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FILED

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Division of Consumer Affairs

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

In the Matter of

BERNARD LEE ESKINS,

Respondent.

Administrative Action

CONSENT ORDER

WHEREAS this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (the "Division"), as an investigation in order to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), the Regulations Governing the Delivery of Household Furniture and Furnishings, N.J.A.C. 13:45A-5.1 et seq. ("Furniture Regulations") and the Regulations Governing General Advertising Practices, N.J.A.C. 13:45A-9.1 et seq. ("Advertising Regulations"), have been or are being committed by Bernard Lee Eskins ("Respondent"), residing at 601 Chews Landing Road, Haddonfield, New Jersey 08033, in connection with his position as the sole shareholder and President of 1525 Route 73 Corp. d/b/a Future Rest ("Future Rest") (hereinafter referred to as the "Investigation");

WHEREAS the Respondent denies that he has committed any violation of the CFA, the Furniture Delivery Regulations, and the Advertising Regulations; and

WHEREAS the Division and Eskins (collectively, the “Parties”) have reached an amicable agreement resolving the issues in controversy and concluding this 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”) without having admitted any fact or violation of law, and for good cause shown:

IT IS on this 3rd day of June, 2009 **ORDERED** and **AGREED** as follows:

1. EFFECTIVE DATE

1.1 This Consent Order shall be effective on the date that it is entered with the Court (“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 “Advertisement” shall mean any written, oral or electronic statement, illustration or depiction that is designed to create interest in the purchase of, impart information about the attributes of, publicize the availability of, or effect the sale or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, free-standing insert, circular, mailer, package insert, package label, product instructions, electronic mail, website, homepage, television, cable television, commercial or any other medium. This definition applies to other forms of the word “Advertisement” including “Advertise.” For purposes of the Advertising Regulations, “Advertisement” shall be defined in accordance with N.J.A.C. 13:45A-9.1.

2.2 “Attorney General” shall refer to the Attorney General of the State of New Jersey (or designated representative) and the Office of the Attorney General.

2.3 “Clear and Conspicuous” and “Clearly and Conspicuously” shall mean a statement that, regardless of the medium in which it is made, is presented in such size, color, contrast, duration, location and audibility, as reasonably compared to the other information with which it is presented, that it is reasonably apparent and understandable and in language and terms used in accordance with their common or ordinary usage and meaning. If such statement modifies, explains or clarifies other information with which it is presented, it must reasonably be presented in proximity to the information it modifies, explains or clarifies and in a reasonable manner that is readily apparent and understandable.

2.4 “Consumer” shall refer to any Person who is offered Merchandise for Sale.

2.5 “Division” shall refer to the New Jersey Division of Consumer Affairs.

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

2.7 “Invoice” shall refer to the contract form or sales documents that Respondent provides to Consumers at the time of Sale.

2.8 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c) and/or N.J.A.C. 13:45A-9.1 and includes, but is not limited to, furniture, fabric, home accessories and decorating services.

2.9 “New Jersey” shall refer to the State of New Jersey.

2.10 “New Jersey Consumer” shall refer to any Consumer who resides in New Jersey.

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

2.12 “Represent” means 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.

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

2.14 “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 his business in the State and shall comply with all applicable State and Federal laws, rules and regulations as now constituted or as may hereafter be amended including, but not limited to, the CFA, Furniture Regulations, and Advertising Regulations.

3.2 In any print Advertisement of Merchandise at a sale price of \$100.00 or more, Respondent shall state the former price or price range or the amount of the reduction in dollars and the basis thereof in close proximity to the selling price or price range of the Advertised Merchandise, in accordance with N.J.A.C. 13:45A-9.2(a).

3.3 In any print Advertisement of Merchandise for sale at a savings of a percentage or a range of percentages (such as “save 20%” or “20% to 50% off”) Respondent shall set forth the basis upon which the former price was established in close proximity to the percentage reduction, in accordance with N.J.A.C. 13:45A-9.5(a).

3.4 Respondent shall Clearly and Conspicuously disclose the seller’s obligations in the case of delayed delivery of Merchandise, in accordance with N.J.A.C. 13:45A-5.3(a).

3.5 Respondent shall not use an Invoice that contains any terms such as “all sales final” and/or “no cancellations”, in accordance with N.J.A.C. 13:45A-5.3(c).

3.6 Respondent shall deliver all ordered Merchandise by or on the promised delivery date, as required by N.J.A.C. 13:45A-5.1. In the event Respondent fails to deliver ordered Merchandise, make only a Partial Delivery or deliver defective Merchandise or non-conforming Merchandise by or on the promised delivery date, Respondent shall comply with the requirements of N.J.A.C. 13:45A-5.1(a)-(c), (e).

