

PHILIP D. MURPHY Governor

SHEILA Y. OLIVER Lt. Governor

New Jersey Office of the Attorney General

Division of Consumer Affairs Office of Consumer Protection 124 Halsey Street, 7th Floor, Newark, NJ 07102



MATTHEW J. PLATKIN Acting Attorney General

> CARI FAIS Acting Director

Mailing Address: P.O. Box 45025 Newark, NJ 07101 (973) 504-6200

September 7, 2022

CERTIFIED AND REGULAR MAIL

Seymours Bakery & Deli, LLC d/b/a Seymour's Cafe C/O Precision Accounting Intl., LLC 1035 US Highway 46 Suite B-101 Clifton, New Jersey 07013

Re: NOV2200201

Dear Sir or Madem:

Please find enclosed Notice of Violation, NOV2200201, dated September 7, 2022. Please respond by signing and returning one of the three options within the NOV to Supervising Investigator Murat Botas at botasm@dca.njoag.gov, by September 23, 2022. Please note, if you fail to respond to this Notice of Violation by the date specified above, a Final Order on Default order will be issued.

Please be advised that all mitigation conferences and pre-hearing conferences normally held in the Newark Office located at 124 Halsey Street, 7th Floor, Newark, New Jersey 07102, are being held remotely until further notice.

The call-in phone number for the remote meeting scheduled for October 4, 2022 at 10:00 AM;

Call in (audio only): 856-288-3130

Phone Conference ID: 923 714 959#

If you have any questions, you may reach me at botasm@dca.njoag.gov.

Sincerely

Murat Botas Supervising Investigator

Office of Consumer Protection

Enclosure



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NOTICE OF VIOLATION AND OFFER OF SETTLEMENT

Dear Sir or Madem:

The New Jersey Division of Consumer Affairs, Office of Consumer Protection (the "Division"), is charged with enforcement of the Consumer Fraud Act ("CFA"), **N.J.S.A. 56:8-1 to -227**, including the portion of the CFA concerning fraud in connection with sale or advertisement of merchandise or real estate as unlawful practice **N.J.S.A. 56:8-2**. On September 1, 2022, the Division conducted an inspection of the retail location in the State of New Jersey operated by Seymours Bakery & Deli, LLC. d/b/a Seymour's Cafe You," "Your" or "Yourself") (hereinafter "Investigation").

The CFA, specifically N.J.S.A. 56:8-2, states:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice...

As result of the Division's Investigation, You have been found to have attempted to require payment of an additional charge for use of a credit card, debit card, or prepaid card ("Card Surcharge" in connection with the sale of merchandise at retail without providing notice to customers of the Card Surcharge. These facts are set forth in the attached **Certifications of Investigator Murat Botas.** In so doing, You have:

1. Failed to clearly and conspicuously provide notice to customers regarding Card Surcharge fees by prominently displaying Your Card Surcharge policy in violation of **N.J.S.A.** 56:8-2.

Each failure to comply with the requirements of the CFA comprises a separate violation of the CFA and subjects You to civil penalties pursuant to **N.J.S.A. 56:8-13**, as well as reimbursement of investigative costs and/or attorneys' fees, pursuant to **N.J.S.A. 56:8-19**.

IF YOU DO NOT CONTEST THE VIOLATIONS ALLEGED and wish to avail Yourself of this opportunity to settle the Investigation, You should sign and return the enclosed Answering Certification within fifteen (15) days from the date of this Notice of Violation ("Notice"), and agree to the following:

- Clearly and conspicuously provide notice to customers regarding Card Surcharge fees by prominently displaying Your Card Surcharge policy; and
- 2. Pay a civil penalty in the amount of \$500.00.

If the above-referenced payment, in the total amount of \$500.00, is received by the Division, along with Your signed Answering Certification, You need not do anything further.

