

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
Jun 25 2020 06:16 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

HOME WARRANTY  
ADMINISTRATOR OF NEVADA,  
INC. dba CHOICE HOME  
WARRANTY, a Nevada corporation

Appellant(s),

v.

STATE OF NEVADA,  
DEPARTMENT OF BUSINESS  
AND INDUSTRY, DIVISION OF  
INSURANCE, a Nevada  
Administrative agency,

Respondent(s).

Case No. 80218

First Judicial District Court  
No. 17 OC 00269 1B

Appeal First Judicial District Court, State of Nevada, County of Carson  
The Honorable James T. Russell, District Judge

**RESPONDENT'S APPENDIX  
VOLUME I OF V**

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Senior Deputy Attorney General  
Richard P. Yien (Bar. No. 13035)  
Deputy Attorney General  
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*Attorneys for Respondents*

## **RESPONDENT'S APPENDIX CHRONOLOGICAL INDEX**

<b>EXHIBIT DESCRIPTION</b>	<b>DATE</b>	<b>VOL.</b>	<b>PAGE NOS.</b>
AB647: Exhibits C –D April 5, 1999	04/05/99	V	AA003286- AA003295
Exhibit 8: State of Washington Regulatory Action  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	01/27/10	II	AA002874- AA002905
Exhibit 1: California Regulatory Action  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	07/23/10	I	AA002776- AA002791
Exhibit H: Oklahoma Fine: Emergency Cease and Desist Order; Conditional Administrative Order dated January 7, 2014  Continuation from Appellant's Appendix (Vol. III) Hearing Exhibit List by HWAN (Cause No. 17.0050) (09/06/17)	07/29/10	IV	AA003136- AA003180
Exhibit D: Certificate of Incorporation: Home Warranty Administrator of Oklahoma, Inc. (Certified)  Continuation from Appellant's Appendix (Vol. III) Hearing Exhibit List by HWAN (Cause No. 17.0050) (09/06/17)	08/04/10	III	AA003078
Exhibit G: California Fine: Default Decision, Imposition of Monetary Penalty, Demand for Payment  Continuation from Appellant's Appendix (Vol. III) Hearing Exhibit List by HWAN (Cause No. 17.0050) (09/06/17)	10/12/10	IV	AA003133- AA003135
Exhibit 41: South Carolina Department of Insurance Licensing Application;  Continuation from Appellant's Appendix (Vol. IV): Updated Hearing Exhibits and Updated Witness List by Division (Cause No. 17.0050) (09/08/17)	04/05/11	V	AA003252- AA003285
Exhibit 24: Nevada Consumer Complaint #3  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	01/27/12	III	AA003007- AA003010

Exhibit 40: Action 9 Investigates Home Warranties  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	08/19/13	III	AA003076- AA003077
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Exhibit 17: Rip-off Report Filed by Nevada Vendor  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	01/14/16	III	AA002994- AA002996
Exhibit 16: Rip-off Report Filed by Nevada Consumer  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	04/20/16	III	AA002992- AA002993

Exhibit 15: Rip-off Report Filed by Nevada Consumer  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	07/07/16	III	AA002990- AA002991
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Exhibit 38: Nevada Consumer Complaint #4  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	07/12/16	III	AA003069- AA003072
Exhibit 18: Rip-off Report Review by Nevada Consumer  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	10/12/16	II	AA002995- AA002998
Exhibit 29: South Carolina Civil Action  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	10/17/16	II	AA003030- AA003068
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Exhibit 9: Better Business Bureau Report  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	04/07/17	II	AA002906- AA002908
Exhibit 27: CHW Email Advertisements  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	08/21/17	III	AA003016- AA003024
Exhibit 26: CHW Internet Advertisement  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	09/03/17	III	AA003013- AA003015
Exhibit 20: NBC Chicago 5 News Report: Home Warranty Business Accused of Not Paying Up  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	09/05/17	III	AA003002- AA003006
Exhibit 39: Fox 4 Problem Solvers: Overland Park Man Wants to Warn Others About Home Warranty  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	09/05/17	III	AA003073- AA003075

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<p>Exhibit K: Claims Ratio &amp; Analysis 2011-2017</p> <p>Continuation from Appellant's Appendix (Vol. III)  Hearing Exhibit List by HWAN (Cause No. 17.0050)  (09/06/17)</p>	09/06/17	IV	AA003186
<p>Exhibit M: HWAN Customer Testimonials  Included Pgs.: 1-20 (Original Exhibit 867Pgs.)  (Redacted for Relevance and Brevity)</p> <p>Continuation from Appellant's Appendix (Vol. III)  Hearing Exhibit List by HWAN (Cause No. 17.0050)  (09/06/17)</p>	09/06/17	IV	AA003187- AA003206

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## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the **RESPONDENT'S APPENDIX (VOLUME I OF V)** with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on June 24, 2020.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system as indicated below:

Constance L. Akridge, Esq.  
Holland and Hart  
[CLAkridge@hollandhart.com](mailto:CLAkridge@hollandhart.com)

/s/ Marilyn Millam  
an employee of the Office of the Attorney General



BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA

In the Matter of

CHOICE HOME WARRANTY,

Respondent.

File No. 09LA00836 - AP

ORDER TO CEASE AND DESIST  
PURSUANT TO INSURANCE CODE  
SECTION 12921.8; NOTICE OF  
MONETARY PENALTY

NOTICE OF RIGHT TO HEARING

TO: CHOICE HOME WARRANTY, 510 Thornall Street, Edison, New Jersey 08837,  
and to its officers, directors, employees, trustees, agents, affiliates and service representatives.

WHEREAS, California Insurance Code §12921.8(a)(1) authorizes the Insurance  
Commissioner of the State of California (Commissioner) to issue a cease and desist order against  
any person who has acted in a capacity for which a license, registration, or certificate of authority  
from the Commissioner is required but not possessed; and

WHEREAS, California Insurance Code §12921.8(c) authorizes the Commissioner to issue  
a cease and desist order without holding a hearing prior to issuance of the order; and

WHEREAS, from not later than October 2008, Choice Home Warranty (Respondent) has  
through the internet, including through the website identified as www.choicehomewarranty.com  
(Website), through the toll free telephone line (888) 531-5403 (Toll Free Number), and through  
other means and devices, solicited the purchase of home protection contracts within the meaning  
of California Insurance Code §12740(a) (Home Protection Contracts) by persons residing in  
California; and

WHEREAS, from not later than October 2008, Respondent solicited the purchase of

1 Home Protection Contracts through e-mails sent to persons residing in California; and

2 WHEREAS, from not later than October 2008, Respondent has through the internet,  
3 including through its Website, through the Toll Free Number, and through other means and  
4 devices, negotiated Home Protection Contracts with persons residing in California; and

5 WHEREAS, from not later than October 2008, Respondent has through the internet,  
6 including through its Website, through the Toll Free Number, and through other means and  
7 devices executed Home Protection Contracts with persons residing in California; and

8 WHEREAS, from not later than October 2008, Respondent transacted matters subsequent  
9 to execution of Home Protection Contracts arising out of such contracts with persons residing in  
10 California, including but not limited to receiving, evaluating, and adjusting claims arising under  
11 such contracts and through providing services specified in such contracts; and

12 WHEREAS, from not later than October 2008, Respondent has maintained an internet  
13 presence, including through its Website, advertised on the internet, and transacted Home  
14 Protection Contracts by, among other things, providing contract fee or premium quotes to  
15 California residents, accepting applications for contracts from persons residing in California, and  
16 communicating with persons residing in California regarding one or more terms of a Home  
17 Protection Contract; and

18 WHEREAS, Respondent has not at any time held, and does not now hold, a home  
19 protection company license issued pursuant to California Insurance Code §12744 authorizing it to  
20 issue or offer Home Protection Contracts in California and has not at any time held, and does not  
21 now hold, a certificate of authority to transact Home Protection Contracts issued pursuant to  
22 California Insurance Code §§700 and 120; and

23 WHEREAS, Respondent having acted in a capacity for which a home protection company  
24 license or certificate of authority is required but was not possessed, as set forth above.

25 NOW THEREFORE,

26 RESPONDENT IS HEREBY ORDERED TO IMMEDIATELY CEASE AND DESIST

27 soliciting, negotiating, issuing, or renewing any Home Protection Contract in California with  
28 residents of California, through any means, including through its Website, the internet (including

AA002777

via e-mail), the Toll Free Number, or otherwise and IMMEDIATELY CEASE AND DESIST collecting contract fees from any California resident through any means.

### NOTICE OF MONETARY PENALTY

PLEASE TAKE NOTICE that pursuant to Insurance Code §12921.8, the Commissioner may impose a monetary penalty equal to five times the amount of money received by Respondent while acting in the capacity for which a home protection company license is required but was not possessed, or five thousand dollars (\$5,000) for each day that Respondent acted in the capacity for which a home protection company license is required but was not possessed, whichever is greater.

### NOTICE OF RIGHT TO HEARING

Insurance Code Section 12921.8(c) provides in part, as follows:

"A person to whom a cease and desist order . . . is issued, may, within seven days after service of the order, . . . request a hearing by filing a request for a hearing with the commissioner."

If you desire a hearing in this matter, your written request for a hearing must be received within seven days after you are served with this Order to Cease and Desist. The seven days begins to run on the day after the day you are served, and if the seventh day falls on a weekend, the period in which your request must be filed is extended until Monday or the next business day if Monday is a holiday.

Your written request for a hearing in this matter must be directed to the following person:

Jerry L. Whitfield  
Assistant Chief Counsel  
California Department of Insurance  
45 Fremont Street, 21st Floor  
San Francisco, California 94105

PLEASE TAKE NOTICE that you are being served pursuant to Insurance Code §§12743(f), 1610 through 1612, and 12931 under which the commission of the acts set forth in this Order to Cease and Desist Pursuant to Insurance Code Section 12921.8 and Notice of Monetary Penalty constitute your appointment of the Commissioner as your attorney and agent for service of process. If you do not respond within the time period set forth above, your default will be taken and the Commissioner will enter an order imposing the statutory monetary penalty

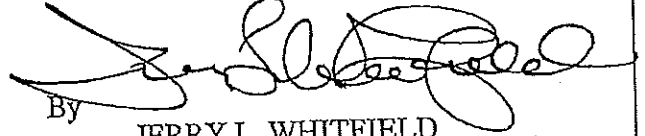
**AA002778**

1 specified herein.

2 IN WITNESS WHEREOF, I have set my hand and affixed my official seal this 23<sup>rd</sup>  
3 day of July, 2010.

4 STEVE POIZNER

5 Insurance Commissioner

6   
7 By

8 JERRY L. WHITFIELD  
9 Assistant Chief Counsel  
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BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA

In the Matter of the  
CHOICE HOME WARRANTY,  
Respondent.

File No: 09 LA 00836-AP  
ORDER

WHEREAS, CHOICE HOME WARRANTY (Respondent) executed a Stipulation and Waiver, attached hereto and made a part hereof, which terms are subject to the approval of the Insurance Commissioner of the State of California ("Commissioner"); and

WHEREAS, Respondent neither admits nor denies the allegations contained in the "Order to Cease and Desist Pursuant to Insurance Code Section 12921.8; Notice of Monetary Penalty, Notice of Right to Hearing" and in the "Final Order to Cease and Desist Pursuant to Insurance Code Section 12921.8, Notice of Right to Hearing Re Monetary Penalty" but acknowledges that if the allegations contained therein were proven to be true, they would constitute grounds for the Commissioner to impose the Penalty set forth in the Default Decision, Imposition of Monetary Penalty, Demand for Payment; and

WHEREAS, Respondent waives its rights to a hearing and stipulates to entry of this Order;

NOW, THEREFORE, IT IS ORDERED as follows:

1. The terms of the Stipulation and Waiver are adopted by the Commissioner and the Stipulation and Waiver shall be binding on Respondent;
2. Within 30 days of receipt of an invoice from the Department of Insurance, Respondent will pay a penalty to the Department of Insurance pursuant to Insurance Code §12921.8(a)(3)(B)

**AA002780**

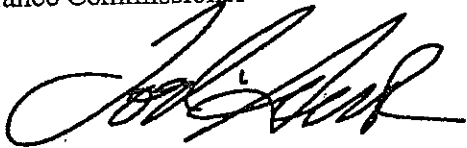
1 in the amount of \$10,000. The payment shall be mailed to the following address:

2 California Department of Insurance  
3 Division of Accounting  
300 Capitol Mall, 13th Floor  
4 Sacramento, California 95814

5 IN WITNESS WHEREOF, I have set my hand and affixed my official seal this 6<sup>th</sup>  
6 day of January, 2011.

7 This Order shall be effective immediately.

8 STEVE POIZNER  
9 Insurance Commissioner

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12 By JOSE AGUILAR  
13 Assistant Chief Counsel  
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BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA

In the Matter of

CHOICE HOME WARRANTY,

Respondent.

File No. 09LA00836 - AP

FINAL ORDER TO CEASE AND DESIST  
PURSUANT TO INSURANCE CODE  
SECTION 12921.8

ORDER TO SHOW CAUSE RE IMPOSING  
MONETARY PENALTY PURSUANT TO  
INSURANCE CODE SECTION 12921.8

NOTICE OF RIGHT TO HEARING RE  
MONETARY PENALTY

TO: CHOICE HOME WARRANTY, 510 Thornall Street, Edison, New Jersey 08837,  
and to its officers, directors, employees, trustees, agents, affiliates and service representatives.

WHEREAS, on July 26, 2010, Respondent CHOICE HOME WARRANTY (Respondent)  
was served with the attached Order to Cease and Desist Pursuant to Insurance Code Section  
12921.8; Notice of Monetary Penalty (Order/Notice.) The Order/Notice is realleged and  
incorporated by reference as though fully set forth herein; and

WHEREAS, the Order/Notice provided Respondent with the opportunity to request a  
hearing on the Order to Cease and Desist contained therein pursuant to Insurance Code section  
12921.8; and

WHEREAS, the time to respond to the Order/Notice has expired and no request for a  
hearing has been received from Respondent.

NOW, THEREFORE, the default of Respondent on the matters set forth in the Order to  
Cease and Desist Pursuant to Insurance Code Section 12921.8 is hereby entered.

**ORDER TO CEASE AND DESIST**

The Order to Cease and Desist, as set forth in the Order/Notice, is final.

**ORDER TO SHOW CAUSE RE IMPOSING MONETARY PENALTY****PURSUANT TO INSURANCE CODE SECTION 12921.8**

WHEREAS, from and after October 2008, Respondent, through the internet, including through the website identified as www.choicehomewarranty.com (Website), through the toll free telephone line (888) 531-5403 (Toll Free Number), through e-mail, and through other means and devices, solicited and continues to solicit the purchase of home protection contracts within the meaning of California Insurance Code §12740(a) (Home Protection Contracts) by persons residing in California; and

WHEREAS, from and after October 2008, Respondent has through the internet, including through its Website, through e-mail, through the Toll Free Number, and through other means and devices, negotiated and the Commissioner is informed and believes continues to negotiate Home Protection Contracts with persons residing in California; and

WHEREAS, from and after October 2008, Respondent has through the internet, including through its Website, through e-mail, through the Toll Free Number, and through other means and devices executed and the Commissioner is informed and believes continues to execute Home Protection Contracts with persons residing in California; and

WHEREAS, from and after October 2008, Respondent transacted matters, and the Commissioner is informed and believes continues to transact matters, subsequent to execution of Home Protection Contracts arising out of such contracts with persons residing in California, including but not limited to receiving, evaluating, and adjusting claims arising under such contracts and through providing services specified in such contracts; and

WHEREAS, from and after October 2008, Respondent has maintained, and continues to maintain, an internet presence, including through its Website, advertised on the internet, and transacted Home Protection Contracts by, among other things, providing contract fee or premium quotes to California residents, accepting applications for contracts from persons residing in



1 California, and communicating with persons residing in California regarding one or more terms  
2 of a Home Protection Contract; and

3 WHEREAS, Respondent has not at any time held, and does not now hold, a home  
4 protection company license issued pursuant to California Insurance Code §12744 authorizing it to  
5 issue or offer Home Protection Contracts in California and has not at any time held, and does not  
6 now hold, a certificate of authority to transact Home Protection Contracts issued pursuant to  
7 California Insurance Code §§700 and 120; and

8 WHEREAS, Respondent having acted in a capacity for which a home protection company  
9 license or certificate of authority is required but was not possessed, as set forth above.

10 **NOW THEREFORE, RESPONDENT IS ORDERED TO SHOW CAUSE**, if any  
11 cause exists, why the Commissioner should not enter an order imposing a monetary penalty in an  
12 amount not less than \$3,255,000 pursuant to Insurance Code §12921.8(a)(3)(B), which has been  
13 calculated at the rate of \$5,000 per day from October 25, 2008, the earliest date identified by the  
14 Commissioner on which Respondent acted in a capacity for which a home protection company  
15 license or certificate of authority was required but was not possessed, through September 7, 2010.

#### 16 **NOTICE OF RIGHT TO HEARING**

17 Insurance Code Section 12921.8(c) provides in part, as follows:

18 "A person to whom a cease and desist order . . . is issued, may,  
19 within seven days after service of the order, . . . request a hearing  
by filing a request for a hearing with the commissioner."

20 If you desire a hearing in this matter, your written request for a hearing must be received  
21 within seven days after you are served with this Order to Show Cause Re Imposing Monetary  
22 Penalty Pursuant to Insurance Code Section 12921.8. The seven days begins to run on the day  
23 after the day you are served, and if the seventh day falls on a weekend, the period in which your  
24 request must be filed is extended until Monday or the next business day if Monday is a holiday.

25 Your written request for a hearing in this matter must be directed to the following person:

26 Jerry L. Whitfield  
27 Assistant Chief Counsel  
California Department of Insurance  
28 45 Fremont Street, 21st Floor  
San Francisco, California 94105

**AA002784**

1 PLEASE TAKE NOTICE that you are being served pursuant to Insurance Code  
2 §§12743(f), 1610 through 1612, and 12931 under which the commission of the acts set forth in  
3 this Final Order to Cease and Desist Pursuant to Insurance Code Section 12921.8, Order to Show  
4 Cause Re Imposing Monetary Penalty Pursuant to Insurance Code Section 12921.8, constitute  
5 your appointment of the Commissioner as your attorney and agent for service of process. If you  
6 do not respond within the time period set forth above, your default will be taken and the  
7 Commissioner will enter an order imposing the statutory monetary penalty specified herein.

8 IN WITNESS WHEREOF, I have set my hand and affixed my official seal this 19th  
9 day of August, 2010.

10 STEVE POIZNER  
11 Insurance Commissioner

12  
13 By 

14 JERRY L. WHITFIELD  
15 Assistant Chief Counsel  
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BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA

In the Matter of  
CHOICE HOME WARRANTY,  
Respondent.

File No. 09LA00836-AP  
DEFAULT DECISION, IMPOSITION OF  
MONETARY PENALTY; DEMAND FOR  
PAYMENT

WHEREAS, on July 26, 2010, Respondent Choice Home Warranty was served with an Order to Cease and Desist Pursuant to Insurance Code Section 12921.8; Notice of Monetary Penalty (Order/Notice); and

WHEREAS, on August 20, 2010, Choice Home Warranty was served with a Final Order to Cease and Desist Pursuant to Insurance Code Section 12921.8, Order to Show Cause Re Imposing Monetary Penalty Pursuant to Insurance Code Section 12921.8, and Notice of Right to Hearing Re Monetary Penalty ("Order to Show Cause"); and

WHEREAS, the time to request a hearing on the Order to Show Cause, including an extension of time granted by the Commissioner to September 13, 2010, has expired and no request for a hearing was made by Choice Home Warranty;

NOW, THEREFORE,

**ENTRY OF DEFAULT**

The default of Choice Home Warranty on the Order to Show Cause is hereby entered.

