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

FILED

FEB - 4 2013

Division of Consumer Affairs

By: Joshua T. Rabinowitz
Deputy Attorney General
Consumer Fraud Prosecution Section
[REDACTED]

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

In the Matter of

JET VAC, INC. and MICHAEL RATTAY,
INDIVIDUALLY,

Respondents.

Administrative Action

CONSENT ORDER

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"), have been or are being committed by Jet-Vac, Inc. ("Jet-Vac") with a main business address of 15 Taylor Road, Wharton, New Jersey 07885-1532 as well as by its owners, officers, directors, managers, employees, representatives and/or agents and Michael Rattay ("Rattay"), individually (collectively, "Respondents"), (hereinafter referred to as the "Investigation");

WHEREAS the Division found that Jet-Vac had a contract with the State that required Jet-Vac to provide certain products and services (“Services”) to municipalities, school districts and other designated public entities (“Other Covered Entities”) on the same terms that it provided those products and services to the State;

WHEREAS, the Division found that Jet-Vac advertised that it was a state contractor and sent estimates for Services to the Other Public Entities that had prices for the Services that were higher than the prices permitted under the State Contract;

WHEREAS, the Division found that Jet-Vac sent purchase orders to the Other Covered Entities that had prices for the Services that were higher than the prices permitted under the State Contract and that the Other Covered Entities paid Jet-Vac the amounts listed on the purchase orders;

WHEREAS, Jet-Vac represents that, to the best of its knowledge, Exhibit B is an update of the State prepared Exhibit A through January 1, 2013, which exhibits together reflect the universe of Other Covered Entities known to the parties.

WHEREAS, the Division alleges that Jet-Vac’s conduct, by virtue of the direct participation and management of Rattay was conduct in violation of the CFA;

WHEREAS the Division and Respondents (collectively, “Parties”) have reached an amicable agreement thereby resolving the issues in controversy and concluding the Investigation 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”) in furtherance of the agreed upon settlement and without any admissions by the Respondents;

IT IS ORDERED AND AGREED as follows:

1. EFFECTIVE DATE

1.1 This Consent Order shall be effective on the date that it is signed by all parties, filed with the Division, and “So Ordered” (“Effective Date”).

2. DEFINITIONS

As used in this Consent Order, the following capitalized 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 “Affected Consumers” shall refer to the Consumers listed in Exhibits A & B attached hereto.

2.3 “Consumer” shall refer to any Person who is offered Merchandise as defined in N.J.S.A. 56:8-1(c) for Sale as defined in N.J.S.A. 56:8-1(e).

2.4 “New Jersey” and “State” shall refer to the State of New Jersey.

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

2.6 “Restitution” shall refer to all agreed upon amounts to be paid to Affected Consumers as set forth in Exhibits A & B.

2.7 “State Contract” shall mean (1) any contract for goods or services that Jet Vac has with the State; or (2) any contract for goods or services that Jet Vac has with any other Person that is entitled to the same terms and conditions Jet Vac has with the State.

3. REQUIRED AND PROHIBITED BUSINESS PRACTICES

3.1 Respondents shall not engage in any unfair or deceptive acts or practices in the conduct of any business in the State and shall comply with such applicable State laws, rules and regulations as now constituted or as may hereafter be amended including, but not limited to, the CFA.

3.2 Rattay shall not solicit, negotiate or otherwise obtain any State Contract.

3.3 Rattay shall not provide any goods or services under, or administer, any State Contract.

3.4 If the New Jersey Department of the Treasury (“Treasury”) reasonably believes that Rattay violated Sections 3.2 or 3.3 after entry of this Order, Treasury shall provide notice to Jet-Vac of the nature of the violation and a reasonable opportunity of 10 business days for Jet-Vac to cure and to further respond to any alleged violation before Treasury takes any action. If Treasury determines that Rattay has in fact violated either provision, with the knowledge of Jet Vac it may: (1) debar Jet-Vac from all State Contracts for a period up to five (5) years; and (2) cancel all State Contracts held by Jet-Vac.

