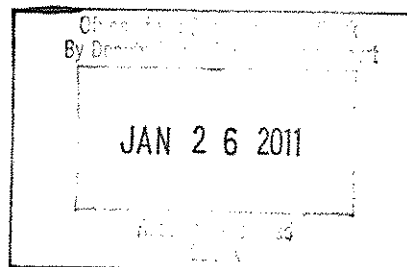


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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, ESSEX COUNTY
DOCKET NO. ESX-C- 23 -11

PAULA T. DOW, Attorney General of the State of New Jersey, and THOMAS R. CALCAGNI, Acting Director of the New Jersey Division of Consumer Affairs,

Plaintiffs,

v.

MITCHELL POLLER individually and d/b/a AMERICAN DRAPERIES AND BLINDS, AMERICAN DRAPERY AND BLIND COMPANY, COUNTRYWIDE DRAPERIES AND BLINDS, COUNTRY WIDE DRAPERIES AND BLINDS, AFFORDABLE DRAPERIES AND BLINDS, AFFORDABLE DRAPERY AND BLIND COMPANY and THE DRAPERY AND BLIND COMPANY, JANE AND JOHN DOES 1-10, individually and as owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of MITCHELL POLLER individually and d/b/a AMERICAN DRAPERIES AND BLINDS, AMERICAN DRAPERY AND BLIND COMPANY, COUNTRYWIDE DRAPERIES AND BLINDS, COUNTRY WIDE DRAPERIES AND BLINDS, AFFORDABLE DRAPERIES AND BLINDS, AFFORDABLE DRAPERY AND BLIND COMPANY and/or THE DRAPERY AND BLIND COMPANY, and XYZ CORPORATIONS 1-10,

Defendants.

Civil Action

COMPLAINT

Plaintiffs Paula T. Dow, Attorney General of the State of New Jersey (“Attorney General”), with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and Thomas R. Calcagni, Acting Director of the New Jersey Division of Consumer Affairs (“Acting Director”), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, by way of Complaint state:

PRELIMINARY STATEMENT

1. When a business owner takes a consumer’s money as a deposit in advance of providing merchandise, trust is an essential element of the transaction. The consumer trusts that the business owner will provide the merchandise or, upon failing to do so, will provide a refund of the deposit.

2. At all relevant times, defendant Mitchell Poller individually and d/b/a American Draperies and Blinds, American Drapery and Blind Company, Countrywide Draperies and Blinds, Country Wide Draperies and Blinds, Affordable Draperies and Blinds, Affordable Drapery and Blind Company and The Drapery and Blind Company (“Defendant” or “Poller”) has been engaged in the sale of home improvements and household furniture in the State of New Jersey (“State” or “New Jersey”), among other things, custom draperies and blinds. In so doing, Defendant has committed numerous 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., the Regulations Governing Home Improvement 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 Delivery of Household Furniture and Furnishings, N.J.A.C. 13:45A-5.1 et seq. (“Furniture Regulations”). Among other things, Defendant has taken consumer deposits for the sale of home improvements and/or household

furniture and then has failed to provide either the expected merchandise or a refund of the consumer's deposit, often despite multiple promises to the contrary.

PARTIES AND JURISDICTION

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

4. By this action, the Attorney General and Acting Director (collectively, "Plaintiffs") seek injunctive and other relief for violations of the CFA, the Contractors' Registration Act, the Contractor Registration Regulations, the Home Improvement Regulations and the Furniture 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/or 56:8-19. Venue is proper in Essex County, pursuant to R. 4:3-2, because it is the county in which Defendant has conducted business.

5. Upon information and belief, at all relevant times, Poller has engaged in business by use of various assumed names including American Draperies and Blinds, American Drapery and Blind Company, Countrywide Draperies and Blinds, Country Wide Draperies and Blinds, Affordable Draperies and Blinds, Affordable Drapery and Blind Company and The Drapery and Blind Company.

6. Upon information and belief, Poller's current and/or last known mailing address is 26 Mount Herman Way, West Caldwell, New Jersey 07006.

