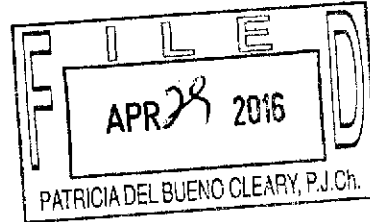


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SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, MONMOUTH  
COUNTY  
DOCKET NO. MON-C- 65-16

ROBERT LOUGY, Acting Attorney General of the State of  
New Jersey, and STEVE C. LEE, Acting Director of the New  
Jersey Division of Consumer Affairs,  
Plaintiffs,

Civil Action

v.

NIEMANN GENERAL CONTRACTOR/BUILDER LLC;  
RESTORE THE SHORE CONTRACTING LIMITED  
LIABILITY COMPANY; ERICH NIEMANN, individually  
and as owner, officer, director manager, employee,  
representative and/or agent of NIEMANN GENERAL  
CONTRACTOR/BUILDER LLC, RESTORE THE SHORE  
CONTRACTING LIMITED LIABILITY COMPANY,  
NIEMANN CONTRACTING, NJ CUSTOM FINISHED  
DECKS, NJ CUSTOM FINISHED BASEMENTS, NJ  
FINISHED BASEMENTS, NJ FINISHED BASEMENTS &  
DECKS, BASEMENTSREMODEL.COM, NJPATIOPAVERS  
COM, and CUSTOMPATIODECKS.COM; and JANE AND  
JOHN DOES 1-20, individually and as owners, officers,  
directors, shareholders, founders, members, managers,  
employees, servants, agents, representatives and/or  
independent contractors of NIEMANN GENERAL  
CONTRACTOR/BUILDER LLC, and RESTORE THE  
SHORE CONTRACTING LIMITED LIABILITY  
COMPANY; and XYZ CORPORATIONS 1-20,

**COMPLAINT**

Defendants.

Plaintiffs Robert Lougy, Acting Attorney General of the State of New Jersey ("Attorney General"), with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and Steve C. Lee, Acting Director of the New Jersey Division of Consumer Affairs ("Director"), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, by way of Complaint state:

### PRELIMINARY STATEMENT

1. At all relevant times, defendants Niemann General Contractor/Builder LLC ("Niemann LLC"), Restore the Shore Contracting Limited Liability Company ("Restore the Shore"), and Erich Niemann ("E. Niemann") (collectively, "Defendants") were engaged in the advertisement, offer for sale, sale and performance of various home improvements, including, among other things, remodeling basements, paving patios and constructing decks, to consumers in the State of New Jersey ("State" or "New Jersey").

2. Consumer complaints received by the New Jersey Division of Consumer Affairs ("Division") regarding Defendants' home improvement work have revealed multiple violations 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., and the regulations promulgated thereunder, specifically the Regulations Governing Contractor Registration, N.J.A.C. 13:45A-17.1 et seq. ("Contractor Registration Regulations"), and the Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 et seq. ("Home Improvement Regulations"). Among other things, these alleged violations arise from Defendants' failure to: (a) provide consumers with written home improvement contracts; (b) include required information in or with home improvement contracts (e.g., description of work, certificate of commercial general liability insurance); and (c) perform the contracted for home improvement work, after receiving consumer payments. The Attorney General and Director

commence this action to halt Defendants' deceptive business practices, to restore unlawful gain to consumers and to obtain other authorized statutory relief.

### PARTIES AND JURISDICTION

3. The Attorney General is charged with the responsibility of enforcing the CFA, the Contractors' Registration Act, the Contractor Registration Regulations and the Home Improvement Regulations. The Director is charged with the responsibility of administering the CFA, the Contractors' Registration Act, the Contractor Registration Regulations and the Home Improvement Regulations on behalf of the Attorney General.

4. By this action, the Attorney General and Director (collectively, "Plaintiffs") seek injunctive and other authorized statutory relief for violations of the CFA, the Contractors' Registration Act, the Contractor Registration Regulations, and the Home Improvement Regulations. Plaintiffs bring this action pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-8, 56:8-11, 56:8-13 and 56:8-19. Venue is proper in Monmouth County, pursuant to R. 4:3-2, because it is a county in which the Defendants have maintained a business address and otherwise conducted business.

