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FILED

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Division of Consumer Affairs

By: John D. Hugelmeyer
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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

**IN THE MATTER OF AN INVESTIGATION
BY THE NEW JERSEY DIVISION OF
CONSUMER AFFAIRS**

of

**Ed Schmidt Moving & Storage Co., LLC
and Ed Schmidt, Individually,
201 Timberlane, Clarksboro, NJ 08020**

Respondents

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: Administrative Action
: I No. 0800225
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: **CONSENT ORDER**
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This matter was opened to the Division of Consumer Affairs, Office of Consumer Protection (referred to as the "Division"), as an investigation into whether Ed Schmidt Moving & Storage Co., LLC, and Ed Schmidt, individually (collectively referred to as the "Respondents") were in violation of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (The "CFA"), and the Public Movers and Warehousemen Licensing Act, N.J.S.A. 45:14D-1 et seq. The investigation itself commenced in July 2009 as a result of a consumer complaint being filed with the Division against the Respondents in April 2009.

The Division and Respondents (collectively referred to as the "Parties") have reached an agreement resolving the issues in controversy and concluding this matter without the need for further actions. Respondents, while neither admitting nor denying any statements of fact or violations of law, have voluntarily cooperated and consented to the entry of this order (the "Consent Order"). Therefore, and for good cause shown:

GENERAL PROVISIONS

15. Nothing contained in this Order shall be construed to limit or affect the rights of any persons or entities who are not parties to this Order with respect to any of the matters contained herein.

16. Nothing contained in this Order shall be construed to limit or affect any position that the Parties may take in any future or pending action not specifically encompassed by this Order.

17. If any provision of this Order, or the application thereof, to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Order, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Order shall be valid and enforced to the fullest extent permitted by law.

18. This Order resolves all claims and causes of action against Respondents for violations of the CFA and the Public Movers and Warehousemen Licensing Act that were known by the Division's Office of Consumer Protection through August 1, 2009.

19. The Parties represent that an authorized representative of each has signed this Order with full knowledge, understanding, and acceptance of its terms; and that this person has done so with the authority to bind legally the respective parties.

20. This Order constitutes the entire agreement between the Parties and shall bind the Parties and their representatives, officers, directors, agents, employees, successors and assigns.

21. Respondents shall not represent or imply that any advertising procedure or other act or practice, hereinafter used or engaged in by Respondents have been required or approved, in whole or in part, by the Attorney General or the Division or any of the State's agencies or agents.

22. The Parties acknowledge that for purposes of enforcement of the Order, New Jersey law shall govern the terms and provisions herein.

23. Respondents acknowledge that this Order is a public document subject to the New Jersey Open Public Records Act.

24. This Consent Order constitutes a final agency action, and shall be effective upon filing.


PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

BY: 
Sharon Joyce, Acting Director
New Jersey Division of Consumer Affairs

DATED: March 3, 2010

FOR RESPONDENTS

The undersigned have read this Consent Order, understand it, and agree to be bound by its terms. Consent is hereby given as to the entry and form of this Order.

BY: 
Ed Schmidt, as Owner and President
of Ed Schmidt Moving & Storage Co. LLC, and Individually

DATED: 2/24/10

IT IS on this 3 day of March, 2010

ORDERED and AGREED as follows:

BUSINESS PRACTICES

1. Respondents shall cease and desist from the following violations of the Public Movers and Warehousemen Licensing Act, N.J.S.A. 45:14D-9 et seq.: (1) failing to perform a physical survey before a move, as required by N.J.A.C. 13:44D-4.1(a)2; and (2) failing to issue the Order for Service at least twenty-four hours in advance of the date of the move, as required by N.J.A.C. 13:44D-4.1(b).

PAYMENT TO THE STATE

2. Respondents shall pay to the Division of Consumer Affairs the sum of \$2,000.00, as a civil monetary penalty pursuant to N.J.S.A. 56:8-13.

3. The payment required by Paragraph 2 shall be made by certified check, attorney trust account check, or other guaranteed funds, made payable to the "New Jersey Division of Consumer Affairs," and shall be delivered within ten (10) days of the issuance of this Consent Order to the following:

**Case Management Tracking
NJ Dept. of Law & Public Safety
Division of Consumer Affairs
124 Halsey Street, PO Box 45025
Newark, NJ 07101**

4. If, after the signing of this Consent Order, Respondents engage in any acts or practices which constitute a violation of the CFA, the Public Movers and Warehousemen Licensing Act, or this Consent Order, Respondents shall be subject to the imposition of enhanced penalties pursuant to N.J.S.A. 56:8-13 and/or N.J.S.A. 45:14D-16, without prejudice to Respondents' right to present evidence in mitigation and affirmative defenses.

DUTY TO COOPERATE

5. Respondents shall have a continuing duty to provide assistance and/or information as requested by the Division in connection with its public moving and/or storage activities.

Respondents shall also have a continuing duty to cooperate in any inquiry, investigation or hearing conducted by the Division in connection with the advertising, moving or storage of household goods within New Jersey.

6. Nothing in this Consent Order shall be construed to limit or affect the rights of any persons or entities who are not parties to this Consent Order with respect to any of the matters contained herein.

RESTITUTION

7. Respondents represent that they shall provide restitution to Complainant No. 1 in the amount of \$1,000.00 for the settlement of any and all claims.

8. The Parties may agree in writing to alter any time periods or deadlines set forth in this Section.

FUTURE CONSUMER COMPLAINTS

9. Respondents agree to submit to and be bound by the decision of a neutral arbitrator of the Alternate Dispute Resolution Unit, Division of Consumer Affairs ("ADR"), with respect to any consumer complaint arising within twenty-four (24) months from the date of the entry of this Order. Respondents further agree to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A-23B-14 and the New Jersey Tort Claims Act, N.J.S.A. 59:10A-1 et seq. with respect to that arbitration. Any and all monies that Respondents are required to pay to any consumer pursuant to the decision of the arbitrator shall be paid by the Respondents within ten (10) days of the date of the said decision. Any failure of Respondents to comply in a complete and timely manner with the requirements contained in this paragraph may be deemed to constitute occupational misconduct under N.J.S.A. 45:14D-7(f), as well as a violation of this Order, and may subject Respondents to any and all remedies available to the Division under N.J.S.A. 45:14D-1 et seq.

10. For a period of twenty-four (24) months from the entry of this Consent Order, the Division will forward to Respondents all consumer complaints received by the Division within thirty (30) days of receipt of such complaint. Complaints received by any county or municipal CALA office will be forwarded to the Division which will then forward them to Respondents within thirty (30) days of the Division's receipt from the county or municipal CALA office. Upon the Division's receipt of a consumer complaint, the Division will notify the consumer that they should receive a response from the company within thirty (30) days from its receipt of a complaint from the Division and that should the complaint not be resolved, it will be referred to arbitration.

11. Within thirty (30) days of receiving said consumer complaints, Respondents will send a written response to each complaining consumer, with a copy to the New Jersey Division of Consumer Affairs, Office of Consumer Protection, Attention: Case Management Tracking, 124 Halsey Street, PO Box 45028, Newark, NJ 07101.

12. If Respondents' written response disputes the consumer's complaint or the relief sought by the consumer, the response shall include all documents related to Respondents' dispute of the complaint and shall inform the consumer that they may participate in the Division's Alternative Dispute Resolution binding arbitration process. If Respondents' written response does not dispute the consumer's complaint or the relief sought by the consumer, Respondents' response to the consumer shall include all documents necessary or appropriate to satisfy the consumer's request relief, including payment or credit. The response provided pursuant to this paragraph shall be considered for settlement purposes only.

13. If the Division has not received notice from Respondents that a forwarded complaint has been settled on or before the forty-fifth (45) day after the complaint is transmitted to Respondents, the Division will notify the consumer of the right to arbitration and forward the complaint to the ADR Unit to reach a resolution of the complaint through binding arbitration. Thereafter, the matter shall proceed in accordance with ADR guidelines. Respondents agree herein to agree to this binding arbitration process and be bound by the arbitrator's decision. In the event that Respondents fail or refuse to participate in the arbitration process with the consumer, the arbitrator may enter a default against the Respondents. Respondents shall pay any and all arbitration awards within then (10) days of the arbitrator's decision unless otherwise specified in writing in the arbitration award. Failure or refusal to participate in the arbitration process or to pay in a timely manner the arbitration award shall constitute a violation of this Consent Order. If a consumer refuses to participate in the ADR process, the consumer's complaint shall be deemed closed for purposes of this Consent Order.

14. After the initial twenty-four (24) months, the complaint resolution procedure set forth above will automatically renew for successive one year periods unless either party provides written notice of termination within sixty (60) days of the anniversary date of this agreement. Written termination under this provision of the Order shall be provided for as follows: For the Division, written notice shall be forwarded via certified mail, return receipt requested, to the New Jersey Division of Consumer Affairs, Office of Consumer Protection, Attention: Chief, Regulated Business Section, Office of Consumer Protection, PO Box 45028, Newark, NJ 07101; for Respondents, written notice shall be forwarded via certified mail, return receipt requested, to Respondents' address of record.