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FILED

OCT 15 2012

**Robert P. Contillo
P.J.Ch.**

By: Nicholas Kant
Deputy Attorney General

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, BERGEN COUNTY
DOCKET NO.: BER-C-125-12

JEFFREY S. CHIESA, Attorney General of the State of New Jersey, and ERIC T. KANEFSKY, Acting Director of the New Jersey Division of Consumer Affairs,

Plaintiffs,

Civil Action

v.

A-1 AMERICAN CONSTRUCTION, INC.; A 1 AMERICAN CHIMNEY LIMITED LIABILITY COMPANY; BRICK CITY CHIMNEY SERVICE, L.L.C.; BRICK CITY CHIMNEY SERVICE AND CLEANING, INC.; ROOFING POLICE, INC. a/k/a ROOFING SQUAD; JOHN KOT, individually, as owner, officer, manager and/or director of A-1 AMERICAN CONSTRUCTION, INC., A 1 AMERICAN CHIMNEY LIMITED LIABILITY COMPANY, BRICK CITY CHIMNEY SERVICE, L.L.C., BRICK CITY CHIMNEY SERVICE AND CLEANING, INC. and ROOFING POLICE, INC. a/k/a ROOFING SQUAD, t/a A-1 AMERICAN CONSTRUCTION [trade name] and A-1 AMERICAN, and d/b/a ROOFING SQUAD, CHIMNEY SQUAD, BRICK CITY, BRICK CITY CHIMNEY & ROOFING SERVICES, A-1 AMERICAN MASONRY, A-1 AMERICAN MASONRY SERVICES, A-1 AMERICAN CHIMNEY SERVICE, A-1 AMERICAN CONTRACTING, A-1 AMERICAN ROOFING, A-1 AMERICAN GUTTERS, A-1 AMERICAN SIDING, A-1 AFFORDABLE CONSTRUCTION, A ABOVE AMERICAN, A ABOVE BRICK CITY, AND DIAMOND ROOFING; GABRIEL R. DASILVA, JR., individually, as owner, officer, manager and/or director of A-1 AMERICAN CONSTRUCTION, INC., A 1 AMERICAN CHIMNEY LIMITED LIABILITY COMPANY, and ROOFING POLICE, INC. a/k/a ROOFING SQUAD; JANE and JOHN DOES 1-10, individually and as owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of A-1 AMERICAN CONSTRUCTION, INC., A 1 AMERICAN CHIMNEY LIMITED LIABILITY COMPANY, BRICK CITY CHIMNEY SERVICE, L.L.C., BRICK CITY CHIMNEY SERVICE AND CLEANING, INC., ROOFING POLICE, INC. a/k/a ROOFING SQUAD, A-1 AMERICAN CONSTRUCTION and/or A-1 AMERICAN; and XYZ CORPORATIONS 1-10,

Defendants.

FINAL
CONSENT
JUDGMENT
(Gabriel
DaSilva)

The parties to this Action and Final Consent Judgment ("Consent Judgment") are plaintiffs Jeffrey S. Chiesa, Attorney General of the State of New Jersey ("Attorney General"), and Eric T. Kanefsky, Acting Director of the New Jersey Division of Consumer Affairs ("Director") (collectively, "Plaintiffs"), and defendant Gabriel R. DaSilva, Jr. ("DaSilva" or "Defendant"). As evidenced by their signatures below, Plaintiffs and Defendant (collectively, "Parties") do consent to the entry of this Consent Judgment and its provisions without trial or adjudication of any issue of fact or law, and without an admission of any liability or wrongdoing of any kind. The Parties consent to entry of this Consent Judgment to avoid the expenses and uncertainty associated with further investigation and/or litigation.