3.7 Upon a failure to deliver Merchandise, a partial delivery of Merchandise or the delivery of defective Merchandise or non-conforming Merchandise, Respondent shall issue a refund when requested by Consumers, in accordance with N.J.A.C. 13:45A-5.1(a), (b), (e).

3.8 At the time of sale and delivery of Merchandise, Respondent shall Clearly and Conspicuously notify Consumers of the following: (a) that they must inspect delivered Merchandise before the delivery Person leaves the Consumer's residence; and (b) that upon identification of any problem, they may refuse delivery; or (c) upon the Consumers' request and after the Consumers clearly Represent that the Merchandise is damaged and they are awaiting new delivery, Respondent may permit the Consumers to retain defective Merchandise pending delivery of new replacement Merchandise.

3.9 Upon delivery of defective Merchandise and/or non-conforming Merchandise, Respondent shall not knowingly exchange it with other defective Merchandise and/or non-conforming Merchandise.

3.10 Respondent shall issue refunds to Consumers who cancel their orders upon delivery because among other things, the Merchandise delivered is defective Merchandise and/or non-conforming Merchandise.

3.11 Within five (5) business days of receipt of a telephone call, letter, or e-mail from a Consumer, Respondent shall provide a response.

4. FUTURE STORE OPENINGS, CLOSINGS AND/OR RELOCATIONS

4.1 For a period of ten (10) years from the Effective Date, Respondent shall provide the Division with written notification of any plans to: (a) open, continue operating, close or relocate any business and/or retail location owned, partially-owned, controlled, operated and/or managed by Respondent in New Jersey; and/or (b) Advertise and/or sell Merchandise to New Jersey Consumers.

4.2 As soon as practical, but not later than thirty (30) days prior to Respondent's: (a) opening and/or operating any business or other entity; and/or (b) Advertising and/or selling Merchandise to New Jersey Consumers, Respondent shall post a bond in favor of the Division in the amount of Fifty Thousand and 00/100 Dollars (\$50,000.00) for the initial year of business and thereafter, either Fifty Thousand and 00/100 Dollars (\$50,000.00) or ten (10%) of Respondent's prior business year's gross income, whichever is greater. Ten percent (10%) of the prior business year's gross income shall only include income generated from a retail location in New Jersey and/or from Merchandise sold to New Jersey Consumers ("New Jersey Gross Income"). The bond shall be posted to secure any payments to be made by Respondent including, but not limited to, recovery under the CFA, the Furniture Regulations and/or the Advertising Regulations. Respondent shall contemporaneously provide the Division with a copy of the standard terms and conditions of the bank or other financial institution issuing the bond.

4.3 Respondent shall maintain the bond described this Section until such time as Respondent: (a) no longer operates a business: (i) in New Jersey; and/or (ii) Advertise and/or sell Merchandise to New Jersey Consumers; and (b) no longer hold any Consumer deposits from a

business: (i) operating in New Jersey; and/or (ii) Advertising and/or selling Merchandise to New Jersey Consumers. However, after ten (10) years of no violation of this Consent Order and upon thirty (30) days' notice to the Division, the bond shall be eliminated.

4.4 On January 1 of each year in which Respondent operates a business that accepts deposits from Consumers: (a) in New Jersey; and/or (b) for Merchandise sold to New Jersey Consumers, and is required to post a bond, Principal shall forward to the Division: (i) a copy of the then current bond; (ii) a certification identifying any such business entity; (iii) a certification from a Certified Public Accountant of the New Jersey Gross Income of any such business entity; and (iv) the amount of the bond to be posted for that year.

4.5 Respondent shall provide Plaintiffs with written notice as soon as practical, but no later than thirty (30) days prior to the opening, closing or relocation of any business accepting Consumer deposits: (a) in New Jersey; and/or (b) selling and/or Advertising Merchandise to New Jersey Consumers. Such notice shall include to the extent known by Respondent: (a) the type of entity; (b) a description of the business in which the entity is to be engaged; (c) name and new d/b/a name(s), if any; (d) address; (e) the owners, officers, directors and shareholders with a minimum five percent (5%) ownership interest in the entity; and (f) a copy of the bond as described this Section.

5. SETTLEMENT PAYMENT

5.1. The Parties have agreed to a settlement of the Action in the amount of Twenty Thousand and 00/100 Dollars (\$20,000.00) (the "Settlement Payment").

