

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for New Jersey Division of Consumer Affairs

FILED

January 17 2023

Division of Consumer Affairs

By: Jeffrey Koziar
Deputy Attorney General
(973) 648-7819

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of
BEACON METALS, CO., INC.
Respondent.

Administrative Action

CONSENT ORDER

WHEREAS this matter was opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection and the New Jersey State Office of Weights and Measures (“OWM”) (collectively, “Division”), as an investigation to determine whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -227 (“CFA”), the Weights and Measures Act, N.J.S.A. 51:1-42 to -133 (“Weights and Measures Act”), and the New Jersey Scales, Instruments and Devices Regulations, N.J.A.C. 13:47B1-10 to -20 (“Scales, Instruments and Devices Regulations”) have been or are being committed by Beacon Metals, Co., Inc. (“Beacon Metals”) as well as by its owners, members, officers, directors, managers, employees, representatives, and agents, (“Respondent”) (hereinafter referred to as the “Investigation”);

WHEREAS the Division alleges that Respondent violated the CFA, the Weights and Measures Act, and the Scales, Instruments and Devices Regulations by, among other things: (1)

using a scale known by Respondent to be in improper working condition and condemned by OWM upon inspection; and (2) overcharging Consumers by using a scale that provided short weight readings.

WHEREAS the Division and Respondent (collectively, “Parties”) have reached an amicable agreement thereby resolving the issues in controversy and concluding the Investigation without the need for further action, and Respondent has voluntarily cooperated with the Investigation and consented to the entry of the within order (“Consent Order”) and for good cause shown;

IT IS ORDERED AND AGREED as follows:

1. EFFECTIVE DATE

1.1 This Consent Order shall be effective on the date that it is filed with the Division (“Effective Date”).

2. DEFINITIONS

Capitalized words or terms not otherwise defined in the Consent Order shall have the following meanings:

2.1 “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.

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

2.3 “Division” refers to the New Jersey Division of Consumer Affairs.

2.4 “Include” and “Including” shall be construed as broadly as possible and shall mean “without limitation.”

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

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

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

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

3. REQUIRED AND PROHIBITED BUSINESS PRACTICES

3.1 Respondent shall comply with all applicable State and/or Federal laws, rules and regulations, as now constituted or as may hereafter be amended, including, but not limited to, the CFA, the Weights and Measures Act, and the Scales, Instruments and Devices Regulations.

3.2 Respondent shall not engage in any unconscionable practices, misrepresentations or deceptive conduct, as prohibited by the CFA, 56:8-2

3.3 Respondent shall maintain devices in proper operating condition, as required by the Scales, Instruments and Devices Regulations, specifically N.J.A.C. 13:47B-1.20.

3.4 Respondent shall not buy or sell goods or services based on weight or measurement by the use of a weight or measure, which has not been properly tested and sealed, as required by the Weights and Measures Act, specifically N.J.S.A. 51:1-83.

4. SETTLEMENT PAYMENT

4.1 The Parties have agreed to a settlement in the amount of One Hundred Twenty-Eight Thousand Eight Hundred Thirty-Eight and 00/100 Dollars (\$128,838.00) (“Settlement Payment”), which Respondent shall pay on or before the Effective Date.

4.2 The Settlement Payment is comprised of One Hundred Twelve Thousand Nine Hundred Fifty-Two and 00/100 Dollars (\$112,952.00) in civil penalties, pursuant to N.J.S.A. 56:8-13; Four Thousand Two Hundred Sixteen and 00/100 Dollars (\$4,216.00) in reimbursement of the Division’s investigative costs, pursuant to N.J.S.A. 56:8-11, and Eleven Thousand Six Hundred Seventy and 00/100 Dollars (\$11,670.00) in reimbursement of the Division’s attorneys’ fees, pursuant to N.J.S.A. 56:8-19.

4.3 The Settlement Payment shall be made by certified or cashier's check, money order, wire transfer or credit card payable to the "New Jersey Division of Consumer Affairs" and shall be forwarded to:

Jeffrey Koziar, 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

4.4 Upon making the Settlement Payment, Respondents 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 Division pursuant to the terms herein.

5. GENERAL PROVISIONS

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

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

5.3 The Parties have 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.

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

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

5.6 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.

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

5.8 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order be used to avoid compliance with this Consent Order.