PRELIMINARY STATEMENT

On April 17, 2012, Plaintiffs commenced this action, alleging that DaSilva as well as A-1 American Construction, Inc. ("A-1 American Construction"), A 1 American Chimney Limited Liability Company ("A 1 American Chimney"), Brick City Chimney Service, L.L.C. ("Brick City Chimney Service"), Brick City Chimney Service and Cleaning, Inc. ("Brick City Chimney Service and Cleaning"), Roofing Police, Inc. a/k/a Roofing Squad ("Roofing Police") and John Kot ("Kot") (collectively, "Defendants"), engaged in conduct in violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq., the Regulations Governing Contractor Registration, N.J.A.C. 13:45A-17.1 et seq. ("Contractor Registration Regulations"), the Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 et seq. ("Home Improvement Regulations"), and the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq. ("Advertising Regulations") in their advertisement, offer for sale, sale and performance of various home improvements, including roof and chimney repair, in New Jersey.

DaSilva failed to file an Answer or to otherwise respond to the Complaint. On June 4, 2012 and at Plaintiffs' request, the Clerk of the Court entered a default against DaSilva.

1. JURISDICTION

1.1 The Parties admit jurisdiction of this Court over the subject matter and over the Parties for the purpose of entering into this Consent Judgment. The Court retains jurisdiction for the purpose of enabling the Parties to apply to this Court at any time for such further orders and relief as may be necessary for the interpretation, modification, enforcement, execution or satisfaction of this Consent Judgment.

2. VENUE

2.1 Pursuant to N.J.S.A. 56:8-8, venue as to all matters between the Parties hereto relating to or arising out of this Consent Judgment shall lie exclusively in the Superior Court of New Jersey, Chancery Division, Bergen County.

3. EFFECTIVE DATE

3.1 This Consent Judgment shall be effective on the date that it is entered with the Court ("Effective Date").

4. DEFINITIONS

As used in this Consent Judgment, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Judgment:

4.1 "Action" shall refer to the action titled Jeffrey S. Chiesa, Attorney General of the State of New Jersey, and Eric T. Kanefsky, Acting Director of the New Jersey Division of Consumer Affairs v. A-1 American Construction, Inc., et al., Superior Court of New Jersey,

Chancery Division, Bergen County, Docket No. BER-C-125-12, and all pleadings and proceedings related thereto, including the Complaint.

4.2 "Advertisement" shall be defined in accordance with N.J.S.A. 56:8-1(a) for purposes of the CFA, the Contractors' Registration Act and the Home Improvement Regulations. "Advertise" shall be defined in accordance with N.J.A.C. 13:45A-17.2 for purposes of the Contractor Registration Regulations. "Advertisement" shall be defined in accordance with N.J.A.C. 13:45A-9.1 for purposes of the Advertising Regulations. These definitions shall apply to other forms of the words "Advertisement" or "Advertise."

4.3 "Attorney General" shall refer to the Attorney General of the State of New Jersey (or designated representative) and the Office of the Attorney General.

4.4 "Consumer" shall refer to any Person who is offered Merchandise for Sale.

4.5 "Contractor" shall be defined in accordance with N.J.S.A. 56:8-137, for purposes of the Contractor Registration Act, and N.J.A.C. 13:45A-17.2, for purposes of the Contractor Registration Regulations.

4.6 "Division" shall refer to the New Jersey Division of Consumer Affairs.

4.7 "Home Improvement" shall be defined in accordance with N.J.S.A. 56:8-137, N.J.A.C. 13:45A-16.1 and/or N.J.A.C. 13:45A-17.2, and includes, but is not limited to, roof and chimney repair.

4.8 "Home Improvement Contract" shall be defined in accordance with N.J.S.A. 56:8-137, N.J.A.C. 13:45A-16.1 and/or N.J.A.C. 13:45A-17.2.

4.9 "Home Improvement Contractor" shall be defined in accordance with N.J.A.C. 13:45A-17.2, for purposes of the Contractor Registration Regulations.

4.10 "Merchandise" shall be defined in accordance with N.J.S.A. 56:8-1(c) and includes, but is not limited to, roof and chimney repair. For purposes of the Advertising Regulations, "Merchandise" shall be defined in accordance with N.J.A.C. 13:45A-9.1.

4.11 "New Jersey" or "State" shall refer to the State of New Jersey.

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

4.13 "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. This definition applies to other forms of the word "Represent" including, without limitation, "Misrepresent."

