. 56:8-18**; (2) assess penalties against the Respondent, pursuant to **N.J.S.A. 56:8-13**; and (3) direct Respondent to pay the Division's costs, pursuant to **N.J.S.A. 56:8-11**.

Two (2) Notices of Violation and Offer of Settlement ("NOVs") were issued to Respondent on May 6, 2009, setting forth the findings of fact and conclusions of law above. Attached to the NOVs were the Certification of Division Investigator Todd Applegate, with a copy of Respondent's contract form/sales document and other exhibits. Such information established the factual basis for the charges. Attached to this Order is the Certification of Investigator Barby Menna, establishing that Respondent was served with the **NOVs**.

Respondent was offered the opportunity to be heard on these charges. Respondent failed to reply within the fifteen (15) days as allowed by the terms of the NOVs and, thus, the charges are deemed uncontested and true. As this Final Order on Default provides, the Director has reviewed the matter and concludes that no basis exists to alter or modify the findings of fact or conclusions of law in the NOVs, or the disposition as set forth therein.

Accordingly, IT IS on this 6th day of Aug., 2009 ORDERED:

1. Respondent shall not engage in any unfair or deceptive acts or practices in the conduct of its 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 Merchandise Pricing Statute, Refund Policy Disclosure Act, Refund Policy Regulations and Furniture Regulations.
2. Pursuant to the Merchandise Pricing Statute, Respondent shall conspicuously post the selling price of furniture and related merchandise offered for sale.
3. Pursuant to the Refund Policy Disclosure Act and the Refund Policy Regulations, Respondent shall post its refund policy on a sign one of the following locations: (a) attached to the merchandise itself; (b) affixed to each cash register or point of sale; (c) so situated as to be clearly visible to the buyer from the cash register; or (d) posted at each store entrance used by the public.
4. Pursuant to the Furniture Regulations, Respondent shall include the proper language in its contract forms and sales documents, are required by **N.J.A.C. 13:45A-5.2(a)**, **5.3(a)** and **5.3(c)**.

5. Respondent shall pay the Division the sum of \$4,500.00 as a civil penalty, pursuant to N.J.S.A. 56:8-13, and \$250.00, as reimbursement for the Division's investigative costs, pursuant to N.J.S.A. 56:8-11. The amount due and owing totals \$4,750.00. Such payment shall be made by a 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 Unit
New Jersey Department of Law and Public Safety
Division of Consumer Affairs
124 Halsey Street
P.O. Box 45025
Newark, New Jersey 07101

6. Payment shall be made within ten(10) days of issuance of this Final Order. Service of this Final Order will be deemed effective if sent by certified mail to the last known mailing address of Respondent's business.
7. Failure to pay any penalties within the time allowed will result in the filing of a Certificate of Debt. Any subsequent violation of this Order may subject Respondent to additional penalties of up to \$25,000.00, pursuant to N.J.S.A. 56:8-18.
8. This Order constitutes a final agency action and shall be effective upon filing and is a public document subject to the New Jersey Open Public Records Act.

NEW JERSEY DIVISION OF CONSUMER AFFAIRS

BY: 

DAVID M. SZUCHMAN, DIRECTOR