

JEFFREY S. CHIESA
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

MAY 25 2013

Division of Consumer Affairs

By: Kourtney J.A. Knop
Deputy Attorney General
Consumer Fraud Prosecution Section



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

In the Matter of

BERWICK INTERNATIONAL INC. d/b/a
VILLAGE HARDWARE,

Respondent.

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 Berwick International Inc. d/b/a Village Hardware, incorporated in the State of New Jersey with a main business address of 223 Main Street, Chatham, New Jersey 07928, as well as by its owners, officers, directors, managers, employees, representatives and/or agents (collectively, “Respondent”), (hereinafter referred to as the “Investigation”);

WHEREAS the Division found that Respondent had engaged in the Sale of Five-Gallon Gas Cans at prices in excess of those permitted after Governor Chris Christie declared a State of Emergency on October 27, 2012, just prior to Tropical Storm Sandy reaching New Jersey;

WHEREAS the Division identified 727 instances in which the Respondent charged above the amount permitted by statute for Five-Gallon Gas Cans during the State of Emergency, specifically from October 31, 2012 to November 12, 2012;

WHEREAS the Division and Respondent (collectively, "Parties") have reached an amicable agreement thereby resolving the issues in controversy and concluding the Investigation without the need for further action, and Respondent having voluntarily cooperated with the Investigation and consented to the entry of the within order ("Consent Order") and for good cause shown:

IT IS ORDERED AND AGREED as follows:

1. EFFECTIVE DATE

1.1 This Consent Order shall be effective on the date that it is filed with the Division ("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 "Advertisement" shall be defined in accordance with N.J.S.A. 56:8-1(c). This definition applies to other forms of the word "Advertisement" including, without limitation, "Advertise."

2.2 "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.

2.3 "Consumer" shall refer to any Person who is offered Merchandise for Sale.

2.4 "Excessive Price Increase" shall be defined in accordance with N.J.S.A. 56:8-108.

2.5 "Five-Gallon Gas Cans" shall refer to the five (5) gallon case cans bearing SKU#575390.

2.6 "Merchandise" shall be defined in accordance with N.J.S.A. 56:8-1(c) and includes Five-Gallon Gas Cans.

2.7 "New Jersey" and "State" shall refer to the State of New Jersey.

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

2.9 "Restitution" shall refer to all methods undertaken by Respondent to resolve Consumer complaints including, but not limited to, the issuance of credits or refunds or the reversal of credit card or debit card charges.

2.10 "State of Emergency" shall be defined in accordance with N.J.S.A. 56:8-108.

3. REQUIRED AND PROHIBITED BUSINESS PRACTICES

3.1 Respondent 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 State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended including, but not limited to, the CFA.

3.2 Respondent shall not Advertise, offer for Sale and/or sell Merchandise, including Five-Gallon Gas Cans, at a price constituting an Excessive Price Increase during a State of

Emergency or within thirty (30) days after termination of the State of Emergency, in violation of N.J.S.A. 56:8-109.

4. SETTLEMENT AMOUNT

4.1 Respondent shall be liable for the sum of Twenty Thousand and 00/100 Dollars (\$20,000.00) ("Settlement Amount").

4.2 The Settlement Amount comprises Seventeen Thousand One Hundred Twenty-Three and 24/100 Dollars (\$17,123.24) in civil penalties, pursuant to N.J.S.A. 56:8-13, and Two Thousand Ninety-Two and 50/100 Dollars (\$2,092.50) in reimbursement of the Division's attorneys' fees and Seven Hundred Eighty-Four and 26/100 Dollars (\$784.26) 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.

4.3 Respondent shall be permitted to pay the Settlement Amount as follows: (1) Respondent shall pay Four Thousand and 00/100 Dollars (\$4,000.00) on or before the Effective Date; (2) Respondent shall pay Four Thousand and 00/100 Dollars (\$4,000.00) on or before August 1, 2013; and (3) Respondent shall pay Four Thousand and 00/100 Dollars (\$4,000.00) on or before November 1, 2013; (4) Respondent shall pay Four Thousand and 00/100 Dollars (\$4,000.00) on or before February 1, 2014; and (5) Respondent shall pay Four Thousand and 00/100 Dollars (\$4,000.00) on or before May 1, 2014. If Respondent fails to make a payment in full and on time, the entire unpaid portion of the Settlement Amount shall be immediately due, payable and owing.

4.4 All payments in satisfaction of the Settlement Amount shall be made by bank check, attorney trust account check or other guaranteed funds made payable to "New Jersey Division of Consumer Affairs" and shall be forwarded to the undersigned:

Kourtney J.A. Knop, 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

4.5 Upon making any payment in satisfaction of the Settlement Amount, 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.

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 Division and Respondent.

5.5 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.

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 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.

5.8 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 Respondent; and (b) an admission by the Respondent 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 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 6) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

5.9 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.

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

5.11 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.

5.12 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.

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 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 prior to the Effective Date against Respondent for violations of the CFA arising out of the Investigation, as well as the matters specifically addressed in Section 3.2 of the Consent Order ("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 the defense of set-off against a 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 hereof or both.

7.2 The Parties agree that any future violations of the provisions of Section 3 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 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 its obligations 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 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:

Kourtney J.A. Knop, 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 Respondent:

David C. Penella, Esq.
Pennella & Claps
16 West Blackwell Street, Suite 201
Dover, New Jersey 07801

IT IS ON THE 25 DAY OF May, 2013 SO ORDERED.

JEFFERY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By: _____

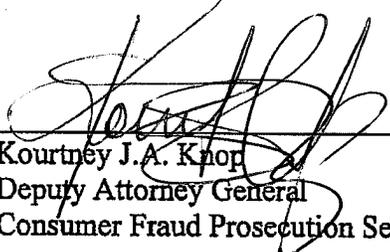

ERIC T. KANEFSKY, DIRECTOR
DIVISION OF CONSUMER AFFAIRS

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

FOR THE DIVISION:

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By: _____


Kourtney J.A. Knop
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: _____

May 23, 2013

124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101


FOR RESPONDENT:

PENELLA & CLAPS

By: _____


David C. Penella, Esq.
16 West Blackwell Street, Suite 201
Dover, New Jersey 07801
Telephone: (973) 361-7100

Dated: _____

5/21, 2013

BERWICK INTERNATIONAL INC.

By: _____


DONALD FERGUSON
Principal
233 Main Street
Chatham, New Jersey 07928

Dated: _____

5/21, 2013