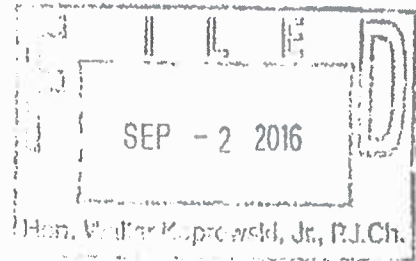


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SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, ESSEX COUNTY  
DOCKET NO. ESX-C-181-15

CHRISTOPHER S. PORRINO, Attorney  
General of the State of New Jersey, and  
STEVE C. LEE, Director of the New Jersey  
Division of Consumer Affairs,

Plaintiffs,

v.

HARBOR VIEW RESTORATION  
LIMITED LIABILITY COMPANY;  
FRANK A. HOFFMAN, SR., individually,  
d/b/a HARBOR VIEW, and as owner,  
principal, officer, director, manager,  
member, employee, representative and/or  
agent of HARBOR VIEW  
RESTORATION, LIMITED LIABILITY  
COMPANY; JOAN F. HOFFMAN; JANE  
AND JOHN DOES 1-20; and XYZ  
CORPORATIONS 1-20,

Defendants.

Civil Action

**FINAL CONSENT ORDER**

The parties to this Action and Final Consent Order ("Consent Order") are plaintiffs Christopher S. Porrino, Attorney General of the State of New Jersey ("Attorney General"), and Steve C. Lee, Director of the New Jersey Division of Consumer Affairs ("Director"), (collectively,

“Plaintiffs”)<sup>1</sup> and defendants Harbor View Restoration Limited Liability Company (“Harbor View Restoration”), Frank A. Hoffman, Sr., individually, d/b/a Harbor View and as owner, officer, director, manager, member, employee, representative and/or agent of Harbor View Restoration (“F. Hoffman”) and Joan F. Hoffman (“J. Hoffman”) (collectively, “Defendants”) (collectively, “Parties”). As evidenced by their signatures below, the Parties do consent to the entry of this Consent Order 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.

### PRELIMINARY STATEMENT

Plaintiffs commenced this Action on September 3, 2015, alleging that Defendants violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), and related statutes and regulations, specifically 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”) through their Advertisement, offering for Sale, Sale and performance of various home improvements, particularly repair of homes in need of restoration following catastrophic events, including fire, smoke, flood, storm and mold damage, in the State of New Jersey (“State” or “New Jersey”) and elsewhere. Defendants deny the allegations.

The Court has reviewed the terms of this Consent Order and based upon the Parties’ agreement and for good cause shown:

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<sup>1</sup> This action was commenced on behalf of John J. Hoffman, former Acting Attorney General, and Steve C. Lee, Acting Director. In accordance with R. 4:34-4, the caption has been revised to reflect the current Attorney General and the current Director.

**IT IS HEREBY ORDERED, ADJUDGED AND AGREED AS FOLLOWS:**

**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 Order. The Court retains jurisdiction for the purpose of enabling the Parties to apply to the Court at any time for such further orders and relief as may be necessary for the construction, modification, enforcement, execution or satisfaction of this Consent Order.

**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 Order shall lie exclusively in the Superior Court of New Jersey, Chancery Division, Essex County.

**3. EFFECTIVE DATE**

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

**4. DEFINITIONS**

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

4.1 “Action” shall refer to the action titled Christopher S. Porrino, et al. v. Harbor View Restoration Limited Liability Company, et al., Superior Court of New Jersey, Chancery Division, Essex County, Docket No. ESX-C-181-15, and all pleadings and proceedings related thereto, including the Verified Complaint, filed September 3, 2015.

4.2 “Additional Consumer” shall refer to any Consumer who submits to the Division directly or through another agency, a written Consumer complaint concerning Defendants’ business practices after the Effective Date and who is not a party to a pending Superior Court action with the Defendants in which any claim for Restitution by the Additional Consumer against Defendants has been or could be asserted.

4.3 “ADR Unit” shall refer to the Alternative Dispute Resolution Unit of the Division.

4.4 “Advertisement” shall be defined in accordance with N.J.S.A. 56:8-1(a). For purposes of the Advertising Regulations, “Advertisement” shall be defined in accordance with N.J.A.C. 13:45A-9.1. These definitions apply to other forms of the word “Advertisement” including “Advertise” and “Advertised.” For purposes of the Contractor Registration Regulations, “Advertise” shall be defined in accordance with N.J.A.C. 13:45A-17.2. This definition applies to other forms of the word “Advertise” Including “Advertisement.”

4.5 “Affected Consumers” shall refer to Consumers Sebrina Adams and William Morris.

4.6 “Arbitration” shall refer to the binding arbitration referenced in Sections 7.7 and 7.8.

4.7 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

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

4.9 “Contractor” shall be defined in accordance with N.J.S.A. 56:8-137.

4.10 “Harbor View Website” refers to the website located at [www.harborviewrestoration.com](http://www.harborviewrestoration.com).

4.11 “Home Improvement” shall be defined: (a) for purposes of the Contractors’ Registration Act in accordance with N.J.S.A. 56:8-137; (b) for purposes of the Home Improvement

Regulations in accordance with N.J.A.C. 13:45A-16.1; and (c) for purposes of the Contractor Registration Regulations in accordance with N.J.A.C. 13:45A-17.2.