5. Niemann LLC is a New Jersey limited liability company, formed on March 8, 2007, with a main business address at 1544 Sterling Road, Wall New Jersey 08736.

6. Niemann LLC's registered agent in the State is E. Niemann with a mailing address c/o Hanlon & Niemann P.C., 3499 Route 9 North, Suite 1F, Freehold, New Jersey 07728.

7. At all relevant times, upon information and belief, E. Niemann has been the managing member/president/owner of Niemann LLC and has otherwise planned, managed and overseen its operation.

8. Restore the Shore is a New Jersey limited liability company, formed on August 18, 2014, with a main business address 3092 Shafto Road, Suite 17, Tinton Falls, New Jersey 07753.

9. Restore the Shore's registered agent in the State is E. Niemann, with a mailing address of 3092 Shafto Road, Suite 17, Tinton Falls, New Jersey 07724.

10. At all relevant times, upon information and belief, E. Niemann has been the president/member/manager of Restore the Shore and has otherwise planned, managed and overseen its operation.

11. Upon information and belief, at varying times, E. Niemann has also advertised and/or conducted business using the following eight (8) assumed names: Niemann Contracting; NJ Custom Finished Decks; NJ Custom Finished Basements; NJ Finished Basements; NJ Finished Basements & Decks; basementsremodel.com; njpatiopavers.com; and custompatiodecks.com. None of these names has been registered in the State as a business entity or trade name.

12. John and Jane Does 1 through 20 are fictitious individuals meant to represent the owners, officers, directors, shareholders, founders, members, managers, agents, servants, employees, representatives and/or independent contractors of Niemann LLC and/or Restore the Shore who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

13. XYZ Corporations 1 through 20 are fictitious corporations meant to represent any additional business entities who have been involved in the conduct that gives rise to the Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

**GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

14. Since at least November 2006, Defendants have been engaged in the advertisement, offer for sale, sale and performance of home improvements in the State including, but not limited to, remodeling basements, finishing patios and constructing decks.

**A. Home Improvement Contractor Registrations:**

15. On or before November 2006, Niemann LLC (then trading as Niemann General Contractor/Builder) submitted to the Division a Home Improvement Contractor Application for Initial Registration ("HIC Registration Application") to engage in business as a home improvement contractor ("HIC") in the State.

16. On or about November 3, 2006, the Division registered Niemann LLC (then trading as Niemann General Contractor/Builder) as an HIC and issued it registration number 13VH03190900.

17. Niemann LLC's HIC registration subsequently lapsed on January 1, 2009.

18. On or about June 29, 2009, Niemann LLC requested that the Division reinstate its HIC registration.

19. On or about August 20, 2009, Niemann LLC's HIC registration was reinstated.

20. Niemann LLC's HIC registration was renewed each year through 2015.

21. As of April 28, 2016, Niemann LLC has not renewed its HIC registration.

22. On or before May 22, 2015, Restore the Shore submitted to the Division an HIC Registration Application to engage in business as an HIC in the State.

23. On or about May 5, 2015, the Division registered Restore the Shore as an HIC and issued it registration number 13VH085707200.

24. As of April 28, 2016, Restore the Shore has not renewed its HIC registration.

25. Upon information and belief, at varying times, E. Niemann has done business under the following business names: Niemann Contracting, NJ Custom Finished Decks, NJ Custom Finished Basements, NJ Finished Basement, and NJ Finished Basements & Decks. These names are neither registered with the Division as an HIC nor registered as an alternate name.

**B. Defendants' Website Advertising:**

26. Defendants have advertised via the following websites: basementsremodel.com, njpatiopavers.com, and custompatiodecks.com.

27. At all relevant times, Defendants' websites have not displayed an HIC registration number.

**C. Defendants' Use Of Assumed Business Names:**

28. Upon information and belief, Defendants have advertised, offered for sale and/or sold home improvements through the use of the following assumed business names, which Defendants have not registered in the State as a corporations, limited liability companies, trade names and/or in any other capacity: (a) Niemann Contracting; (b) NJ Custom Finished Decks; (c) NJ Custom Finished Basements; (d) NJ Finished Basements; (e) NJ Finished Basements & Decks; (f) basementsremodel.com; (g) njpatiopavers.com; and (h) custompatiodecks.com.