**FINDINGS OF FACT**

The facts alleged in the Order to Show Cause are hereby found to be true. Choice Home Warranty has acted in a capacity for which a home protection company license or certificate of authority was required but was not possessed from not later than October 25, 2008 and Choice Home Warranty has continued to act in a capacity for which a home protection company license or certificate of authority is required but is not possessed through at least October 1, 2010.

**AA002786**

**IMPOSITION OF MONETARY PENALTY**

Based on the Order to Show Cause, the Entry of Default and the Findings of Fact, a monetary penalty is hereby imposed on Choice Home Warranty pursuant to Insurance Code Section 12921.8(a)(3)(B), in the amount of \$5,000 per day from October 25, 2008 through October 1, 2010. The penalty for the foregoing 706 day period is \$3,530,000 (Penalty.)

**DEMAND FOR PAYMENT OF MONETARY PENALTY**

The Insurance Commissioner demands payment of the Penalty within ten (10) days of the effective date hereof. Payment must be made to the Insurance Commissioner at the following address:

Accounting Services Bureau  
Department of Insurance  
300 Capitol Mall, 13th Floor  
Sacramento, California 95814

Pursuant to Insurance Code Section 12976, if payment of the Penalty is not made within ten (10) days hereof, the Commissioner shall institute an action in the name of the people of the State of California for the purpose of recovering the Penalty.

**EFFECTIVE DATE**

This Order is effective immediately.

IT IS SO ORDERED this 12<sup>th</sup> day of October, 2010.

STEVE POIZNER  
Insurance Commissioner

By 

JERRY L. WHITFIELD  
Assistant Chief Counsel

**AA002787**

BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA

In the Matter of  
CHOICE HOME WARRANTY,  
Respondent.

File No. 09LA00836-AP  
STIPULATION AND WAIVER

TO: THE DEPARTMENT OF INSURANCE OF THE STATE OF CALIFORNIA:

Respondent Choice Home Warranty enters into this Stipulation and Waiver in the above-entitled matter as follows:

STATEMENTS OF FACT

1. Choice Home Warranty (Choice) has received a copy of each of the following documents: (a) Order to Cease and Desist Pursuant to Insurance Code Section 12921.8; Notice of Monetary Penalty, Notice of Right to Hearing (C&D); (b) Final Order to Cease and Desist Pursuant to Insurance Code Section 12921.8; Order to Show Cause Re Imposing Monetary Penalty Pursuant to Insurance Code Section 12921.8, Notice of Right to Hearing Re Monetary Penalty (OSC); and (c) Default Decision, Imposition of Monetary Penalty; Demand for Payment (Payment Demand.) Choice's default was entered on the OSC and the Payment Demand required payment of a monetary penalty by Choice in the amount of \$3,530,000 (Penalty.)

2. Choice engaged in discussions with the Commissioner to resolve the matters set forth in the C&D and OSC and Choice now wishes to resolve the matters set forth in the C&D, the OSC and the Payment Demand in the manner set forth herein.

STIPULATION TERMS

1. Choice neither admits nor denies the allegations contained in the C&D and the OSC

1 but acknowledges that the facts alleged therein, if true, constitute grounds for the Commissioner  
2 to impose the Penalty.

3 2. As of the effective date of the order entered by the Commissioner based upon this  
4 Stipulation and Waiver (Order), Choice shall cease and desist from selling home protection  
5 contracts, as defined in Insurance Code §12740, to California residents or covering real or  
6 personal property located in California (California Contracts), and upon the expiration date of any  
7 California Contracts which are in force as of the date of the Order, Choice shall not renew such  
8 California Contracts until it comes licensed in California.

9 3. Commencing upon the effective date of the Order and continuing until such time as  
10 Choice holds a home protection company license issued by the Commissioner pursuant to  
11 Insurance Code §12744 or holds a certificate of authority issued by the Commissioner permitting  
12 it to transact miscellaneous insurance as defined in Insurance Code §120:

13 (a) Choice shall display a prominent disclaimer on the home page of all current and future  
14 Choice websites, including but not limited to [www.choicehomewarranty.com](http://www.choicehomewarranty.com) and  
15 [www.choicehomewarranty.org](http://www.choicehomewarranty.org), and shall include a prominent disclaimer in all internet  
16 advertisements that states the following: "Choice Home Warranties are not available in  
17 California" (Disclaimer.)

18 (b) Choice shall include the Disclaimer all e-mails pertaining to the solicitation or sale of  
19 California Contracts, including all e-mails responding to inquiries from any person regarding, or  
20 preliminary to, the purchase of a California Contract.

21 (c) Choice shall advise all persons with whom its representatives speak regarding, or  
22 preliminary to, the purchase of California Contracts, whether on a toll-free telephone line or  
23 otherwise, that Choice is not permitted to sell home warranties or home protection contracts in  
24 California or to California residents.

25 4. Notwithstanding its agreement to cease and desist from selling or renewing California  
26 Contracts until it becomes licensed in California, Choice shall continue to honor the terms of all  
27 California Contracts that were issued prior to the effective date of the Order.

28 5. Within seven days of the effective date of the Order, the Commissioner will provide

1 Choice with a list of California Contracts for which claims were denied (California Claims.) In  
 2 good faith, Choice shall re-review and re-adjust the California Claims and shall provide each  
 3 claimant with a written statement of the results of its review and adjustment. A copy of each  
 4 written statement shall be provided to the following person:

5 Harry J. LeVine  
 6 Department of Insurance  
 45 Fremont Street, 21st Floor  
 7 San Francisco, CA 94105

8 6. Within fourteen days of the effective date of the Order, Choice shall provide the  
 9 following information to the Commissioner (at the address specified in Paragraph 10) for the  
 10 periods of January 1, 2009 through December 31, 2009 and January 1, 2010 through December  
 11 31, 2010: (a) total number of California Contracts issued (including renewals), (b) percentage by  
 12 number of contracts that California Contracts bears to all home protection contracts issued by  
 13 Choice; (c) total annualized premium of California Contracts issued; and (d) percentage of  
 14 annualized premium that California Contracts bears to all annualized premium for home  
 15 protection contracts issued by Choice. Said information shall remain confidential and shall not be  
 16 disclosed by the Commissioner to any third party.

17 7. Choice shall pay a fine in the amount of \$10,000 within 30 days of receipt of an  
 18 invoice from the Commissioner. The payment shall be mailed to the California Department of  
 19 Insurance, Division of Accounting, 300 Capitol Mall, 13th Floor, Sacramento, California 95814.

20 8. Choice hereby requests that the Commissioner approve this Stipulation and Waiver and  
 21 issue his Order thereon, without further notice to Choice.

22 9. Choice acknowledges that it freely and voluntarily executes this Stipulation and  
 23 Waiver, with a full realization of its legal rights.

24 10. To the extent not already waived, Choice waives a hearing on the C&D and OSC, and  
 25 all other due process rights that may be accorded to it by the California Administrative Procedure  
 26 Act (sections 11500-11528 of the Government Code), California Insurance Code, California  
 27 Constitution, United States Constitution, and every other statute, case and regulation.

28 11. Choice acknowledges that California Insurance Code section 12921(b)(1) requires the

1 Commissioner to approve the final settlement of this matter. The settlement terms and conditions  
2 contained herein and the acceptance of those terms and conditions are contingent upon the  
3 Commissioner's approval.

4 Choice Home Warranty declares the above to be true under penalty of perjury under the  
5 laws of the State of California and executes this document at \_\_\_\_\_, on the  
6 24<sup>th</sup> day of December, 2010.

7 CHOICE HOME WARRANTY

8  
9 By 

10 Victor Mandalawi  
(Print Name)

11 Its President  
(Print Title)

12  
13 APPROVED AS TO FORM

14 Date: December 28, 2010

Oved & Oved, LLP

15  
16 By 

Darren Oved



BEFORE THE INSURANCE COMMISSIONER OF THE  
STATE OF OKLAHOMA

**FILED**

FEB 07 2014

INSURANCE COMMISSIONER  
OKLAHOMA

STATE OF OKLAHOMA, *ex rel.* )  
JOHN D. DOAK, Insurance Commissioner, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
CHOICE HOME WARRANTY, )  
An unlicensed service warranty association, )  
 )  
Respondent. )

Case No. 14-0108-DIS

**CONDITIONAL ADMINISTRATIVE ORDER  
AND NOTICE OF RIGHT TO BE HEARD**

COMES NOW the State of Oklahoma, ex rel., John D. Doak, Insurance Commissioner,  
by and through counsel, and alleges and states as follows:

**JURISDICTION**

1. John D. Doak is the Insurance Commissioner of the State of Oklahoma and as such is charged with the duty of administering and enforcing all provisions of the Service Warranty Act; 15 O.S. §§ 141.1 et seq.

2. Choice Home Warranty ("Respondent") is an unlicensed service warranty company who has solicited and sold service warranty contracts in the State of Oklahoma.

3. The Insurance Commissioner has jurisdiction over the subject matter raised in this dispute and may issue penalties pursuant to 15 O.S. § 141.12.

**ALLEGATIONS OF FACT**

1. The Insurance Commissioner issued an Emergency Cease and Desist Order in Case No. 10-0954-UNI against Respondent on July 29, 2010, pursuant to a finding that

Respondent was unauthorized to engage in the business of offering, providing, servicing and entering into service warranty contracts in Oklahoma.

2. Respondent continued engaging in the business of offering, providing, servicing and entering into service warranty contracts in Oklahoma and was fined on July 15, 2011, in the amount of \$25,000.00 for violating the Cease and Desist Order in Case No. 11-0712-DIS. (Exhibit "A"). The Insurance Commissioner and Respondent thereafter settled the matter by entering into a Consent Order whereby Respondent paid a \$15,000.00 fine and agreed to continue to pay all valid claims and refunds that arise pursuant to service warranty contract it had issued in Oklahoma. (Exhibit "B").

3. Respondent still does not hold a license or registration in the State of Oklahoma and is not authorized by the Oklahoma Insurance Department to engage in the service warranty business in Oklahoma other than to pay all valid claims and refunds that arise pursuant to service warranty contracts it has issued in Oklahoma. Respondent continues to engage in a course of unfair and deceptive conduct while circumventing regulatory authority.

4. Respondent previously entered into a service warranty agreement, contract #919157764, with Oklahoma homeowner Clifford Lussier for coverage located at 13444 Prairie View Lane in Oklahoma City, Oklahoma 73142, the type of agreement covered by the Service Warranty Act. That user agreement was transferred upon sale of the home to Kent Johnson. Choice Home Warranty's address on the Transfer Form is 510 Thornall Street, Edison, New Jersey 08837. (Exhibit "C").

5. Kent Johnson made a claim with Respondent on July 9, 2013, after his air conditioner unit quit working. Respondent denied his claim for failure to maintain the unit properly without even sending a technician to make an inspection of such. Johnson complained

to Respondent on July 13, 2013, and provided a bill for the repairs he paid of \$5,587.00; a short note from his technician stating there was no indication of improper maintenance; and an email from the previous owner stating that the unit was serviced by a technician of Respondent on August 22, 2010, and all recommended owner maintenance procedures were completed. (Exhibit "D").

6. When Respondent failed to respond to Johnson, he hired counsel John Garland who sent Respondent a letter dated September 10, 2013, stating that Respondent failed to mediate in good faith and made demand for the sum due. Respondent failed to respond to Garland's letter.

7. Garland also complained to the Oklahoma Insurance Department on the same date and provided the letters previously sent to Respondent. (Exhibit "F"). Jason Johnston, Senior Claims Process Reviewer in the Consumer Assistance Division, then sent a letter to Respondent on October 9, 2013, requesting Respondent to respond with a written explanation regarding Respondent's position in the matter. (Exhibit "G").

8. A representative of Respondent named Tracy called Johnston on December 12, 2013, and left a message stating they received the letter but that it was sent to Respondent's old address. Johnston returned a message requesting an updated address and a response to his letter.

9. Respondent has failed to call, failed to send a new address, and failed to respond to the homeowner's complaint as of this date.

#### **CONCLUSIONS OF LAW**

1. No person shall engage in this state in any trade practice which is defined as an unfair method of competition and unfair or deceptive acts as defined in 15 O.S. § 141.26. 15 O.S. § 141.25.

2. Respondent violated 15 O.S. § 141.26 by failing to investigate Johnson's claim; by failing to acknowledge and act promptly upon communication with respect to the claim; by denying Johnson's claim without conducting reasonable investigation based upon available information; failing to promptly provide a reasonable explanation to Johnson in relation to the facts or applicable law for the denial of the claim. 15 O.S. § 141.26(5).

3. If it is found that a service warranty association has knowingly and willfully violated a lawful rule or order of the Commissioner or any provision of the Service Warranty Act, the Commissioner may impose a fine in an amount not to exceed Ten Thousand Dollars (10,000.00) for each violation. 15 O.S. § 141.12.

#### **ORDER**

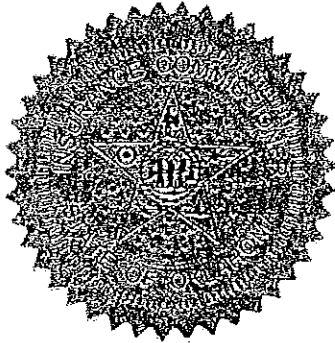
**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** by the Insurance Commissioner, subject to the following paragraphs, that the Respondent has willfully violated the Consent Order dated January 2, 2012, by failing to pay all valid claims and refunds that arise pursuant to service warranty agreements in Oklahoma. **IT IS FURTHER ORDERED** that Respondent has knowingly and willfully violated provisions of the Service Warranty Act; failed to update its address with Oklahoma consumers and the Insurance Commissioner; and failed to respond to the Oklahoma Insurance Commissioner and, as a result, Respondent is fined in the amount of **TEN THOUSAND DOLLARS (\$10,000.00)**.

**IT IS THEREFORE ORDERED** that Respondent shall provide a response to the inquiry and pay the fine within thirty (30) days of the date of this Order.

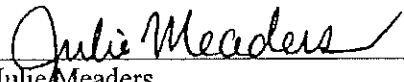
**IT IS FURTHER ORDERED** that unless Respondent requests a hearing with respect to the Allegations of Fact set forth above within thirty (30) days of the date of mailing of this Order, this Order and the penalties set forth above shall become a Final Order on the thirty-first

day following the date of mailing of this Order. Such request for a hearing, if desired, shall be made in writing, addressed to Julie Meaders, Assistant General Counsel, Oklahoma Insurance Department, Legal Division, 3625 NW 56<sup>th</sup> Street, Suite 100, Oklahoma City, Oklahoma 73112 and must be served on the Oklahoma Insurance Department within the thirty (30) days allotted. The proceedings on any such requested hearing will be conducted in accordance with the Service Warranty Act 15 O.S. §§ 141.1 et seq. and the Oklahoma Administrative Procedures Act 75 O.S. §250 et seq.

WITNESS My Hand and Official Seal this 7<sup>th</sup> day of January, 2014.



JOHN D. DOAK  
INSURANCE COMMISSIONER  
STATE OF OKLAHOMA

  
Julie Meaders  
Deputy General Counsel  
3625 NW 56<sup>th</sup> Street, Suite 100  
Oklahoma City, Oklahoma 73112  
(405) 521-2746

**CERTIFICATE OF MAILING**

I, Julie Meaders, hereby certify that a true and correct copy of the above and foregoing Conditional Order and Notice of Right to be Heard was mailed by certified mail with postage prepaid and return receipt requested on this 7<sup>th</sup> day of February, 2014 to:


Choice Home Warranty  
1090 King Georges Post Road  
Edison, NJ 08837


**CERTIFIED MAIL NO: 7001 0320 0004 4249 5289**

And a copy delivered to:

Jason Johnston/Consumer Assistance Division

Lauren Bouse /Financial Division

  
Julie Meaders

U.S. Postal Service CERTIFIED MAIL RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
7001 0320 0004 4249 5289	
Postage \$	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees \$	
Sent To	Choice Home Warranty
Street, Apt. No., or PO Box No.	1090 King Georges Post Road
City, State, ZIP+4	Edison, NJ 08837
	rlg/14-0108-DIS/Cond. Adm. Ord.
PS Form 3810, January 2004	

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<p>■ Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p>
<p>1. Article Addressed to:</p> <p>Choice Home Warranty 1090 King Georges Post Road Edison, NJ 08837 rlg/14-0108-DIS/Cond. Adm. Ord.</p>	<p>D. Is delivery address different from Item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>IF YES, enter delivery address below:</p>
<p>2. Article Number (Transfer from service label)</p> <p>7001 0320 0004 4249 5289</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>PS Form 3811, February 2004</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> <p>Domestic Return Receipt 102595-02-M-1540</p>

AA002798

**BEFORE THE INSURANCE COMMISSIONER OF THE  
STATE OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel. JOHN D.  
DOAK, Insurance Commissioner,

Petitioner,

vs.

CHOICE HOME WARRANTY,  
an Unlicensed Home Warranty Company,

Respondent.

CASE NO. 11-0712-DIS

**FILED**

JUL 15 2011

INSURANCE COMMISSIONER  
OKLAHOMA

**CONDITIONAL ADMINISTRATIVE ORDER  
AND NOTICE OF RIGHT TO BE HEARD**

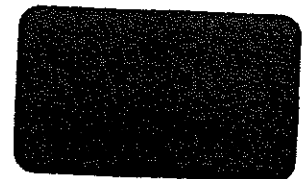
THE STATE OF OKLAHOMA, ex rel., John D. Doak, Insurance Commissioner, by and  
through counsel FINDS AND ORDERS AS FOLLOWS:

**JURISDICTION**

1. The Insurance Commissioner has jurisdiction of this cause, pursuant to the provisions of the Oklahoma Insurance Code, 36 O.S. §§ 101 et seq., including and in particular Title 36 O.S. § 6604, which covers the requirements for licensure and transactions subject to the Service Warranty Insurance Act.

2. Respondent, Choice Home Warranty, is an unlicensed service warranty company soliciting and selling service warranty contracts in the State of Oklahoma.

3. The Insurance Commissioner has jurisdiction over the subject matter raised in this dispute and may issue penalties pursuant to 36 O.S. §§ 6610 and 6613.





**FACTS LEADING TO ADMINISTRATIVE ORDER**

1. The Insurance Commissioner issued to Respondent an Emergency Cease and Desist Order on July 29, 2010, (Exhibit 1), pursuant to finding that Respondent was unauthorized to engage in the business of offering, providing, servicing, and entering service warranty agreements, service warranty contracts, indemnity agreements or indemnity contracts, and in violation of Article 6 of the Insurance Code (Authorization of Insurers), 36 O.S. §§ 601 *et seq.*; the Unauthorized Insurance Business Act, 36 O.S. §§ 6103.1 *et seq.*; and the Service Warranty Insurance Act, 36 O.S. §§ 6601 *et seq.*

2. Respondent does not hold any license, certificate of authority, or other authorization from the Oklahoma Insurance Department to engage in the business of offering, providing, servicing, and entering service warranty agreements, service warranty contracts, indemnity agreements or indemnity contracts.