7. Upon information and belief, the current and/or last known business address used by Poller is 193½ Main Street, Hackensack, New Jersey 07601.

8. Upon information and belief, at varying times, Poller used the following prior business addresses: (a) 288 Glenwood Avenue, Bloomfield, New Jersey 07003; (b) 14 Northfield Avenue, West Orange, New Jersey 07052; (c) 110 Hackensack Street, East Rutherford, New Jersey 07073; (d) 601 Ridge Road, North Arlington, New Jersey 07031; and (e) 220 Bloomfield Avenue, Montclair, New Jersey 07042.

9. On October 5, 2000 Poller registered American Draperies and Blinds as a trade name in the State.

10. On May 30, 2002, Poller registered Country Wide Draperies and Blinds as a trade name in the State.

11. Poller individually and d/b/a American Draperies and Blinds, American Drapery and Blind Company, Countrywide Draperies and Blinds, Country Wide Draperies and Blinds, Affordable Draperies and Blinds, Affordable Drapery and Blind Company and The Drapery and Blind Company is referred to as "Defendant."

GENERAL ALLEGATIONS COMMON TO ALL COUNTS:

A. Defendant's Business Generally:

12. Upon information and belief, at least since June 2004, Poller has been engaged in the business of selling home improvements and household furniture to consumers in the State including, but not limited to, the manufacture and installation of custom draperies and blinds.

13. Upon information and belief, Poller has advertised in newspapers and telephone directories in this State and through an Internet website, namely, www.draperyandblindco.com

("Defendant's Website"). Such advertisements concerned, among other things, the sale, manufacture, installation and repair of custom draperies, blinds and other window treatments (collectively, "Window Treatments").

14. Defendant's Website is no longer active or accessible.

B. Defendant's Sales of Window Treatments and Other Merchandise:

15. At all relevant times, Poller took consumer orders for the manufacture and installation of Window Treatments.

16. At all relevant times, Poller took consumer orders for other types of household furniture and furnishings (e.g., wood screens, mirrors) (collectively, "Furnishings").

17. Poller generally required up-front deposits that were a portion of the total sales price of the Window Treatments and/or Furnishings that were to be provided.

18. In connection with the sale and installation of Window Treatments and/or Furnishings, Poller generally provided to consumers a contract/agreement in the form of a one-page "Invoice", among other things, which included the consumer's name and address, a cursory description of the Window Treatments and/or Furnishings to be provided, the total amount due, deposit amount paid and balance due ("Poller Sales Contract").

19. The Poller Sales Contract did not include the following: (a) the legal name and address of the business; (b) the signatures of both parties; (c) a copy of Defendant's certificate of commercial general liability insurance as well as the telephone number of the company issuing the certificate; (d) the date or time period within which work was to commence; (e) the date or time period within which work was to be completed; (f) a complete and accurate description of the products and materials to be used; and (g) a promised delivery date.

20. The Poller Sales Contract included some or all of the following terms: (a) "NO REFUNDS AFTER 3 DAYS"; (b) "ALL SALES FINAL"; and/or (c) "NO EXCHANGES OR REFUNDS".

21. While the Poller Sales Contract did not include a promised delivery date, Poller would orally provide consumers with a delivery date.

22. After receiving up-front deposits from consumers, Poller failed to deliver the contracted for Window Treatments and/or Furnishings, made a partial delivery and/or delivered damaged, defective or otherwise non-conforming merchandise (e.g., the drapes or blinds did not fit the window).

23. Poller failed to provide written notice to consumers of the impossibility of meeting the promised delivery date for Window Treatments and/or Furnishings.

24. Upon failing to meet a promised delivery date, Poller failed to provide consumers with the option to cancel their Window Treatments and/or Furnishings order and receive a refund or to accept delivery at a specified later time.

25. When consumers received only a partial delivery of Window Treatments and/or Furnishings, Poller did not provide written notice of their option to cancel for a full refund or to accept delivery at a later date.

26. When consumers received damaged, defective or otherwise non-conforming Window Treatments and/or Furnishings, Poller did not provide consumers with the option of cancelling the order for a full refund or accepting delivery at a later date.