3.5 Rattay will relinquish his role as an employee and officer of Jet-Vac by the Effective Date and will not maintain any position at Jet-Vac involving the proscribed conduct set forth in Section 3.

3.6 For a period of thirty-six months following the effective date of this Order, Jet-Vac shall provide to the Division and the Treasury, on a semi-annual basis the following: (1) a current list of Jet-Vac’s State Contracts; and (2) certifications from a Jet-Vac officer certifying that Rattay was not involved in any aspect of Jet-Vac’s business relating to State Contracts,

including, but not limited to, soliciting, preparing the estimate for, negotiating the terms of or responding to questions about any State Contract.

3.7 Jet-Vac shall not engage in any of the following conduct from the Effective Date of this Order and during the period when it holds a State Contract: (1) provide a price estimate to any Person covered by the State Contract that identifies Jet-Vac as a State Contractor and includes prices that are greater than the prices permitted under the State Contract; (2) charge any Person covered by the State Contract any prices for goods and services that are greater than the prices permitted under the State Contract; and (3) charge any Person for shop services that are not disclosed in the price estimate or are inconsistent with, and greater than, the prices Jet-Vac is permitted to charge under the State Contract.

4. RESTITUTION PAYMENT

On the Effective Date, Jet-Vac shall pay Restitution totaling One Hundred Fifty-Eight Thousand Two Hundred Twenty-Six and 83/100 Dollars (\$158,226.83) to the Affected Consumers in the amounts listed in Exhibits A & B ("Restitution Payments"). Jet-Vac shall make the Restitution Payments as set forth in Exhibits A & B, by bank check, attorney trust account check or other guaranteed funds and shall forward the total Restitution Payment: directly to New Jersey Division of Consumer Affairs, Office of Consumer Protection, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101, Attention: Investigator Van Mallet. The Division shall disburse the restitution in the amounts listed in Exhibits A & B with a cover letter stating that by depositing the check the consumer will be releasing Jet-Vac in full payment and settlement of each transaction which formed the basis for the payment. If any consumer rejects the payment, that amount shall remain with the State.

5. SETTLEMENT PAYMENT

5.1 On the Effective Date, Michael Rattay shall pay the amount of One Hundred Twenty-Nine Thousand and 00/100 Dollars (\$129,000.00) (“Settlement Payment”).

5.2 The Settlement Payment is comprised of One Hundred Fifteen Thousand and 00/100 Dollars (\$115,000.00) in civil penalties (including interest), pursuant to N.J.S.A. 56:8-13, Twelve Thousand Five Hundred and 00/100 Dollars (\$12,500.00) in reimbursement of the Division’s attorneys’ fees and One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) in reimbursement of the Division’s investigative costs, pursuant to N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19.

5.3 In the event Michael Rattay fails to remit the Settlement Payment by the Effective Date then Jet Vac shall within 5 business days of such Effective Date remit the Settlement Payment.

5.4 All payments in satisfaction of the Settlement Payments shall be made by bank check, attorney trust account check or other guaranteed funds made payable to the “New Jersey Division of Consumer Affairs” and shall be forwarded to:

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

5.5 Upon making the Settlement Payments, Respondents 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 in full settlement of all matters arising out of or related to all State Contracts investigated as of the effective date and 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 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.

6.4 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 Division and Respondents.

6.5 Except as otherwise explicitly provided for 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 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.

6.7 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.

6.8 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 nor any action taken hereunder shall constitute, or 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; and (b) an admission by the Respondents that any of its acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate any of the Consumer protection or any other laws of the State. This Consent Order is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms of this Consent Order; or (b) any action or proceeding involving a Released Claim (as defined in Section 9) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

6.9 Nothing contained in this Consent Order shall be construed to limit or otherwise affect the rights of any Persons who are not Parties to this Consent Order with respect to any of the matters contained herein. The parties to this Consent Order reserve all their rights and defenses, including any rights and defenses as a result of this Consent Order, should any non party seek to invoke any claims.