3. Respondent has not begun the licensing procedures set forth in the Service Warranty Act and continues to provide and offer to provide service warranty agreements, service warranty contracts, indemnity agreements, indemnity contracts and/or home service agreements illegally and in violation of 36 O.S. §§ 6103.3 and 6601 *et seq.*

4. Respondent entered into a Home Warranty Agreement, contract #387395833, of the type covered by the Service Warranty Insurance Act, 36 O.S. §§ 6601 *et seq.* with Cynthia Northington, a citizen of Oklahoma, with an effective starting date of March 12th 2011. (Exhibit 2)

5. Respondent has engaged in a course of conduct designed to circumvent and avoid regulatory oversight by the Commissioner, in violation of 36 O.S. §§ 6103.1 and 6601 *et seq.*

**AA002800**

### CONCLUSION

Respondent has willfully violated Article 6 of the Insurance Code (Authorization of Insurers), 36 O.S. §§ 601 *et seq.*; the Unauthorized Insurance Business Act, 36 O.S. §§ 6103.1 *et seq.*; and the Service Warranty Insurance Act, 36 O.S. §§ 6601 *et seq.* after receiving a lawful Emergency Cease and Desist Order prohibiting the same.

### ORDER

**IT IS THEREFORE ORDERED** that Choice Home Warranty is fined in the amount of Twenty-Five Thousand Dollars (\$25,000.00). The fine is to be submitted to the Oklahoma Insurance Department within thirty (30) days of the date of receipt of this Order.

**IT IS FURTHER ORDERED** Respondent shall leave all records undisturbed in its offices until such time as an appropriate examination of such records can be completed by representatives of the Oklahoma Insurance Department or other examiners appointed by or cooperating with the Commissioner.

**IT IS FURTHER ORDERED** that notwithstanding any of the above orders to the contrary, Respondent shall pay all valid claims and refunds that arise pursuant to service warranty agreements and/or contracts in Oklahoma.

**IT IS FURTHER ORDERED** that this Order is effective immediately and shall continue in full force and effect until further Order of the Commissioner. This Order is binding on Respondent, its agents, affiliates, employees, and/or other representatives, both current and successor, whether named or unnamed herein.

Respondent is further notified that THIS FINE REFLECTS ONLY ONE INSTANCE OF

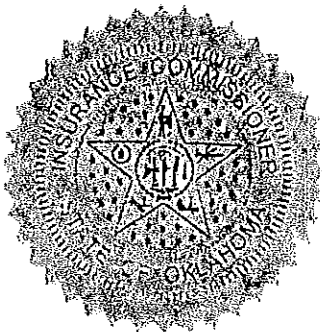
**AA002801**

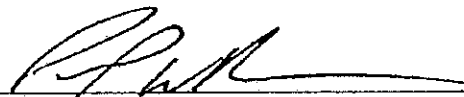
VIOLATION of the Emergency Cease and Desist Order, and that any future violations will also be assessed and fined by the Insurance Commissioner.

Respondent is further notified that it may request a hearing within 30 days of the receipt of this Order concerning this action, and upon such request the Insurance Department shall conduct a hearing before an independent hearing examiner. A request for hearing shall be made in writing to Mark A. Willingham, Oklahoma Insurance Department, Legal Division, 3625 NW 56<sup>th</sup> Suite 100, Oklahoma City, Oklahoma 73112 and state the basis for requesting the hearing.

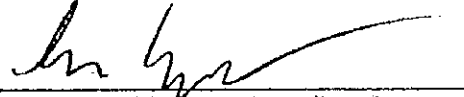
If Respondent does not request a hearing within the 30 days allotted this Order shall be a **FINAL ORDER** on the 31<sup>st</sup> day following the receipt of the Order.

WITNESS My Hand and Official Seal this 14<sup>th</sup> day of July, 2011.



  
 PAUL WILKENING  
 DEPUTY COMMISSIONER OF ADMINISTRATION  
 STATE OF OKLAHOMA

And

  
 Mark A. Willingham, OBA #22769  
 Assistant General Counsel  
 3625 NW 56<sup>th</sup> Street, Suite 100  
 Oklahoma City, Oklahoma, 73112  
 (405) 521-3998  
**ATTORNEY FOR PETITIONER**  
**STATE OF OKLAHOMA, ex rel.**  
**JOHN DOAK, INSURANCE COMMISSIONER**

AA002802


**CERTIFICATE OF SERVICE**

This is to certify that on the date of filing, I, Mark A. Willingham, mailed a true and correct copy of the foregoing **Conditional Administrative Order and Notice of Right to Be Heard** by **certified mail**, return receipt requested, postage prepaid, on this 15<sup>th</sup> day of July, 2011 to:

Choice Home Warranty  
510 Thornall Street  
Edison, NJ 08837

and

Choice Home Warranty  
244 Madison Avenue  
New York, NY 10016

  
\_\_\_\_\_  
Mark A. Willingham**AA002803**

DEPT OF CHS E000 DEPT 9002

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)  
 For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage \$  
 Certified Fee  
 Return Receipt Fee (Endorsement Required)  
 Restricted Delivery Fee (Endorsement Required)  
 Total Pct

Postmark: MARTIN LUTHER KING STATION, JUL 11 2011

Sent To: Choice Home Warranty  
 510 Thornall St  
 Edison, NJ 08837  
 City, Sta sms/11-0712-DIS/Cond. Ord

PS Form 3811, August 2004

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)</p> <p>C. Date of Delivery 7/18/11</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No          If YES, enter delivery address below:</p>
<p>1. Article Addressed to:</p> <p>OKLAHOMA INSURANCE DEPARTMENT          Choice Home Warranty          510 Thornall St          Edison, NJ 08837 Legal Division          sms/11-0712-DIS/Cond. Ord</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>A. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>7008 1830 0003 9410 9830</p>
PS Form 3811, February 2004	Domestic Return Receipt 102585-02-11-1540

AA002804

BEFORE THE INSURANCE COMMISSIONER OF THE  
STATE OF OKLAHOMA

**FILED**

STATE OF OKLAHOMA, ex rel.  
KIM HOLLAND, Insurance  
Commissioner,

JUL 29 2010

INSURANCE COMMISSIONER  
OKLAHOMA

Petitioner,

Case No. 10-0954-UNI

v.

CHOICE HOME WARRANTY  
an unlicensed service warranty  
company

Respondent.

EMERGENCY CEASE AND DESIST ORDER

On this 29<sup>th</sup> day of July 2010, the Oklahoma Insurance Department ("Petitioner") through Kim M. Rytter, Assistant General Counsel, presented to the undersigned Insurance Commissioner, Kim Holland, an Application for Emergency Cease and Desist Order. The Commissioner, having examined the Application of the Petitioner, finds that the Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code generally, 36 O.S. §§ 101 *et seq.*, and specifically pursuant to Article 6 of the Insurance Code (Authorization of Insurers), 36 O.S. §§ 601 *et seq.*; the Unauthorized Insurance Business Act, 36 O.S. §§ 6103.1 *et seq.*; and the Service Warranty Insurance Act, 36 O.S. §§ 6601 *et seq.* The Commissioner further finds that the factual allegations are supported by clear and convincing evidence and, therefore, FINDS AND ORDERS AS FOLLOWS:

1. Choice Home Warranty ("Respondent") has been involved in the unauthorized business of offering, providing, servicing, and entering service warranty



agreements, service warranty contracts, indemnity agreements, indemnity contracts, and/or home service agreements in violation of 36 O.S. § 6604(A).

2. Respondent does not hold any license, certificate of authority, or other authorization from the Oklahoma Insurance Department to engage in the business of offering, providing, servicing, and entering service warranty agreements, service warranty contracts, indemnity agreements or indemnity contracts.

3. Respondent has engaged in a course of conduct designed to circumvent and avoid regulatory oversight by the Commissioner, in violation of 36 O.S. §§ 6103.1 and 6601 *et seq.*

4. Respondent has not begun the licensing procedures set forth in the Service Warranty Act and continues to provide and offer to provide service warranty agreements, service warranty contracts, indemnity agreements, indemnity contracts and/or home service agreements in violation of 36 O.S. §§ 6103.3 and 6601 *et seq.* and will continue to offer, provide, service, and enter service warranty agreements, service warranty contracts, indemnity agreements, indemnity contracts, and/or home service agreements unless immediately ordered to cease and desist from these acts.

5. The Insurance Commissioner, having examined the attached Application, finds that Respondent is unauthorized to engage in the business of offering, providing, servicing, and entering service warranty agreements, service warranty contracts, indemnity agreements or indemnity contracts, and in violation of Article 6 of the Insurance Code (Authorization of Insurers), 36 O.S. §§ 601 *et seq.*; the Unauthorized Insurance Business Act, 36 O.S. §§ 6103.1 *et seq.*; and the Service Warranty Insurance

Act, 36 O.S. §§ 6601 *et seq.* and should be immediately stopped and enjoined from conducting any further insurance or service warranty business in the State of Oklahoma.

**IT IS THEREFORE ORDERED**, that Respondent and their unlicensed agents, affiliates, employees, and/or other representatives, both current and successor whether named herein, shall **CEASE AND DESIST** from all activities related to doing insurance business and/or service warranties in this state, including:

1. The making of or proposing to make, as a sales representative, warrantor or warranty seller, any service warranty agreement, any service warranty contract, any indemnity agreement, any indemnity contract, or any home warranty agreement in the State of Oklahoma;

2. The taking or receiving of any application for any service warranty agreement, any service warranty contract, any indemnity agreement, any indemnity contract or home warranty agreement in the State of Oklahoma;

3. The issuance or delivery of service warranty contracts, indemnity agreements, indemnity contracts or home warranty agreement to residents of the State of Oklahoma or to persons authorized to do business in the State of Oklahoma;

4. Contracting to provide indemnification or expense reimbursement in the State of Oklahoma to persons domiciled in the State of Oklahoma or for risks and/or personal and real property located in the State of Oklahoma, whether as a sales representative, warrantor, warranty seller, or an insurer, agent, administrator, trust, funding mechanism, or by any other method;

5. The doing of any kind of service warranty insurance business specifically recognized as constituting the doing of a service warranty insurance business within the



meaning of the statutes relating to service warranty insurance in the State of Oklahoma pursuant to the Oklahoma Service Warranty Act 36 O.S. §§ 6601 *et seq.*, and any other applicable Oklahoma statutes;

6. The doing or proposing to do any service warranty business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the Oklahoma Service Warranty Act, 36 O.S. §§ 6601 *et seq.*, or any other applicable Oklahoma statutes; and

7. Any other transactions of business in this state by a sales representative, warrantor, warranty seller, or insurer.

**IT IS FURTHER ORDERED** Respondent shall leave all records undisturbed in its offices until such time as an appropriate examination of such records can be completed by representatives of the Oklahoma Insurance Department or other examiners appointed by or cooperating with the Commissioner.

**IT IS FURTHER ORDERED** that notwithstanding any of the above orders to the contrary, Respondent shall pay all valid claims and refunds that arise pursuant to service warranty agreements and/or contracts in Oklahoma.

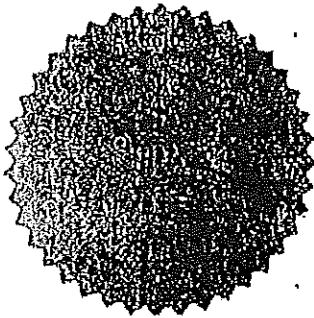
**IT IS FURTHER ORDERED** that this Order is effective immediately and shall continue in full force and effect until further Order of the Commissioner. This Order is binding on Respondent, its agents, affiliates, employees, and/or other representatives, both current and successor, whether named or unnamed herein.

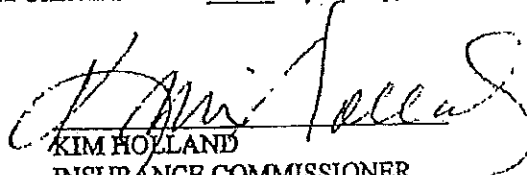
Pursuant to 36 O.S. § 6103.6(B), any person affected by this Order who seeks to contest it, has the right to request a hearing before the Insurance Commissioner, or his duly appointed representative, to show cause why this Order should not be affirmed. The

person affected must make the request not later than the 30<sup>th</sup> day after the date on which the person receives this Order. The request must be in writing directed to the Insurance Commissioner and must state the grounds for the request to set aside or modify the Order. Pending hearing this Order shall continue in full force and effect unless stayed by the Insurance Commissioner. Any such hearing shall be conducted according to the procedures for contested cases under the Oklahoma Administrative Procedures Act, 75 O.S. §§ 250-323.

IN THE EVENT THIS ORDER IS VIOLATED, THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY OF \$25,000.00 FOR EACH ACT OF VIOLATION, OR DIRECT THE RESPONDENT AGAINST WHOM THE ORDER IS ISSUED TO MAKE COMPLETE RESTITUTION, IN THE FORM AND AMOUNT AND WITHIN THE PERIOD DETERMINED BY THE COMMISSIONER, TO ALL OKLAHOMA RESIDENTS, OKLAHOMA INSURERS, AND ENTITIES OPERATING IN OKLAHOMA DAMAGED BY THE VIOLATION OR FAILURE TO COMPLY, OR IMPOSE BOTH THE PENALTY AND DIRECT RESTITUTION.

WITNESS My Hand and Official Seal this 29<sup>th</sup> day of July, 2010.



  
 KIM HOLLAND  
 INSURANCE COMMISSIONER  
 STATE OF OKLAHOMA

CERTIFICATE OF MAILING

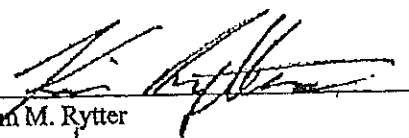
This is to certify that on the date of filing, I, Kim M. Rytter, mailed a true and correct copy of the foregoing Emergency Cease and Desist Order by certified mail, return receipt requested, postage prepaid, on this 29<sup>th</sup> day of July, 2010 to:

Choice Home Warranty  
510 Thomall Street  
Edison, NJ 08837

CERTIFIED NO: 7001 0320 0004 0178 5116

Choice Home Warranty  
244 Madison Avenue  
New York, NY, 10016

CERTIFIED NO: 7001 0320 0004 0178 5109

  
\_\_\_\_\_  
Kim M. Rytter

**SENDER: COMPLETE THIS SECTION**

- Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Choice Home Warranty  
 510 Thomall Street  
 Edison, NJ 08837

2. Article Number

(Transfer from service label)

7001 0320 0004 0178 5116

PS Form 3811, February 2004

Domestic Return Receipt

109905-02-14-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

RECEIVED

C. Date of Delivery

8/6/10

OKLAHOMA INSURANCE DEPARTMENT

D. Is delivery address different from item 1?

☐ Yes☐ No

If YES, enter delivery address below:

AUG 06 2010

Legal Division

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

AA002811

## YOUR HOME SERVICE AGREEMENT



CHOICE JUN 08 2011 WARRANTY

Consumer Assistance Division

**America's Choice**  
 In Home Warranty Protection

Cynthia Northington  
 11700 Grande Mesa Ter  
 Oklahoma City, OK 73162

Case# 200017864

Dear Cynthia Northington,

Welcome to Choice Home Warranty! You made a wise decision when you chose to protect your home with a CHW Warranty. We appreciate your business and look forward to providing you with quality service for all your home protection needs.

To obtain the most value from your new CHW Warranty, please take a moment to read and understand your coverage. Your coverage is dependant on the plan you have selected.

Should you have a problem with any of your covered systems or appliances, please call us toll-free at (888)-531-5403. We are available 24 hours a day, 7 days a week, 365 days a year, or simply log on to our website located at [www.ChoiceHomeWarranty.com](http://www.ChoiceHomeWarranty.com) and file your claim online.

THIS CONTRACT EXPLAINS THE COVERAGE, LIMITATIONS, &amp; EXCLUSIONS. PLEASE REVIEW YOUR CONTRACT.

Contract Number: 387395833  
 Contract Term: 03/12/2011 - 09/12/2014  
 Covered Property:  
     11700 Grande Mesa Ter  
     Oklahoma City, OK 73162  
 Property Type: Single Family  
 Rate: \$1020.00  
 Service Call Fee: \$45.00

**Coverage Plan: Total Plan**

Includes: Clothes Dryer, Clothes Washer, Refrigerator, Air Conditioning System, Heating System, Water Heater, Electrical System, Plumbing System, Plumbing Stoppage, Built-In Microwave, Oven/Range, Stove, Cooktop, Dishwasher, Garbage Disposal, Ceiling & Exhaust Fans, Ductwork, Garage Door Opener, Whirlpool Bath tub  
 Optional Coverage: None

EXHIBIT

2

CHOICE HOME WARRANTY

510 Thornall Street | Edison, NJ 08837 | Toll Free: (888) 531-5403

**Refer-A-Friend**

**CHOICE**   
Home Warranty

**CHOICE HOME WARRANTY**

**Get more without paying for more!**  
**Refer-A-Friend to Choice Home Warranty!**

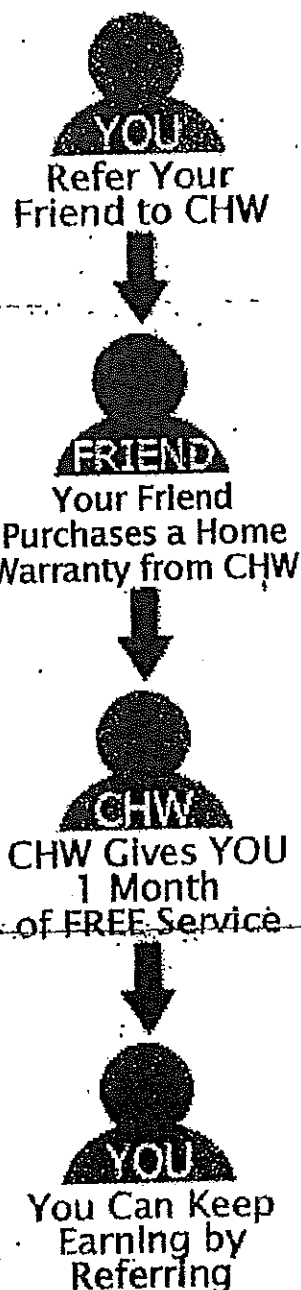
Thank you once again for choosing Choice Home Warranty. CHW home warranties are the most comprehensive, flexible and value-priced on the market. ~~We do everything we can to help you get back on track - that's the difference.~~

Being a part of the Choice Home Warranty family has its rewards - like getting free service just for spreading the word to your friends and family. In fact, every time you refer a friend who joins Choice Home Warranty, you'll get 1 MONTH of FREE service. Best of all, there is no limit to how many FREE months of service you can earn! Simply have your friends or family members mention your name and covered property address at the time of purchase and receive 1 FREE month of service. It's that easy!

To learn more about the CHW Refer-A-Friend Program, please contact Choice Home Warranty at 1-888-531-5403.

We genuinely appreciate your patronage, and we are fully committed to serving your home warranty needs.