4.12 “Home Improvement Contract” shall be defined: (a) for purposes of the Contractors’ Registration Act in accordance with N.J.S.A. 56:8-137; (b) for purposes of the Home Improvement Regulations in accordance with N.J.A.C. 13:45A-16.1; and (c) for purposes of the Contractor Registration Regulations in accordance with N.J.A.C. 13:45A-17.2.

4.13 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c).

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

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

4.16 “Represent” shall mean 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, “Representation.”

4.17 “Restitution” shall refer to all methods undertaken by Defendants to resolve Consumer complaints including the issuance of credits or refunds or the reversal of credit card or debit card charges.

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

4.19 “Substandard Home Improvements” include, without an admission of liability: roof installation/repair after which the roof leaks; any work that fails any type of final government permit/code inspection; flooring installation after which the flooring buckles, peels or warps; incorrect installation of siding; and installation of products and/or materials of an inferior quality and/or which do not comply with architectural plans.

## 5. INJUNCTIVE RELIEF AND BUSINESS PRACTICES

Without any admission of liability, Defendants agree to the following:

5.1 Defendants shall not engage in any unfair or deceptive acts or practices in the conduct of their businesses 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 the CFA, the Contractors' Registration Act, the Contractor Registration Regulations, the Home Improvement Regulations and/or the Advertising Regulations.

5.2 Defendants shall display their Contractor registration number as required in Advertisements or otherwise, in accordance with N.J.S.A. 56:8-144(a) and N.J.A.C. 13:45A-17.11(d)(2).

5.3 Defendants shall not begin Home Improvement work prior to obtaining the Consumer's approval, in violation of N.J.A.C. 13:45A-16.2(a)(7)(i).

5.4 Defendants shall not substitute products or materials for those specified in the Home Improvement Contract without the knowledge or consent of the Consumer, in violation of N.J.A.C. 13:45A-16.2(a)(3)(iv).

5.5 Defendants shall not include in Home Improvement Contracts any language that is contrary to the provisions and/or requirements of the CFA, the Contractors' Registration Act, the Contractor Registration Regulations and/or the Home Improvement Regulations.

5.6 Defendants shall not include in their Home Improvement Contracts any language which purports to create a power of attorney in favor of the Defendants.

5.7 Defendants shall not require a Consumer to sign a Home Improvement Contract prior to beginning emergency repairs which Includes the following or similar language: "All work has

been completed to the insured's complete satisfaction and approves payment for these services by the above named insurance company.”

5.8 Defendants shall not complete or sign a Home Improvement Contract on behalf of a Consumer, without the knowledge and consent of the Consumer.

5.9 Defendants shall not exercise any rights under any power of attorney which was executed by a Consumer before the Effective Date.

5.10 Defendants shall clearly and accurately set forth their legal name and business address on Home Improvement Contracts, pursuant to N.J.S.A. 56:8-151(a)(1) and N.J.A.C. 13:45A-16.2(12)(i).

5.11 Defendants shall clearly and accurately set forth in Home Improvement Contracts the legal name and the business address of the sales representative or agent who solicited or negotiated the Home Improvement Contract, in accordance with N.J.A.C. 13:45A-16.2(12)(i).

5.12 Defendants shall include in their Home Improvement Contracts the “Notice to Consumer” in 10-point bold-face type, as required by the Contractors’ Registration Act, specifically, N.J.S.A. 56:8-151(b).

5.13 Defendants shall include the required cancellation language in Home Improvement Contracts, in accordance with N.J.S.A. 56:8-151(b).

5.14 Defendants shall clearly and accurately set forth 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).

5.15 Defendants shall clearly and accurately set forth in Home Improvement Contracts a statement of the terms and conditions affecting the price of the Home Improvement Contract, including cost of materials and hourly labor rate, in accordance with N.J.A.C. 13:45A-16.2(a)(12)(iii).

5.16 Defendants shall clearly and accurately set forth in Home Improvement Contracts the dates or time periods within which work is to be commenced and completed, in accordance with N.J.A.C. 13:45A-16.2(a)(12)(iv).

5.17 Defendants shall clearly and accurately set forth the signatures of both parties to every Home Improvement Contract, pursuant to N.J.S.A. 56:8-151(a) and N.J.A.C. 13:45A-16.2(a)(12), and every Home Improvement Contract shall be signed by both parties prior to the commencement of any Home Improvement.

5.18 Defendants shall enter into a written Home Improvement Contract for all Home Improvements in excess of \$500.00, in accordance with N.J.S.A. 56:8-151(a).

5.19 Defendants shall not enter into Home Improvement Contracts that do not comply with the requirements of N.J.S.A. 56:8-151 (e.g. failing to set forth the signatures of both parties), in violation of N.J.A.C. 13:45A-17.13.

5.20 Defendants shall include on any invoice, Home Improvement Contract and/or correspondence which is given to a Consumer the informational statement and toll-free telephone number provided by the Director for Consumers making inquiries regarding Contractors, pursuant to N.J.S.A. 56:8-144(b) and N.J.A.C. 13:45A-17.11(f).



5.21 Defendants shall provide with Home Improvement Contracts a copy of their certificate of commercial general liability insurance as well as the telephone number of the company issuing the certificate, in accordance with N.J.S.A. 56:8-151(a)(2).

