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ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
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STATE OF NEW JERSEY  
OFFICE OF ADMINISTRATIVE LAW  
DCR DOCKET NO: EG14HB-65777

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R.B.,

Complainant,

v.

P. Judge and Sons, Inc.,

Respondent.

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**ADMINISTRATIVE ACTION**

CONSENT ORDER AND DECREE

**WHEREAS**, this matter was commenced on October 26, 2015, when Complainant, R.B. (“R.B.” or “Complainant”) filed a verified complaint (“Verified Complaint”) with the New Jersey Division on Civil Rights (“DCR”) against P. Judge and Sons, (“Respondent”), alleging that Respondent engaged in disability discrimination in violation of the New Jersey Law Against Discrimination (“LAD”), N.J.S.A. 10: 5-1 et seq. when it refused to reinstate Complainant despite the fact that he obtained a valid Medical Examiner Certificate (“MEC”) clearing him to return to work; and

**WHEREAS**, DCR conducted an investigation into the allegations in the Verified Complaint and issued a Finding of Probable Cause (“FPC”) on February 7, 2017; and

**WHEREAS**, Respondent denied, and continues to deny, all allegations of discrimination and argued it had legitimate, nondiscriminatory business reasons for not permitting Complainant to return to work, i.e., that allowing Complainant to return to work may have violated the Federal Motor Carrier Safety Administration's regulations concerning fitness for duty and created a potential safety hazard; and

**WHEREAS**, a conciliation conference took place on October 25, 2017, and the parties reached agreement on the terms of settlement that have been set forth in this Agreement; and

**WHEREAS**, it is now the intention of the parties to amicably settle, compromise and resolve in good faith, the differences and disputes that exist or may exist between them, and the parties desire to avoid the time and expense of a public hearing;

**NOW, THEREFORE**, it is on this 22<sup>nd</sup> day of MARCH, 2018, **ORDERED and AGREED** as follows:

1. Respondent agrees that it shall comply with the provisions of the LAD, N.J.S.A. 10:5-1 et seq., and shall not engage in any retaliatory conduct against Complainant, Complainant's family, or against any witness or participant in these proceedings, or allow any of its employees or agents to engage in any such conduct.

2. Respondent shall display conspicuous notice of an employee's rights and obligations pursuant to the LAD and New Jersey Family Leave Act in all workplaces in New Jersey, pursuant to N.J.A.C. 13:8-1.2 and N.J.A.C. 13:8-2.2. The notices to be displayed pursuant to this paragraph may be obtained from the Division's website, [www.NJCivilRights.gov](http://www.NJCivilRights.gov), and must be displayed in locations easily visible to all employees and applicants for employment.

### MONETARY PAYMENTS AND PENALTIES

3. Respondent shall pay to Complainant the total sum of Thirty Thousand Dollars (\$30,000.00) in settlement of all claims and damages arising from the allegations set forth in the Verified Complaint and Finding of Probable Cause. The settlement amount of Thirty Thousand Dollars (\$30,000.00) shall be paid in two separate installments of (\$15,000) Fifteen Thousand Dollars each. The first installment of Fifteen Thousand Dollars (\$15,000.00) shall be considered as recovery of lost wages and shall be paid within thirty (30) days of the complete execution of this Agreement. The second installment of Fifteen Thousand Dollars (\$15,000.00) shall be considered damages for alleged pain and suffering and shall be paid to Complainant within four (4) months of the complete execution of this Agreement.

4. The payments described in paragraph 3, supra, shall be by check made payable to Complainant and shall be mailed to the attention of Carlos Bellido, Chief of Staff, Division on Civil Rights, (DCR Chief of Staff Bellido), 31 Clinton Street, 3rd floor, P.O. Box 46001, Newark, New Jersey 07102.. DCR shall record receipt of the payment and forward it to Complainant.

5. Complainant shall be solely responsible for paying any and all federal, state or local taxes that may be due on the settlement amount. Additionally, Complainant is solely responsible for any penalties or interest relating to any State, Federal or local taxes or tax liens that may be required by law to be paid by Complainant with respect to the settlement amount. Respondent shall issue Complainant appropriate tax documentation for the settlement amount.

6. Respondent shall be liable for a civil penalty in the amount of Five Thousand Dollars (\$5,000.00) (hereinafter "Penalty Amount") for the alleged violations of the LAD. The Director agrees to suspend and automatically vacate the Penalty Amount upon the expiration of the Monitoring Time Period set forth in paragraph 7, provided:

- a. Respondent timely makes the payment to Complainant as referenced in paragraphs 3 and 4 of the Consent Decree;
- b. Respondent complies with all the provisions of this Consent Decree; and
- c. Respondent is not adjudicated in any judicial or administrative forum to have committed any violations of the LAD or substantially similar anti-discrimination laws, said violations occurring during the Monitoring Time Period.