**America's Choice**  
**In Home Warranty Protection**



**CHOICE HOME WARRANTY**  
510 Thornall Street • Edison, NJ 08637 • Toll Free: (888) 531-5403

# YOUR HOME SERVICE AGREEMENT

## CHOICE HOME WARRANTY

America's Choice In Home Warranty Protection

### I. COVERAGE

During the coverage period, CHW's sole responsibility will be to arrange for a qualified service contractor ("Service Provider") to repair or replace, at CHW's expense (up to the limits set forth below), the systems and components mentioned as "Included" in accordance with the terms and conditions of this contract so long as such systems and components:

A. Are located inside the confines of the main foundation of the home or attached or detached garage (with the exception of the exterior pool/spa, well pump, septic tank pumping and air conditioner); and  
B. Become inoperative due to normal wear and tear; and  
C. Are in place and in proper working order on the effective date of this home warranty contract. This contract does not cover any known or unknown pre-existing conditions. It is understood that CHW IS NOT A SERVICE PROVIDER and is not itself undertaking to repair or replace any such systems or components. This contract covers single-family homes (including manufactured homes), new construction homes, condominiums, townhomes, and mobile homes under 5,000 square feet, unless an alternative dwelling type (i.e. above 5,000 square feet or multi-unit home) is applied, and appropriate fee is paid. Coverage is for occupied, owned or rented residential property, not commercial property or residences used as businesses, including, but not limited to, day care centers, fraternity/sorority houses, and nursing home homes. This contract describes the basic coverage and options available. Coverage is subject to limitations and conditions specified in this contract. Please read your contract carefully. NOTE: This is not a contract of insurance, residential service, warranty, extended warranty, or implied warranty.

### II. COVERAGE PERIOD

Coverage starts 30 days after acceptance of application by CHW and receipt of applicable contract fees and continues for 365 days from that date. Your coverage may begin before 30 days if CHW receives proof of prior coverage, showing no lapse of coverage, through another carrier within 15 days of the order date.

### III. SERVICE CALLS - TO REQUEST SERVICE: 1-888-631-5403

A. You or your agent (including tenant) must notify CHW for work to be performed under this contract as soon as the problem is discovered. CHW will accept service calls 24 hours a day, 7 days a week, 365 days a year at 1-888-631-5403. Notice of any malfunction must be given to CHW prior to expiration of this contract.

B. Upon request for service, CHW will contact an authorized Service Provider within two (2) days during normal business hours and four (4) days on weekends and holidays. The authorized Service Provider will contact You to schedule a mutually convenient appointment during normal business hours. CHW will determine what repairs constitute an emergency and will make reasonable efforts to expedite emergency service. If You should request CHW to perform non-emergency service outside of normal business hours, You will be responsible for payment of additional fees and/or overtime charges.

C. CHW has the sole and absolute right to select the Service Provider to perform the service; and CHW will not reimburse for services performed without its prior approval.

D. You will pay a trade service call fee ("Service Fee") per claim (amount shown on page one) or the actual cost, whichever is less. The Service Fee is for each visit by a CHW approved Service Provider, except as noted in this Section III (E), and is payable to the CHW approved Service Provider at the time of each visit. The service fee applies to each call dispatched and scheduled, including but not limited to those calls wherein coverage is included, excluded, or denied. The service fee also applies in the event You fail to be present at a scheduled time, or in the event You cancel a service call at the time a service contractor is in route to your home or at your home. Failure to pay the Service Fee will result in suspension or cancellation of coverage until such time as the proper Service Fee is paid. At that time, coverage may be reinstated; however, the contract period will not be extended.

E. If service work performed under this contract should fail, then CHW will make the necessary repairs without an additional trade service call fee for a period of 90 days on parts and 90 days on labor.

### IV. COVERAGE (COVERAGE DEPENDANT ON PLAN)

The Coverage is for no more than one unit, system, or appliance, unless additional fees are paid. If no additional fees are paid, covered unit, system, or appliance is at the sole discretion of CHW; certain limitations of liability apply to Covered systems and appliances.

#### 1. CLOTHES DRYER

INCLUDED: All components and parts, except:

EXCLUDED: Noise - Venting - Lint screens - Knobs and dials - Doors - Door seals - Hinges - Glass - Levelling and balancing - Damage to clothing.

#### 2. CLOTHES WASHER

INCLUDED: All components and parts, except:

EXCLUDED: Noise - Plastic mini-tubs - Soap dispensers - Filter screens - Knobs and dials - Door seals - Hinges - Glass - Levelling and balancing - Damage to clothing.

#### 3. KITCHEN REFRIGERATOR

NOTE: Must be located in the kitchen.

INCLUDED: All components and parts, including Integral freezer unit, except:

EXCLUDED: Packs - Shelves - Lighting and handles - Freezer ice makers, ice crushers, beverage dispensers and their respective equipment - Water lines and valve to ice maker - Line restrictions - Leaks of any kind - Interior thermal shells - Freezers which are not an integral part of the refrigerator - Wine coolers or mini refrigerators - Food spoilage - Doors - Door seals and gaskets - Hinges - Glass - Audio/Visual equipment and Internet connection components.

#### 4. AIR CONDITIONING/COOLER

NOTE: Not exceeding 5 (five) ton capacity and designed for residential use.

INCLUDED: Ducted electric central air conditioning, ducted electric wall air conditioning. All components and parts, for units below 13 SEER and when CHW is unable to facilitate repair/replacement of failed covered equipment at the current SEER rating, repair/replacement will be performed with 13 SEER equipment and/or 7.7 HSPF or higher compliant, except:

EXCLUDED: Gas air conditioning systems - Condenser casings - Registers and Grills - Filters - Electronic air cleaners - Window units - Non-ducted wall units - Water towers - Humidifiers - Improperly sized units - Chillers - All exterior condensing, cooling and pump pads - Roof mounts, jacks, stands or supports - Condensate pumps - Commercial grade equipment - Cost for crane rentals - Air conditioning with mismatched condensing unit and evaporative coil per manufacturer specifications - Improper use of metering devices - Thermal expansion valves - Refrigerant conversion - Leak detections - Water leaks - Drain line stoppages - Maintenance - Noise. No more than two systems covered unless purchased separately at time of enrollment. CHW is not responsible for the costs associated with matching dimensions, brand or color made. CHW will not pay for any modifications necessitated by the repair of existing equipment or the installation of new equipment.

#### 5. HEATING SYSTEM OR BUILT-IN WALL UNIT

NOTE: Main source of heat to home not to exceed 5 (five) ton capacity and designed for residential use.

INCLUDED: All components and parts necessary for the operation of the heating system. For units below 13 SEER and when CHW is unable to facilitate repair/replacement of failed covered equipment at the current SEER rating, repair/replacement will be performed with 13 SEER equipment and/or 7.7 HSPF or higher compliant, except:

EXCLUDED: All components and parts relating to geothermal, water source heat pumps including: outside or underground piping, components for geothermal and/or water source heat pumps, re-drilling of wells for geothermal and/or water source heat pumps, and well pump and well pump components for geothermal and/or water source heat pumps. Access - Radiators or valves - Baseboard casings - Radiant heating - Dampers - Valves - Fuel storage tanks - Portable units - Solar heating systems - Fireplaces and key valves - Filters - Line dryers and filters - Oil filters, nozzles, or strainers - Registers - Backflow preventers - Evaporator coil pan - Primary or secondary drain pans - Grills - Clocks - Timers - Add-ons for zoned systems - Heat lamps - Humidifiers - Flues and vents - Improperly sized heating systems - Mismatched systems - Chimneys - Pellet stoves - Cable heat (in ceiling) - Wood stoves (even if only source of heating) - Calcium build-up - Maintenance.

CHOICE HOME WARRANTY

510 Thornhill Street, Edison, NJ 08827 • Toll Free: (888) 631-5403

# YOUR HOME SERVICE AGREEMENT

Page 1 of 5

## 8. WATER HEATER (Gas and/or Electric)

**INCLUDED:** All components and parts, including circulating pumps, except:  
**EXCLUDED:** Access - Insulation blankets - Pressure reducing valve - Sediment build-up - Rust and corrosion - Main, Holding or storage tanks - Vents and flues - Thermal expansion tanks - Low boy and/or Squat water heaters - Solar water heaters - Solar components - Fuel, holding or storage tanks - Noise - Energy management systems - Commercial grade equipment and units exceeding 75 gallons - Drain pans and drain lines - Tankless water heaters.

## 7. ELECTRICAL SYSTEM

**INCLUDED:** All components and parts, including built-in bathroom exhaust fans, except:  
**EXCLUDED:** Fixtures - Carbon monoxide alarms, smoke detectors, detectors or related systems - Intercoms and door bell systems associated with intercoms - Inadequate wiring capacity - Solar power systems and panels - Solar Components - Energy Management Systems - Direct current (D.C.) wiring or components - Attic exhaust fans - Commercial grade equipment - Auxiliary or sub-panels - Broken and/or severed wires - Rerunning of new wiring for broken wires - Wire tracing - Garage door openers - Central vacuum systems - Damages due to power failure or surge - Circuit Overload.

## 8. PLUMBING SYSTEM/STOPPAGE

**INCLUDED:** Leaks and breaks of water, drain, gas, waste or vent lines, except (if caused by freezing or roots) - Toilet tanks, bowls and mechanisms (replaced with builder's grade as necessary), toilet wax ring seals - Valves for shower, tub, and diverter angle stops, flises and gate valves - Permanently installed interior sump pumps - Built-in bathtub whirlpool motor and pump assemblies - Stoppages/Clogs in drain and sewer lines up to 100 feet from access point. Mainline stoppages are only covered if there is an accessible ground level clean out, except:

**EXCLUDED:** Stoppages and clogs in drain and sewer lines that can not be cleared by cable or due to roots, collapsed, broken, or damaged lines outside the confines of the main foundation (even if within 100 feet of access point) - Access to drain or sewer lines from vent or removal of water closets - Cost to locate, access or install ground level clean out - Slab leaks - Polybutylene or Quest piping - Galvanized drain lines - Hose Bibs - Drum traps - Flange - Collapse of or damage to water, drain, gas, waste or vent lines caused by freezing, settlement and/or roots - Faucets, fixtures, cartridges, shower heads & shower arms - Baskets and strainers - Pop-up assemblies - Bathtubs and shower - Cracked porcelain - Glass - Shower enclosures and base pans - Roman tubs - Bath tub drain mechanisms - Sinks - Toilet lids and seats - Cabling or grouting - Whirlpool jets - Whirlpool control panel - Septic tanks - Sewage ejector pumps - Water softeners - Pressure regulators - Inadequate or excessive water pressure - Flow restrictions in fresh water lines caused by rust, corrosion or chemical deposits - Holding or storage tanks - Saunas and/or steam rooms. **NOTE:** CHW will provide access to plumbing systems through unobstructed walls, ceilings or floors, only, and will return the access opening to rough finish condition. CHW shall not be responsible for payment of the cost to remove and replace any built-in appliances, cabinets, floor coverings or other obstructions impeding access to walls, ceilings, and/or floors.

## 9. BUILT-IN MICROWAVE

**INCLUDED:** All components and parts, except:  
**EXCLUDED:** Hinges - Handles - Doors - Door glass - Lights - Interior linings - Trays - Clocks - Shelves - Portable or counter top units - Arcing - Meat probe assemblies - Rotisserie.

## 10. OVEN/RANGE/STOVE/COOKTOP (Gas or Electric; Built-In, Portable or Free Standing)

**INCLUDED:** All components and parts, except:  
**EXCLUDED:** Clocks (unless they affect the cooking function of the unit) - Meat probe assemblies - Rotisserie - Hooks - Handles - Knobs - Door seals - Doors - Hinges - Lighting and handles - Glass - Panel heat burners will only be replaced with standard burners.

## 11. DISHWASHER

**INCLUDED:** All components and parts, except:  
**EXCLUDED:** Hooks - Baskets - Rollers - Hinges - Handles - Doors - Door gaskets - Glass - Damage caused by broken glass - Cleaning.

## 12. GARBAGE DISPOSAL

**INCLUDED:** All components and parts, including entire unit, except:  
**EXCLUDED:** Problems and/or jams caused by bones, glass, or foreign objects other than food.

## 13. CEILING AND EXHAUST FANS

**INCLUDED:** Motors - Switches - Controls - Bearings, except:

**EXCLUDED:** Fans - Blades - Belts - Shutters - Filters - Lighting. **Note:** Builder's standard is used when replacement is necessary.

## 14. DUCTWORK

**INCLUDED:** Duct from heating unit to point of attachment at registers or grills, except:

**EXCLUDED:** Registers and grills - Insulation - Asbestos-insulated ductwork - Vents, flues and breaching - Ductwork exposed to outside elements - Improperly sized ductwork - Separation due to settlement and/or lack of support - Damper motors - Diagnostic testing of, or locating leaks to ductwork, including but not limited to, as required by any federal, state or local law, ordinance or regulation, or when required due to the installation or replacement of system equipment. CHW will provide access to ductwork through unobstructed walls, ceilings or floors, only, and will return the access opening to rough finish condition. CHW's authorized Service Provider will close the access opening and return to a rough finish condition. CHW shall not be responsible for payment of the cost to remove and replace any built-in appliances, cabinets, floor coverings or other obstructions impeding access to walls, ceilings, and/or floors.

## 15. GARAGE DOOR OPENER

**INCLUDED:** All components and parts, except:  
**EXCLUDED:** Garage doors - Hinges - Springs - Sensors - Chains - Travelers - Tracks - Rollers - Remote receiving and/or transmitting devices.

## 16. CHW GREEN

**INCLUDED:** If a covered system or appliance (limited to: Clothes Washer, Clothes Dryer, Refrigerator, Dishwasher, Heating System, and Water Heater) breaks down per Section I above and subject to all other contract inclusions, exclusions and limitations, and it can not be repaired, CHW will replace the appliance with an ENERGY STAR qualified product (subject to availability, exclusions and limitations), one with similar and like features as existing appliance, except:

**EXCLUDED:** All other contract limitations of liability and exclusions apply.

## V. OPTIONAL COVERAGE (Requires Additional Payment)

**NOTE:** You may purchase any Optional Coverage for up to 30 days after commencement of Coverage. However, Coverage shall not commence until receipt of payment by CHW and such Coverage shall expire upon expiration of Coverage period in Section II.

### 1. POOL AND/OR SPA EQUIPMENT

**INCLUDED:** Both pool and built-in spa equipment (exterior hot tub and whirlpool) are covered if they utilize common equipment. If they do not utilize common equipment, then only one or the other is covered unless an additional fee is paid. Coverage applies to above ground, accessible working components and parts of the heating, pumping and filtration system as follows: Heater - Pump - Motor - Filter - Filter liner - Gaskets - Blower - Timer - Valves, limited to back flush, actuator, check, and 2 and 3-way valves - Relays and switches - Pool sweep motor and pump - Above ground plumbing pipes and wiring, except:

**EXCLUDED:** Portable or above ground pools/spas - Control panels and electronic boards - Lights - Liners - Maintenance - Structural defects - Solar equipment - Jets - Ornamental fountains, waterfalls and their pumping systems - Pool cover and related equipment - Fill line and fill valve - Built-in or detachable-swinging equipment such as, but not limited to, pool sweeps, pop up heads - Turbo valves, skimmers, chlorinators, and ionizers - Fuel storage tanks - Disposable filtration mediums - Cracked or corroded filter casings - Ords - Cartridges - Heat pump - Salt water systems.

### 2. SEPTIC TANK PUMPING

**INCLUDED:** Main line stoppages/clogs (one time only, and must have existing access or clean out). If a stoppage is due to a septic tank back up, then we will pump the septic tank one time during the term of the plan. Coverage can only become effective if a septic certification was completed within 90 days prior to close of sale. CHW reserves the right to request a copy of the certification prior to service dispatch.

**EXCLUDED:** The cost of gaining or finding access to the septic tank and the cost of sewer hook ups - Disposal of waste - Chemical treatments - Tanks - Leach lines - Cess pools - Mechanical pumps/systems.

### 3. WELL PUMP

**INCLUDED:** All components and parts of well pump utilized for main dwelling only, except:

**EXCLUDED:** Holding or storage tanks - Digging - Locating pump - Pump retrieval - Redrilling of wells - Well casings - Pressure tanks - Pressure switches and gauges - Check valve - Relief valve - Drop pipe - Piping or

## CHOICE HOME WARRANTY

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electrical lines leading to or connecting pressure tank and main dwelling including wiring from control box to the pump - Booster pumps - Well pump and well pump components for geothermal and/or water source heat pumps.

### 4. SUMP PUMP

**INCLUDED:** Permanently installed sump pump for ground water, within the foundation of the home or attached garage, except:

**EXCLUDED:** Sewerage ejector pumps - Portable pumps - Backflow preventers - Check valves - Piping modifications for new installs.

### 5. CENTRAL VACUUM

**INCLUDED:** All mechanical system components and parts, except:

**EXCLUDED:** Ductwork - Hoses - Blockages - Accessories.

### 6. LIMITED ROOF LEAK (Single Family Homes Only)

**INCLUDED:** Repair of shake, shingle, and composition roof leaks over the occupied living area.

**EXCLUDED:** Porches - Patios - Cracked and/or missing material - Foam roofs - Tar and gravel or metal roof - Cedarwood shakes - Masonite shingles - Flat or built-up roof - Structural leaks adjacent to or caused by appendages of any kind - Downspouts - Flashing - Gutters - Skylights - Decks - Patio covers - Solar equipment - Roof jacks - Antennae - Satellite components - Chimneys - Partial roof replacement - Preventative maintenance.

**NOTE:** If roof must be partially or completely replaced to effect repair, this coverage does not apply.

### 7. STAND ALONE FREEZER

**INCLUDED:** All parts and components that affect the operation of the unit, except:

**EXCLUDED:** Ice makers, crushers, dispensers and related equipment - Internal shell - Racks - Shelves - Glass displays - Lights - Knobs and caps - Dials - Doors - Door seals and gaskets - Door hinges - Door handles - Glass - Condensation pans - Clogged drains and clogged lines - Grates - Food spoilage - Freon - Disposal and recapture of Freon.

### 8. SECOND REFRIGERATOR

**INCLUDED:** All components and parts, including integral freezer unit, except:

**EXCLUDED:** Racks - Shelves - Lighting and handles - Freon - Ice makers, ice crushers, beverage dispensers and their respective equipment - Water lines and valve to ice maker - Line restrictions - Leaks of any kind - Interior thermal shells - Freezers which are not an integral part of the refrigerator - Food spoilage - Doors - Door seals and gaskets - Hinges - Glass - Audio/Visual equipment and Internet connection components.

### 9. SEPTIC SYSTEM

**INCLUDED:** Sewage ejector pump - Jet pump - Aerobic pump - Septic tank and line from house.

**EXCLUDED:** Leach lines - Field lines - Lateral lines - Tile fields and leach beds - Insufficient capacity - Clean out - Pumping.

### VI. LIMITATIONS OF LIABILITY

1. The following are not included during the contract term: (i) malfunction or improper operation due to rust or corrosion of all systems and appliances, (ii) collapsed ductwork, (iii) known or unknown pre-existing conditions.

2. CHW is not responsible for providing access to or closing access from any covered item which is concrete-encased or otherwise obstructed or inaccessible.

3. At times it is necessary to open walls or ceilings to make repairs. The Service Provider obtained by CHW will close the opening, and return to a rough finish condition. CHW is not responsible for restoration of any wall coverings, floor coverings, plaster, cabinets, counter tops, tiling, paint, or the like.

4. CHW is not responsible for the repair of any cosmetic defects or performance of routine maintenance.

5. Electronic or computerized energy management or lighting and appliance management systems, solar systems and equipment are not included.