27. Consumers who paid deposits and did not receive their contracted-for Window Treatments and/or Furnishings attempted to contact Poller, generally multiple times by telephone and/or mail.

28. Some consumers who contacted Poller were told that they would receive the Window Treatments and/or Furnishings, or a refund, but such did not occur.

29. Some consumers who contacted Poller received no response.

30. Several consumers who paid deposits to Poller for Window Treatments and/or Furnishings that were never delivered have filed civil actions, to which Poller failed to respond, resulting in unpaid default judgments.

C. Defendant's Sale of Cleaning and Repair Services:

31. Poller was also engaged in the business of cleaning and repairing Window Treatments and/or upholstered seating (e.g. sofas and recliners).

32. As part of such services, Poller also agreed to re-hang/install Window Treatments that were to be cleaned or repaired.

33. Poller generally required up-front deposits from consumers that were a portion of the total sales price of the cleaning or repair services to be provided.

34. In connection with such cleaning or repair services, Poller took possession of consumers' Window Treatments and/or upholstered seating.

35. In connection with such cleaning or repair services, Poller generally provided to consumers a contract/agreement in the form of a one-page "Invoice", among other things, which included the consumer's name and address, a cursory description of the services to be provided, the total amount due, deposit amount paid and balance due ("Poller Cleaning/Repair Contract").

36. The Poller Cleaning/Repair Contract did not include the following: (a) the legal name and address of the business; (b) the signatures of both parties; (c) a copy of Defendant's certificate of commercial general liability insurance as well as the telephone number of the company issuing the certificate; (d) the date or time period within which work was to commence; (e) the date or time period within which work was to be completed; (f) a complete and accurate description of the products and materials to be used; and (g) a promised delivery date.

37. The Poller Cleaning/Repair Contract included the following language: "NO REFUNDS AFTER 3 DAYS (MUST BE CERTIFIED MAIL)".

38. Poller took possession of Window Treatments and/or upholstered seating for cleaning or repair and then failed to return such items to consumers.

39. Poller failed to return the deposits or other monies paid by consumers after he failed to return their Window Treatments and/or upholstered seating.

40. Consumers who paid deposits and did not receive their Window Treatments and/or upholstered seating, whether or not cleaned or repaired, attempted to contact Poller, generally multiple times by telephone and/or mail.

41. Some consumers who contacted Poller were told that they would receive their Window Treatments and/or upholstered seating, and/or a refund, but such did not occur.

42. Some consumers who contacted Poller received no response.

43. Poller failed to refund the deposit to consumers who requested a refund within three (3) days of the invoice date.

44. Upon information and belief, several consumers who paid deposits to Poller for cleaning and/or repair services that were never provided have filed civil actions, to which Poller has failed to respond, resulting in unpaid default judgments.

45. To date, Poller has not submitted a Home Improvement Contractor Application for Initial Registration ("HIC Registration Application") to the New Jersey Division of Consumer Affairs ("Division") individually and/or behalf of American Draperies and Blinds, American Drapery and Blind Company, Countrywide Draperies and Blinds, Country Wide Draperies and Blinds, Affordable Draperies and Blinds, Affordable Drapery and Blind Company and The Drapery and Blind Company.

COUNT I

VIOLATION OF THE CFA BY DEFENDANT (UNCONSCIONABLE COMMERCIAL PRACTICES)

46. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 45 as if more fully set forth herein.

47. The CFA 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...

[N.J.S.A. 56:8-2.]

48. 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).

49. At all relevant times, Defendant has been engaged in the advertisement and sale of merchandise within the meaning of N.J.S.A. 56:8-1(c), specifically the advertisement and sale of Window Treatments and/or Furnishings, and the cleaning and repair of Window Treatments and/or upholstered seating.

50. In the operation of his business, Defendant has engaged in the use of unconscionable commercial practices, false promises and/or misrepresentations and the knowing omission of material facts.