#### MONITORING

7. For a period of two years following the execution of this Consent Order by all parties (hereafter referred to as the "Monitoring Time Period"), the Division will monitor Respondent's practices concerning its treatment of employees and job applicants with disabilities to ensure compliance with the LAD and this Consent Order.

8. Within sixty (60) days of the effective date of this Consent Order, Respondent shall establish a system for maintaining records of the following: (a) records related to any employee or prospective employee Respondent or Respondent's agent (including any doctor retained by Respondent) determines is or was unable to work or return to work due to a medical condition; (b) records related to any requests for accommodations due to any medical condition by any employee or prospective employee; and (c) records related

to any allegations of disability discrimination and/or complaints of disability discrimination. These records will include, at minimum, the names and contact information for the individual(s) involved (address, phone number, and e-mail address if applicable); a description of the issue of concern or allegation of disability discrimination; and an explanation of how Respondent investigated, addressed or resolved the issue of concern or allegation of disability discrimination. Respondent shall maintain copies of all documentation related to the issues described in (a) through (c), including but not limited to how same was investigated, addressed or resolved by Respondent. Respondent shall maintain the records for a period of at least three years, or longer if otherwise required by law. Respondent shall allow a DCR representative to review the documentation upon request.

9. Respondent shall provide DCR, via Chief of Staff Bellido, a report every six months during the Monitoring Time Period, on or before the following dates: June 30, 2018, December 31, 2018, June 30, 2019, and December 31, 2019. At a minimum, the reports are to include a summary of the information outlined in paragraph eight (8)(a) through (c). The Division shall maintain the monitoring reports as part of its investigative file. Respondent may redact personal identifying information from the report, but such identifying information and all related documentation shall be made available to DCR upon request.

## POLICIES AND TRAINING

10. No later than sixty (60) days from the execution of this agreement, Respondent will review and revise as necessary its workplace anti-discrimination policies to ensure they are consistent with the LAD. In completing the requirements of this provision, Respondent shall not be required to implement or enforce any policies that are inconsistent with its obligations under federal laws and regulations, including but not limited to the Federal Motor Carrier Safety Administration's regulations relating to fitness for duty; however, Respondent recognizes the LAD may provide broader protection than Federal laws in the area of disability discrimination and will act in good faith to ensure compliance with both Federal and State laws. As part of this review, Respondent shall ensure that its policies contain information related to the following:

- a. A section explaining that employees with disabilities may request reasonable accommodations and further explaining: (1) how and to whom an employee may submit a request for a reasonable accommodation; (2) how Respondent will address a request for a reasonable accommodation; and (3) how Respondent will maintain the confidential nature of any information obtained by Respondent in connection with a request for a reasonable accommodation;
- b. A section explaining the "safety defense" and when and under what circumstances it is appropriate for an employer to invoke same;
- c. A section explaining the circumstances under which Respondent may request a "fitness for duty" evaluation, and describing the type of information and/or medical documentation required to establish that an employee is unfit for duty, or presents a direct threat to themselves or others; and

d. A provision specifically indicating that it is violation of the LAD to retaliate and/or otherwise discriminate against any individual for exercising his or her rights pursuant to the LAD.

11. Respondent shall provide a copy of the revised policies being adopted to DCR Chief of Staff Bellido at least ten days prior to their implementation by Respondent.

12. The policies established pursuant to paragraphs 10 and 11 shall be disseminated to Respondent's managers, agents and/or employees within sixty (60) days following the execution of this agreement. Additionally, the policies, as adopted and/or modified, shall be included with all compilations of Respondent's employee policies and maintained in places where Respondent generally posts its policies. Respondent shall maintain a copy of the policies in a readily accessible location in each of its offices.

13. Respondent agrees to train its supervisors, managers and Human Resources personnel and/or agents on the LAD and the policies adopted and/or modified. Such training shall include, but not be limited to:

a. An understanding of the LAD, including the general purpose of the legislation and types of discrimination covered by the LAD;

b. An understanding of an employer's obligation to provide reasonable accommodations to the known limitations of an employee or applicant with a disability unless doing so would constitute an undue burden for the employer;

c. An understanding of an employer's obligation with regard to addressing requests for reasonable accommodations, and how to recognize a request for reasonable accommodations;

d. An understanding of what may constitute a reasonable accommodation such as the examples in N.J.A.C. 13:13-2.5(b);

e. An understanding of what is meant by engaging in the interactive process in connection with a request for a reasonable accommodation;

f. An understanding of when and under what circumstances it is appropriate to request a fitness for duty evaluation; and