6. You may be charged an additional fee by the Service Provider to dispose of an old appliance, system or component, including, but not limited to the following items: condensing units, evaporator coils, compressors, capacitors, refrigerators, freezers, water heaters, and any system or appliance which contains dangerous or hazardous materials.

7. CHW is not liable for service involving hazardous or toxic materials including but not limited to mold, lead paint, or asbestos, nor costs or expenses associated with refrigerant recovery, recycling, reclaiming or disposal. CHW is not liable for any failure to obtain timely service due to conditions beyond its control, including, but not limited to, labor difficulties or delays in obtaining parts or equipment.

8. CHW is not liable for repair of conditions caused by chemical or sedimentary build up, rust or corrosion, mildew, mold, misuse or abuse, failure to clean or maintain as specified by the equipment manufacturer, missing parts, structural changes, fire, freezing, electrical failure or surge, water damage, lightning, mud, earthquake, soil movement, soil settlement, settling of home, storms, accidents, pest damage, acts of God, or failure due to excessive or inadequate water pressure.

9. CHW has the sole right to determine whether a covered system or appliance will be repaired or replaced. CHW is responsible for installing replacement equipment of similar features, capacity, and efficiency, but not for matching dimensions, brand or color. CHW is not responsible for upgrades, components, parts, or equipment required due to the incompatibility of the existing equipment with the replacement system or appliance or component or part thereof or with new type of chemical or material utilized to run the replacement equipment including, but not limited to, differences in technology, refrigerant requirements, or efficiency as mandated by federal, state, or local governments. If parts are no longer available, CHW will offer a cash payment in the amount of the average cost between parts and labor of the covered repair. CHW reserves the right to locate parts at any time. For the first 90 days of the contract period, CHW is not liable for replacement of entire systems or appliances due to obsolete, discontinued or unavailability of one or more integral parts. However, CHW will provide reimbursement for the cost of these parts determined by a reasonable allowance for the fair value of like parts. CHW reserves the right to rebuild a part or component, or replace with a rebuilt part or component.

10. CHW is not liable for repairs related to costs of construction, carpentry or other incidental costs associated with alterations or modifications of appliances, components or installation of different equipment and/or systems. Except as required to maintain compatibility with equipment manufactured to be 13 SEER and/or 7.7 HSPF or higher compliant, CHW is not responsible for providing upgrades, components, parts or equipment required due to the incompatibility of the existing equipment with the replacement system, appliance or component/part, including but not limited to efficiency as mandated by federal, state or local governments.

11. CHW is not responsible for repairs related to inadequacy, lack of capacity, improper installation, mismatched systems, oversized systems, undensitized systems, previous repair or design, manufacturer's defect, and any modification to the system or appliance.

12. CHW is not liable for normal or routine maintenance. CHW will not pay for repairs or failures that result from the Contract holder's failure to perform normal or routine maintenance. For example, You are responsible for providing maintenance and cleaning pursuant to manufacturers' specifications, such as periodic cleaning of heating and air conditioning systems, evaporator coils and condenser coils, as well as periodic filter replacement.

13. CHW is not liable for the repair or replacement of commercial grade equipment, systems or appliances (such as, but not limited to, brand names such as Sub Zero, Viking, Wolf, Bosch, Jenn-Air, GE Monogram, Thermador, and etc.).

14. CHW reserves the right to obtain a second opinion at its expense.

15. CHW is not responsible for any repair, replacement, installation, or modification of any covered system or appliance arising from a manufacturer's recall or defect of said covered items, nor any covered item while still under an existing manufacturer's, distributor's, or in-home warranty.

16. CHW reserves the right to offer cash back in lieu of repair or replacement in the amount of CHW's actual cost (which at times may be less than retail) to repair or replace any covered system, component or appliance.

17. CHW is not responsible for the repair or replacement of any system or appliance or component or part thereof that has been previously, or is subsequently, determined to be defective by the Consumer Product Safety Commission or the manufacturer and for which either has issued, or issues, a warning or recall, or which is otherwise necessitated due to failure caused by the manufacturer's improper design, use of improper materials, formula, manufacturing process or other manufacturing defect.

18. CHW will not pay for the repairs or replacement of any covered systems or appliances if they are inoperable as a result of known or unknown pre-existing conditions, deficiencies and/or defects.

19. You agree that CHW is not liable for the negligence or other conduct of the Service Provider, nor is CHW an insurer of Service Provider's performance. You also agree that CHW is not liable for consequential,

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# YOUR HOME SERVICE AGREEMENT

Page 1 of 3

Incidental, indirect, secondary, or punitive damages. You expressly waive the right to all such damages. Your sole remedy under this agreement is recovery of the cost of the required repair or replacement, whichever is less.

## VII. Mediation

In the event of a dispute over claims or coverage You agree to file a written claim with Choice Home Warranty and allow CHW thirty (30) calendar days to respond to the claim. The parties agree to mediate in good faith before resorting to mandatory arbitration in the State of New Jersey.

Except where prohibited, if a dispute arises from or relates to this Agreement or its breach, and if the dispute cannot be settled through direct discussions you agree that:

A. Any and all disputes, claims and causes of action arising out of or connected with this Agreement shall be resolved individually, without resort to any form of class action.

B. Any and all disputes, claims and causes of action arising out of or connected with this Agreement (including but not limited to whether a particular dispute is arbitrable hereunder) shall be resolved exclusively by the American Arbitration Association in the state of New Jersey under its Commercial Mediation Rules. Controversies or claims shall be submitted to arbitration regardless of the theory under which they arise, including without limitation contract, tort, common law, statutory, or regulatory duties or liability.

C. Any and all claims, judgments and awards shall be limited to actual out-of-pocket costs incurred to a maximum of \$1500 per claim, but in no event attorneys' fees.

D. Under no circumstances will you be permitted to obtain awards for, and you hereby waive all rights to claim, indirect, punitive, incidental and consequential damages and any other damages, other than for actual out-of-pocket expenses, and any and all rights to have damages multiplied or otherwise increased. All issues and questions concerning the construction, validity, interpretation and enforceability of this Agreement, shall be governed by, and construed in accordance with, the laws of the State of New Jersey, U.S.A. without giving effect to any choice of law or conflict of law rules (whether of the State of New Jersey or any other jurisdiction), which would cause the application of the laws of any jurisdiction other than the State of New Jersey.

## VIII. BUILDING AND ZONING CODE REQUIREMENTS OR VIOLATIONS

A. CHW will not contract for services to meet current building or zoning code requirements or to correct for code violations, nor will it contract for services when permits cannot be obtained. CHW will not pay for the cost to obtain permits.

B. Except as required to maintain compatibility with equipment manufactured to be 13 SEER and/or 7.7 HSPF or higher compliant, CHW is not responsible for upgrade or additional costs or expenses that may be required to meet current building or zoning code requirements or correct for code violations. This includes city, county, state, federal and utility regulations and upgrades required by law.

## IX. MULTIPLE UNITS AND INVESTMENT PROPERTIES

A. If the contract is for duplex, triplex, or fourplex dwelling, then every unit within such dwelling must be covered by a CHW contract with applicable optional coverage for coverage to apply to common systems and appliances.

B. If this contract is for a unit within a multiple unit of 5 or more, then only items contained within the confines of each individual unit are covered. Common systems and appliances are excluded.

C. Except as otherwise provided in this section, common systems and appliances are excluded.

## X. TRANSFER OF CONTRACT & RENEWALS

A. If your covered property is sold during the term of this contract You must notify CHW of the change in ownership and submit the name of the new owner by phoning 1-888-531-5403 in order to transfer coverage to the new owner.

B. You may transfer this contract at any time. There is no fee to transfer contract.

C. This contract may be renewed at the option of CHW and where permitted by state law. In that event, You will be entitled to the same yearly rate as the prior year, as well as the same trade service call fee.

D. If You select the monthly payment option and CHW elects to renew your contract, CHW will notify You of applicable rate and terms of renewal during the tenth month of your contract. You will automatically be renewed for a monthly coverage period unless You notify CHW in writing 30 days prior to the expiration of the contract. Your first payment for the next contract term will be construed as authorization for month-to-month charges.

## XI. CANCELLATION

This is a maintenance agreement for repair, replacement, or partial replacement of the products listed that are deemed manufactured or sold by the manufacturer. This is not a contract of insurance, residential service, warranty, extended warranty, or implied warranty. You may cancel within the first 30 days of the order date for a refund of the paid contract fee, less a \$50 administrative fee and any service costs incurred by CHW.

This contract shall be non-cancelable by CHW except for:

1. Nonpayment of contract fee;
2. Nonpayment of Service Fee, as stated in Section III;
3. Fraud or misrepresentation of facts material by You to the issuance of this contract;
4. Mutual agreement of CHW and You. If canceled after 30 days, You shall be entitled to a pro rata refund of the paid contract fee for the unexpired term, less a \$50 administrative fee and any service costs incurred by CHW.

All cancellation requests must be submitted in writing.

Coverage Plans	Basic	Total
Clothes Dryer		
Clothes Washer		
Refrigerator		
Air Conditioning System		
Heating System		
Water Heater		
Electrical System		
Plumbing System		
Plumbing Stoppage		
Built-In Microwave		
Oven/Range/Stove		
Cooktop		
Dishwasher		
Garbage Disposal		
Ceiling & Exhaust Fans		
Ductwork		
Garage Door Opener		
Whirlpool Bathiub		
Optional Coverage: Pool/Spa, Additional Spa, Septic Tank Pumping, Septic System, Well Pump, Sump Pump, Central Vacuum, Limited Roof Leak, Standalone Freezer, Second Refrigerator.		

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AA002817

BEFORE THE INSURANCE COMMISSIONER OF THE  
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel. JOHN D.  
DOAK, Insurance Commissioner.

Petitioner.

v.

CHOICE HOME WARRANTY,  
an Unlicensed Service Warranty Company,

Respondent.

CASE NO. 11-0712-DIS

**FILED**

JAN 09 2012

INSURANCE COMMISSIONER  
OKLAHOMA

CONSENT ORDER

THE STATE OF OKLAHOMA, ex rel. John D. Doak, Insurance Commissioner, by and  
through counsel FINDS AND ORDERS AS FOLLOWS:

JURISDICTION

1. The Insurance Commissioner has jurisdiction of this cause, pursuant to the provisions of the Oklahoma Insurance Code, 36 O.S. §§ 101 et seq., including and in particular Title 36 O.S. § 6604, which covers the requirements for licensure and transactions subject to the Service Warranty Insurance Act.
2. Choice Home Warranty ("Respondent") is an unlicensed service warranty company who has solicited and sold service warranty contracts in the State of Oklahoma.
3. The Insurance Commissioner has jurisdiction over the subject matter raised in this dispute and may issue penalties pursuant to 36 O.S. §§ 6610 and 6613.



AA002818

4. Respondent has been apprised of their rights including the right to a public hearing and has knowingly and freely waived said rights and entered into this Consent Order as a voluntary settlement of the issues and questions raised in the above captioned case.

#### STIPULATIONS OF FACT

1. The Insurance Commissioner issued to Respondent an Emergency Cease and Desist Order on July 29, 2010, pursuant to finding that Respondent was unauthorized to engage in the business of offering, providing, servicing, and entering service warranty agreements, service warranty contracts, indemnity agreements or indemnity contracts, and in violation of Article 6 of the Insurance Code (Authorization of Insurers), 36 O.S. §§ 601 *et seq.*; the Unauthorized Insurance Business Act, 36 O.S. §§ 6103.1 *et seq.*; and the Service Warranty Insurance Act, 36 O.S. §§ 6601 *et seq.*

2. Respondent does not hold any license, certificate of authority, or other authorization from the Oklahoma Insurance Department to engage in the business of offering, providing, servicing, and entering service warranty agreements, service warranty contracts, indemnity agreements or indemnity contracts.

3. Respondent entered into a Home Warranty Agreement, contract #387395833, of the type covered by the Service Warranty Insurance Act, 36 O.S. §§ 6601 *et seq.* with a citizen of Oklahoma, with an effective starting date of March 12th 2011.

4. Respondent was issued a Conditional Administrative Order which fined them the statutorily required amount of twenty-five thousand dollars (\$25,000) under Title 36 O.S. §6103.7.

5. Respondent has demonstrated their willingness to comply with Oklahoma law governing service warranty contracts by licensing an Oklahoma affiliate.

6. Respondent may only sell service warranty contracts through its affiliate, or other duly licensed entity.

7. Respondent may provide marketing services and any other service not requiring licensure under the Oklahoma Insurance Code.

#### CONCLUSION

Respondent violated Article 6 of the Insurance Code (Authorization of Insurers), 36 O.S. §§ 601 *et seq.*; the Unauthorized Insurance Business Act, 36 O.S. §§ 6103.1 *et seq.*; and the Service Warranty Insurance Act, 36 O.S. §§ 6601 *et seq.* after receiving a lawful Emergency Cease and Desist Order prohibiting the same and was duly fined for the violation.

#### ORDER

IT IS THEREFORE ORDERED by the Insurance Commissioner and CONSENTED to by Choice Home Warranty that Respondent shall pay a settlement fine in the amount of Fifteen Thousand Dollars (\$15,000.00) for the above mentioned violation of the Oklahoma Insurance Code. The fine is to be submitted to the Oklahoma Insurance Department within thirty (30) days of the date of receipt of this Order.

IT IS FURTHER ORDERED that notwithstanding any of the above orders to the contrary, Respondent shall pay all valid claims and refunds that arise pursuant to service warranty agreements and/or contracts in Oklahoma.

IT IS FURTHER ORDERED that this Order is effective immediately and shall

continue in full force and effect until further Order of the Commissioner. This Order is binding on Respondent, its agents, affiliates, employees, and/or other representatives, both current and successor, whether named or unnamed herein.

IT IS FURTHER ORDERED that notwithstanding anything contained herein to the contrary, any sale of service warranty agreements and/or contracts in Oklahoma by Respondent prior to the effective date of this Order, shall not be deemed to constitute a violation of any Oklahoma law governing service warranty contracts, provided Respondent provides the Insurance Department with a list of current open service warranty contracts and Respondent has/will also transfer all rights and obligations of those contracts to its licensed affiliate in a form approved by the Commissioner and Insurance Department.

Respondent is further notified that the above referenced July 29, 2010 Emergency Cease and Desist Order is still in effect.

Respondent is further notified that THIS FINE REFLECTS A SETTLEMENT OF ONLY THE ABOVE REFERENCED VIOLATION of the Emergency Cease and Desist Order, and that any future violations resulting from the sale of new service warranty contracts through an unlicensed entity will also be assessed and fined by the Insurance Commissioner.

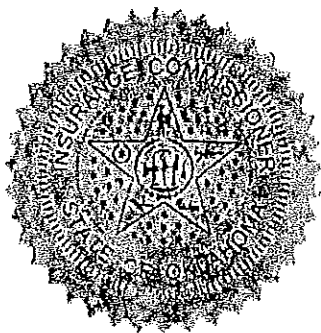
Respondent is further notified that the settlement fine must be submitted within 30 days of the date of receipt of this order, otherwise, on the 31st day, this agreement becomes void and the full \$25,000 fine will be assessed against Respondent. Payment of the fine should be made by check to the Oklahoma Insurance Department and reference Case No. 11-0712-DIS in the memo line.

Respondent is further notified that it may request a hearing within 30 days of the receipt of this Order concerning this action, and upon such request the Insurance Department shall

conduct a hearing before an independent hearing examiner. A request for hearing shall be made in writing to Mark A. Willingham, Oklahoma Insurance Department, Legal Division, 3625 NW 56<sup>th</sup> Suite 100, Oklahoma City, Oklahoma 73112 and state the basis for requesting the hearing.

If Respondent does not request a hearing and pays the settlement fine within the 30 days allotted, this Order shall be a FINAL ORDER on the 31<sup>st</sup> day following the receipt of the Order.

WITNESS My Hand and Official Seal this 29<sup>th</sup> day of December 11.



*Ramon Freeman*  
 Judge Ramon Freeman  
 Hearing Examiner

*Victor Mandalawi*  
 Victor Mandalawi  
 Representative of Respondent

*Darren Oved*  
 Darren Oved, Esq.  
 Attorney for Respondent

*Mark A. Willingham*  
 Mark A. Willingham, OBA No. 22769  
 Attorney for Petitioner

## CERTIFICATE OF SERVICE

This is to certify that on the date of filing, I, Mark A. Willingham, mailed a true and correct copy of the foregoing Consent Order and Notice of Right to Be Heard by certified mail, return receipt requested, postage prepaid, on this 9<sup>th</sup> day of January, 2012 to:

Darren Oved, Esq.  
Attorney for Respondent  
401 Greenwich Street  
New York, New York 10013

  
\_\_\_\_\_  
Mark A. Willingham



# U.S. Postal Service CERTIFIED MAIL RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)

7001 0320 0004 4250 5650

Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Post		

Postage Station 5100  
JAN 09 2012  
Postmark  
OK 73103

To: Darren Oved, Esq.  
Attorney for Respondent  
401 Greenwich St.  
New York, NY 10013  
sms/11-0712-DIS/Const. Ord.

## SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Darren Oved, Esq.  
Attorney for Respondent  
401 Greenwich St.  
New York, NY 10013  
sms/11-0712-DIS/Const. Ord.

2. Article Number  
(Transfer from service label)

7001 0320 0004 4250 5650

PS Form 3811, February 2004

Domestic Return Receipt

## COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

3. Is delivery address different from item 1? ☐ YesIf delivery address below: ☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

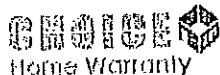
☐ Yes

102565-02-44-1540

AA002824

## POLICY TRANSFER FORM

CHOICE HOME WARRANTY



Please fax completed Transfer Form to: (732) 520-6461

Policy Number: 919157764 EXP. 2/16/2014  
 Name: CLIFFORD LUSSIER  
 Coverage Address: 13444 PRAIRIE VIEW LN  
 City, State Zip: OKLAHOMA CITY, OK 73142  
 Property Type (i.e. Single Family, Townhouse): SINGLE FAMILY  
 Home Phone: 405-722-3507 Work Phone: \_\_\_\_\_  
 E-mail: apacheflat@sbglobal.net

Name: KENT JOHNSON  
 Mailing Address: 6808 NW 135TH TERRACE  
 City, State Zip: OKLAHOMA CITY, OK 73142  
 Home Phone: 405-823-7331 Work Phone: \_\_\_\_\_  
 E-mail: bigstee@acox.net

I have read and understood all the terms & conditions listed in the User Agreement located at [www.ChoiceHomeWarranty.com](http://www.ChoiceHomeWarranty.com) and agree to be bound by them. By signing below, I acknowledge that I am of legal age, have provided true and complete information, and have received a copy of the User Agreement.

Print Name: \_\_\_\_\_  
 Signature: [Signature] Date: 3-1-13

No charge

CHOICE HOME WARRANTY  
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July 13, 2013

Kent Johnson

13444 Prairie View Lane

Oklahoma City, OK, 73142

Re: Claim #50683544

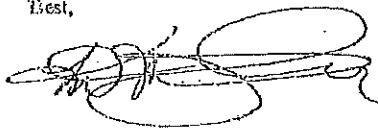
I purchased this house, the address of which is listed above, on March 1, 2013. Prior to the purchase, the house was inspected and Consumer Home Warranty underwrote the HOW policy that was purchased by the seller and provided to me by your company.