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

5. INJUNCTIVE RELIEF AND BUSINESS PRACTICES

5.1 Defendant 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/or Federal laws, rules and regulations as now constituted or as may hereafter be amended including, but not limited to, the CFA, the Contractors' Registration Act, the Contractor Registration Regulations, the Home Improvement Regulations and the Advertising Regulations.

5.2 Defendant shall not Advertise, offer for Sale, sell and/or perform any Home Improvement without being registered as a Contractor with the Division in accordance with the Contractors' Registration Act and the Contractor Registration Regulations.

5.3 Defendant shall not commence Home Improvements without the necessary State and/or local permits to perform the contracted-for Home Improvements, as required by N.J.A.C. 13:45A-16.2(a)(10)(i).

5.4 Defendant shall provide Consumers with a written copy of all guarantees or warranties made with respect to labor services, products or materials furnished in connection with Home Improvements, as required by N.J.A.C. 13:45A-16.2(a)(11)(i).

5.5 Defendant shall perform the work specified in a Consumer's Home Improvement Contract.

5.6 Defendant shall not perform Home Improvements of poor or substandard quality and then fail to make the necessary corrective repairs.

5.7 Defendant shall not cause damage to a Consumer's home while performing Home Improvements and then fail to fix, clean, or compensate for the damage.

5.8 Defendant shall not take consumer deposits and then fail to provide the contracted-for Home Improvements.

5.9 Defendant shall not fail to perform and/or complete the contracted-for Home Improvements and then fail to provide a refund to Consumers.

5.10 Defendant shall not fail to respond to Consumers' inquiries or complaints in a timely manner or at all.

5.11 Defendant shall not conduct business under an assumed name that he has not registered in the State as a business entity or trade name including, but not limited to, Roofing Squad.

5.12 Defendant shall not wrongfully imply, in Advertisements, Home Improvement Contracts and otherwise, that Roofing Police, Roofing Squad, Chimney Squad and/or Diamond Roofing are a branch of or associated with any department or agency of the State or Federal government, in violation of N.J.S.A. 56:8-2.1.

5.13 To the extent not otherwise set forth in Section 5.12, Defendant shall not wrongfully imply that any business is a branch of or associated with any department or agency of the State or Federal government, in violation of N.J.S.A. 56:8-2.1.

5.14 Defendant shall not Misrepresent, either directly or indirectly, that any products or materials to be used by Roofing Police, Roofing Squad, Chimney Squad and/or Diamond Roofing in the performance of Home Improvements are approved or recommended by any government agency, Person, firm or organization, in violation of N.J.A.C. 13:45A-16.2(a)(2)(iv).

5.15 Defendant shall not Misrepresent that Roofing Police, Roofing Squad, Chimney Squad and/or Diamond Roofing are part of any governmental or public agency in any printed or oral communication, in violation of N.J.A.C. 13:45A-16.2(a)(4)(iv).

5.16 Defendant shall not use a Home Improvement Contractor registration number that has been assigned to another entity, in accordance with N.J.S.A. 56:8-151(a)(1).

5.17 Defendant shall set forth the signatures of all parties to the Home Improvement Contract, in accordance with N.J.S.A. 56:8-151(a) and N.J.A.C. 13:45A-16.2(a)12.

5.18 Defendant shall use invoices, Home Improvement Contracts and/or correspondence that include the informational statement and toll-free telephone set forth in N.J.A.C. 13:45A-17.11(f), in accordance with N.J.S.A. 56:8-149(b).

5.19 Defendant shall set forth the legal name and business address of the Contractor on all Home Improvement Contracts, in accordance with N.J.S.A. 56:8-151(a)(1) and N.J.A.C. 13:45A-16.2(a)(12)(i).

5.20 Defendant shall include with every Home Improvement Contract a copy of the Contractor's certificate of commercial general liability insurance and the telephone number of the insurance company issuing the certificate, in accordance with N.J.S.A. 56:8-151(a)(2).

5.21 Defendant shall include in any Home Improvement Contract the conspicuous notice printed in at least 10-point bold-faced type set forth in N.J.S.A. 56:8-151(b).