5.22 Defendants shall not bill consumers for Home Improvements that were not performed.

5.23 Defendants shall provide timely written notice to the consumers of reasons beyond their control for any delay in performance, and when the work will begin or be completed, as required by the Home Improvement Regulations, specifically, N.J.A.C. 13:45A-16.2(a)(7)(iii).

5.24 Defendants shall provide Consumers with Home Improvement guarantees or warranties made for labor services, products or materials used that are specific, clear and definite and state all exclusions or limitations, in accordance with N.J.A.C. 13:45A-16.2(a)(11)(i).

5.25 Defendants shall not institute legal proceedings against a Consumer seeking payment for Home Improvements which Defendants did not perform.

5.26 Defendants shall not file a lien against a Consumer's residential property for Home Improvements not performed, in violation of the Construction Lien Law, N.J.S.A. 2A:44A-1, et seq., specifically N.J.S.A. 2A:44A-6(a)(1)(a-b).

5.27 Defendants shall not file a lien against a Consumer's residential property without first filing a Notice of Unpaid Balance in accordance with the Construction Lien Law, N.J.S.A. 2A:44A-1, et seq., specifically N.J.S.A. 2A:44A-21(b)(1).

5.28 Defendants shall inform Consumers that an inspection is required after completion of Home Improvements for which a permit was or should have been issued, in accordance with N.J.A.C. 13:45A-16.2(a)(9)(ii).

5.29 Defendants shall make a good faith attempt to arrange for the required inspection of Home Improvements performed and shall not collect final payments from Consumers prior to such final inspection, in accordance with N.J.A.C. 13:45A-16.2(a)(10)(ii).

5.30 Defendants shall not perform Substandard Home Improvements which result in dangerous and/or unsafe conditions for Consumers.

5.31 Defendants shall not require or accept payment for Home Improvements, if Defendants fail to perform the Home Improvements according to the Home Improvement Contract specifications.

5.32 Defendants shall not perform Substandard Home Improvements and then fail to make the necessary corrective repairs.

5.33 Defendants shall not act as a Public Adjuster as defined by the Public Adjuster's Licensing Act, N.J.S.A. 17:22B-2, et seq., without obtaining a license issued by the New Jersey Division of Banking and Insurance.

5.34 Defendants shall disclose accurate and full information on any Home Improvement Contractor Application for Initial Registration, Disclosure Statements and renewals (e.g., all addresses used by the business, all business names used, all criminal convictions), in accordance with N.J.A.C. 13:45A-17.5 and -17.6, and shall inform the Director of any changes or additions thereto within twenty (20) calendar days of the change or addition, in accordance with N.J.A.C. 13:45A-17.7.

## 6. AFFECTED CONSUMER COMPLAINT RESOLUTION

6.1 Within fifteen (15) days of the Effective Date, Defendants shall execute a Mutual Release (in a form to be prepared by Plaintiffs' counsel) with Consumer Sebrina Adams concerning Home Improvements performed by Defendants following a fire at her home on October 22, 2011.

6.2 Defendants shall arbitrate, through binding arbitration to be conducted by the Honorable Glenn Berman, J.S.C. (Ret.) ("Judge Berman"), any and all civil claims arising out of the Home Improvements performed by them to repair damage to the home of Consumer William Morris ("Consumer Morris") sustained during a severe storm on July 28, 2012.

6.3 Defendants and Consumer Morris shall equally share the costs associated with the arbitration before Judge Berman.

6.4 Within twenty (20) days of the Effective Date, the Division, upon notice to Defendants and Consumer Morris, shall forward Consumer Morris' complaint and accompanying documents to Judge Berman.

6.5 If Defendants fail or refuse to participate in the arbitration to conclusion, Judge Berman may enter a default against Defendants as to Consumer Morris.

6.6 Defendants shall pay any arbitration award to Consumer Morris within forty five (45) days of Judge Berman's award. Consumer Morris may enforce an award entered against Defendants as allowed by law.

6.7 If Consumer Morris fails or refuses to participate in the arbitration to conclusion, Consumer Morris' complaint shall be deemed closed for purposes of this Consent Order.

6.8 If Consumer Morris fails to pay an arbitration award entered against him, Defendants may enforce this award pursuant to the provisions of applicable law.

## 7. ADDITIONAL CONSUMER COMPLAINTS

7.1 For a period of one (1) year from the Effective Date, the Plaintiffs shall forward to Defendants copies of any Additional Consumer complaints. Plaintiffs shall forward to Defendants the Additional Consumer complaints within thirty (30) days of Plaintiffs' receipt thereof.

7.2 Within thirty (30) days of Plaintiffs' receipt, Plaintiffs shall notify the Additional Consumers, in writing, of the following: (a) that the Additional Consumer's complaint has been forwarded to Defendants; (b) that he/she should expect a response from Defendants within thirty (30) days; and (c) the right to refer the Additional Consumer's complaint to the ADR Unit or an arbitrator mutually agreed upon by Defendants and the Division for Arbitration if Defendants dispute the Additional Consumer's complaint and/or requested relief.

7.3 Within thirty (30) days of receiving the Additional Consumer's complaint from Plaintiffs, Defendants shall send a written response to each Additional Consumer, with a copy to the New Jersey Division of Consumer Affairs, Office of Consumer Protection, Attention: Case Management Tracking Supervisor, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101. Defendants' response may include a claim against the Additional Consumer for monies due to Defendants. Defendants may supplement this response, including additional defenses or claims, in the event the matter goes to mediation or Arbitration.