IF YOU DO NOT CONTEST THE VIOLATIONS ALLEGED, but wish to present information to Division representatives supporting mitigating circumstances in Your case that may persuade the Division to reduce the civil penalty, you may request an informal Mitigation Conference. If You request a Mitigation Conference, You will waive Your right to an Administrative Hearing. The Mitigation Conference date is October 4, 2022 at 10:00AM, at 856-288-3130 (Conference ID 923 714 959#), with Supervising Investigator Murat Botas ("Investigator Botas"), a representative of the Division. You may be accompanied by an attorney. Should You have any questions regarding this procedure, or seek an adjournment of this date, please contact Investigator Botas at (973) 273-8030 or botasm@dca.njoag.gov. Alternatively, You may send written documentation to the Division concerning any mitigating circumstances that You believe may persuade the Division to reduce the civil penalty. The Division will then review this material and respond to You. In order to elect either of these options, You must return the enclosed Answering Certification within fifteen (15) days from the date of this Notice.

IF YOU CONTEST THE VIOLATIONS ALLEGED, and do not wish to settle the matter consistent with the terms set forth above, You may request a formal Administrative Hearing by returning the enclosed Answering Certification within fifteen (15) days from the date of this Notice. In that event, this Notice will serve as notice of the violations against You. You should be aware that in making its final decision, the Division may, if violations of the above-referenced statute have been proven, order civil penalties and remedies other than the settlement offer above.

Specifically, You may be ordered to: pay civil penalties in an amount up to \$10,000 for the first violation and up to \$20,000 for the second violation and each subsequent violation, pursuant to N.J.S.A. 56:8-13; and pay investigative costs and attorneys' fees to the Division, pursuant to N.J.S.A. 56:8-11 and 56:8-19.

Before a determination is made with regard to whether an Administrative Hearing will be conducted before the Director or referred to the Office of Administrative Law, a Pre-Hearing Conference will be held. If You request an Administrative Hearing, Your Pre-Hearing Conference will be scheduled on is October 4, 2022 at 10:00AM, at 856-288-3130 (Conference ID 923 714 959#), with Investigator Botas. You may be accompanied by an attorney. Should You have any questions regarding this procedure, or seek an adjournment of this date, please contact Investigator Botas, who may be reached at (973) 273-8038 or email BotasM@dca.njoag.gov. Your attendance at this Pre-Hearing Conference is mandatory. Any failure to appear without a satisfactory explanation may result in an order barring You from raising certain defenses at the Administrative Hearing, pursuant to N.J.A.C. 1:1-14.4. The purpose of this Pre-Hearing Conference is to discuss the issues in this matter and the defenses which You may wish to raise. You should be prepared to discuss the evidence You will propose to offer at the Administrative Hearing. It may be helpful if You bring to the Pre-Hearing Conference a copy of any documentation that supports Your position. If the Division determines that there are no material facts in dispute, You will have an opportunity to submit legal arguments and any documentation that may be relevant to the ultimate disposition of this matter. If there are material facts in dispute, an Administrative Hearing will be scheduled. During the Administrative Hearing, You, either personally or with the assistance of Your attorney, will have an opportunity to respond to the alleged violations, and submit evidence and present testimony as may be necessary for the Division to make a final determination.

IF YOU FAIL TO RESPOND to this Notice within fifteen (15) days of the date of this Notice, the settlement offer will be withdrawn, and You will be deemed in default. The allegations against You will be deemed uncontested. Thereafter, this Notice and the underlying proofs may be reviewed by the Director, and a Final Decision and Order on Default ("Final Order on Default") will be issued, and You may be ordered to: pay civil penalties in an amount up to \$10,000 for the first violation and up to \$20,000 for the second violation and each subsequent violation pursuant to N.J.S.A. 56:8-13; and pay investigative costs and attorneys' fees to the Division pursuant to 56:8-11 and 56:8-19. You will receive no further notice from the Division prior to issuance of a Final Order on Default. Once a Final Order on Default has been entered, Your failure to pay any civil penalties, attorneys' fees and/or investigative costs within the time allowed will result in the filing of a Certificate of Debt. Any subsequent violation of a Final Order on Default with a cease and desist provision may subject You to a penalty of up to \$25,000 pursuant to N.J.S.A. 56:8-18. Service of a Final Order on Default will be deemed effective if sent by first class and certified mail, return receipt requested, to Your last known mailing address.