51. Defendant has engaged in unconscionable commercial practices including, but not limited to, the following:

- a. Taking consumer deposits and failing to provide the contracted-for merchandise;
- b. Failing to provide the contracted for merchandise and then failing to provide a refund;
- c. Taking consumers' Window Treatments and/or upholstered seating for cleaning or repair and failing to return such items to consumers;
- d. Failing to register with the Division as a home improvement contractor and then advertising and/or soliciting consumers for home improvement work;
- e. Performing home improvement work without being registered by the Division as a home improvement contractor;
- f. Accepting payment for home improvement work that Defendant never completed;

- g. Failing to perform the work specified in a consumer's home improvement contract;
- h. Failing to deliver merchandise in a timely manner or at all;
- i. Delivering defective merchandise to consumers;
- j. Refusing to issue a refund when so requested by consumers after Defendant failed to deliver merchandise, perform the contracted for cleaning/repair services and/or return Window Treatments and/or upholstered seating taken from a consumer's home;
- k. Using terms in contract or sales documents for household furniture which violate or are contrary to the rights and responsibilities provided for by the Furniture Regulations, such as "NO REFUNDS AFTER 3 DAYS", "ALL SALES FINAL" and/or "NO EXCHANGES OR REFUNDS"; and
- l. Failing to respond to communications from consumers, including telephone calls and letters, in a timely manner or at all.

52. Each unconscionable commercial practice by Defendant constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT II

VIOLATION OF THE CFA BY DEFENDANT (FALSE PROMISES AND/OR MISREPRESENTATIONS)

53. Plaintiffs repeat and reallege the allegations contained paragraphs 1 through 52 above as if more fully set forth herein.

54. Defendant's conduct in violation of the CFA includes, but is not limited to, the following false promises and/or misrepresentations:

- a. Misrepresenting to consumers the expected delivery date of merchandise;
- b. Misrepresenting that a refund would be provided if a consumer cancelled a contract within three (3) days; and

- c. Misrepresenting that Defendant would respond to a consumers' phone call(s) or correspondence by providing merchandise, a refund and/or a phone call or correspondence regarding the status of an order.

55. Each false promise and/or misrepresentation by Defendant constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT III

VIOLATION OF THE CONTRACTORS' REGISTRATION ACT BY DEFENDANT

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

57. The Contractors' Registration Act, N.J.S.A. 56:8-136 et seq., among other things, governs the registration of home improvement contractors with the Division.

58. At all relevant times, Defendant has been a "Contractor" within the definition of the Contractors' Registration Act, N.J.S.A. 56:8-137.

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

60. 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).]

61. Further, 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 liability insurance required of a contractor pursuant to section 7 of this act and the telephone number of the insurance company issuing the certificate; and

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

62. Also, the Contractors' Registration Act provides for the cancellation of a home improvement contract as follows:

b. On or after December 31, 2005, a home improvement contract may be cancelled by a consumer for any reason at any time before midnight of the third business day after the consumer receives a copy of it. In order to cancel a contract the consumer shall notify the contractor of the cancellation in writing, by registered or certified mail, return receipt requested, or by personal delivery, to the address specified in the contract. All moneys paid pursuant to the cancelled contract shall be fully refunded within 30 days of receipt of the notice of cancellation. . . . 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;
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).]

63. Defendant has engaged in conduct in violation of the Contractors' Registration Act by, among other things:

- a. Performing home improvement work without being registered by the Division as a home improvement contractor (N.J.S.A. 56:8-138(a));
- b. Offering to perform home improvement work without being registered by the Division as a home improvement contractor (N.J.S.A. 56:8-138(a));
- c. Failing to provide refunds to consumers who cancel their contracts within three (3) days (N.J.S.A. 56:8-151(b));
- d. Failing to provide a written home improvement contract for home improvement work in excess of \$500 (N.J.S.A. 56:8-151(a));
- e. Failing to include the legal name and business address of the business in the home improvement contract (N.J.S.A. 56:8-151(a)(1));
- f. Failing to set forth the signatures of both parties to the home improvement contract (N.J.S.A. 56:8-151(a));
- g. Failing to include with home improvement contracts a copy of Defendant's 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)); and
- h. Failing to use or using incomplete or inaccurate cancellation language in his home improvement contracts (N.J.S.A. 56:8-151(b)).