**D. Defendants' Business Practices Generally:**

29. At varying times, Restore the Shore entered into contracts with consumers and performed home improvements when Restore the Shore was not registered as an HIC with the Division.

30. At varying times, Restore the Shore failed to provide consumers with home improvement contracts.

31. At varying times, Defendants failed to begin and/or complete work on the agreed upon date or time period represented orally or in the home improvement contract.

32. At varying times, Defendants commenced home improvements only to abandon the work and not return to the consumers' homes for weeks, months or at all.

33. At varying times, Defendants failed to give timely written notice to the consumer for any delay in the performance of the home improvements and when the work would begin or be completed.

34. At varying times, Defendants would change contracts without notice to consumers.

35. At varying times, Defendants failed to respond to consumers' calls, e-mails and/or texts inquiring into when Defendants would begin or continue home improvement work that they had already commenced, but then abandoned.

36. At varying times, consumers who were able to reach Restore the Shore were given the "run around," and myriad excuses as to why Restore the Shore could not start or had stopped the home improvement work.

37. At varying times, Defendants provided consumers with a date and time for their return to the consumers' homes, but then failed to appear.

38. At varying times, Defendants performed additional work or used materials not specified in the contract, and charged consumers additional costs.

39. At varying times, Defendants stopped the contracted-for home improvement work, and then informed consumers that they would not continue the work unless the consumers paid additional money. Defendants threatened to, and in some cases did, put construction liens on consumers' homes if consumers did not pay the additional money.

40. At varying times, consumers obtained estimates from or hired other contractors to correct and complete Defendants' home improvement work and incurred substantial additional costs to do so.

41. At varying times, Defendants failed to perform home improvement work according to the contract specifications, and demanded and received payment for the unperformed work.

42. At varying times, Restore the Shore refused to issue a refund when requested by consumers after Restore the Shore failed to perform the contracted-for home improvement work.

43. At varying times, E. Niemann would meet with consumers to discuss the scope of home improvements.

44. At varying times, E. Niemann would sign Home Improvement Contracts.

45. On at least one occasion, E. Niemann directed a consumer to make a check out to him, rather than to Niemann LLC or Restore the Shore.

46. In advertising, offering for sale, selling and/or performing home improvements, at varying times, Defendants used the following unregistered business names, none of which was registered with the Division as a home improvement contractor nor listed as an alternate name for an entity that was registered: (a) Niemann Contracting; (b) NJ Custom Finished Decks; (c) NJ Custom Finished Basements; (d) NJ Finished Basements; (e) NJ Finished Basements & Decks; (f) basementsremodel.com; (g) njpatiopavers.com; and (h) custompatiodecks.com.

**E. Defendants' Home Improvement Contracts:**

47. At varying times, Defendants provided consumers with home improvement contracts that did not include: (a) an accurate description of the work to be done and the principal products and materials to be used or installed in performance of the contracts; (b) a copy of the certificate of commercial general liability insurance; (c) dates for the commencement and/or completion of the



home improvement work; (d) the name and address of the business; (e) the toll-free telephone number provided by the Director of the Division for consumers to make inquiries concerning home improvement contractors; (f) the signatures of both parties; and (g) the required "Notice to Consumer" cancellation language.

## COUNT I

### **VIOLATION OF THE CFA BY DEFENDANTS (UNCONSCIONABLE COMMERCIAL PRACTICES AND DECEPTION)**

48. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 47 above as if more fully set forth herein.

49. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby...

50. The CFA defines "merchandise" as including "any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale." N.J.S.A. 56:8-1(c).

51. At all relevant times, Defendants have been engaged in the advertisement and sale of merchandise within the meaning of N.J.S.A. 56:8-1(c), including, but not limited to, remodeling basements, paving patios and constructing decks.

52. In the operation of their businesses, Defendants have engaged in the use of unconscionable commercial practices, deception, false promises and/or misrepresentations.