5.2 The Settlement Payment comprises civil penalties, pursuant to N.J.S.A. 56:8-13, consumer restitution, pursuant to N.J.S.A. 56:8-8, reimbursement for attorneys' fees pursuant to N.J.S.A. 56:8-19, and reimbursement for investigative costs pursuant to N.J.S.A. 56:8-11.

5.3 Twenty Thousand and 00/100 Dollars (\$20,000.00) of the Settlement Payment shall be suspended and automatically vacated within five (5) years of the Effective Date, provided:

- (a) Respondent complies with the restraints and conditions set forth in this Consent Order; and
- (b) Respondent does not engage in any acts or practices in violation of the CFA, Furniture Regulations, and/or the Advertising Regulations.

5.4 In the event Respondent fails to comply with the provisions of this Consent Order, the entire suspended amount of Twenty Thousand and 00/100 Dollars (\$20,000.00) shall be immediately due and payable upon notice by the Division.

6. GENERAL PROVISIONS

6.1 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.

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 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.

6.5 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.

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 be used to avoid compliance with this Consent Order.

6.8 This Consent Order shall be binding upon the Respondent as well as his agents, servants, employees (managerial and/or non-managerial), representatives, successors and assigns, and any entity (whether company, corporation, limited liability company, partnership, sole proprietorship, incorporated or unincorporated association, joint venture, trust or estate) which has been formed or will be formed after the Effective Date by or on behalf of Respondent through which Respondent may now or hereafter act (whether as owner, operator, officer, director, and/or shareholder), as well as any Persons who have authority to control or who, in fact, control and direct Respondent's business.

6.9 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 Respondent; and/or (b) an admission by Respondent that any of his 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 8.1) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

6.11 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 constitute one and the same Consent Order.

7. REPRESENTATIONS AND WARRANTIES

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

8. RELEASE

8.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Order, 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, the Furniture Regulations and/or the Advertising Regulations prior to the Effective Date for matters alleged in the Action and/or specifically addressed in this Consent Order (the "Released Claims").

8.2 Notwithstanding any provision of this Consent Order, the following do not comprise the Released Claims: (a) private rights of action; (b) actions to enforce this Consent Order; and (c) any claims against Respondent by any other entity or subdivision of the State.

9. PENALTIES FOR FAILURE TO COMPLY

9.1 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.

9.2 The Parties agree that any future violations by Respondent of the injunctive provisions of this Consent Order, the CFA, the Furniture Regulations, and/or the Advertising Regulations shall constitute a second or succeeding violation pursuant to N.J.S.A. 56:8-13 and that Respondent may be subjected to enhanced penalties, as provided therein, upon a Court's finding that Respondent has committed a violation of the injunctive provisions of this Consent Order, the CFA, the Furniture Regulations and/or the Advertising Regulations.

10. COMPLIANCE WITH ALL LAWS

10.1 Except as provided in this Consent Order, no provision shall be construed as:

- (a) Relieving Respondent of his obligations to comply with all State and Federal laws, regulations or rules, as now constituted or as hereafter may be amended, or as granting permission to engage in any acts or practices prohibited by 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 hereafter may 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.

11. NOTICES UNDER THIS CONSENT JUDGMENT

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 United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides tracking

services and identification of Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

Jah-Juin Ho, Deputy Attorney General
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:

Kristofer Kaufmann, Esq.
Mandale Kaufmann, P.C.
230 Broad Street, Ste 400
Philadelphia, Pennsylvania 19102

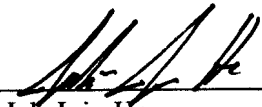
IT IS ON THE 3rd DAY OF June, 2009 SO ORDERED.

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

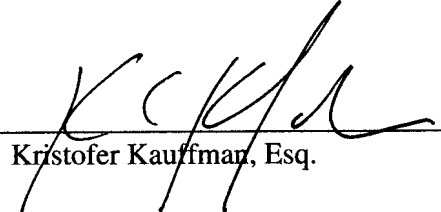
By: 
Jiah-Juin Ho
Deputy Attorney General

Dated: May 20, 2009

124 Halsey Street - 5th Floor
P.O. Box 45029
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Tel: (973)877-1280


FOR RESPONDENT:

MANDALE KAUFFMAN, P.C.

By: 
Kristofer Kauffman, Esq.
Mandale Kaufmann, P.C.
230 S. Broad St., Ste. 400
Philadelphia, Pennsylvania 19102

Dated: 5-14-09, 2009

BERNARD LEE ESKINS:

By: 
Bernard Lee Eskins

Dated: 5-12-09, 2009

601 Chews Landing Road
Haddonfield, New Jersey 08033