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

6.11 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.

6.12 Unless otherwise prohibited by law, any signatures by the Parties required for entry 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.

7. REPRESENTATIONS AND WARRANTIES

The Division Represents and Warrants that it, as well as the Treasury, will take no further action against Jet-Vac arising out of or relating to any State Contract that Jet-Vac held during the period from at least January 1, 2003, through the Effective Date provided that Jet-Vac fully complies with the terms of this Consent Order.

8. RELEASE

8.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondents making the Settlement Payment in the manner referenced in Section 5, the Division and the Treasury 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 or Treasury could have brought prior to the Effective Date against Respondents for violations of the CFA or State Law relating to the subject matters arising out of or related to the Investigation, as well as the matters specifically addressed in Section 3 of the Consent Order (“Released Claims”).

8.2 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 Respondents from raising the defense of set-off against a Consumer who has received Restitution; (b) actions to enforce this Consent Order; and (c) any claims against Respondents by any other agency or subdivision of the State, except the Department of the Treasury.

9. PENALTIES FOR FAILURE TO COMPLY

9.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Order or to seek sanctions for violations hereof or both.

9.2 The Parties agree that any future violations of the provisions of this Consent Order and/or the CFA shall constitute a second or succeeding violation under N.J.S.A. 56:8-13 and that the Respondents may be liable for enhanced civil penalties.

10. COMPLIANCE WITH ALL LAWS

10.1 Except as provided in this Consent Order, no provision herein shall extend the applicable statute of limitations or be construed as:

- (a) Relieving Respondents of their obligations to comply with all State 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 Respondents pursuant to any State 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 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 the 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:

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

For the Treasury:

Philip Michaels
Contract Compliance and Audit Unit
Division of Purchase and Property
Department of the Treasury
33 West State Street
P.O. Box 236
Trenton, New Jersey 08625-0236

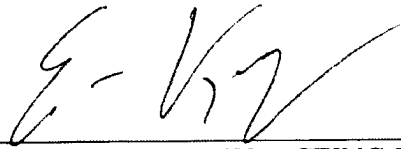
For the Respondent:

Justin P. Walder, Esq.
Walder, Hayden & Brogan, P.A.
5 Becker Farm Road
Roseland, New Jersey 07068-1727

Michael Rattay
44 Hill Street
Rockaway, New Jersey 07866

IT IS ON THE 4th DAY OF February 2013 SO ORDERED.

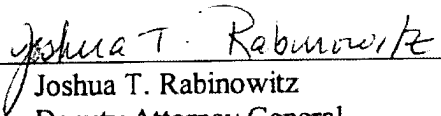
JEFFERY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By: 
ERIC T. KANEFSKY, ACTING 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.**

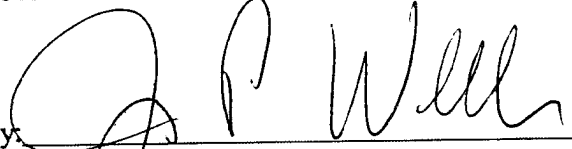
FOR THE DIVISION AND TREASURY:

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

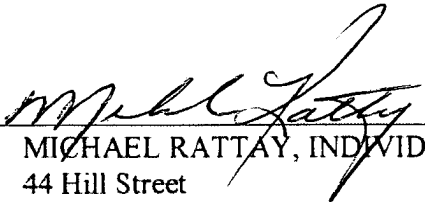
By: 
Joshua T. Rabinowitz
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Telephone: (973) 648-3070

Dated: February 4, 2013

FOR RESPONDENTS:

By: 
Justin P. Walder, Esq.
Walder, Hayden & Brogan, P.A.
5 Becker Farm Road
Roseland, New Jersey 07068-1727
Telephone: (973) 992-5300

Dated: 2/12 2013

By: 
MICHAEL RATTAY, INDIVIDUALLY
44 Hill Street
Rockaway, New Jersey 07866

Dated: 2/8, 2013