53. Defendants have engaged in unconscionable commercial practices including, but not limited to, the following:

- a. Failing to begin or complete home improvement work on the agreed upon date or time period represented orally or in the home improvement contract;
- b. Failing to provide timely written notice for any delay in the performance of home improvement work, as well as when work would commence or be completed;
- c. Commencing home improvement work then abandoning a project for weeks and/or months at a time;
- d. Commencing home improvement work then abandoning a project totally;
- e. Failing to respond to consumers' calls inquiring when home improvement work would commence or continue;
- f. Taking consumers' payments and then failing to provide the contracted-for home improvements;
- g. Performing additional work not specified in contracts, resulting in additional costs to consumers without the permission of the consumer;
- h. Failing to perform home improvement work according to the contract specifications and demanding and receiving payment for the work;
- i. Failing to respond to consumers' telephone calls, inquiries and/or complaints in a timely manner or at all;
- j. Refusing to issue a refund when so requested by consumers after Defendants failed to perform the contracted-for home improvement work;
- k. Failing to provide consumers with a written contract and/or providing contracts after home improvement work had commenced;
- l. Changing contracts without notice to consumers; and
- m. Stopping contracted for home improvement work and refusing to recommence work unless consumers paid additional money, and then threatening to file construction liens on the homes of consumers who did not pay additional money.

54. Defendant Restore the Shore has engaged in conduct in violation of the CFA including, but not limited to, the following:

- a. Entering into contracts and/or performing home improvement work while not registered with the State as a home improvement contractor;
- b. Refusing to issue a refund when so requested by consumers after Defendants failed to perform the contracted-for home improvement work;
- c. Performing home improvement work without a contract;
- d. Failing to provide consumers with home improvement contracts; and
- e. Giving consumers the "run around," and myriad excuses as to why Restore the Shore could not start or had stopped the home improvement work.

55. Each unconscionable commercial practice and act of deception by Defendants constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

## COUNT II

### **VIOLATION OF THE CFA BY DEFENDANTS (MISREPRESENTATIONS)**

56. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 55 above as if more fully set forth herein.

57. Defendants' conduct in violation of the CFA includes, but is not limited to, the following misrepresentations:

- a. Representing to consumers that work would begin or be completed on an agreed upon date or time period, when such was not the case; and
- b. Representing to consumers that Defendants would appear at consumers' homes at a date certain to complete previously abandoned home improvement work, when such was not the case.

58. Each misrepresentation by Defendants constitutes a separate violation under CFA, N.J.S.A. 56:8-2

**COUNT III**

**VIOLATION OF THE CONTRACTORS'  
REGISTRATION ACT BY DEFENDANTS**

59. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 58 above as if set forth more fully herein.

60. The Contractors' Registration Act, among other things, governs the registration of HICs with the Division.

61. At all relevant times, Defendants have been "Contractor[s]" within the definition of the Contractors' Registration Act, N.J.S.A. 56:8-137.

62. At all relevant times, Defendants have offered to perform and performed "Home Improvement[s]" within the definition of the Contractors' Registration Act, N.J.S.A. 56:8-137.

63. At all relevant times, Defendants have entered into "Home Improvement Contract[s]" within the definition of the Contractors' Registration Act, N.J.S.A. 56:8-137.

64. The Contractors' Registration Act provides, in pertinent part:

a. On or after December 31, 2005, no person shall offer to perform, or engage, or attempt to engage in the business of making or selling home improvements unless registered with the Division of Consumer Affairs in accordance with the provision of this act.

[N.J.S.A. 56:8-138(a)]

65. At all relevant times, Defendants were not exempt from the Contractors' Registration Act, pursuant to N.J.S.A. 56:8-140.

66. The Contractors' Registration Act requires that home improvements contracts maintain insurance and provides in pertinent part:

a. On or after December 31, 2005, every registered contractor who is engaged in home improvements shall secure, maintain and file with the director proof of a certificate of commercial general liability insurance in a minimum amount of \$500,000 per occurrence.

b. Every registered contractor engaged in home improvements whose commercial general liability insurance policy is cancelled or nonrenewed shall submit to the director a copy of the certificate of commercial general liability insurance for a new or replacement policy which meets the requirements of subsection a. of this section before the former policy is no longer effective.