7.4 If Defendants do not dispute the Additional Consumer's complaint and requested relief, Defendants' written response shall so inform the Additional Consumer. Defendants shall contemporaneously forward to such Additional Consumer the appropriate Restitution. Where Restitution concerns the reversal of credit or debit card charges, Defendants shall include documents evidencing that such adjustments have been made. Where Restitution concerns a refund or other

payment, such shall be made by certified check, money order or other guaranteed funds made payable to the Additional Consumer.

7.5 If Defendants dispute the Additional Consumer's complaint and/or requested relief, Defendants' written response shall include copies of all documents concerning Defendants' dispute of the complaint.

7.6 Within forty-five (45) days of Defendants' receipt of the Additional Consumer's complaint, Defendants shall notify Plaintiffs as to whether such Additional Consumer's complaint has been resolved. Such notification shall include the following:

- a. The name and address of the Additional Consumer;
- b. Whether or not the Additional Consumer's complaint has been resolved;
- c. An identification of any Restitution provided to the Additional Consumer;
- d. Copies of all documents evidencing any Restitution;
- e. In the event Defendants' written response was returned as undeliverable, the efforts Defendants had undertaken to locate the Additional Consumer; and
- f. Confirmation that Defendants sent all mailings to the Additional Consumer as required by this Section.

Following Plaintiffs' receipt and verification that an Additional Consumer's complaint has been resolved, the Additional Consumer's complaint shall be deemed closed for purposes of this Consent Order.

7.7 If within sixty (60) days of Defendants' receipt of the Additional Consumer's complaint: (a) Plaintiffs have not received a response from Defendants; or (b) the Additional Consumer has refused Defendant's offer of Restitution, if any, Plaintiffs shall forward such Additional Consumer's complaint to the ADR Unit or arbitrator as described in Section 7.8 to reach

a resolution of the complaint through Arbitration. Defendants agree herein to consent to Arbitration and to be bound by the arbitrator's decision.

7.8 In lieu of the Arbitration process described in Section 7.7, Defendants may opt to engage in Arbitration before a third-party arbitrator, who is mutually acceptable to the Defendants and the Division. Defendants shall bear all costs associated with any Arbitration under this section unless the Defendants and the Additional Consumer mutually agree to engage in Arbitration before a third-party arbitrator. If the Defendants and the Additional Consumer mutually agree to engage in Arbitration before a third-party arbitrator, the Defendants and the Additional Consumer shall share the costs associated with any Arbitration equally, subject to reallocation by the third-party arbitrator.

7.9 If Defendants proceed with Arbitration through the ADR Unit, they 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. 59:1-1 et seq.

7.10 Plaintiffs shall notify in writing the Additional Consumer of the referral of the complaint to Arbitration. Thereafter, Arbitration shall proceed in accordance with the ADR Guidelines (A copy of which is attached as Exhibit A).

7.11 As part of the Arbitration process, Defendants may assert defenses, set-offs, or claims for amounts due from the Additional Consumer to Defendants.

7.12 If Defendants refuse to participate in Arbitration, the arbitrator may enter a default against Defendants. Unless otherwise specified in the arbitration award, Defendants shall pay all arbitration awards within thirty (30) days of the arbitrator's decision. Defendants' failure or refusal to participate in the arbitration process or to pay an arbitration award timely shall constitute a

violation of this Consent Order. Under these circumstances, Plaintiffs may unilaterally discontinue the Additional Consumer complaint resolution process upon notice to Defendants.

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

7.14 In the event the arbitrator enters an award for Defendants and against the Additional Consumer, Defendants may enforce said award against the Additional Consumer in any manner allowed by law.

7.15 The complaint resolution process described in this Section may be extended for additional one (1) year period upon written notice by Defendants, provided thirty (30) days prior to the expiration of the initial one (1) year prior, or any subsequent one (1) year period.

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

## **8. SETTLEMENT PAYMENT**

8.1 The Parties have agreed to a settlement of the Action in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00) ("Settlement Payment") paid pursuant to N.J.S.A. 56:8-11, N.J.S.A. 56:8-13 and N.J.S.A. 56:8-19.

8.2 The Settlement Payment shall be paid as follows:

a. On or before September 1, 2016, Respondent shall pay to the Division the sum of Ten Thousand and 00/100 Dollars (\$10,000.00). Thereafter, Respondent shall make the following payments:

1. Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) on or before October 1, 2016;

2. Two Thousand Seven Hundred and 00/100 Dollars,(\$2,700.00) on or before November 1, 2016;
3. Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) on or before December 1, 2016;
4. Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) on or before January 1, 2017;
5. Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) on or before February 1, 2017;
6. Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) on or before March 1, 2017;
7. Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) on or before April 1, 2017;
8. Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) on or before May 1, 2017;
9. Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) on or before June 1, 2017;
10. Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) on or before July 1, 2017;
11. Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) on or before August 1, 2017;
12. Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) on or before September 1, 2017;
13. Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) on or before November 1, 2017;
14. Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) on or before December 1, 2017;
15. Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) on or before January 1, 2018;
16. Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) on or before February 1, 2018;



17. Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) on or before March 1, 2018;
18. Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) on or before April 1, 2018;
19. Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) on or before May 1, 2018;
20. Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) on or before June 1, 2018;
21. Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) on or before July 1, 2018;
22. Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) on or before August 1, 2018;
23. Fifteen Thousand Three Hundred and 00/100 Dollars (\$15,300.00) on or before September 1, 2018;
24. Fifteen Thousand Three Hundred and 00/100 Dollars (\$15,300.00) on or before October 1, 2018.