64. Defendant's 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 DEFENDANT

65. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 64 above as if more fully set forth herein.

66. The Contractor Registration Regulations, N.J.A.C. 13:45A-17.1 et seq., among other things, provide for procedures for the registration of home improvement contractors with the Division.

67. At all relevant times, Defendant has been a "Home Improvement Contractor" and/or "Contractor" within the definition of the Contractor Registration Regulations, N.J.A.C. 13:45A-17.2.

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

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

70. 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).]

71. At all relevant times, Defendant was not registered with the Division or exempt from the Division's contractor registration requirements.

72. Further, 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.]

73. Defendant has engaged in conduct in violation of the Contractor Registration Regulations by, among other things:

- a. Performing home improvement work without being registered by the Division as a home improvement contractor (N.J.A.C. 13:45A-17.3(a)1);
- b. Advertising as a home improvement contractor in the State without being registered by the Division (N.J.A.C. 13:45A-17.3(a)2); and
- c. 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 signatures of both parties, to include the total price) (N.J.A.C. 13:45A-17.13).

74. Defendant's 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 DEFENDANT

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

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

77. Defendant is a "Seller[s]" within the definition of N.J.A.C. 13:45A-16.1.

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

79. 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 of a seller of the following acts and practices involving the sale, attempted sale, advertisement or performance of home improvements shall be unlawful hereunder:

....

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. . . .;

....

- 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)(12)(i)(ii)(iv).]

80. Defendant has engaged in conduct in violation of the Home Improvement Regulations by, among other things:

- a. Failing to include in home improvement contracts the dates or time periods or on within which the work is to commence (N.J.A.C. 13:45A-16.2(a)(12)(iv));
- b. Failing to include in home improvement contracts the dates or time periods on or within which work is to be completed (N.J.A.C. 13:45A-16.2(a)(12)(iv));
- c. Failing to provide the legal name and business address of the company on the home improvement contract (N.J.A.C. 13:45A-16.2(a)(12)(i));
- d. Failing to set forth the signatures of both parties to the home improvement contract (N.J.A.C. 13:45A-16.2(a)(12)); and
- e. Failing to include in home improvement contracts, specific descriptions of work to be completed and/or the principal products and materials to be used or installed in the performance of the contracts (N.J.A.C. 13:45A-16.2(a)(12)(ii)).

81. Defendant's 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

VIOLATION OF THE FURNITURE REGULATIONS BY DEFENDANT

82. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 81 above as if more fully set forth herein.

83. The Furniture Regulations, N.J.A.C. 13:45A-5.1 et seq., govern the delivery of household furniture and furnishings.

84. "Household furniture" within the meaning of the Furniture Regulations, specifically N.J.A.C. 13:45A-5.1(d) includes draperies.

85. The Furniture Regulations require the seller to deliver furniture by the promised date or to notify consumers in writing if delivery cannot occur by the promised date and to provide consumers with an option to cancel.

86. Specifically, N.J.A.C. 13:45A-5.1 provides, in pertinent part:

- (a) Any person who is engaged in the sale of household furniture for which contracts of sale or sale orders are used for merchandise ordered for furniture delivery shall:
 - 1. Deliver all of the ordered merchandise by or on the promised delivery date; or
 - 2. Provide written notice to the consumer of the impossibility of meeting the promised delivery date. The notice shall offer the consumer the option to cancel said order with a prompt, full refund of any payments already made or to accept delivery at a specified time. Said written notice shall be mailed on or prior to the delivery date.
- (b) In the event a seller fails to deliver all of the ordered merchandise on the promised delivery date and makes only a partial delivery, the seller shall comply with the notice requirement of (a) above. Said notice shall offer the consumer the option of cancelling the order with a prompt, full refund of any payments already made or accepting delivery of the balance of the ordered merchandise at a specified later date.
- (c) Failure to comply with (a) above shall constitute a deceptive practice under the Consumer Fraud Act.