[N.J.S.A. 56:8-142(a), (b)]

67. The Contractors' Registration Act requires that certain information must be displayed by the Contractor and provides in pertinent part:

a. All registrants shall prominently display their registration numbers within their places of business, in all advertisements distributed within this State, on business documents, contracts and correspondence with consumers of home improvement services in this State, and on all commercial vehicles registered in this State and leased or owned by registrants and used by registrants for the purpose of providing home improvements, except for vehicles leased or rented to customers of registrants by a registrant or any agent or representative thereof.

[N.J.S.A. 56:8-144(a)]

68. The Contractors' Registration Act further provides that "[t]he Director shall provide a toll-free telephone number for consumers making inquiries regarding contractors." N.J.S.A. 56:8-149(b). At all relevant times, the Director established and has published a toll-free telephone number.

69. In this regard, the Contractors' Registration Act requires that:

b. Any invoice, contract or correspondence given by a registrant to a consumer shall prominently contain the toll-free telephone number provided pursuant to [N.J.S.A. 56:8-149] of this Act."

[N.J.S.A. 56:8-144(b)]

70. Moreover, the Contractors' Registration Act includes a writing requirement for contracts priced in excess of \$500.00 and provides, in pertinent part:

a. On or after December 31, 2005, every home improvement contract for a purchase price in excess of \$500, and all changes in the terms and conditions of the contract, shall be in writing. The contract shall be signed by all parties thereto, and shall clearly and accurately set forth in legible form and in understandable language all terms and conditions of the contract, including but not limited to:

(1) The legal name, business address, and registration number of the contractor;

(2) A copy of the certificate of commercial general liability insurance required of a contractor pursuant to section 7 [C. 56:8-142] of this act and the telephone number of the insurance company issuing the certificate; . . .

[N.J.S.A. 56:8-151(a).]

71. In addition, the Contractors' Registration Act requires that home improvement contractors include cancellation language as follows:

b. . . . The contract shall contain a conspicuous notice printed in at least 10-point bold-faced type as follows:

"NOTICE TO CONSUMER

YOU MAY CANCEL THIS CONTRACT AT ANY TIME BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY AFTER RECEIVING A COPY OF THIS CONTRACT. IF YOU WISH TO CANCEL THIS CONTRACT, YOU MUST EITHER:

1. SEND A SIGNED AND DATED WRITTEN NOTICE OF CANCELLATION BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED; OR

2. PERSONALLY DELIVER A SIGNED AND DATED WRITTEN NOTICE OF CANCELLATION TO:

(Name of Contractor)

(Address of Contractor)

(Phone Number of Contractor)

If you cancel this contract within the three-day period, you are entitled to a full refund of your money. Refunds must be made within 30 days of the contractor's receipt of the cancellation notice."

[N.J.S.A. 56:8-151(b)]

72. Defendants have engaged in conduct in violation of the Contractors' Registration Act including, but not limited to, the following:

- a. Advertising, selling and/or offering to perform home improvement work without being registered by the Division as a home improvement contractor, (i.e., Niemann Contracting, NJ Custom Finished Decks, NJ Custom Finished Basements, NJ Finished Basements, NJ Finished Basements & Decks, basementsremodel.com, njpatiopavers.com, and custompatiodecks.com.)
- b. Failing to include on invoices and home improvement contracts the toll-free telephone number provided by the Director for consumers to call with inquiries or complaints concerning home improvement contractors (N.J.S.A. 56:8-144(b));
- c. Failing to include the required Notice to Consumer language in home improvement contracts (N.J.S.A. 56:8-151(b));
- d. Failing to include on home improvement contracts the signatures of both parties (N.J.S.A. 56:8-151(a)); and
- e. Failing to include with home improvement contracts a copy of Defendants' certificate of commercial general liability insurance as well as the telephone number of the company issuing the certificate (N.J.S.A. 56:8-151(a)(2)).