Should You have any questions, please contact Investigator Botas at 973-273-8038 or BotasM@dca.njoag.gov.

New Jersey Division of Consumer Affairs Office of Consumer Protection

Assistant Deputy of Enforcement

(OPTION 1) Seymours Bakery & Deli, LLC d/b/a Seymour's Cafe

I,	hereby acknowledge that I have iolations of the Consumer Fraud Act A.A. 56:8-2.
PLEASE CHECK ONE OF THE OPTIONS BELOW	<u>/:</u>
(OPTION 1): Subject	
I DO NOT CONTEST THE VIOLATION conduct that has been alleged and agree to:	
 Clearly and conspicuously provide noti Surcharge fees by prominently displ Surcharge policy; and 	ce to customers regarding Card aying [company name's] Card
2. Pay a civil penalty in the amount of \$5	00.00.
I understand that if the above-reference \$500.00 is received by the Division, along with I need not do anything further.	11 11 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
I am also aware that the action taken a matter of public record, and that the Div Certification are public documents. I am en money order in the sum of \$500.00 made particles of Consumer Affairs", which I am mailing or deliver and Public Safety, Division of Consumer Affair Halsey Street, P.O. Box 45025, Newark, New Jer	aclosing herewith a cashier's check or ayable to the "New Jersey Division of tring to: New Jersey Department of Law of Consumer Protection, 124
	Ву:
	SIGN NAME
Y	Name:
	PRINT NAME

(OPTION 2) Seymours Bakery & Deli, LLC d/b/a Seymour's Cafe

	and hereby waive any	
rights I may have to an Administrative Hearing in against any alleged violations, BUT I ask the circumstances in my case before rendering its fine	the Division to consider mitigating al decision.	
I request a Mitigation Conference to representatives; I understand that the Mit on is October 4, 2022 at 10:00AM, at 8 923 714 959#), I am aware that I may b at the Mitigation Conference.	356-288-3130 (Conference ID se represented by an attorney	
I am submitting written document circumstances; I understand that the Div before rendering a final decision.	101011 11111	
I understand that, if, after considering to Division is not persuaded that any reduction in the Notice is warranted or that any of the other term following terms may be ordered and I will be obli	s or conditions should be modified, the gated to:	
	rice to customers regarding Card ving [company name's] Card Surcharge	
2. Pay a civil penalty in the amount of \$5	500.00.	
If a modification in these terms is accepted by the Division, I will be notified of the amounts that I must pay. I am also aware that the action taken against me by the Division herein is a matter of public record, and that the Division's Notice and this Answering Certification are public documents. Failure to comply may subject me to further enforcement proceedings and any failure to make a required payment will result in the filing of a Certificate of Debt .		
Dated:	By:	
٠	SIGN NAME	
	Name:	
	PRINT NAME	

(OPTION 3) Seymours Bakery & Deli, LLC d/b/a Seymour's Cafe

Administrative Hearing. I understand that I am required to attend a Pre-Hearing Conference on is October 4, 2022 at 10:00AM, at 856-288-3130 (Conference ID 923 714 959#), with Investigator Botas, at which the issues in this matter and the possibility of settlement will be discussed. I am aware that I may be represented by an attorney at the Pre-Hearing Conference.