[N.J.A.C. 13:45A-5.1(a), (b), (c).]

87. The Furniture Regulations further provide that delivery of damaged or non-conforming merchandise does not constitute delivery. Specifically, N.J.A.C. 13:45A-5.1(e) provides:

- (e) For purposes of this section, delivery of furniture or furnishings that are damaged or that are not the exact size, style, color or condition indicated on the sales contract, shall not constitute delivery as required by (a)(1) above.
 - 1. Upon the receipt of such non-conforming merchandise, the consumer shall have the option of either accepting the furniture or of exercising any of the options set forth in (a)(2) above.

[N.J.A.C. 13:45A-5.1(e).]

88. The Furniture Regulations also require a seller of furniture to specify on the sale order the date of delivery of the furniture or the length of time agreed upon with the purchaser for delivery. Specifically, N.J.A.C. 13:45A-5.2 provides, in pertinent part:

- (a) The contract forms or sales documents shall show the date of the order and shall contain the following sentence in ten-point bold face type:

The merchandise you have ordered is promised for delivery to you on or before (insert date or length of time agreed upon).

- (b) The blank for the delivery date referred to in (a) above shall be filled in by the seller at the time the contract of sale is entered into by the parties or when the sales documents are issued, either as a specific day of a specific month or as a length of time agreed upon by the buyer and seller (for example, "six weeks from date of order").

[N.J.A.C. 13:45A-5.2(a),(b).]

89. Additionally, the Furniture Regulations require a seller to specify on the contract forms or sales documents that the purchaser has the opportunity to cancel the order if the merchandise is not delivered by the promised delivery date. Specifically, N.J.A.C. 13:45A-5.3 provides, in pertinent part:

- (a) The contract forms or sales documents shall conspicuously disclose the seller's obligations in the case of delayed delivery in compliance with N.J.A.C. 13:45A-5.1 and shall contain, on the first page of the contract form or sales document, the following notice in ten-point bold face type:

If the merchandise ordered by you is not delivered by the promised delivery date, (insert name of seller) must offer you the choice of (1) canceling your order with a prompt, full refund of any payments you have made, or (2) accepting delivery at a specific later date.

[N.J.A.C. 13:45A-5.3(a).]

90. Moreover, the Furniture Regulations prohibit contracts and sales agreements with language contrary to the Furniture Regulations. Specifically, N.J.A.C. 13:45A-5.3 provides:

- (c) It shall be unlawful for any person to use any contract or sales agreement that contains any terms, such as "all sales final" or "no cancellations", which violate or are contrary to the rights and responsibilities provided for by this rule. Any contract or sales agreement which contains such a provision shall be null and void and unenforceable.

91. Finally, the Furniture Regulations provide in pertinent part that "any violation of the provisions of this subchapter shall be subject to the sanctions contained in [the CFA]." N.J.A.C. 13:45A-5.4.

92. At all relevant times, Defendant has engaged in the sale of "household furniture" within the definition of the Furniture Regulations, N.J.A.C. 13:45A-5.1(d).

93. At all relevant times, Defendant has engaged in the sale of household furniture for which contracts of sale or sale orders are used for merchandise ordered for future delivery.

94. Defendant has engaged in conduct in violation of the Furniture Regulations by, among other things:

- a. Failing to deliver all of the ordered merchandise by or on the promised delivery date, or to provide written notice to a consumer of the impossibility of meeting the promised delivery date and offering the consumer the option

to cancel said order with a prompt, full refund of any payments already made or to accept delivery at a specified later time (N.J.A.C. 13:45A-5.1(a));