73. Defendant Restore the Shore has engaged in conduct in violation of the Contractors' Registration Act including, but not limited to, the following:

- a. Entering into home improvement contracts and providing HIC services without being registered with the Division as a home improvement contractor (N.J.S.A. 56:8-138(a)).

74. Defendants' conduct constitutes multiple violations of the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq.

**COUNT IV**

**VIOLATION OF THE CONTRACTOR  
REGISTRATION REGULATIONS BY DEFENDANTS**

75. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 74 above as if more fully set forth herein.

76. The Contractor Registration Regulations, among other things, provide procedures for the registration of HICs with the Division.

77. At all relevant times, Defendants have been "Home Improvement Contractor[s]" and/or "Contractor[s]" within the definition of the Contractor Registration Regulations, N.J.A.C. 13:45A-17.2.

78. At all relevant times, Defendants have performed "Home Improvement[s]" within the definition of the Contractor Registration Regulations, N.J.A.C. 13:45A-17.2.

79. At all relevant times, Defendants have "advertise[d]" home improvements within the meaning of the Contractor Registration Regulations, N.J.A.C. 13:45A-17.2.

80. At all relevant times, Defendants have entered into "Home Improvement Contract[s]" within the definition of the Contractor Registration Regulations, N.J.A.C. 13:45A-17.2.

81. The Contractor Registration Regulations provide, in pertinent part:

(a) On or after December 31, 2005, unless exempt under N.J.A.C. 13:45A-17.4:

1. No person shall engage in the business of making or selling home improvements in this State unless registered with the Division in accordance with this subchapter; and
2. No person shall advertise indicating that the person is a contractor in this State unless the person is registered with the Division in accordance with this subchapter.

[N.J.A.C. 13:45A-17.3(a)]



82. At all relevant times, Defendants were not exempt from the Division's contractor registration requirements.

83. The Contractor Registration Regulations further require that an applicant for registration as an HIC provide information to the Division on the HIC Registration Application and Disclosure Statement, including, among other things: (a) the name and street address of each place of business of the HIC; (b) any fictitious or trade name to be used by the HIC. N.J.A.C. 13:45A-17.5(a)(1).

84. The Contractor Registration Regulations require that HICs prominently display certain information and provide, in pertinent part:

- (f) As of November 4, 2008, any invoice, contract or correspondence given by a registrant to a consumer shall prominently contain the toll-free telephone number provided by the Division pursuant to (b) of N.J.S.A. 56:8-149 and shall be displayed in all caps in at least 10-point bold-face type as follows:  
FOR INFORMATION ABOUT CONTRACTORS AND THE  
CONTRACTORS' REGISTRATION ACT, CONTACT THE NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF  
CONSUMER AFFAIRS AT 1-888-656-6225.

[N.J.A.C. 13:45A-17.11(f)]

85. Additionally, the Contractor Registration Regulations provide that:

In addition to the requirements of a home improvement contract pursuant to N.J.A.C. 13:45A-16.2, every home improvement contract in which a person required to be registered as a home improvement contractor is a party shall comply with the provisions of N.J.S.A. 56:8-151.

[N.J.A.C. 13:45A-17.13]

86. Defendants have engaged in conduct in violation of the Contractor Registration Regulations including, but not limited to, the following:

- a. Advertising as a home improvement contractor in the State without being registered by the Division as a home improvement contractor. (i.e., Niemann Contracting, NJ Custom Finished Decks, NJ Custom Finished Basements,

NJ Finished Basements, NJ Finished Basements & Decks, basementsremodel.com, njpatiopavers.com, and custompatiodecks.com.);

- b. Failing to include on home improvement contracts the informational statement and toll-free telephone number provided by the Director for consumers making inquiries regarding contractors (N.J.A.C. 13:45A-17.11(f));
- c. Providing incomplete, incorrect and/or misleading information to the Division on an HIC Registration Application and/or Disclosure Statement (e.g., failing to disclose other business names used);
- d. Entering into home improvement contracts that did not comply with the requirements of N.J.S.A. 56:8-151 (e.g., failing to set forth the signature of both parties, the name and address of the business, and a copy of the certificate of commercial general liability) (N.J.A.C. 13:45A-17.13); and
- e. Failing to include the required Notice to Consumer language in home improvement contracts (N.J.A.C. 13:45A-17.13).