Sometime during the night of July 8<sup>th</sup>, the air conditioning unit quit operating. Because outdoor temperatures were 101+ in Oklahoma at the time (I woke up to temperatures inside my house of 84 degrees at 7 a.m.), I did not have the option of seeing how your company would respond so I contacted a technician from Air Comfort Solutions, a very reputable firm in Oklahoma City. I believed the unit would only need minor servicing. Air Comfort Solutions came out on July 9<sup>th</sup> and indicated the complete unit needed to be replaced.

I contacted your company on July 9<sup>th</sup> and my technician talked to your staff, explaining that the capacitor went out. At that time, the staff members we spoke with said the unit had likely not been maintained properly. My technician told your staff there was no rust, no dirt, and no indication of improper maintenance and that it was only approximately 9 years old. The indicated staff member said that the company would get back in contact with us that day. When I did not hear back from your staff that night, or the next day, I called the company and learned the company denied my claim saying the unit was not maintained properly. I find it an erroneous assumption that you may be able to determine over the phone, having never laid eyes on the unit, that it was in a state of disrepair. The company did not even offer to have a technician make an independent determination.

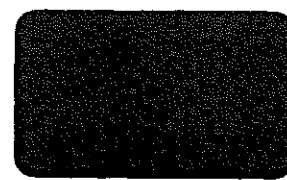
I have included the bill detailing work completed (totaling \$5587.00), a short note from the technician explaining what he found, as well as an email from the previous owner stating that the unit was serviced by your staff/associates for this same part on 8/22/2010 and all recommended owner maintenance procedures were completed. Please be aware that I will be making copies of all our correspondence and will be filing formal complaints with the Better Business Bureau (BBB) and the Insurance Commission. If that is not sufficient, I will seek legal counsel for further assistance because I believe your company took on this insurance policy in good faith and I accepted it in good faith. I believe a fair resolution is possible and look forward to working with you in order to resolve this issue.

Best,



Kent M. Johnson

405-823-7331



LAW OFFICES  
PAIN AND GARLAND  
111 S. W. SECOND  
P. O. BOX 158  
ANADARKO, OKLAHOMA 73005

LESLIE PAIN (013-2005)  
JOHN W. GARLAND  
RICHARD A. WILLIAMS

TELEPHONES (405) 247-3365  
(405) 247-3366  
FAX (405) 247-7177  
email: jwgarland@abcglobal.net

September 10, 2013

Choice Home Warranty  
510 Thornall Street  
Edison, New Jersey 08837

Re: Kent Johnson  
13444 Prairie View Lane  
Oklahoma City, OK 73142  
Policy #919157764

Gentlemen:

On July 13, 2013, Mr. Kent Johnson wrote your company and referred to claim number 50683544 to request payment for the loss of his air conditioning unit. Mr. Johnson has not received a written response from his letter.

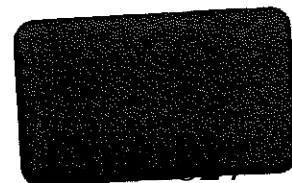
Mr. Johnson notified your company as required by article three of your Choice Home Warranty policy. The company failed to comply with

III.B by sending a service provider to his residence to determine the loss by Mr. Johnson.

Mr. Johnson completed the replacement of his air conditioning unit at a total cost of \$5587.00.

You have also been furnished information to show that the air conditioning unit had been properly maintained since you issued the policy to Mr. Clifford Lussier. Policy did not expire until February 16, 2014.

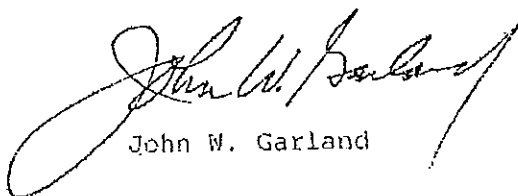
You have also failed to mediate this problem in good faith with Mr. Johnson as required by your policy.



Mr. Johnson is making demand for all sums due to him under the policy. You may contact me or Mr. Johnson concerning this matter. Mr. Johnson may be reached at 405-823-7331, or at the address shown above.

This matter is also being referred to the State Insurance Commissioner for assistance in resolving this claim.

Sincerely,

A handwritten signature in dark ink, appearing to read "John W. Garland". The signature is fluid and cursive, with a large loop at the end.

John W. Garland

JWG:cw

CC: Kent Johnson  
13444 Prairie View Lane  
Oklahoma City, OK 73142

**AA002828**

LAW OFFICES  
PAIN AND GARLAND

111 S. W. SECOND  
P. O. BOX 158  
ANADARKO, OKLAHOMA 73005

LESLIE PAIN (1913-2005)  
JOHN W. GARLAND  
RICHARD A. WILLIAMS

TELEPHONES (405) 247-3365  
(405) 247-3368  
FAX (405) 247-7177  
email: jwgarland@abcglobal.net

September 10, 2013

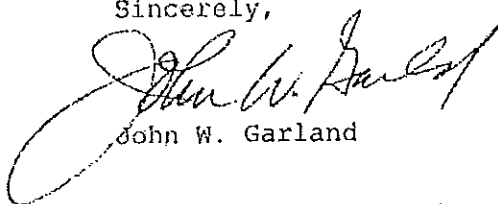
Oklahoma State Insurance Dept  
Suite 100, 3625 NW 56<sup>th</sup> St.  
P.O. Box 53408  
Oklahoma City, OK 73152-3408

Oklahoma Insurance Department  
RECEIVED  
SEP 18 2013  
Consumer Assistance Division

Gentlemen:

Enclosed is a copy of the letter that Mr. Kent Johnson wrote to Choice Home Warranty to cover the cost of the replacement of an air conditioning unit that was insured by Choice Home Warranty. Mr. Johnson has not received a response to his letter. Mr. Johnson also had the unit inspected and it was determined that he had not failed to properly maintain the unit. The company is refusing to mediate with Mr. Johnson or pay his claim. Could you please assist Mr. Johnson in resolving this issue without going to New Jersey for mediation. You will also find enclosed a copy of the letter that we wrote to Choice Home Warranty and a copy of Mr. Johnson's policy.

Sincerely,

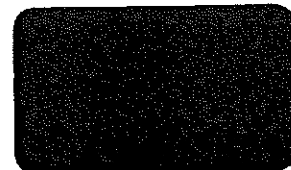


John W. Garland

JWG:cw  
Encl.

CC: Kent Johnson  
13444 Prairie View Lane  
Oklahoma City, OK 73142

CC: Choice Home Warranty  
510 Thornall Street  
Edison, New Jersey 08837



Governor  
Mary Fallin



Insurance Commissioner  
John Doak

Oklahoma Insurance Department  
State of Oklahoma

October 9, 2013

CHOICE HOME WARRANTY  
510 THORNALL ST  
EDISON NJ 08837

RE: JOHN GARLAND  
OID FILE NUMBER:41880

Dear Ladies and Gentlemen:

Enclosed you will find a copy of a Request for Assistance we have received from the above inquirer. Please review this correspondence and advise this office of your position. We ask that you use our file number on all correspondence concerning this inquiry.

Section 1250.4 (B) of the Oklahoma Insurance Code requires that your company provide this Department with an adequate written explanation regarding your position taken in this matter. Your response must be received by this office no later than thirty (30) days from the date of this letter.

Your response must include the full name of the insuring company and the corresponding NAIC company code. This will ensure that we associate the record of the complaint with the appropriate entity.

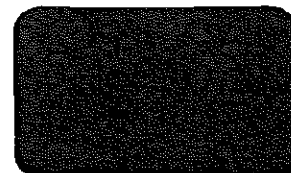
We also request that you provide a copy of the policy in question, and further request that you provide a specific contact person who will be handling this matter, their direct telephone number and e-mail address.

Thank you in advance for your assistance and your timely response. This department looks forward to working with you in resolving the insurance problems of this consumer.

Sincerely,

Jason Johnston CIC CISR  
Sr. Claims Process Reviewer  
Consumer Assistance/Claims Division  
Jason.Johnston@oid.ok.gov  
(405)521-2991 Phone (405) 521-6652 Fax

Enclosure



Ex 6

1/43



THE STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
OFFICE OF THE ATTORNEY GENERAL

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Christopher S. Porrino  
Attorney General

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**For Immediate Release:**

June 15, 2015

**For Further Information:****Media Inquiries-**

Jeff Lamm or  
Neal Buccino  
973-504-6327

**Citizen Inquiries-**

609-984-5828

**Office of The Attorney General**- John J. Hoffman, *Acting Attorney General***Division of Consumer Affairs**- Steve C. Lee, *Acting Director***Division of Law**- Jeffrey S. Jacobson, *Director*

## Edison-Based "Home Warranty" Company to Pay \$780,000 Revise its Business Practices, Retain a Compliance Monitor in Settlement of State's Enforcement Action

Final Consent Judgment

NEWARK – Edison-based CHW Group, Inc., which does business as Choice Home Warranty, has agreed to pay the State \$779,913.93 including consumer restitution; revise its business practices; and retain a compliance monitor for at least one year under a Final Consent Judgment resolving the lawsuit brought by the New Jersey Division of Consumer Affairs in July 2014 against the company and its current and former principals, Victor Mandalawi, Victor Hakim and David Seruya.

"Despite the representations in their contracts, these defendants allegedly used creative and deceptive means to deny their customers' claims," said Acting Attorney General John J. Hoffman. "We will continue to pursue so-called 'warranty' companies like CHW to make sure they live up to the promises they make to consumers."

The Division's Complaint, filed in Superior Court in Middlesex County, alleged that CHW induced consumers to buy the so-called "home warranties" – which were actually service contracts – by stating they offered "comprehensive" coverage. The Division alleged that CHW then used deceptive tactics to deny consumers' claims, such as denying claims if the consumers were unable to submit multiple years' worth of maintenance records. As a result, consumers who paid hundreds of dollars for CHW's "warranties" were required to pay out-of-pocket for air conditioning, refrigerator, or other repairs that were purportedly covered.

"Choice Home Warranty allegedly deceived consumers by refusing to provide the services it promised – specifically, the ability to have major appliances or systems repaired or replaced," Division of Consumer Affairs Acting Director Steve Lee said. "CHW did this after luring consumers with ads promising they would 'Never Pay for Covered Home Repairs Again.'"

The Division received, directly or indirectly, 1,085 complaints about CHW and its practices, from consumers in New Jersey and throughout the country.

The Final Consent Judgment requires Mandalawi, Hakim and Seruya to execute Confessions of Judgment, enabling the State to seek payment from them in the event CHW fails to make the settlement payment.

AA002831



The Judgment also requires CHW to retain and bear the costs of a State-approved compliance monitor. For up to two years, the compliance monitor will oversee CHW's, Mandalawi's and Hakim's compliance with the terms of the Judgment, all applicable New Jersey consumer protection laws, and CHW's internal policies and procedures. The compliance monitor will provide quarterly reports to the Division.

CHW, Mandalawi and Hakim also are prohibited from using the following business practices, among others:

- Representing that consumers who purchase residential service contracts will never pay for repairs to home systems or appliances.
- Representing that they will assign technicians to service consumers' claims, unless they are able to make such assignments.
- Requesting maintenance records or other similar documents from consumers in the initial review of their claims.

They are also required to adopt the following business practices:

- Clearly and conspicuously disclose in advertisements that they offer service contracts, which are not warranties.
- Disclose that they may make payments to consumers instead of replacing their home systems or appliances.
- Provide, upon a consumer's request, a written explanation for a claim denial.
- For a period of one year, resolve consumer complaints within 60 days of receiving such complaint from the Division, or have the complaints forwarded to the Division's Alternative Dispute Resolution Unit for binding arbitration.

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This judgment requires that CHW notify this Division of the terms of any new business in New Jersey, moves an existing business into New Jersey, or otherwise sells service contracts or any other merchandise in New Jersey.

Investigator Brian Morgenstern, of the Division of Consumer Affairs Office of Consumer Protection, conducted this investigation.

Deputy Attorneys General David Reap and Jeffrey Koziar, of the Consumer Fraud Prosecution Section within the Division of Law, represented the State in this action.

Consumers who believe they have been cheated or scammed by a business, or suspect any other form of consumer abuse, can [file a complaint online](#) with the State Division of Consumer Affairs or by calling **1-800-242-5846** (toll free within New Jersey) or **973-504-6200**.

####

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**AA002832**

JOHN J. HOFFMAN  
 ACTING ATTORNEY GENERAL OF NEW JERSEY  
 Division of Law  
 124 Halsey Street - 5<sup>th</sup> Floor  
 P.O. Box 45029  
 Newark, New Jersey 07101  
 Attorney for Plaintiffs

**FILED**

JUN 09 2015

TRAVIS L. FRANCIS  
 ASSIGNMENT JUDGE  
 MIDDLESEX VICINAGE

By: David M. Reap (025632012)  
 Deputy Attorney General  
 [REDACTED]

SUPERIOR COURT OF NEW JERSEY  
 CHANCERY DIVISION  
 MIDDLESEX COUNTY  
 DOCKET NO. C-135-14

JOHN J. HOFFMAN, Acting Attorney General of the  
 State of New Jersey, and STEVE C. LEE, Acting Director  
 of the New Jersey Division of Consumer Affairs,

Civil Action

Plaintiffs,

v.

CHW GROUP INC. d/b/a CHOICE HOME  
 WARRANTY; VICTOR MANDALAWI; VICTOR  
 HAKIM; DAVID SERUYA; JANE AND JOHN DOES 1-  
 20, individually and as officers, directors, shareholders,  
 founders, owners, managers, agents, servants, employees,  
 representatives, sales representatives and/or independent  
 contractors of CHW GROUP, INC. d/b/a CHOICE HOME  
 WARRANTY; and XYZ CORPORATIONS 1-20,

Defendants.

**FINAL CONSENT JUDGMENT**

The Parties to this Action and Final Consent Judgment ("Consent Judgment") are  
 plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey ("Attorney  
 General"), and Steve C. Lee, Acting Director of the New Jersey Division of Consumer Affairs  
 ("Director") (collectively, "Plaintiffs"), and defendants CHW Group Inc. d/b/a Choice Home

Warranty ("CHW"), Victor Mandalawi ("Mandalawi"), Victor Hakim ("Hakim") and David Seruya ("Seruya") (collectively, "Defendants"). As evidenced by their signatures below, the Parties do consent to the entry of this Consent Judgment and its provisions without trial or adjudication of any issue of fact or law, and without an admission of any liability or wrongdoing of any kind. The Parties consent to entry of this Consent Judgment to avoid the expenses and uncertainty associated with further investigation and/or litigation.

#### **PRELIMINARY STATEMENT**

Plaintiffs commenced this Action on July 22, 2014, alleging that Defendants violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), and the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq. ("Advertising Regulations"), arising from their Advertisement, offer for Sale and Sale of RSCs. Defendants have denied the allegations.

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

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

##### **1. JURISDICTION**

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

##### **2. VENUE**

2.1 Pursuant to N.J.S.A. 56:8-8, venue as to all matters between the Parties hereto

relating to or arising out of this Consent Judgment will lie exclusively in the Superior Court of New Jersey, Chancery Division, Middlesex County.

### 3. EFFECTIVE DATE

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

### 4. DEFINITIONS

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

4.1 "AAA" refers to the American Arbitration Association.

4.2 "Action" refers to the matter titled John J. Hoffman, Acting Attorney General of the State of New Jersey, and Steve C. Lee, Acting Director of the New Jersey Division of Consumer Affairs v. CHW Group, Inc. d/b/a Choice Home Warranty, Victor Mandalawi, Victor Hakim, and David Seruya, Superior Court of New Jersey, Chancery Division, Middlesex County, Docket No. MID-C-135-14, and all pleadings and proceedings related thereto, including the Complaint, filed July 22, 2014.

4.3 "Additional Consumer" refers to any Consumer who submits to the Division, directly or through another agency, after the Effective Date, a complaint concerning CHW's business practices.

4.4 "ADR Unit" refers to the Alternative Dispute Resolution Unit of the Division.

4.5 "Advertisement" is defined in accordance with N.J.S.A. 56:8-1(c). For purposes of the Advertising Regulations, "Advertisement" shall be defined in accordance with N.J.A.C. 13:45A-9.1. These definitions apply to other forms of the word "Advertisement," including

"Advertise[s]" and "Advertised."

4.6 "Attorney General" refers to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

4.7 "CHW Advertisements" refers to CHW's Advertisements, Including the CHW Booklet, CHW Commercial Advertisements, CHW Email Advertisements and CHW Website.

4.8 "CHW Booklet" refers to the booklet CHW mails to Consumers who purchase RSCs, which includes the RSC.

4.9 "CHW Commercial Advertisements" refers to commercials posted by CHW at [www.youtube.com](http://www.youtube.com).

4.10 "CHW Email Advertisements" refers to emails sent by CHW to Consumers Advertising and offering for Sale RSCs.

4.11 "CHW Website" refers to the website located at [www.choicehomewarranty.com](http://www.choicehomewarranty.com), as well as any other website owned or controlled by CHW through which RSCs are Advertised, offered for Sale and/or sold, Including [www.choicehomeaz.com](http://www.choicehomeaz.com); [www.choicehomenv.com](http://www.choicehomenv.com); [www.choicehomeus.com](http://www.choicehomeus.com); [www.choicehomewarranty.biz](http://www.choicehomewarranty.biz); [www.choicehomewarranty.info](http://www.choicehomewarranty.info); [www.choicehomewarranty.me](http://www.choicehomewarranty.me); [www.choicehomewarranty.mobi](http://www.choicehomewarranty.mobi); [www.choicehomewarranty.net](http://www.choicehomewarranty.net); [www.choicehomewarranty.org](http://www.choicehomewarranty.org); [www.chwplan.com](http://www.chwplan.com); and [www.warrantymyhome.com](http://www.warrantymyhome.com).

4.12 "Claims Agent" refers to any employee of CHW or any Person acting or purporting to act on its behalf, engaged in the evaluation of Consumers' claims arising under RSCs.

4.13 "Clearly and Conspicuously" means a statement that, regardless of the medium in which it is made, is presented in such size, color, contrast, duration, location and audibility, compared to the other information with which it is presented, that it is readily apparent and

understandable and in language and terms used in accordance with their common or ordinary usage and meaning.

4.14 "Consumer" refers to any Person who is offered Merchandise for Sale.

4.15 "Diagnosis Form" refers to the form, whether electronic or otherwise, through which Claim Agents, or any other of CHW's employees or any other Person acting or purporting to act on CHW's behalf, memorialize a technician's diagnosis of a failure to a Consumer's home system or appliance.

4.16 "Division" or "Division of Consumer Affairs" refers to the New Jersey Division of Consumer Affairs.

4.17 "Including" is construed as broadly as possible and shall mean "without limitation." This definition applies to other forms of the word "Including" such as "Include" and "Included."

4.18 "Merchandise" is defined in accordance with N.J.S.A. 56:8-1(c) and shall include RSCs.

4.19 "New Jersey" and "State" refers to the State of New Jersey.

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

4.21 "Represent" means to state or imply through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages or any other manner or means by which meaning might be conveyed.

4.22 "Restitution" refers to all methods undertaken by CHW to resolve Additional Consumer complaints, including the issuance of refund checks or other payments.

4.23 "RSC" refers to CHW's residential Service Contract.

4.24 "Sale" is defined in accordance with N.J.S.A. 56:8-1(e).