8.3 Defendants shall make the Settlement Payment amounts referenced in Section 8.2 by a certified check, cashier's check, money order, credit card or wire transfer made payable to "New Jersey Division of Consumer Affairs" and forwarded to:

Erin M. Greene, 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

8.4 Upon making the Settlement Payment, Defendants shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any

subsequent interest or income derived therefrom shall inure entirely to the benefit of the Plaintiffs pursuant to the terms herein.

#### 9. SUSPENDED CIVIL PENALTY

9.1 For a period of two (2) years from the Effective Date, an additional sum of Forty Thousand and 00/100 Dollars (\$40,000.00) in civil penalties, pursuant to N.J.S.A. 56:8-13, shall be suspended subject to the conditions set forth in Section 9.2 (“Suspended Penalty”).

9.2 The Suspended Penalty shall automatically be vacated at the end of the two (2) year period, provided:

- a. Defendants comply in all material respects with the restraints and conditions set forth in Section 5;
- b. Defendants do 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; and
- c. Defendants make the Settlement Payment in the manner required under Sections 8.2.

9.3 In the event Defendants fail to comply with Section 9.2, Plaintiffs shall provide Defendants with written notice of default or noncompliance (“Notice of Noncompliance”) seeking payment of the Suspended Penalty as well as any unpaid portion of the Settlement Payment. In any Notice of Noncompliance, however, Plaintiffs shall provide Defendants with the specific details of Defendants’ alleged default or noncompliance, as well as any supporting documents, and shall afford Defendants a twenty (20) day period from receipt of the Notice of Noncompliance within which to cure the default or noncompliance.

9.4 In the event of Defendants’ failure to cure any default or noncompliance, Plaintiffs may move on Notice of Motion or Order to Show Cause to have a judgment entered against

Defendants for the entire Suspended Penalty as well as any unpaid portion of the Settlement Payment. Defendants shall have the right to submit opposition to any Motion or Order to Show Cause application filed by Plaintiffs and to contest it on any return date. Plaintiffs acknowledge the Court is not bound to enter judgment for the full amount of the Suspended Penalty, and has the discretion to enter less than the amount of the Suspended Penalty. The Court has the discretion to deny Plaintiffs' application in its entirety. In connection with such application, the Court shall not enter judgment for an amount in excess of the Suspended Penalty as well as any unpaid portion of the Settlement Payment, except that the Court may enter judgment for attorneys' fees, investigative costs and any other reasonable costs incurred by the Plaintiffs.

9.5 Upon entry by the Court of judgment following the proceedings set forth in Section 9.4, Plaintiffs shall arrange for entry of the judgment upon the Statewide docket.

#### **10. DISMISSAL OF ACTION**

10.1 The entry of this Consent Order constitutes a dismissal with prejudice of the Action.

10.2 The December 23, 2015 *Consent Order Modifying October 6, 2015 Order and Continuing Temporary Restraints* is vacated.

#### **11. GENERAL PROVISIONS**

11.1 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.

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

11.3 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.

11.4 This Consent Order contains the entire agreement among 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 Plaintiffs and Defendants.

11.5 Except as otherwise explicitly provided for 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.

11.6 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.

11.7 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 avoid compliance with this Consent Order.

11.8 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 the Defendants; and (b) an admission by Defendants that any of their 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 12) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

11.9 Nothing contained in this Consent Order shall be construed to limit or otherwise affect the rights of any Persons who are not Parties to this Consent Order with respect to any of the matters contained herein.

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

11.11 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 shall together be one and the same Consent Order.

## 12. RELEASE

12.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Defendants making the Settlement Payment in the manner referenced in Section 8, Plaintiffs agree to release Defendants from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Plaintiffs could have brought prior to the Effective Date against Defendants for violations of the CFA, the Contractors' Registration Act, the Contractor Registration Regulations, the Home Improvement Regulations and the Advertising Regulations as alleged in the Action, as well as the matters specifically addressed in Section 5 of this Consent Order ("Released Claims").

12.2 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 Defendants from raising the defense of set-off against a Consumer; (b) actions to enforce this Consent Order; (c) administrative procedural claims; (d) any claims against Joan Hoffman t/a J.P. Hoffman (Home Improvement Contractor Registration Number 13VH07051600); and (e) any claims against Defendants by any other agency or subdivision of the State.

### **13. PENALTIES FOR FAILURE TO COMPLY**

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

### **14. COMPLIANCE WITH ALL LAWS**

- 14.1 Except as provided in this Consent Order, no provision herein shall be construed as:
- a. Relieving Defendants of their 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 Plaintiffs may otherwise have to obtain information, documents or testimony from Defendants 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 Defendants may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Plaintiffs to obtain such information, documents or testimony.

### **15. NOTICES UNDER THIS CONSENT ORDER**

15.1 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 the 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 Plaintiffs:

Erin M. Greene, Deputy Attorney General  
Consumer Fraud Prosecution Section  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

For Defendants:

John J. Petriello, Esq.  
Ehrlich, Petriello, Gudin, & Plaza  
60 Park Place  
Newark, New Jersey 07102

Harbor View Restoration Limited Liability Company  
Frank Hoffman  
Joan Hoffman  
180 Figueroa Avenue  
Staten Island, New York 10312

IT IS ON THE 2<sup>nd</sup> DAY OF September 2016 SO ORDERED, ADJUDGED  
AND DECREED.

  
\_\_\_\_\_  
HON. WALTER KOPROWSKI, JR., P.J.Ch.

**JOINTLY APPROVED AND  
SUBMITTED FOR ENTRY:**

FOR THE PLAINTIFFS:

CHRISTOPHER S. PORRINO  
ATTORNEY GENERAL OF NEW JERSEY

By:  \_\_\_\_\_

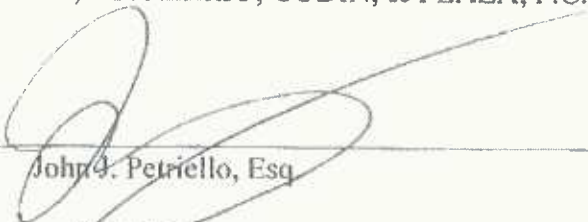
Erin M. Greene  
Deputy Attorney General  
Consumer Fraud Prosecution Section

Dated: August 16, 2016

124 Halsey Street – 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

FOR THE DEFENDANTS:

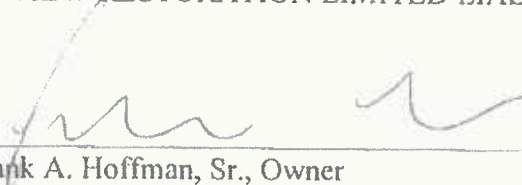
EHRlich, PETRIELLO, GUDIN, & PLAZA, P.C.

By:  \_\_\_\_\_

John J. Petriello, Esq.  
60 Park Place, Suite 1016  
Newark, New Jersey 07102

Dated: 8/16, 2016

HARBOR VIEW RESTORATION LIMITED LIABILITY COMPANY

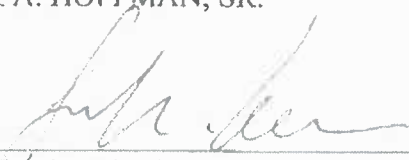
By:  \_\_\_\_\_

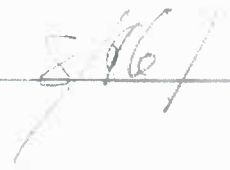
Frank A. Hoffman, Sr., Owner  
180 Figurea Avenue  
Staten Island, New York 10312

Dated: 8/16, 2016




FRANK A. HOFFMAN, SR.

By:   
Frank A. Hoffman, Sr.

Dated: , 2016

180 Figurea Avenue  
Staten Island, New York 10312

JOAN F. HOFFMAN

By:   
Joan F. Hoffman

Dated: , 2016

180 Figurea Avenue  
Staten Island, New York 10312

# **EXHIBIT A**

NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
ALTERNATIVE DISPUTE RESOLUTION UNIT

ADR UNIT GUIDELINES

INTRODUCTION

The Division of Consumer Affairs ("Division") started the Alternative Dispute Resolution ("ADR") Unit in May 1992 as an independent, non-advocacy unit within the Division. It was designed to offer a method of resolving problems without using the court system, thereby avoiding the time and expense of court cases. Two programs are available for settling disputes: mediation and arbitration. In the mediation program, the parties involved work directly with a mediator who, as an uninvolved third party, helps to create an atmosphere that is conducive to resolving the issues. In arbitration, the parties present their problem to a neutral individual who analyzes the presentations and then issues a final decision that all parties must follow. Both approaches use trained volunteers and are generally available to the parties at no cost. Originally, the Division made these services available only for settling disputes between businesses and consumers. Over time, however, the focus has been expanded and this assistance is now available to various State agencies.

I. DEFINITIONS

Listed below are definitions for terms used in these Guidelines and in the various ADR processes:

(1) "Arbitration" is a voluntary means of settling a disagreement in which an arbitrator assigned by the ADR Unit reviews the facts of the case, meets with the parties, and issues a final non-reasoned award that is binding on everyone involved. (A "non-reasoned award" means the parties receive the decision reached by the arbitrator but not the rationale that went into reaching that decision.) Once such a decision is issued, the parties' right to seek further review through the court system is very limited. If necessary, however, the terms of the award can be enforced by the courts. (See discussion below). For the purposes of these Guidelines, an arbitration begins at the time the parties sign the arbitration agreement. (See section VI below.)

(2) An "arbitrator" is a volunteer trained by the Division who reviews the facts of the case, meets with the parties and issues a final and binding decision.

(3) A "complaint" is a dispute arising out of an interaction between a business and a consumer or between an individual and a State agency, as well as from cases referred by a State agency.

(4) A "complainant" is the person who brings the dispute to the attention of the Division or the Unit.

(5) **"Mediation"** is the process by which a mediator works with the parties in an effort to help them craft and agree upon a solution to the dispute. For the purposes of these Guidelines, a mediation begins at the time the parties agree to mediate. That settlement, once reached, is binding on the parties. (See section VI below.)

(6) A **"mediation document"** is any written material prepared before or during the mediation for purposes of the mediation. Such papers may include, but are not limited to, memoranda, notes, files and records.

(7) A **"mediator"** is a volunteer trained by the Division to serve as a neutral third party to help settle disputes brought to the ADR Unit. The mediator does not have the authority to impose a resolution upon the parties.

(8) A **"party"** is a complainant or respondent and may be an individual, corporation, association or other legal entity.

(9) A **"respondent"** is the party against whom the complaint is filed.

## II. **WHAT IS MEDIATION?**

In mediation, through one or more sessions, the mediator encourages the parties to explain their positions about the dispute and helps them develop a solution that is acceptable to them. This is a voluntary procedure that, when successful, quickly turns a dispute into a winning situation for both parties; as a result, long and costly litigation can be avoided.

The mediator may conduct joint and separate meetings with the parties and may propose oral and written suggestions for settlement. (At the discretion of the mediator, the mediation may be conducted by telephone.) The mediator determines when each party may speak during a mediation conference. The mediator may also decide whether the party's representative may speak during the conference. If necessary, the mediator may obtain expert advice concerning technical aspects of the dispute. When appropriate, and when they agree, the parties will jointly pay for such advice. Arrangements for obtaining that input will be made by the mediator or by agreement of all parties.

It is important to note that although mediation is non-binding, once a resolution is reached and agreed upon by the parties, it is binding on all involved, as would any agreed upon contract.

## III. **WHAT IS ARBITRATION?**

The arbitration process also uses trained volunteers to resolve disputes. The arbitrator reviews the facts and issues of the dispute, hears testimony, accepts evidence and evaluates the positions of the parties. Unlike mediation where the parties have agreed to a resolution, in arbitration the arbitrator issues a binding decision. That decision is in the form of a non-reasoned award; that is, no findings of fact and no opinion or rationale are provided by the arbitrator. Additionally, arbitration is not as formal as a court

proceeding. For example, evidence often unacceptable in a court proceeding may be admissible in an arbitration. The parties are bound by and must follow the decision. This process is also faster and less costly than taking a case to court, and the arbitrator's award is viewed as an end to the case. Arbitration awards cannot be challenged in court except under very limited circumstances. For example, in order to overturn a decision, there must be a showing of favoritism, prejudice, fraud, misconduct, or blatant disregard of the rules and procedures in relation to the process of the arbitration. Once a dispute has been submitted for arbitration and an award is issued, neither party can later choose to resolve the dispute again in any other manner, including use of the court system. Please note that if any party to the dispute fails to comply with the arbitrator's decision, the offended party may apply to a court of appropriate jurisdiction to have the decision enforced pursuant to N.J.S.A. 2A:23B-22.

#### **IV. GENERAL GUIDELINES FOR DISPUTE RESOLUTION**

##### **Standard for Participation**

The Director of the ADR Unit accepts referrals from State agencies for mediation or arbitration of complaints that are appropriate for those types of dispute resolution. Such complaints include, among others, requests for restitution, replacements or exchanges of merchandise, warranty claims, and specific performance under a contract.

The Director of the Unit may, in his discretion, decline to accept matters for dispute resolution if the matter is not suitable for arbitration or mediation. In making that determination, the Director shall consider the nature of the relief sought by the complainant (money damages or other relief that can be awarded) and whether the responding party continues to exist or has the resources to address the complaint (for example, the company is bankrupt). If the referral is made pursuant to a Consent Order from a State Agency, any decision to decline to attempt dispute resolution shall be promptly conveyed to that agency along with the reasons for the decision.

##### **Complaint Review**

The ADR Unit reviews the complaints it receives to determine their suitability for the Unit's dispute resolution processes. If the Unit finds that a complaint is appropriate for resolution, either through mediation or arbitration, it will offer those services to the parties involved. Though the ADR Unit and/or the parties decide if mediation or arbitration will be used, generally, unless otherwise required by consent order, matters will be mediated.

If the ADR Unit considers a complaint inappropriate for its dispute resolution procedures, it will return the complaint to the agency that initially referred it to the Unit.

##### **Beginning the Process**

Once a complaint has been accepted by the ADR Unit, a letter is sent to all parties. When

mediation is the proposed process, the letter to the complainant says that the complaint has been received and that the other party, the respondent, is being contacted. The letter to the respondent offers a brief description of the complaint. The letters to both parties name the neutral third party appointed and state how to best contact that person.

In matters to be arbitrated, both parties will be informed of the date of the hearing through ADR Unit staff. In arbitration, ex parte communication, that is contact by one party without the presence of the other, is strictly prohibited. Once the parties agree to participate in dispute resolution, the process is started. Should an arbitrator or mediator become unwilling or unable to serve, the ADR Unit will appoint an alternate.

### **Representation**

Any party may be represented by an attorney during dispute resolution proceedings. In mediation, any individual designated by a party may accompany the party to and participate in a mediation.

### **Date, Time and Place of Mediation or Arbitration**

The mediator shall set the date and time of each conference. In the case of an arbitration, the ADR Unit staff, will fix the date and time of the hearing. Unless the parties are notified otherwise, sessions are held at the offices of the ADR Unit, located at 153 Halsey Street, 7th floor, Newark, New Jersey. In mediation, the mediator and the parties may decide that the sessions will be conducted over the telephone. In arbitration, telephone hearings will only be conducted under extenuating circumstances. The Unit attempts to arrange convenient dates and times for all sessions. In the case of an arbitration, if necessary, the date and time of the hearing may be imposed by the ADR Unit staff. Parties failing to cooperate in setting a date and time or failing to appear when required, may forfeit the ability to present their case to the arbitrator and a decision may be rendered without their ability to offer testimony or evidence beyond those documents submitted to the Unit in advance of the arbitration.

### **Identification of Matters in Dispute**

#### **A) Mediation**

During an initial telephone conference, the mediator and the parties will discuss what information should be provided, including a brief description of the facts, issues and positions in dispute and the parties' desired outcome. That information and copies of any supporting documents must be produced at least five days before the first session. Documents may be exchanged between the parties if everyone expressly agrees to that process. The mediator may ask that additional information be provided before, during or after the sessions.

#### **B) Arbitration**

The ADR Unit will assign an arbitrator who will hear the matter. Once an arbitrator has been selected to hear the case, the arbitrator's curriculum vitae will be sent to each party to the dispute. (Please

see the **Disclosure** section - **D**, below, for the process used to challenge the selection of that arbitrator.) An ADR staff member will then contact the parties to establish a schedule. At least ten days before the first session, each party must provide the arbitrator, through the Unit staff, a brief written description of the facts and issues in dispute, all appropriate documents and background information that are relevant to the dispute and a statement of the relief sought through the arbitration process. Arbitration, through the ADR Unit will not award punitive or consequential damages. At any time during the process, the arbitrator may compel the production of additional information through documents or witnesses by way of subpoena.

Parties will be given the opportunity to present their case in its entirety, including all necessary documentation. However, unless otherwise expressly stated by the arbitrator, no evidence or testimony will be accepted by the arbitrator once the hearing has been concluded.

**C) Written Requirements**

Before starting a face-to-face mediation or an arbitration, parties must agree to certain terms. There are agreement forms that must be read, understood and signed before anyone can participate. Copies of those forms are provided to the parties prior to the initial mediation or arbitration session but are signed only in the presence of the mediator or arbitrator. (Generally parties who participate in telephone mediation are not required to sign the form. They will, however, be required to indicate acceptance of the terms governing the mediation during the telephone conference.)

**D) Disclosure**

A person appointed as an arbitrator shall disclose to the ADR staff and to the parties any circumstance likely to raise any question as to the arbitrator's impartiality or independence, including any bias or financial interest or past or present relationship with parties or their representatives. This shall remain a continuing obligation of the arbitrator. Notice of any challenge to the impartiality or independence of the arbitrator shall be made within five (5) days of becoming aware of circumstances giving rise to the challenge. This notice shall be in writing to the ADR Unit and shall set forth the facts and circumstances giving rise to the challenge.

**V Privacy**

All sessions are private and confidential. Only parties and their designated representatives may attend conferences and/or hearings. Other persons may attend only with the permission of the parties and with the consent of the mediator or arbitrator and the Unit Director.

**VI CONFIDENTIALITY OF DISPUTE RESOLUTION SESSIONS**

All information provided by parties during the mediation process is confidential. Success of mediation depends in large part on a free exchange of information, so it is important that parties feel free to discuss issues openly. Information provided by one party will not be revealed to the opposing party without the explicit authorization of the revealing side. Mediators cannot be forced to release any

information or to testify about the mediation in a lawsuit or court proceeding. All mediation documents are considered confidential. (For a full description of these rights and responsibilities please see N.J.S.A. 2A:23C-4, 5 and 6.)

In arbitrations, information provided to the arbitrator must also be given to the opposing party. Parties must maintain the confidentiality of the arbitration and may not disclose information except to the staff of the ADR Unit. Confidentiality as discussed in this section, takes effect upon the parties' agreement to participate in the ADR process. The following documents related to the arbitration proceeding are not considered confidential and may be available upon request to persons or entities:

- a) The complaint, with all its attachments, that initiated the arbitration;
- b) The response to the initial complaint, with all its attachments,; and
- c) The arbitrator's award.

All other documents submitted in the course of the arbitration are considered confidential and not available to any person or entity except the parties involved, the staff of the ADR Unit and its counsel.

No taped or stenographic record may be made of any dispute resolution process.

## **VII TERMINATION**

A mediation will be concluded in one of the following ways:

- 1) the signing of a written settlement agreement by the parties;
- 2) an oral agreement between the parties;
- 3) a written or oral statement of the mediator saying that further efforts at mediation will not be productive; or
- 4) a statement by a party or parties withdrawing from the mediation proceedings.

An arbitration will be concluded in one of the following ways:

- 1) upon the issuance of a decision by the arbitrator;
- 2) a written agreement between the parties resolving the dispute; or
- 3) a written statement by all parties that they no longer wish to continue the arbitration.

## **VIII EXCLUSION OF LIABILITY**

Neither the staff of the ADR Unit nor any mediator or arbitrator is a necessary party in a judicial proceeding related to the dispute that is being resolved. Parties to an arbitration expressly 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. Parties to a mediation or arbitration shall be deemed to have consented that neither the staff of the ADR Unit nor any mediator or arbitrator shall be liable to any party in any way for damages or for injunctive relief for any act or omission in connection with any mediation or arbitration conducted under these rules.



**IX INTERPRETATION AND APPLICATION OF RULES**

Mediators and arbitrators shall interpret and apply these rules as they relate to their duties and responsibilities. All other rules shall be interpreted and applied by the Director of the ADR Unit.

*Revised June 2008*