87. Defendant Restore the Shore has engaged in conduct in violation of the Contractor Registration Regulations including, but not limited to, the following:

- a. Entering into contracts and performing home improvement services while not registered with the State as a home improvement contractor (N.J.A.C. 13:45A-17.3(a)(1)).

88. Defendants' conduct constitutes multiple violations of the Contractor Registration Regulations, N.J.A.C. 13:45A-17.1 et seq., each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq.

#### COUNT V

#### VIOLATION OF THE HOME IMPROVEMENT PRACTICES REGULATIONS BY DEFENDANTS

89. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 88 above as if more fully set forth herein.

90. The Home Improvement Regulations, among other things, prohibit certain acts and practices of a seller in connection with the sale, advertisement or performance of home improvement contracts.

91. Defendants are "Seller[s]" within the definition of N.J.A.C. 13:45A-16.1.

92. At all relevant times, Defendants entered into "Home Improvement Contract[s]" within the definition of N.J.A.C. 13:45A-16.1.

93. The Home Improvement Regulations prohibit certain practices with regard to the performance of home improvement contracts, as follows:

- a. Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., utilization by a seller of the following acts and practices involving the sale, attempted sale, advertisement or performance of home improvements shall be unlawful hereunder.

....

7. Performance:

- ii. Fail to begin or complete work on the date or within the time period specified in the home improvement contract, or as otherwise represented. . . .
- iii. Fail to give timely written notice to the buyer of reasons, beyond the seller's control for any delay in the performance and when work will begin or be completed.

....

12. Home improvement contract requirements-writing requirement: All home improvement contracts for a purchase price in excess of \$500.00, and all changes in the terms and conditions thereof shall be in writing. Home improvement contracts which are required by this subsection to be in writing, and all changes in the terms and conditions thereof, shall be signed by all parties thereto, and shall clearly and accurately set forth in legible form and in understandable language all terms and conditions of the contract, including, but not limited to, the following:

- i. The legal name and business address of the seller, including the legal name and business address of the sales representative or agent who solicited or negotiated the contract for the seller;
  - ii. A description of the work to be done and the principal products and materials to be used or installed in performance of the contract. The description shall include, where applicable, the name, make, size, capacity, model, and model year of principal products or fixtures to be installed, and the type, grade, quality, size or quantity of principal building or construction materials to be used. Where specific representations are made that certain types of products or materials will be used, or the buyer has specified that certain types of products are to be used, a description of such products or materials shall be clearly set forth in the contract;
- .....
- iv. The dates or time period on or within which the work is to begin and be completed by the seller;
- .....

N.J.A.C. 13:45A-16.2(a)(7)(ii-iii), (12)(i-ii), (iv)

94. Defendants violated the Home Improvement Regulations by engaging in certain conduct including, but not limited to the following:

- a. Failing to include the legal name and business address of the seller (N.J.A.C. 13:45A-16.2(a)(12)(i));
- b. Failing to begin or complete home improvement work on the date or within the time period represented (N.J.A.C. 13:45A-16.2(a)(7)(ii));
- c. Failing to give timely written notice to consumers of reasons, beyond Defendants' control, for any delay in the performance or when home improvement work will begin or be completed (N.J.A.C. 13:45A-16.2(a)(7)(iii));
- d. Failing to include in home improvement contracts the signature of both parties (N.J.A.C. 13:45A-16.2(a)(12));
- e. Failing to include in home improvement contracts a description of the work to be done and the principal products and materials to be used or installed (N.J.A.C. 13:45A-16.2(a)(12)(ii)); and

f. Failing to include in home improvement contracts the date or time period on or within which work is to begin and be completed (N.J.A.C. 13:45A-16.2(a)(12)(iv)).

95. Defendant Restore the Shore has engaged in conduct in violation of the Home Improvement Practices Regulations including, but not limited to, performing home improvement work without a contract.

96. Defendants' conduct constitutes multiple violations of the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq., each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq.