g. An understanding of an employer's obligations when utilizing the safety defense, which should include an understanding of what type of information and medical documentation is required to establish that an employee may present a risk of harm to himself or others;

h. An understanding that an employer may not rely on a conclusory medical report to determine if an employee is unable to perform the essential functions of the job, but should instead review not only the report of its medical expert, but also relevant records such as the employee's work and medical histories and, in appropriate cases, might reasonably be expected to communicate with its medical expert about the meaning of the report, to independently reach an objectively reasonable decision concerning the employee's ability to perform the job, or the probability the employee will cause harm to themselves or others; and

i. An understanding that it is a violation of the LAD to retaliate and/or otherwise discriminate against an individual for exercising his/her rights pursuant to the LAD.

14. All training required by paragraph 13 shall be completed within six months of the execution of this Agreement. Each individual who participates in training



and receives instruction will sign a statement acknowledging that he or she has participated in, understands, and has completed the training. If Respondent's training is conducted by a private firm, or by Respondent, Respondent shall submit an outline of the subject matter being covered and provide a copy of any materials used in these sessions, including but not limited to handouts and any Power Point slides, to DCR Chief of Staff Bellido for review prior to training. Respondent will provide DCR with at least ten days' notice of when the training is to occur and shall permit one or more representatives of DCR to attend any or all sessions. Alternatively, Respondent may arrange for DCR to conduct the required training.

#### COMPLIANCE AND RELEASES

15. Where a dispute arises regarding the Respondent's compliance with this Agreement, DCR and Respondent shall first attempt in good faith to resolve the dispute before seeking the Court's intervention. DCR shall provide Respondent with the specific details of the alleged noncompliance and provide Respondent at least a ten (10) day period within which to cure any noncompliance.

16. In the event that Respondent defaults with respect to any provision herein, following an opportunity to cure the default, Respondent hereby consents to the entry of this Consent Order and Decree in the Chancery Division of the Superior Court of New Jersey, thereby making this Consent Order and Decree an order of the Court for purposes of enforcement therein. If the Superior Court finds that Respondent is in default, all costs associated with the enforcement of this Agreement shall be paid by Respondent. Additionally, the penalty amount described in paragraph 6, supra, shall be immediately due and owing.

17. Should Respondent be found in default or fail to timely pay the sums set forth in this agreement, it shall pay, in addition to the sums outlined in paragraphs 3 through 6, any interest on the award as well as all reasonable costs, expenses and attorney fees incurred in any further proceedings or steps necessary to collect or enforce this Consent Order.

18. This Consent Order shall be binding upon the parties to this agreement and their successors and their assigns. In no event shall assignment of any right, power or authority avoid compliance with the terms of this Consent Order.

19. The parties agree that, if any Court declares any portion of this agreement unenforceable, the remaining portions shall be fully enforceable.

20. This Agreement contains the sole and entire agreement between the parties hereto. Each party represents and acknowledges that, prior to executing this agreement, they have had ample time to consult with legal counsel prior to making the decision to execute this agreement, and that no party has relied upon any representation or statement not set forth in this agreement, made by any other party hereto, or their counsel or representatives, with regard to the subject matter of this agreement. No other promises or agreements shall be binding unless in writing, signed by the parties hereto, and expressly stated to represent an amendment to this agreement. Complainant expressly recognizes and understands that the Deputy Attorney General, Beverley A. Lapsley (DAG Lapsley) represents the Director of the Division on Civil Rights in this matter and does not represent him. Complainant acknowledges that he has not relied upon any advice from Respondent or DAG Lapsley concerning this matter including but not limited to the taxability of the amounts to be paid under this Consent Order. Complainant

acknowledges that he had the opportunity to retain counsel to review this agreement prior to its execution and has chosen not to do same.

21. This agreement shall operate as a complete and final disposition of the aforesaid Verified Complaint, subject only to the fulfillment of all the foregoing provisions. In consideration for the execution of this agreement and payment as set forth in paragraph 3, Complainant expressly waives releases and gives up any claims that have been asserted or could have been asserted in the DCR Action, DCR Docket No: EG14HB-65777. Execution of this Agreement shall result in dismissal of the DCR complaint with prejudice, subject to the fulfillment of the requirements of this Agreement.

22. Any signature for the entry of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same Consent Order.

  
CRAIG SASHIHARA  
DIRECTOR, NEW JERSEY DIVISION ON  
CIVIL RIGHTS

Jointly Approved and Submitted for Entry:

For Complainant R.B.:

By: 

DATED: 03-20-2018

For Respondent, P. Judge and Sons, Inc.:

By: 

Patrick J. Judge III  
Title: Vice President

DATED: