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FILED

JUN 09 2011

Division of Consumer Affairs

By: Frank Marasco
Deputy Attorney General
(973) 648-3709

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
DOCKET NO.: 10-088

PAULA T. DOW, Attorney General of the
State of New Jersey,

Complainant,

v.

DRIFTWOOD CAMPING RESORT, INC.
d/b/a DRIFTWOOD CAMPING AND RV
CENTER,

Respondent.

Administrative Action

CONSENT ORDER

WHEREAS this matter having been opened by Paula T. Dow, Attorney General of the State of New Jersey (“Complainant”), as an Administrative Complaint alleging that 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 Driftwood Camping Resort, Inc. d/b/a Driftwood Camping Resort and RV Center, Inc. (“Respondent”) with a business location of 1955 Route 9 North, Clermont, New Jersey 08210 (hereinafter the “Action”);

WHEREAS the Complainant alleges that Respondent violated the CFA in connection with its business of leasing space at its Campgrounds to Consumers, among other things, by: (1) failing to provide notification to Consumers at the time Consumers purchased their Units of Respondent's sales commission policies; and (2) negotiating the sale of a Unit without the Consumer's agreement as to the sales price;

WHEREAS the Respondent denies that it has committed any violation of the CFA;

WHEREAS the Complainant and Respondent (collectively, the "Parties") having reached an amicable agreement thereby resolving the issues in controversy and concluding this Action without the need for further action, and Respondent having voluntarily cooperated and consented to the entry of the within order (hereinafter "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 words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Order:

2.1 "Additional Affected Consumer shall refer to any Consumer who submits to the Division, directly or through CALA or another agency, after ninety days from the Effective Date, a written complaint concerning Respondents' business practices.

2.2 "Additional Consumer" shall refer to any Consumer who submits to the Division, directly or through CALA or another agency, within ninety (90) days of the Effective Date, a written

complaint concerning Respondents' receipt of a fifty percent (50%) commission on the amount of a Campground Unit's sales price which is in excess of the Unit's original purchase price.

2.3 "ADR Unit" shall refer to the Alternative Dispute Resolution Unit of the Division.

2.4 "Affected Consumers" shall refer to the Consumers listed on Exhibit A.

2.5 "Attorney General" shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General.

2.6 "CALA" refers to the Consumer Affairs Local Assistance offices located within counties and/or municipalities in the State.

2.7 "Campground(s)" shall refer to 1955 Route 9 North, Clermont, New Jersey 08210 and 6623 Route 322, Clermont, New Jersey 08210.

2.8 "Consumer" refers to a seasonal and recreational tenant who leased space at the Campgrounds for a Unit.

2.9 "Division" refers to the New Jersey Division of Consumer Affairs.

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

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

2.12 "Seasonal Rental Agreement" refers to the annual terms and conditions for all Consumers at the Campgrounds.

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

2.14 "Seasonal Regulations" refers to the annual rules and regulations for all Consumers and their guests at the Campgrounds.

2.15 “State” and “New Jersey” shall refer to the State of New Jersey.

2.16 “Unit” refers to a recreational vehicle, camper, park model or trailer.

2.17 “Website” refers to Respondent’s website located at www.Driftwoodcampingresorts.com, www.DriftwoodToo.com, and www.DriftwoodRVCenter.com.

3. BUSINESS PRACTICES AND INJUNCTIVE RELIEF

3.1 Respondent shall not engage in any unfair or deceptive practices in the Sale of any Unit in the State and shall comply with such State laws, rules and regulations as now constituted or as may hereafter be amended, including but not limited to, the CFA.

3.2 Respondent shall provide, prior to purchase, written notice of all sales policies and fees in effect at the time of the sale, including commissions, to Consumers regarding their Unit, whether purchased from or through Respondent, or located at the Campground.

3.3 Respondent shall provide, prior to purchase, written notice to Consumers that title to a Unit over fifteen (15) years old cannot be transferred unless the Unit is removed from the Campground.

3.4 Respondent shall cease and desist from unreasonably preventing Consumers from having motor vehicle access to their Units.

3.5 Respondent shall cease and desist from negotiating the Sale of a Unit without the Consumer’s agreement as to the sales price.

3.6 Not later than December 31st of each calendar year, Respondent shall make the upcoming Seasonal Rental Agreement and Seasonal Regulations available to existing Consumers by the following: (a) Respondent shall post the Seasonal Rental Agreement and Seasonal

Regulations on the Website; and (b) Respondent shall mail the Seasonal Rental Agreement and Seasonal Regulations to each Consumer's last known address.

3.7 Respondent shall include in the Website posting and the mailings referenced in Section 3.6 a written notification, that unless Consumers sign and return to Respondent the Seasonal Rental Agreement on or before the beginning of the upcoming season's rental term, the Consumer will not be afforded access to the Campgrounds.

3.8 With regard to the Sale of a Unit, Respondent may continue to charge a Consumer a commission of 10% of the original purchase price, plus 50% of the sales price in excess of the original purchase price of the Unit so long as Respondent has given the Consumer notice of these commissions in accordance with Sections 3.6 and 3.7.

4. RESTITUTION

4.1 Respondent shall pay Restitution, pursuant to N.J.S.A. 56:8-15, totaling Thirty-Eight Thousand Four Hundred and 00/100 Dollars (\$38,400.00) to the Affected Consumers.

4.2 Within ten (10) days of the Effective Date, Respondent shall transmit a check for the Affected Consumer Restitution to Dennis L. Riley, Esq. who shall hold the funds in escrow.

4.3 Upon the expiration of ninety (90) days from the Effective Date, Mr. Riley shall provide Restitution to the Affected Consumers by certified check, attorney's trust check, or money order. Mr. Riley shall simultaneously send a copy of the documents evidencing the Restitution provided to each Affected Consumer to the following: Division of Consumer Affairs, Office of Consumer Protection, P.O. Box 45025, Newark, New Jersey 07101, Attention: Investigator Patrick Mullan.

5. ADDITIONAL CONSUMER COMPLAINTS

5.1 For a period of ninety (90) days from the Effective Date, the Division shall forward to Respondent the complaints of any Additional Consumer concerning the 50% sales commission within thirty (30) days of the Division's receipt of the Additional Consumer complaint.

5.2 Respondent shall provide Restitution to the Affected Consumer within thirty (30) days of its receipt of the Additional Consumer complaint by certified check, attorney's trust check, or money order. Respondent shall simultaneously send a copy of the documents evidencing the Restitution provided to each Additional Consumer to the following: Division of Consumer Affairs, Office of Consumer Protection, P.O. Box 45025, Newark, New Jersey 07101. Attention: Investigator Patrick Mullan.

5.3 Respondent shall not be required to provide Restitution to an Additional Consumer in the event it can demonstrate to the Division's satisfaction, that it provided the Additional Consumer with written notification of any such commission either prior to the purchase of their Unit or not later than December 31st of the calendar year prior to the seasonal rental.

5.4 Respondent's failure or refusal to provide Restitution in accordance with Section 5.2 or to provide the Division with proof of notice in accordance with Section 5.3 shall constitute a violation of this Consent Order.

5.5 The Additional Consumer complaint resolution process set forth in Sections 5.1 through 5.3 shall terminate ninety (90) days after the Effective Date.

5.6 Thereafter, any Additional Affected Consumer complaints which remain unresolved shall be forwarded to the Division's ADR Unit for resolution through binding arbitration.

5.7 Respondent agrees herein to consent to this arbitration process and to be bound by the arbitrator's decision. Respondent further agrees 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. 59:1-1 et seq. The Division shall notify in writing the Additional Affected Consumer of the referral of the complaint to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines (a copy of which is attached as Exhibit B).

5.8 If Respondent refuses to participate in the ADR program, the arbitrator may enter a default against the Respondent. Unless otherwise specified in the arbitration award, Respondent shall pay all arbitration awards within thirty (30) days of the arbitrator's decision. Respondent's failure or refusal to participate in the arbitration process or to pay an arbitration award timely shall constitute a violation of this Consent Order.

5.9 If the Additional Affected Consumer refuses to participate in the ADR program, that Additional Affected Consumer's complaint shall be deemed closed for the purposes of this Consent Order.

5.10 This Additional Affected Consumer complaint resolution process set forth in Sections 5.6 through 5.9 shall terminate twelve (12) months after the Effective Date.

6. SETTLEMENT AMOUNT

6.1 The Parties have agreed to a settlement of the Action in the amount of Thirty-Two Thousand Two Hundred Ten and 40/100 Dollars ("Settlement Amount").

6.2 Of the Settlement Amount, Respondent shall pay Seventeen Thousand Two Hundred Ten and 40/100 Dollars (\$17,210.40) ("Settlement Payment") on or before the Effective Date. The Settlement Payment comprises Eight Thousand Seven Hundred Fifty and 00/100 Dollars (\$8,750.00) as reimbursement of the Complaint's attorneys' fees, and Eight Thousand Four Hundred Sixty and

40/100 Dollars (\$8,460.40) as reimbursement of the Complaint's investigative costs, pursuant to N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19.

6.3 Respondent shall make the Settlement Payment by bank check, attorney's trust check or money order made payable to "New Jersey Division of Consumer Affairs" and forwarded to the undersigned:

New Jersey Division of Consumer Affairs
Office of Consumer Protection
P.O. Box 45025
Newark, New Jersey 07101
Attn: Case Management Tracking Unit

6.4 Upon making the Settlement Payment, Respondent shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and subsequent interest of income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

6.5 The Fifteen Thousand and 00/100 Dollars (\$15,000.00) balance of the Settlement Amount, which comprises civil penalties pursuant to N.J.S.A. 56:8-13 ("Suspended Penalty"), shall be suspended and automatically vacated ninety (90) days after the Effective Date provided:

- (a) Respondent complies in all material respects with the restraints and conditions set forth in this Consent Order;
- (b) Respondent provides the Restitution as required under Sections 4 and 5; and/or
- (c) Respondent makes the Settlement Payment as required under Section 6.2.

6.6 In the event that Respondent materially fails to comply with Section 6.5, the entire Suspended Penalty shall be immediately due and payable upon notice by the Division. In any such notice, however, the Division shall provide Respondent with the specific details of Respondent's alleged noncompliance and Respondent shall be afforded a fifteen (15) day period within which to

cure any such noncompliance. In the event of Respondent's failure to cure any such noncompliance, the Division will file a Certificate of Debt for the Suspended Penalty, as well as any unpaid Restitution and/or the balance of the Settlement Payment.

7. GENERAL PROVISIONS

7.1 This Consent Order is entered into by the Parties as their own free and voluntary act etc. with full knowledge and understanding of obligations and duties imposed by this Consent Order.

7.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State.

7.3 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.

7.4 This Consent Order contains the entire agreement between 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 Parties.

7.5 Except as otherwise explicitly provided in this Consent Order, nothing in this Consent Order shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

7.6 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.

7.7 This Consent Order shall be binding upon Respondent as well as its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, successors and assigns, and any Persons through which it may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct its business.

7.8 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.

7.9 This Consent Order is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provisions contained in this Consent Order 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 (b) an admission by Respondent that any of its acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CFA. Neither the existence of, nor the terms of this Consent Order, shall 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 herein; or (b) any action or proceeding involving a Released Claim (as defined in Section 8) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

7.10 The Parties represent and warrant an authorized representative of each has signed this Consent Order with full knowledge, understanding and acceptance of its terms and that the representative has done so with authority to legally bind the respective Party.

7.11 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.

7.12 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 together be one and the same Consent Order.

8. RELEASE

8.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent making the payments in the manner specified in Sections 4, 5 and 6, the Complainant 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 Complainant could have brought prior to the Effective Date against Respondent for violations of the CFA as alleged in the Action, as well as the matters specifically addressed in this Consent Order (“Released Claims”).

8.2 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 a 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.

9. FORBEARANCE ON EXECUTION AND DEFAULT

9.1 Respondent agrees to pay all reasonable attorneys’ fees and costs, including, but not limited to, Court costs, associated with any successful collection efforts by the Complainant pursuant to this Consent Order.

9.2 Respondent agrees that if it defaults on making the payments under Section 6 or in the event it fails to provide any Restitution under Sections 4 and 5, if awarded, the Complainant shall be able to seek any remedies available at law including, but not limited to, statutory interest.

10. PENALTIES FOR FAILURE TO COMPLY

10.1 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.

11. COMPLIANCE WITH ALL LAWS

11.1 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 Complainant 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 Complainant to obtain such information, documents or testimony.

12. NOTICES UNDER THIS CONSENT ORDER

12.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Complainant or Respondent 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 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 Complainant:

Frank J. Marasco, Deputy Attorney General
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

For the Respondent:

Dennis L. Riley, Esq.
Riley & Shovlin, P.A.
1405 Chews Landing Road, Suite 7
Laurel Springs, New Jersey 08021

IT IS ON THE 9th DAY OF June, 2011 SO
ORDERED.


PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

By: 
THOMAS R. CALCAGNI, ACTING 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 COMPLAINANT:

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

By: 

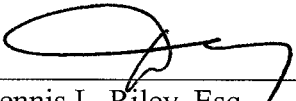
Frank J. Marasco
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: May 19, 2011

124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
(973) 648-3709

FOR THE RESPONDENT:

RILEY & SHOVLIN, P.A.

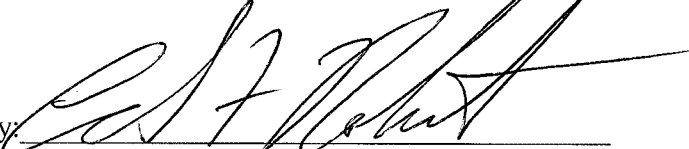
By: 

Dennis L. Riley, Esq.

Dated: 5/14/11, 2011


1405 Chews Landing Road, Suite 7
Laurel Springs, New Jersey 08021
(856) 232-3800

DRIFTWOOD CAMPING RESORT AND RV CENTER, INC.
d/b/a DRIFTWOOD CAMPING AND RV CENTER

By: 

Edson F. Robertson, President

Dated: 5/14/11, 2011

By: 

Malcolm G. Robertson, Vice President

Dated: 5/14/11, 2011