- b. Making only a partial delivery of merchandise, and then failing to provide consumers with written notice, among other things, informing them of their option to cancel for a full refund or to accept delivery at a later date (N.J.A.C. 13:45A-5.1(b));
- c. Delivering merchandise that is damaged, defective or otherwise non-conforming and then failing to provide consumers with the option of cancelling the order for a full refund or accepting delivery at a later date (N.J.A.C. 13:45A-5.1(e));
- d. Refusing to issue a refund when requested by consumers after Defendant failed to deliver merchandise or delivered non-conforming merchandise (N.J.A.C. 13:45A-5.1(a), (e));
- e. Failing to provide consumers with contract forms or sales documents in compliance with N.J.A.C. 13:45A-5.2(a) and (b);
- f. Failing to provide consumers with contract forms or sales documents in compliance with N.J.A.C. 13:45A-5.3(a); and
- g. Using in contract or sales documents for household furniture terms which violate or are contrary to the rights and responsibilities provided for by the Furniture Regulations, such as "NO REFUNDS AFTER 3 DAYS", "ALL SALES FINAL" and/or "NO EXCHANGES OR REFUNDS" (N.J.A.C. 13:45A-5.3(c)).

95. The conduct of Defendant constitutes multiple violations of the Furniture Regulations, N.J.A.C. 13:45A-5.1 et seq., each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq.

PRAYER FOR RELIEF

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

- (a) Finding that the acts and omissions of Defendant constitute multiple violations of the CFA, the Contractors' Registration Act, the Contractor

Registration Regulations, the Home Improvement Regulations, and the Furniture Regulations;

- (b) Permanently enjoining Defendant, along with his agents, employees, representatives, independent contractors, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under his control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, the Contractors' Registration Act, the Contractor Registration Regulations, the Home Improvement Regulations, and the Furniture Regulations;
- (c) Permanently enjoining Defendant, individually, and as an officer, director or managing partner or member of any business or corporate entity, from advertising, selling and/or performing home improvements in the State of New Jersey unless and until registered with the Division as a home improvement contractor;
- (d) Directing Defendant 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 practice alleged herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8, and twice the amount or value to be restored to any senior citizen, pursuant to N.J.S.A. 56:8-14;
- (e) Directing Defendant to pay the maximum statutory civil penalties for each violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (f) Directing Defendant to pay costs and fees, including attorneys' fees, for the use of the State, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (g) Granting such other relief as the interests of justice may require.

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

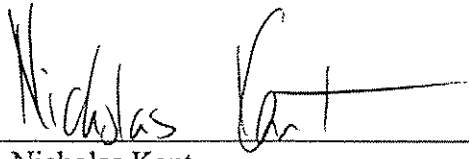
By: Nicholas Kant
Nicholas Kant
Deputy Attorney General

Dated: January 26, 2011
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the CFA, the Contractors' Registration Act, the Contractor Registration Regulations, the Home Improvement Regulations, and the Furniture Regulations, 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 am aware that consumers have brought their own civil actions against Defendant, including at least one action with allegations of violations of the CFA, entitled Guy Collette and Judi Collette v. American Draperies and Blinds, Mitchell Poller, a/k/a Mitchell Pollard, a/k/a Mitchell Doller, MRS-L-1068-07. Further, I am aware that some consumers who filed consumer complaints with the New Jersey Division of Consumer Affairs previously filed civil actions against Defendant for the return of their deposits, primarily in the Special Civil Part, which have resulted judgments for only compensatory damages against Defendant and not injunctive and civil penalty relief as sought by the Attorney General in this action.

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 

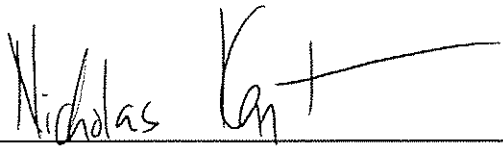
Nicholas Kant
Deputy Attorney General

Dated: January 26, 2011
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).

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 

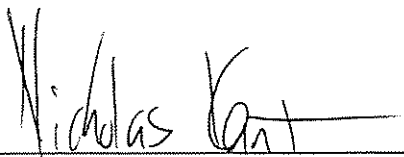
Nicholas Kant
Deputy Attorney General

Dated: January 26, 2011
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Deputy Attorney General Nicholas Kant is hereby designated as trial counsel for this matter.

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 

Nicholas Kant
Deputy Attorney General

Dated: January 26, 2011
Newark, New Jersey