

ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for Division of Consumer Affairs

**FILED**

NOV 16 2009

*Division of Consumer Affairs*

By: Sabina P. McKinney  
Deputy Attorney General  
(973) 648-4584

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

In the Matter of

Administrative Action

TIERRA SANTA FURNITURE CORP.,

**CONSENT ORDER**

**Respondent.**

**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”), and the regulations promulgated thereunder, N.J.A.C. 13:45A-1 et seq. (“CFA Regulations”), have been or are being committed by Tierra Santa Furniture Corp., with a main business address of 53 Broadway, Newark, New Jersey 07104, as well as its owners, officers, directors, managers, agents, servants, employees, representatives, independent contractors, subsidiaries, successors and assigns (collectively, “Tierra Santa” or “Respondent”), (hereinafter referred to as the “Investigation”);

**WHEREAS** Respondent denies that it has committed any violation of the CFA and/or the CFA Regulations;

**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 (“Consent Order”) without having admitted violation of law or finding of fact, and for good cause shown:

IT IS on this 16<sup>th</sup> day of Nov, 2009 **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 for Sale.

2.3 “Furniture Regulations” shall refer to the Regulations Governing the Delivery of Household Furniture and Furnishings, N.J.A.C. 13:45A-5.1 et seq.

2.4 “Household Furniture” shall be defined in accordance with N.J.A.C. 13:45A-5.1(d).

2.5 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c) and includes, but is not limited to, Household Furniture.

2.6 “Merchandise Pricing Statute” shall refer to the portion of the CFA concerning the Sale of Merchandise with a Tag or Label with the Total Selling Price, N.J.S.A. 56:8-2.5.

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

2.8 “Refund Policy Act” shall refer to the Refund Policy Disclosure Act, N.J.S.A. 56:8-2.14 et seq.

2.9 “Refund Policy Regulations” shall refer to the Regulations Governing Disclosure of Refund Policy in Retail Establishment, N.J.A.C. 13:45A-15.1 et seq.

2.10 “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. This definition applies to other forms of the word “Represent” including, without limitation, “Representation.”

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

2.12 “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 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, Merchandise Pricing Statute, Furniture Regulations, Refund Policy Act and Refund Policy Regulations.

3.2 Respondent shall cease and desist from engaging in any practices in violation of the CFA, Merchandise Pricing Statute, Furniture Regulations, Refund Policy Act and Refund Policy Regulations.

3.3 Respondent shall conspicuously post the selling price of all Merchandise sold and/or offered for Sale, as required by the Merchandise Pricing Statute, N.J.S.A. 56:8-2.5.

3.4 Respondent shall conspicuously post any refund policy, as required by the Refund Policy Act, N.J.S.A. 56:8-2.14 et seq., and the Refund Policy Regulations, N.J.A.C. 13:45A-15.1 et seq.

3.5 Respondent shall include in all contract forms and/or sales documents for Household Furniture the date of the order as well as the following sentence in ten-point bold face type, as required by N.J.A.C. 13:45A-5.2(a): **“The merchandise you have ordered is promised for delivery to you on or before (insert date or length of time agreed upon).”**

3.6 Respondent shall include on the first page of all contract forms and/or sales documents for Household Furniture the following notice in ten-point bold fact type, as required by N.J.A.C. 13:45A-5.3(a):

**If the merchandise ordered by you is not delivered upon 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.**

3.7 Respondent shall not include in any contract form and/or sales document for Household Furniture terms such as “all sales final” or “no cancellations,” as prohibited by N.J.A.C. 13:45A-5.3(c).

#### **4. SETTLEMENT PAYMENT**

4.1 The Parties have agreed to a settlement of the Investigation in the amount of Three Thousand One Hundred and Twenty Five and 00/100 Dollars (\$3,125.00) (“Settlement Payment”).

4.2 The Settlement Payment consists of a civil penalty of Two Thousand Eight Hundred and Seventy Five and 00/100 Dollars (\$2,875.00), pursuant to N.J.S.A. 56:8-13, and investigative costs of Two Hundred and Fifty and 00/100 Dollars (\$250.00), pursuant to N.J.S.A. 56:8-11.