#### COUNT VI

**VIOLETIONS OF THE CFA, THE CONTRACTORS'  
REGISTRATION ACT, THE CONTRACTOR  
REGISTRATION REGULATIONS, AND/OR THE HOME  
IMPROVEMENT REGULATIONS  
BY E. NIEMANN**

97. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 96 above as if more fully set forth herein.

98. At all relevant times, E. Niemann has been the owner, President, or managing member of Niemann LLC and Restore the Shore, and has controlled, directed and/or participated in the management and operation of those entities, including the conduct alleged in this Complaint.

99. In that capacity, E. Niemann, among other things, met with consumers on a number of occasions to discuss the scope of the home improvements, received a check made out to him for home improvements, and signed Home Improvement Contracts.

100. The conduct of E. Niemann makes him personally liable for the violations of the CFA, the Contractors' Registration Act, the Contractor Registration Regulations, and/or the Home Improvement Regulations committed by Niemann LLC and Restore the Shore.

### **PRAYER FOR RELIEF**

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment against Defendants:

- (a) Finding that the acts and omissions of Defendants constitute multiple instances of unlawful practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq., the Contractor Registration Regulations, N.J.A.C. 13:45A-17.1 et seq., and the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq.;
- (b) Permanently enjoining Defendants and their owners, officers, directors, shareholders, founders, members, managers, agents, servants, employees, representatives, independent contractors and all other persons or entities directly under their control, from engaging in, continuing to engage in or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq., the Contractor Registration Regulations, N.J.A.C. 13:45A-17.1 et seq., and the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq., including, but not limited to, the acts and practices alleged in this Complaint, as authorized by the CFA, N.J.S.A. 56:8-8;
- (c) Permanently enjoining Defendants from owning, operating or otherwise managing any business or other entity in the State, whether registered with the Division or not, that advertises, offers for sale, sells and/or performs HIC Services within the State, as authorized by N.J.S.A. 56:8-8;
- (d) Permanently enjoining Defendants from the advertisement, offer for sale, sale and performance of HIC Services within the State, as authorized by N.J.S.A. 56:8-8;
- (e) Directing the assessment of restitution amounts against Defendants, jointly and severally, to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any alleged practice herein to be unlawful and found to be unlawful, as authorized by N.J.S.A. 56:8-8;

- (f) Canceling the Certificates of Formation in the State of New Jersey for defendants Niemann General Contractor/Builder LLC, and Restore the Shore Contracting Limited Liability Company, as authorized by the CFA, N.J.S.A. 56:8-8;
- (g) Assessing the maximum statutory civil penalties against Defendants, jointly and severally, for each and every violation of the CFA, as authorized by N.J.S.A. 56:8-13;
- (h) Directing the assessment of costs and fees, including attorneys' fees, against Defendants, jointly and severally, for the use of the State of New Jersey, as authorized by N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (i) Granting such other relief as the interests of justice may require.

ROBERT LOUGY  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: Alina Wells  
Alina Wells  
Deputy Attorney General  
Consumer Fraud Prosecution Section

Dated: April 28, 2016  
Newark, New Jersey

**RULE 4:5-1 CERTIFICATION**

I certify, to the best of my information and belief, that the matter in this action involving the aforementioned violations of the CFA, N.J.S.A. 56:8-1 et seq., the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq., the Contractor Registration Regulations, N.J.A.C. 13:45A-17.1 et seq., and the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq., is not the subject of any other action pending in any other court of this State. I further certify, to the best of my information and belief, that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

ROBERT LOUGY  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: Alina Wells  
Alina Wells  
Deputy Attorney General  
Consumer Fraud Prosecution

Dated: April 28, 2016  
Newark, New Jersey



**RULE 1:38-7(c) CERTIFICATION OF COMPLIANCE**

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

ROBERT LOUGY  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: Alina Wells  
Alina Wells  
Deputy Attorney General  
Consumer Fraud Prosecution Section

Dated: April 28, 2016  
Newark, New Jersey

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Deputy Attorney General Alina Wells is hereby designated as trial counsel for the Plaintiffs in this action.

ROBERT LOUGY  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: Alina Wells  
Alina Wells  
Deputy Attorney General  
Consumer Fraud Prosecution Section

Dated: April 28, 2016  
Newark, New Jersey