4.25 "Sales Representative" refers to any employee of CHW, or any Person acting or purporting to act on its behalf, engaged in the Advertisement, offer for Sale or Sale of RSCs.

4.26 "Service Contract" is defined in accordance with N.J.S.A. 56:12-87.

4.27 "Service Contracts Act" refers to the Act Concerning Service Contracts, N.J.S.A. 56:12-87 et seq.

4.28 "Warranty" is defined in accordance with N.J.S.A. 56:12-87.

## **5. INJUNCTIVE RELIEF AND REQUIRED BUSINESS PRACTICES AS TO CHW, MANDALAWI AND HAKIM**

5.1 CHW, Mandalawi and Hakim shall not engage in any unfair or deceptive acts or practices in the conduct of any business in the State and shall comply with such State laws, rules and regulations as now constituted, Including the CFA, the Advertising Regulations and the Service Contracts Act.

### **Advertisement and Offer for Sale of RSCs:**

5.2 In the CHW Advertisements, CHW, Mandalawi and Hakim shall Clearly and Conspicuously disclose that CHW offers for Sale and/or sells Service Contracts, which are not Warranties.

5.3 In the CHW Advertisements, CHW, Mandalawi and Hakim shall not Represent that Consumers who purchase RSCs will never pay for repairs to home systems or appliances.

5.4 In the CHW Advertisements, CHW, Mandalawi and Hakim shall not Represent that Consumers who purchase RSCs will be assigned technicians to service their claims, unless they are able to assign technicians to service Consumers' claims.

5.5 In the CHW Advertisements, CHW, Mandalawi and/or Hakim shall not Represent that technicians will be assigned to a Consumer's claim and/or dispatched to a Consumer's residence within a specified time period (e.g. within two (2) days).

5.6 In the CHW Advertisements, CHW, Mandalawi and Hakim shall not Represent that Consumers who purchase RSCs will have their home systems and/or appliances replaced, unless they Clearly and Conspicuously disclose, in close proximity to such Representations, that CHW reserves the right to make payment to Consumers in lieu of replacing their home systems or appliances, and that, in the event that CHW makes such payment, CHW will provide written notification to Consumers of the basis for the amount of the payment.

5.7 In the CHW Advertisements, CHW, Mandalawi and Hakim shall Clearly and Conspicuously disclose that CHW reserves the right to make payment to Consumers in lieu of replacing their home systems or appliances.

5.8 In the CHW Advertisements, CHW, Mandalawi and Hakim shall Clearly and Conspicuously disclose any limitations of liability and/or exclusions from coverage under the terms and conditions of the RSC.

5.9 In the CHW Website, CHW, Mandalawi and Hakim shall Include a section concerning Consumers' maintenance of their home systems and appliances, which shall Include a statement that CHW has the right to request "maintenance records" and/or similar documents from Consumers under certain circumstances.

**Sales Representatives:**

5.10 Sales Representatives shall not make any false or misleading statements to induce Consumers to purchase RSCs.

5.11 Sales Representatives shall not misrepresent to Consumers the terms and conditions of the RSC.



5.12 Sales Representatives shall not Represent to Consumers that CHW will assign technicians to service their claims, unless CHW is able to assign technicians to service Consumers' claims.

5.13 Sales Representatives shall disclose that CHW reserves the right to make payment to Consumers in lieu of replacing their home systems or appliances.

5.14 Sales Representatives shall disclose that CHW has the right to require Consumers to submit "maintenance records" and/or other similar documents under certain circumstances.

**Terms and Conditions of the RSC:**

5.15 CHW, Mandalawi and Hakim shall Clearly and Conspicuously disclose in the terms and conditions of the RSC any limitation of liability and/or exclusion from coverage.

5.16 CHW, Mandalawi and Hakim shall not Include in the RSC any statement that CHW will arrange for technicians to service a Consumers' claims, unless CHW is able to arrange for technicians to service Consumers' claims.

5.17 CHW, Mandalawi and Hakim shall not Include in the RSC any statement that technicians will be assigned to service Consumer's claim and/or dispatched to Consumers' residences within a specified time period (e.g. within two days), unless CHW is able to assign technicians to service Consumers' claims and/or dispatch technicians to Consumers' residences within the specified time period.

5.18 CHW, Mandalawi and Hakim shall Clearly and Conspicuously disclose in the terms and conditions of the RSC that CHW reserves the right to make payment to Consumers in lieu of replacing their home systems or appliances.

5.19 CHW, Mandalawi and Hakim shall Clearly and Conspicuously disclose in the terms and conditions of the RSC that CHW has the right to require Consumers to submit

"maintenance records" and/or other similar documents in the event that Consumers request that CHW review the denial of their claims.

5.20 CHW, Mandalawi and Hakim shall Include in the terms and condition of the RSC that any informal resolution process of a Consumer's claim is voluntary and shall be concluded within twenty (20) days.

5.21 CHW, Mandalawi and Hakim shall not Include in the terms and conditions of the RSC any references to arbitration before the AAA, unless CHW is in good standing with the AAA.

5.22 CHW, Mandalawi and Hakim shall not Include in the terms and conditions of the RSC any reference to any limitation on liability that contradicts applicable New Jersey Consumer protection laws, particularly as to Consumers' rights to recovery.

5.23 To the extent that any of the above-referenced provisions require changes in the terms and conditions of the existing RSC, CHW, Mandalawi and Hakim shall make such changes within ninety (90) days of the Effective Date.

**Assignment of Technicians:**

5.24 CHW, Mandalawi and Hakim shall ensure, to the best of their knowledge based upon their diligent and good faith inquiries, that any technician they assign to service a Consumer's claim possesses all requisite licenses, registrations and insurance.

5.25 CHW, Mandalawi and Hakim shall ensure that any technician they assign to service a Consumer's claim, to the best of their knowledge based on their diligent and good faith inquiries, is available and able to service such claim.

**Evaluation of Claims:**

5.26 In CHW, Mandalawi and Hakim's initial evaluation of Consumers' claims, they shall not request "maintenance records" or other similar documents from Consumers.

5.27 CHW, Mandalawi and Hakim shall not deny a Consumer's claim upon a basis not set forth in the RSC.

5.28 At the time a Claims Agent orally denies a Consumer's claim, the Claims Agent shall inform the Consumer that he/she has the right to request a written denial from CHW, which shall be provided to him/her in fifteen (15) days of receiving the request for a written denial.

5.29 The written denial shall Include:

- (a) the technician's diagnosis of the home system or appliance, as demonstrated by any available supporting documents, whether electronic or otherwise, Including the Diagnosis Form;
- (b) CHW's basis for the denial under the RSC; and
- (c) notification that the Consumer may send a written request for CHW to review the denial, along with a list of required documents (i.e. "maintenance records") that must be sent with such a request.

5.30 Within thirty (30) days of receiving a Consumer's written request to review a denial, CHW shall provide written notification to the Consumer of the results of its review, which shall Include the basis for its decision and any supporting documents.

5.31 In the event a Consumer disputes the results of CHW's review, CHW shall orally inform the Consumer that he/she may submit a complaint to the Division, which will be referred to arbitration with the ADR Unit, in accordance with Section 7.

**Payment to Technicians:**

5.32 In the event that a Consumer notifies CHW, orally or in writing, that a technician is directly seeking payment from him/her, CHW, Mandalawi and Hakim shall make payment to the technician of the approved amount within thirty (30) days.

**Payment in Lieu of Replacement:**

5.33 In the event CHW, Mandalawi and/or Hakim makes payment to a Consumer in lieu of replacing his/her home system or appliance, CHW, Mandalawi and/or Hakim shall provide the Consumer with written notification of payment, which shall include CHW's basis for the amount provided as payment in lieu of replacement of the home system or appliance.

5.34 Within thirty (30) days of providing the Consumer with written notification of payment, CHW, Mandalawi and Hakim shall provide the Consumer with such payment in the same manner in which the Consumer purchased the RSC or by check, at the election of the Consumer.

**Refunds:**

5.35 In the event that CHW, Mandalawi and/or Hakim cancel a RSC, at the time of such cancellation, they shall provide the Consumer with written notification of the cancellation, which shall include the amount of any refund due to the Consumer.

5.36 Within thirty (30) days of providing the Consumer with written notification of the cancellation, CHW, Mandalawi and Hakim shall provide any refund due in the same manner in which the Consumer purchased the RSC or by check, at the election of the Consumer.

**Written Notification:**

5.37 CHW, Mandalawi and Hakim may provide the written notifications to Consumers required under Sections 5.28, 5.30, 5.33, 5.35 by electronic transmission.

**Training of Sales Representatives and Claims Agents:**

5.38 CHW, Mandalawi and/or Hakim shall develop training materials to ensure that their Sales Representatives and Claims Agents are familiar with the terms of this Consent

Judgment. Such training shall include, at a minimum, the specific practices that are required and prohibited pursuant to Section 5 of this Consent Judgment.

5.39 CHW, Mandalawi and Hakim shall ensure that all of their Sales Representatives and Claims Agents receive the training referenced in Section 5.38 within thirty (30) days of the Effective Date.

5.40 CHW, Mandalawi and Hakim shall have a continuing obligation to ensure that all new Sales Representatives and Claims Agents receive the training referenced in Section 5.38 within thirty (30) days of their commencement of employment with CHW.

5.41 CHW, Mandalawi and Hakim shall ensure that their Sales Representatives and Claims Agents sign a form acknowledging that he/she has received the training and materials.

**Service Contracts Act:**

5.42 CHW, Mandalawi and Hakim shall comply with all of the requirements of the Service Contracts Act.

**6. INJUNCTIVE RELIEF AND REQUIRED BUSINESS PRACTICES AS TO SERUYA**

6.1 Seruya Represents and warrants that he has not been an officer, director, shareholder, owner, manager, agent, servant, employee, representative, Sales Representative, Claims Agent and/or independent contractor of CHW's parent company, CHW, CHW's affiliated companies and/or CHW's subsidiary companies since at least May 21, 2013.

6.2 Seruya shall provide written notice to Plaintiffs of any plans to: (a) relocate any business entity owned, operated and/or managed by him to New Jersey; (b) form any business entity to be owned, operated and/or managed by him in New Jersey, and/or (c) Advertise, offer for Sale and/or sell Merchandise, including RSCs or any other type of Service Contracts to Consumers in New Jersey, along with a description of any such Merchandise. Seruya shall

provide such notification at least thirty (30) days prior to the date of any such relocation, formation and/or Advertisement, offer for Sale, and/or Sale of Merchandise.

6.3 In the event Seruya: (a) relocates any business entity owned operated and/or managed by him to New Jersey that is engaged in the Advertisement, Offering for Sale and/or Sale of RSCs or any type of Service Contracts; (b) forms any business entity owned, operated and/or managed by him in New Jersey that is engaged in the Advertisement, offering for Sale and/or Sale of RSCs or any type of Service Contracts; and/or (c) otherwise Advertises, Offers for Sale and/or sells RSCs or any other type of Service Contracts to Consumers in New Jersey, he shall comply with the requirements of Sections 5.1 through 5.42 of this Consent Judgment.

#### **7. ADDITIONAL CONSUMER COMPLAINTS**

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

7.2 After forwarding to CHW the complaint of an Additional Consumer, the Division shall notify the Additional Consumer, in writing, of the following: (a) that his/her complaint has been forwarded to CHW; (b) that he/she should expect a response from CHW within thirty (30) days from the date of this notice; and (c) the right to refer his/her complaint to the ADR Unit for binding arbitration if CHW disputes the complaint and/or requested relief.

7.3 Within thirty (30) days of receiving the Additional Consumer complaint from the Division, CHW shall send a written response to the Additional Consumer, with a copy sent by first class mail, fax or email to the following:

New Jersey Division of Consumer Affairs,  
Office of Consumer Protection  
Case Initiation and Tracking Unit  
124 Halsey Street, P.O. Box 45025

Newark, New Jersey 07101  
 Fax: (973) 648-3139  
 E-mail: cmt@dca.lps.state.nj.us.

7.4 If CHW does not dispute the Additional Consumer's complaint and requested relief, CHW shall provide written notification to the Additional Consumer. Where Restitution concerns a refund or other payment, such shall be made to the Additional Consumer in the same manner in which the Consumer purchased the RSC or by check.

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

7.6 Within forty-five (45) days of receiving from the Division the Additional Consumer's complaint, CHW shall provide the Division with written notification whether the Additional Consumer's complaint has been resolved. Such notification shall include the following:

- (a) The Additional Consumer's name and address;
- (b) Whether the Additional Consumer's complaint has been resolved;
- (c) The Restitution provided to the Additional Consumer;
- (d) Copies of any documents evidencing Restitution provided to the Additional Consumer;
- (e) Confirmation that CHW sent all notifications to the Additional Consumer as required by this Section; and
- (f) In the event that CHW's written response and/or Restitution to the Additional Consumer is returned as undeliverable, the efforts CHW has undertaken to locate the Additional Consumer.

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

Consent Judgment.

7.7 If within sixty (60) days of CHW's receipt of the Additional Consumer's complaint: (a) CHW has not notified the Division that the Additional Consumer's complaint has been resolved; (b) CHW has notified the Division that the Additional Consumer's complaint has not been resolved; or (c) CHW notified the Division that the Additional Consumer refuses CHW's offer of Restitution, the Division shall forward such Additional Consumer complaint to the ADR Unit for binding arbitration. CHW agrees herein to consent to this arbitration process and to be bound by the arbitrator's decision. CHW further agrees to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. The Division shall notify any such Additional Consumer and CHW of the referral of the complaint to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines (a copy of which is attached as Exhibit A).

7.8 If CHW refuses to participate in the ADR program, the arbitrator may enter a default against CHW. Unless otherwise specified in the arbitration award, CHW shall pay all arbitration awards within thirty (30) days of the arbitrator's decision.

7.9 CHW's failure or refusal to comply with the requirements of Sections 7.3 through 7.6 and/or participate in the arbitration process or pay an arbitration award timely shall constitute a violation of this Consent Judgment. Under these circumstances, the Division may unilaterally discontinue the Additional Consumer complaint resolution process upon notice to CHW.

7.10 If an Additional Consumer refuses to participate in the ADR program, that Additional Consumer's complaint shall be deemed closed for the purposes of this Consent Judgment and no Restitution will be required to be made by CHW to the Additional Consumer through the Additional Consumer Complaints Process.



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

7.12 Following the expiration of the one (1) year period, CHW may request to continue the Additional Consumer complaint resolution process for up to two (2) successive one (1) year periods, upon written notice by CHW to the Division not later than thirty (30) days prior to the expiration of the initial or any subsequent one (1) year period. The Division may decline to grant CHW's request, at its sole discretion, for any reason including those set forth in Section 7.9.

## **8. INDEPENDENT COMPLIANCE MONITOR**

8.1 Within thirty (30) days of the Effective Date, CHW shall retain an Independent Compliance Monitor ("Compliance Monitor") to monitor CHW's compliance with the terms and conditions of this Consent Judgment. CHW shall bear all costs associated with the Compliance Monitor.

8.2 The Compliance Monitor will be an individual whose retention is approved in advance by the Division and who is familiar with the terms of the Consent Judgment. The Compliance Monitor will serve in this capacity for a period of up to two (2) years from the date of retention ("Monitoring Period"), subject to Sections 8.10 and 8.11.

8.3 The Compliance Monitor shall not have any direct or indirect interest in, or relationship with, either the Division or Defendants that would impede, or reasonably be perceived to impede, the Compliance Monitor's ability to perform the services under this Consent Judgment.

8.4 The Compliance Monitor shall not be employed by or affiliated with CHW, Mandalawi and/or Hakim, nor any other entity owned or controlled by them, for a period of at least one (1) year from the termination of the Monitoring Period.

8.5 Under no circumstances will the cost of the Compliance Monitor exceed One Hundred Thousand and 00/100 Dollars (\$100,000.00), regardless of the length of the Compliance Monitor's retention.

8.6 The Compliance Monitor shall be compensated quarterly, and he/she shall submit a quarterly invoice to CHW for the amount of all of his/her costs incurred during the quarter. CHW shall pay each invoice within thirty (30) days upon receipt.

8.7 The Compliance Monitor shall perform the following functions:

- (a) Monitor CHW, Mandalawi and Hakim's compliance with the terms of this Consent Judgment as well as with all applicable State laws;
- (b) Monitor CHW, Mandalawi and Hakim's compliance with CHW's internal policies and procedures;
- (c) Evaluate the adequacy of CHW's internal policies and procedures to ensure compliance with all applicable State laws, and to recommend any changes to those policies and procedures that the Compliance Monitor deems reasonably necessary to achieve such compliance; and
- (d) Provide written quarterly reports to the Division.

8.8 The Compliance Monitor's quarterly reports referenced in Section 8.7 shall be limited to the following:

- (a) Confirming that the CHW Advertisements have been revised in accordance, and otherwise comply, with Sections 5.2 to 5.9;
- (b) Confirming that CHW, Mandalawi and Hakim have implemented policies to ensure that their Sales Representatives do not misrepresent the terms and conditions of the RSC and make the disclosures set forth in Sections 5.13 and 5.14;
- (c) Confirming that CHW, Mandalawi and Hakim have revised their RSC in accordance with Sections 5.15 to 5.23, within ninety (90) days of the Effective Date;
- (d) Confirming that CHW, Mandalawi and Hakim's assignment of technicians comply with Sections 5.24 and 5.25;

- (e) Confirming that CHW, Mandalawi and Hakim, in their initial evaluation of claims under the RSC, do not request "maintenance records" or similar documents from Consumers, and do not deny Consumers' claims upon a basis not set forth in the RSC, in accordance with Sections 5.26 and 5.27;
- (f) Confirming that CHW, Mandalawi and Hakim have implemented policies to ensure that they provide written notifications to Consumers in accordance with Sections 5.28, 5.29, 5.30, 5.33, and 5.35; and
- (g) Confirming that CHW has addressed the Additional Consumer complaints, in accordance with Section 7.

8.9 Within thirty (30) days of the Effective Date, CHW shall send to the Division the full name, business address (street and mailing), telephone number, facsimile number and electronic mail address of the Compliance Monitor.

8.10 At any time after one (1) year from the date of hire of the Compliance Monitor, CHW may make a written request to the Division to terminate the retention of the Compliance Monitor. Such request shall include a certification under oath by a principal of CHW that CHW has been in compliance with all applicable State laws, CHW's own policies and procedures, and this Consent Judgment.

8.11 Within thirty (30) days of the submission of the request referenced in Section 8.10, the Division shall notify CHW, in writing, whether it will consent to CHW's request to terminate the retention of the Compliance Monitor.

8.12 If the Compliance Monitor's retention is terminated prior to the expiration of the Monitoring Period, the Compliance Monitor shall submit an invoice to CHW for any costs incurred after submission of the last quarterly invoice. CHW shall pay that invoice within thirty (30) days of receipt.

8.13 CHW's failure to timely pay any invoice presented to it by the Compliance Monitor shall constitute a violation of this Consent Judgment.

## 9. SETTLEMENT PAYMENT

9.1 The Parties have agreed to a settlement of the Action in the amount of Seven Hundred Seventy-Nine Thousand Nine Hundred Thirteen and 93/100 Dollars (\$779,913.93) ("Settlement Payment"), which is comprised of civil penalties, pursuant to the CFA, N.J.S.A. 56:8-13, Restitution, pursuant to the CFA, N.J.S.A. 56:8-8, and reimbursement of Plaintiffs' attorneys' fees and investigative costs, pursuant to the CFA, N.J.S.A. 56:8-11.