5.9 This Consent Order is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall constitute, or be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of Respondent; and (b) an admission by Respondent of any liability or wrongdoing under the CFA, the Weights and Measure Act and the Scales, Instruments and Devices Regulations. Neither the existence of, nor the terms of this Consent Order, shall be deemed to constitute evidence or precedent of any kind

or for any purpose except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms herein; or (b) any action or proceeding involving a Released Claim (as defined in Section 6) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

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

5.11 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.

5.12 This Consent Order is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 to -13.

6. RELEASE

6.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent making the Settlement Payment as specified in Section 4, the Division hereby agrees to release Respondent from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Respondents for violations of the CFA, the Weights and Measures Act and the Scales, Instruments and Devices Regulations arising out of the Investigation, as well as the matters specifically addressed in this Consent Order (“Released Claims”).

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

7. PENALTIES FOR FAILURE TO COMPLY

7.1 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.

7.2 The Parties agree that any future violations of the provisions of Section 3 of this Consent Order and/or the CFA shall constitute a second or succeeding violation pursuant to N.J.S.A. 56:8-13 and that Respondent may be liable for enhanced civil penalties.

8. COMPLIANCE WITH ALL LAWS

8.1 Except as provided in this Consent Order, no provision herein shall be construed as:

- (a) Relieving Respondent of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- (b) Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondent pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondent may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

9. NOTICES UNDER THIS CONSENT ORDER

9.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondent pursuant to this Consent Order shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier

service that provides for tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

Jeffrey Koziar, Deputy Attorney General
Consumer Fraud Prosecution Section
State of New Jersey
Department of Law and Public Safety
Division of Law
124 Halsey Street – 5th Floor
Newark, New Jersey 07101

For Respondent:

Eric H. Lubin, Esq.
Lomurro, Munson, Comer, Brown & Schottland, LLC
Monmouth Executive Center
4 Paragon Way
Suite 100
Freehold, New Jersey 07728

IT IS ON THE 17th DAY OF January, 2023 SO
ORDERED.

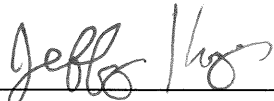
MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: Cari Faiss
CARI FAIS, ACTING DIRECTOR
DIVISION OF CONSUMER AFFAIRS

**THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS
CONSENT ORDER ON THE DATES BESIDE THEIR RESPECTIVE SIGNATURES.**


FOR THE DIVISION:

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By:  Dated: 1/12, 2023
Jeffrey Koziar
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
(973) 648-7819

FOR RESPONDENT:

LOMURRO, MUNSON, COMER, BROWN & SCHOTTLAND, LLC

By:  Dated: 1/10, 2023
Eric H. Lubin, Esq
Lomurro, Munson, Comer, Brown & Schottland, LLC
Monmouth Executive Center
4 Paragon Way
Suite 100
Freehold, New Jersey 07728
(732) 414-0300

BEACON METALS CO., INC.

By: William Smith

Dated: 01/05/23, 2023

William Smith
(Print Name)

V. Pres
(Print Title)

215 Throckmorton St Freehold NJ 07728
(Print Address)

CASHIER'S CHECK

6755401268

0067554

11-24

Office AU #

1210(8)

Remitter: BEACON METAL CO INC
Operator I.D.: nj001166 u513987

January 4, 2023

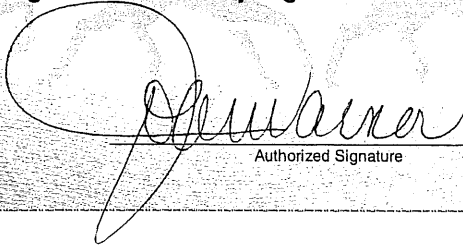
PAY TO THE ORDER OF ***NJ DIVISION OF CONSUMER AFFAIRS***

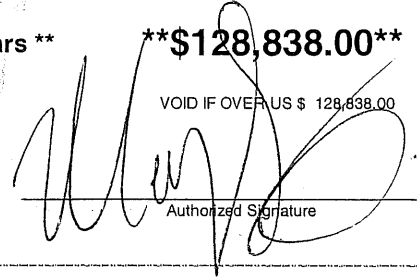
**One Hundred Twenty-Eight Thousand Eight Hundred Thirty-Eight and 00/100 -US Dollars **

\$128,838.00

Payee Address:
Memo:

WELLS FARGO BANK, N.A.
116 N BROADWAY
SOUTH AMBOY, NJ 08879
FOR INQUIRIES CALL (480) 394-3122


Authorized Signature


Authorized Signature

VOID IF OVER US \$ 128,838.00

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Security Features Included. Details on Back.