5.22 Defendant shall include in Home Improvement Contracts the legal name and/or address of the sales representative or agent who solicited or negotiated the contract for Defendant, in accordance with N.J.A.C. 13:45A-16.2(a)(12)(i).

5.23 Defendant shall include in Home Improvement Contracts a description of the work to be done and the principal products and materials to be used or installed in performance of the Home Improvement Contract, in accordance with N.J.A.C. 13:45A-16.2(a)(12)(ii).

5.24 Defendant shall include in Home Improvement Contracts the total price or other consideration to be paid by the buyer, including the hourly rate for labor and all other terms and conditions of the contract affecting price, in accordance with N.J.A.C. 13:45A-16.2(a)(12)(iii).

5.25 Defendant shall include in Home Improvement Contracts the dates or time periods on or within which work is to commence and to be completed, in accordance with N.J.A.C. 13:45A-16.2(a)(12)(iv).

6. SETTLEMENT AMOUNT

6.1 The Parties have agreed to a settlement of the Action in the amount of Thirty Thousand and 00/100 Dollars (\$30,000.00) ("Settlement Amount") which comprises a civil penalty, pursuant to N.J.S.A. 56:8-13.

6.2 The Settlement Amount shall be suspended and automatically vacated after three (3) years, provided:

- a. Defendant complies with the restraints and conditions set forth in Section 5 of this Consent Judgment; and
- b. Defendant does not engage in any acts or practices in violation of the CFA, the Contractors' Registration Act, the Contractor Registration Regulations, the Home Improvement Regulations and/or the Advertising Regulations.

6.3 In the event Defendant fails to comply with Section 6.2, the Settlement Amount shall be immediately due and payable upon written notice by the Plaintiffs ("Notice of Noncompliance"). In any such Notice of Noncompliance, however, Plaintiffs shall provide Defendant with the specific details of his alleged noncompliance and Defendant shall be afforded fifteen (15) days from the date of the Notice of Noncompliance within which to cure any such noncompliance ("Cure Period"). In the event Defendant cures the noncompliance, the Settlement Amount shall return to its suspended status. In the event Defendant fails to cure the noncompliance within the Cure Period, the Settlement Payment shall become immediately due and payable.

7. DISMISSAL OF ACTION

7.1 The entry of this Consent Judgment constitutes a vacatur of the June 4, 2012 default entered against DaSilva and a dismissal with prejudice of the Action against DaSilva.

8. GENERAL PROVISIONS

8.1 This Consent Judgment 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 Judgment.

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

8.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Judgment 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 Judgment.

8.4 This Consent Judgment contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Judgment shall be modified only by a written instrument signed by or on behalf of the Parties.

8.5 Except as otherwise explicitly provided in this Consent Judgment, 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.

8.6 If any portion of this Consent Judgment is held invalid or unenforceable by operation of law, the remaining terms of this Consent Judgment shall not be affected.

8.7 This Consent Judgment 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 Judgment avoid compliance with this Consent Judgment.

8.8 This Consent Judgment is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Judgment shall constitute or be construed as: (a) an approval, sanction or authorization by the Attorney General, Division or any other governmental unit of the State of any act or practice of Defendant; or (b) an admission by Defendant that any of his acts or practices described in or prohibited by this Consent Judgment are unfair, or deceptive or violate the CFA, the Contractors' Registration Act, the Contractor Registration Regulations, the Home Improvement Regulations and/or the Advertising Regulations. This Consent Judgment is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in: (a) an action or proceeding by one of the

Parties to enforce, rescind or otherwise implement any or all of the terms herein; or (b) an action or proceeding involving a Released Claim (as defined in Section 10) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

8.9 Unless otherwise prohibited by law, any signatures by the Parties required for filing of this Consent Judgment may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Judgment.

9. REPRESENTATIONS AND WARRANTIES

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

9.2 Defendant Represents and warrants that he has fully read and understands this Consent Judgment, that he understands the legal consequences involved in signing the Consent Judgment and that there are no other representations or agreements not stated in writing herein.