4.3 Respondent shall make the Settlement Payment in eight (8) installments as follows:

- a. Three Hundred and Twenty-Five and 00/100 Dollars (\$325.00) shall be paid on or before October 1, 2009; and
- b. The remaining Two Thousand Eight Hundred and 00/100 Dollars (\$2,800.00) shall be paid in seven (7) equal installments of Four Hundred and 00/100 Dollars (\$400.00), with each installment due on the first of the month, beginning November 1, 2009, with the final installment due on May 1, 2010.

4.4 The payments referenced in Section 4.3 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

4.5 Upon making the payments referenced in Section 4.3, 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 its owners, officers, directors, managers, agents, servants, employees, representatives, subsidiaries, successors and assigns, and any entity or device through which it may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct its 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 its acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CFA, Merchandise Pricing Statute, Furniture Regulations, Refund Policy Act and/or Refund Policy 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. REPRESENTATIONS AND WARRANTIES**

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

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

## **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 Settlement Payment 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 against Respondent for violations of the CFA, Merchandise Pricing Statute, Furniture Regulations, Refund Policy Act and/or Refund Policy Regulations, prior to the Effective Date for matters 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 Respondent by any other agency or subdivision of the State.

## **8. PENALTIES FOR FAILURE TO COMPLY**

8.1 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.

8.2 The Parties agree that any future violations of the injunctive provisions of this Consent Order, the CFA, Merchandise Pricing Statute, Furniture Regulations, Refund Policy Act and/or Refund Policy Regulations shall constitute a violation under N.J.S.A. 56:8-18 and/or a second or succeeding violation under N.J.S.A. 56:8-13 and that Respondent may be liable for enhanced civil penalties.

## **9. COMPLIANCE WITH ALL LAWS**

- 9.1 Except as provided in this Consent Order, no provision herein shall be construed as:
- a. Relieving Respondent of its 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.

## **10. NOTICES UNDER THIS CONSENT ORDER**

10.1 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 - 7<sup>TH</sup> Floor  
P.O. Box 45028  
Newark, New Jersey 07101

For the Respondents:

Hasan Nassar  
Tierra Santa Furniture Corp.  
53 Broadway  
Newark, New Jersey 07104

IT IS ON THE 16<sup>th</sup> DAY OF Nov, 2009 SO ORDERED.

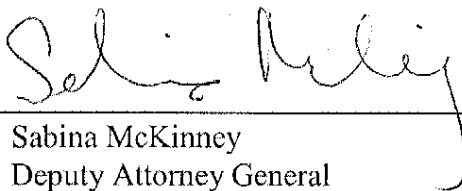
ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY

By: David M. Szuchman  
DAVID M. SZUCHMAN, 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

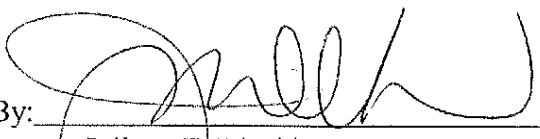
ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY

By:   
\_\_\_\_\_  
Sabina McKinney  
Deputy Attorney General  
Consumer Fraud Prosecution Section  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Telephone: (973) 648-4584

Dated: 10/1, 2009

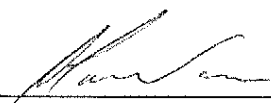
FOR RESPONDENT:

Juliana E. Blackburn, Esq.

By:   
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Juliana E. Blackburn, Esq.  
The Law Offices of Juliana E. Blackburn, P.C.  
936 Broad Street, Second Floor  
Newark, New Jersey 07102

Dated: 9/28/09, 2009

TIERRA SANTA FURNITURE CORP.

By:   
\_\_\_\_\_  
Hasan Nassar  
Tierra Santa Furniture Corp.  
53 Broadway  
Newark, New Jersey 07104

Dated: 9/28/09, 2009