If the Division and I agree upon any essential settlement terms at the **Pre-Hearing Conference**, I understand that:

- These terms will be included in a document ("Pre-Hearing Settlement Sheet");
- 2. The Division representative and I will sign the Pre-Hearing Settlement Sheet and I will be bound by it; and
- 3. The Division will send me a **Consent Order** which will include all settlement terms. I also understand that **I must sign and return the Consent Order and any required payment to the Division** within thirty (30) days of the date that the Division sends it to me.

I further understand that if I fail to sign and return the Consent Order, the Division will present this matter to the Director of the Division based upon this Notice, and a Final Decision and Order After Notice of Violation ("Order") will be issued. I will receive no further notice from the Division prior to issuance of an Order.

Conference, I will thereafter be advised of the time, date and place for the Administrative Hearing if a determination has been made that there are material facts in dispute. I am aware that I may be represented by an attorney at the Administrative Hearing. I am also aware that at the time of the Administrative Hearing, I may offer testimony, documentation and legal argument relevant to the alleged violations. I understand that in making a final decision, the Director of the Division may, if unlawful activity has been proven, issue a cease and desist order and/or assess civil penalties, attorneys' fees and investigative costs exceeding the settlement offer in this Notice, and may order such other remedies as deemed appropriate. I am also aware that this proceeding is a matter of public record and that the Notice and this Answering Certification are public documents.

Dated:	By:	
	SIGN NAME	
ř.	Name:	
	PRINT NAME	

Seymours Bakery & Deli, LLC d/b/a Seymour's Cafe 567 South Livingston Ave. Livingston, New Jersey 07039

INVESTIGATIVE CERTIFICATION

- I, Murat Botas, being of full age, do hereby certify as follows:
 - 1. I am employed as an Investigator by the Office of the Attorney General, Division of Consumer Affairs, Office of Consumer Protection ("Division") located at 124 Halsey Street, Newark, New Jersey 07101, and have held that position at all times relevant to this Certification.
 - 2. On September 1, 2022 at 11:35 a.m., I, arrived at **Seymour's Cafe** located at 567 South Livingston Ave. Livingston, New Jersey 07039, to conduct an on-site inspection. Inspection Sheet **Attached as Exhibit 1.**
 - 3. The purpose of the inspection was to determine whether Seymour's Café was providing notice to customers of a requirement that customers must pay an additional charge for use of a credit card, debit card, or pre-paid card ("Card Surcharge") by prominently displaying the company's Card Surcharge policy.
 - 4. Upon arrival, I was greeted by Axel, who identified himself as the Manager. I explained that the Division was conducting an inspection of the location for the purpose of ensuring compliance with the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -227.
 - I inquired if there was a service fee for use of a credit card, and Axel indicated yes.
 - 6. I asked Axel if there was any signage indicating the charge and was told there is a 3% charge listed on the bill for the customer to see.
 - I was not able to locate a conspicuously posted Card Surcharge disclosure.
 - 8. At 11:45 p.m., I left Seymour's Café.

All documents submitted with this Certification are true copies of the documents in possession of the Division.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: 09 03, 2022

Murat Botas

NOV#2200201

EXHIBIT 1

Credit Card Surcharge Inspection Sheet

Versette Business: Sermour's CAFE
Name of the Business: Seymour's CAFE Address: 567 5 Lumston Ave
Address: 561 5 Lumston Ave
City/State/Zip/County: Livingston NJ 67039
Telephone Number: 973 992- 1763
Date of Inspection: 6 122 Start Time: 11:45
Investigator: MURPOT BOLAS
Representative you spoke to: AXEL MAPAGEN
1. Does this establishment impose a Credit Card Surcharge? YES NO
2. If YES is a "Notice" conspicuously displayed of this fact, including the amount, at or near the point of sale? YESNO
3. If YES, Check the areas displayed.
The Entrance of the establishment:
The cash register:
Menu/Menu board:
The consumer's Receipt:
AXEL, the MANAGER STATED 3% Chape is croted
on the Bill. <u>CERTIFICATION</u>
I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.
3/122 Signature Mucht Botas Print Name