9.3 Defendant Represents and warrants that he has been advised by the Plaintiffs to seek legal counsel to review this Consent Judgment and that he has voluntarily chosen not to do so.

10. RELEASE

10.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Judgment, Plaintiffs hereby agrees to release Defendant from any and all civil claims or Consumer-related administrative claims, to the extent permitted by State law, which Plaintiffs could have brought prior to the Effective Date against Defendant for violations of the CFA, the Contractors' Registration Act, the Contractor

Registration Regulations, the Home Improvement Regulations and/or the Advertising Regulations as alleged in the Action, as well as the matters specifically addressed in this Consent Judgment ("Released Claims").

10.2 Notwithstanding any term of this Consent Judgment, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Consent Judgment; and (c) any claims against Defendant by any other agency or subdivision of the State.

11. FORBEARANCE ON EXECUTION AND DEFAULT

11.1 Defendant agrees to pay all reasonable attorneys' fees and costs including, but not limited to Court costs, associated with any successful collection or enforcement efforts by the Plaintiffs pursuant to this Consent Judgment.

11.2 On or before the Effective Date and continuing for a period of three (3) years thereafter, Defendant shall provide Plaintiffs with a writing containing his current address, telephone number and facsimile number for service of the Notice of Noncompliance referenced in Section 6.3. Within five (5) days of relocating to a new address or obtaining new telephone or facsimile numbers, Defendant shall provide such information, in writing, to the Plaintiffs. In the event of Defendant's default under Sections 5 and/or 6 of this Consent Judgment, service upon Defendant shall be effective upon mailing the Notice of Noncompliance by First Class Mail to the most recent address and by sending the Notice of Noncompliance by facsimile transmission to any facsimile number provided by Defendant. Alternatively, Plaintiffs may serve the Notice of Noncompliance in the manner provided in Section 14.1. If Defendant fails to respond to the Notice of Noncompliance within fifteen (15) days of the date of such notice, Plaintiffs may move before the Court upon notice to the Defendant for relief pursuant to R. 1:10-3 and Defendant shall have the right to oppose any such motion.

12. PENALTIES FOR FAILURE TO COMPLY

12.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Judgment or to seek sanctions for violations hereof or both.

12.2 The Parties agree that any future violations of the provisions of Section 5 of this Consent Judgment, the CFA, the Contractors' Registration Act, the Contractor Registration Regulations, the Home Improvement Regulations and/or the Advertising Regulations shall constitute second or succeeding violations pursuant to N.J.S.A. 56:8-13 and that Defendant may be liable for enhanced civil penalties.

13. COMPLIANCE WITH ALL LAWS

13.1 Except as provided in this Consent Judgment, no provision herein shall be construed as:

- (a) Relieving Defendant of his obligation 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 Plaintiffs may otherwise have to obtain information, documents or testimony from Defendant 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 Defendant may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by Plaintiffs to obtain such information, documents or testimony.

14. NOTICES UNDER THIS CONSENT ORDER

14.1 Except as otherwise provided herein, any notices or other documents required to be sent to Plaintiffs or Defendant pursuant to this Consent Judgment 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:

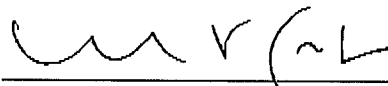
For Plaintiffs:

Nicholas Kant, Deputy Attorney General
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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 Defendant:

Gabriel R. DaSilva, Jr.
251 Lexington Avenue
Paterson, New Jersey 07502

IT IS ON THE 15 DAY OF October, 2012 SO ORDERED,
ADJUDGED AND DECREED.



HON. ROBERT P. CONTILLO, P.J. CH.

JOINTLY APPROVED, AGREED AND
SUBMITTED FOR ENTRY:

FOR THE PLAINTIFFS:

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By: Nicholas Kant
Nicholas Kant
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: Oct. 15, 2012

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FOR DEFENDANT:

GABRIEL R. DASILVA, JR.

By: Gabriel DaSilva
Gabriel R. DaSilva, Jr.
251 Lexington Avenue
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Dated: Oct. 15 - , 2012