9.2 CHW shall make the Settlement Payment as follows:

- (a) On or before thirty (30) days from the Effective Date, CHW shall pay Two Hundred Eighty Three Thousand Eight Hundred Eighty-Eight and 93/100 Dollars (\$283,888.93); and
- (b) On or before nine (9) months from the Effective Date, CHW shall pay Four Hundred Ninety-Six Thousand and 00/100 Dollars (\$496,025.00).

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

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

9.4 Upon making the Settlement Payment, CHW shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Plaintiffs pursuant to the terms herein.

9.5 In the event that CHW fails to make the Settlement Payment in accordance with

Sections 9.2 and 9.3, Plaintiffs shall provide CHW with written notice of non-payment. CHW shall be afforded a seven (7) day period from receipt of such notice within which to cure any such non-payment. CHW's failure to cure any such non-payment will be considered an event of default ("Event of Default").

9.6 Upon a request by or on behalf of CHW and verification that the Settlement Payment has been made, Plaintiffs shall provide CHW with a Warrant of Satisfaction as to such payment. The Warrant of Satisfaction shall have no effect on CHW, Mandalawi, Hakim and Seruya's continuing obligations under any other provision of this Consent Judgment.

#### **10. CONFESSION OF JUDGMENT**

10.1 Upon execution of this Consent Judgment, Mandalawi, Hakim and Seruya shall provide Plaintiffs with an executed Confession of Judgment in the amount of Seven Hundred Seventy-Nine Thousand Nine Hundred Thirteen and 93/100 Dollars (\$779,913.93) that has been executed in the form annexed as Exhibit B. Plaintiffs' counsel shall hold the Confession of Judgment in escrow pending an Event of Default.

10.2 If an Event of Default occurs, Plaintiffs may make an application pursuant to the New Jersey Rules of Court to enter and enforce the Confession of Judgment, and to have judgment entered against Mandalawi, Hakim and Seruya, in the amount of Seven Hundred Seventy-Nine Thousand Nine Hundred Thirteen and 93/100 Dollars (\$779,913.93), minus any amounts paid by CHW pursuant to Sections 9.2 and 9.3, plus Plaintiffs' attorneys' fees and costs.

#### **11. DISMISSAL OF ACTION**

11.1 The entry of this Consent Judgment constitutes a dismissal with prejudice of the Action, provided however, that the Court shall retain jurisdiction to enforce the terms of the Consent Judgment.

## 12. GENERAL PROVISIONS

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

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

12.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Judgment and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Judgment.

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

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

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

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

12.8 This Consent Judgment is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Judgment nor any action taken hereunder shall constitute, or be construed as: (a) an approval, sanction or

authorization by the Attorney General, the Division, or any other governmental unit of the State of any act or practice of Defendants; and (b) an admission by Defendants that any of their acts or practices described in or prohibited by this Consent Judgment are unfair or deceptive or violate or are governed by the Consumer protection laws of the State. This Consent Judgment is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms of this Consent Judgment.

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

12.10 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Judgment 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 Judgment.

### 13. RELEASE

13.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Judgment and conditioned on CHW complying with the Additional Consumer Complaint Process pursuant to Section 7, and CHW making the Settlement Payment in the manner specified in Section 9, Plaintiffs hereby agree to release Defendants from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Plaintiffs could have brought prior to the Effective Date against Defendants for violations of the CFA and the Advertising Regulations alleged in the Action, as well as the matters specifically addressed in Section 5 of the Consent Judgment ("Released Claims").

13.2 Notwithstanding any term of this Consent Judgment, the following do not

comprise Released Claims: (a) actions to enforce this Consent Judgment; and (b) any claims against Defendants by any other agency or subdivision of the State.

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

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

14.2 The Parties agree that any future violations by CHW, Mandalawi and Hakim of Section 5 and Seruya of Section 6 of this Consent Judgment, the CFA and/or the Advertising Regulations shall constitute a second or succeeding violation pursuant to N.J.S.A. 56:8-13, and that Defendants may be liable for enhanced civil penalties as provided therein.

#### **15. COMPLIANCE WITH ALL LAWS**

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

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

#### **16. NOTICES UNDER THIS CONSENT JUDGMENT**

16.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Consent Judgment shall be sent by the United States Mail,



Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For Plaintiffs:

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

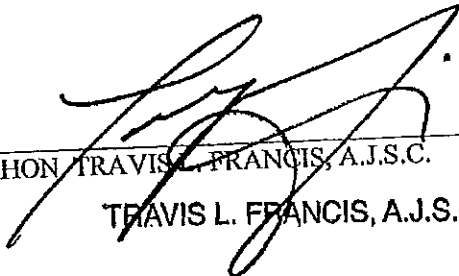
For CHW, Mandalawi and Hakim:

Lori Grifa, Esq.  
Archer & Greiner, P.C.  
Court Plaza South, West Wing  
21 Main Street, Suite 353  
Hackensack, New Jersey 07601

For Seruya:

Arnold Reiter, Esq.  
Reiter and Zipern  
Attorneys at Law  
75 Montbello Road  
Suffern, New York 10901

IT IS ON THE 9<sup>th</sup> DAY OF June 2015, SO ORDERED, ADJUDGED  
AND DECREED.

  
HON. TRAVIS L. FRANCIS, A.J.S.C.

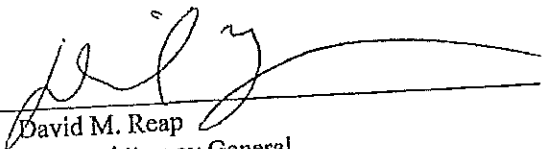
TRAVIS L. FRANCIS, A.J.S.C.

JOINTLY APPROVED AND  
SUBMITTED FOR ENTRY:

FOR THE PLAINTIFFS:

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

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

  
David M. Reap  
Deputy Attorney General  
Consumer Fraud Prosecution Section

Dated: May 21, 2015

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

FOR DEFENDANTS CHW GROUP, INC.  
D/B/A CHOICE HOME WARRANTY,  
VICTOR MANDALAWI AND VICTOR HAKIM:

ARCHER & GREINER, P.C.

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

Lori Grifa, Esq.

Dated: \_\_\_\_\_, 2015

Court Plaza South, West Wing  
21 Main Street, Suite 353  
Hackensack, New Jersey 07601

JOINTLY APPROVED AND  
SUBMITTED FOR ENTRY:

FOR THE PLAINTIFFS:

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2015

David M. Reap  
Deputy Attorney General  
Consumer Fraud Prosecution Section

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

FOR DEFENDANTS CHW GROUP, INC.  
D/B/A CHOICE HOME WARRANTY,  
VICTOR MANDALAWI AND VICTOR HAKIM:

ARCHER & GREINER, P.C.

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

Lori Grifa, Esq.

Dated: May 21, 2015

Court Plaza South, West Wing  
21 Main Street, Suite 353  
Hackensack, New Jersey 07601

OVED & OVED, LLP

By:  Dated: 5/21, 2015  
Darren Oved, Esq.

401 Greenwich Street  
New York, New York 10013

CHW GROUP, INC. D/B/A CHOICE HOME WARRANTY

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2015  
Victor Mandalawi, President

1090 King Georges Post Road  
Edison, New Jersey 08837

VICTOR MANDALAWI

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2015  
Victor Mandalawi

\_\_\_\_\_  
\_\_\_\_\_

VICTOR HAKIM


By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2015  
Victor Hakim

\_\_\_\_\_  
\_\_\_\_\_

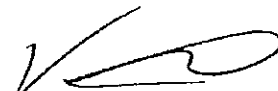
OVED & OVED, LLP

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2015  
Darren Oved, Esq.  
401 Greenwich Street  
New York, New York 10013

CHW GROUP, INC. D/B/A CHOICE HOME WARRANTY

By:  \_\_\_\_\_ Dated: 5/21, 2015  
Victor Mandalawi, President  
1090 King Georges Post Road  
Edison, New Jersey 08837

VICTOR MANDALAWI

By:  \_\_\_\_\_ Dated: 5/21, 2015  
Victor Mandalawi

VICTOR HAKIM

By:  \_\_\_\_\_ Dated: 5/21, 2015  
Victor Hakim

QUIANA PITTMAN  
NOTARY PUBLIC OF NEW JERSEY  
ID # 2437848  
My Commission Expires 8/28/2018

FOR DEFENDANT DAVID SERUYA:

REITER AND ZIPERN  
ATTORNEYS AT LAW

By: 

Arnold Reiter, Esq.

Dated: May 21, 2015

75 Montbello Road  
Suffern, New York 10901

DAVID SERUYA

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

David Seruya

Dated: \_\_\_\_\_, 2015

FOR DEFENDANT DAVID SERUYA:

REITER AND ZIPERN  
ATTORNEYS AT LAW

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2015  
Arnold Reiter, Esq.

75 Montbello Road  
Suffern, New York 10901

DAVID SERUYA

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2015  
David Seruya

# EXHIBIT A

**AA002863**



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

**ADR UNIT GUIDELINES**

**INTRODUCTION**

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

**I. DEFINITIONS**

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

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

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

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

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

**AA002864**

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

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

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

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

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

## II. WHAT IS MEDIATION?

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

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

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

## III. WHAT IS ARBITRATION?

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

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

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

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

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

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

##### **Complaint Review**

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

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

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

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

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

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

#### **Representation**

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

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

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

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

##### **A) Mediation**

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

##### **B) Arbitration**

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

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

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

#### **C) Written Requirements**

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

#### **D) Disclosure**

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

### **V Privacy**

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

### **VI CONFIDENTIALITY OF DISPUTE RESOLUTION SESSIONS**

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

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

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

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

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

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

## VII TERMINATION

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

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

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

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

## VIII EXCLUSION OF LIABILITY

Neither the staff of the ADR Unit nor any mediator or arbitrator is a necessary party in a judicial proceeding related to the dispute that is being resolved. Parties to an arbitration expressly agree to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14 and the New Jersey Tort Claims Act, N.J.S.A. 59:10A-1 et seq. Parties to a mediation or arbitration shall be deemed to have consented that neither the staff of the ADR Unit nor any mediator or arbitrator shall be liable to any party in any way for damages or for injunctive relief for any act or omission in connection with any mediation or arbitration conducted under these rules.

**IX INTERPRETATION AND APPLICATION OF RULES**

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

*Revised June 2008*

# EXHIBIT B

AA002871



JOHN J. HOFFMAN  
 ACTING ATTORNEY GENERAL OF NEW JERSEY  
 Division of Law  
 124 Halsey Street - 5<sup>th</sup> Floor  
 P.O. Box 45029  
 Newark, New Jersey 07101  
 Attorney for Plaintiffs

By: David M. Reap (025632012)  
 Deputy Attorney General  
 [REDACTED]

SUPERIOR COURT OF NEW JERSEY  
 CHANCERY DIVISION  
 MIDDLESEX COUNTY  
 DOCKET NO. C-135-14

JOHN J. HOFFMAN, Acting Attorney General of the State  
 of New Jersey, and STEVE C. LEE, Acting Director of the  
 New Jersey Division of Consumer Affairs,

Plaintiffs,

v.

CHW GROUP INC. d/b/a CHOICE HOME WARRANTY;  
 VICTOR MANDALAWI; VICTOR HAKIM; DAVID  
 SERUYA; JANE AND JOHN DOES 1-20, individually and  
 as officers, directors, shareholders, founders, owners,  
 managers, agents, servants, employees, representatives, sales  
 representatives and/or independent contractors of CHW  
 GROUP, INC. d/b/a CHOICE HOME WARRANTY; and  
 XYZ CORPORATIONS 1-20,

Defendants.

Civil Action

**CONFESSION OF**  
**JUDGMENT**  
**BY VICTOR MANDALAWI**

Upon reading and filing the annexed Affidavit of Victor Mandalawi for Confession of  
 Judgment, sworn to on the \_\_\_ day of \_\_\_\_\_, 2015, and

**AA002872**

WHEREAS, defendant CHW Group Inc. d/b/a Choice Home Warranty having defaulted on the payment terms of the Consent Judgment, filed \_\_\_\_\_, 2015, and having failed to cure said default upon prior written notice from Plaintiffs or their counsel, attached hereto, within the time provided therein, it is:

**ORDERED, ADJUDGED AND DECREED**, that Plaintiffs, John J. Hoffman, Acting Attorney General of the State of New Jersey, and Steve C. Lee, Acting Director of the New Jersey Division of Consumer Affairs, located at 124 Halsey Street, 5<sup>th</sup> Floor, P.O. Box 45029, Newark, New Jersey 07101, recover of defendant Victor Mandalawi, with a primary place of residence of \_\_\_\_\_, the sum of Seven Hundred Seventy-Nine Thousand Nine Hundred Thirteen and 93/100 Dollars (\$779,913.93), minus any amounts paid by any defendant to Plaintiffs.

Judgment entered the \_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Clerk

AA002873

MIKE KREIDLER  
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON



OFFICE OF  
INSURANCE COMMISSIONER

HEARINGS UNIT

Fax: (360) 664-2782

Patricia D. Petersen  
Chief Hearing Officer  
(360) 725-7105

**EX 8**  
Phone: (360) 725-7000  
www.insurance.wa.gov  
**FILED**

2010 JAN 27 A 11:46

Hearings Unit, DIC  
Patricia D. Petersen  
Chief Hearing Officer

Nicole Kelly  
Paralegal  
(360) 725-7002  
nicolek@oic.wa.gov

BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:

No. 10-0199

CHW GROUP, INC., doing business as  
CHOICE HOME WARRANTY  
and [www.ChoiceHomeWarranty.com](http://www.ChoiceHomeWarranty.com),  
VICTOR MANDALAWI, JAMES MOSS,  
DAVID BAILEY, STEVEN SAFDEIH,  
MICHAEL GUTHOLC,  
Respondents

FINAL ORDER TERMINATING  
PROCEEDING

**TO:** Darren Oved, Esq.  
Oved & Oved LLP  
Attorneys and Counselors at Law  
101 Avenue of the Americas, 15<sup>th</sup> Floor  
New York, NY 10013-1991

**COPY TO:** Mike Kreidler, Insurance Commissioner  
Michael G. Watson, Chief Deputy Insurance Commissioner  
Carol Sureau, Esq. Deputy Commissioner, Legal Affairs Division  
Alan M. Singer, Esq. Staff Attorney, Legal Affairs Division  
James T. Odiorne, CPA, JD, Deputy Commissioner, Company Supervision Div.  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

On November 1, 2010, the Insurance Commissioner ("Commissioner") received a letter from Darren Oved, Esq., of Oved & Oved LLP in New York City. Mr. Oved advised that he represented CHW Group, Inc., Victor Mandalawi, David Bailey, Steven Safdeih and Michael Gutholc ("Respondents") and that apparently James Moss does not exist. Said letter was

Mailing Address: P. O. Box 40255 • Olympia, WA 98504-0255  
Street Address: 5000 Capitol Blvd. • Tumwater, WA 98501

**AA002874**

FINAL ORDER TERMINATING PROCEEDINGS  
CHW GROUP, INC., No. 10-0199

considered a Demand for Hearing. The purpose of said Demand for Hearing is to contest the Commissioner's Order to Cease and Desist, No. 10-0199, dated October 21, 2010.

On Monday, November 15, 2010, the undersigned held a first prehearing teleconference in this matter. Mr. Oved appeared on behalf of Respondents. The Commissioner appeared pro se, by and through Alan M. Singer, Esq., Staff Attorney in the Commissioner's Legal Affairs Division. During said prehearing conference, the undersigned reviewed administrative procedure to be expected at hearing, citing Title 48 RCW, relevant sections of which are set forth in the Order to Cease and Desist, and 34 RCW, the Administrative Procedures Act and addressed all questions and concerns of the parties. By agreement of the parties, a hearing was scheduled for January 10, 2011. The parties were informed if they had any future questions or concerns, or requests for additional prehearing conferences, they should contact Nicole Kelly, Paralegal to the undersigned, who can be reached by telephone at (360) 725-7002, e-mail at [nicolek@oic.wa.gov](mailto:nicolek@oic.wa.gov), or at the above address.

Of significance during said prehearing conference, the undersigned advised the Respondents that RCW 48.04.020(1) does not provide for an automatic stay of the Commissioner's Order as the Order was by its terms made effective immediately. For this reason, Respondents moved for a discretionary stay pursuant to RCW 48.04.020(2). The parties agreed to a schedule for submission of written briefs and oral argument to be followed promptly by a ruling thereon. Accordingly, on November 22, 2010, Respondents filed their letter brief in support of their Motion for Discretionary Stay and on November 29 the Commissioner filed his brief in opposition to Respondents' Motion for Discretionary Stay, and on November 30 the parties presented oral argument before the undersigned, by telephone, on this Motion. After considering the arguments of the parties and the entire hearing file, including Respondents' statement that they had fully complied with said Order except for the requirement that they advise each of their Washington consumers of this action, the undersigned determined that there was insufficient evidence to support a discretionary stay herein and on December 1, 2010 entered her Order Denying Respondents' Motion for Discretionary Stay. Thereafter, Respondents advised the undersigned that because their motion for discretionary stay was denied they since that time had complied with the remaining term of the Order by contacting each of their Washington consumers and informing them about this action.

On December 27, 2010, the Commissioner filed a Motion for Telephone Testimony of Patricia Ryan and A. Tom Klindt. While the Respondents had no objections to telephonic testimony of the witnesses, they questioned the relevancy of the testimony and, on January 5, 2011, asked that a prehearing conference be held to discuss the exchange of *witness lists and other information necessary to ensure the effective and efficient administration of the hearing*. A third prehearing conference was held at 1:00 p.m. on January 6, at which time the hearing was rescheduled to commence on Tuesday, February 1, 2011 at 11:00 a.m. and continue on subsequent days thereafter until terminated.

Thereafter, the undersigned received the attached Stipulation Regarding Withdrawal of Hearing Demand from the parties. Said Stipulation 1) confirms that Respondents have withdrawn their request for hearing; 2) that the Commissioner's representative Alan Michael Singer, Esq. and Brian S. Tretter, Esq. of Oved & Oved, LLP who represents Respondents together with Mr.

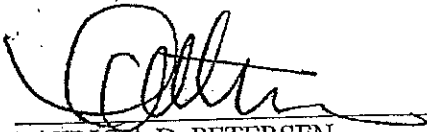
FINAL ORDER TERMINATING PROCEEDINGS  
CHW GROUP, INC., No. 10-0199

Oved, have discussed the matter and that the Commissioner has no objections to Respondents' withdrawal; 3) that Respondents understand and agree that by their withdrawal there will be no hearing and that Order No. 10-0199 will remain in full force and effect; 4) that the parties agree and represent that Respondents have made no promises for their withdrawal and that there are no side or other settlement agreements regarding their withdrawal; and 5) that Respondents understand that they are relinquishing any and all right to further contest or appeal of Order No. 10-0199.

Based upon the above activity,

**IT IS HEREBY ORDERED** that this proceeding is terminated with prejudice.  
**IT IS FURTHER ORDERED** that the Commissioner's Order No. 10-0199 has been in effect since October 21, 2010 and shall remain in effect indefinitely.

ENTERED AT TUMWATER, WASHINGTON, this 27<sup>th</sup> day of January, 2011, pursuant to RCW 48.04, Title 34 RCW and applicable regulations.

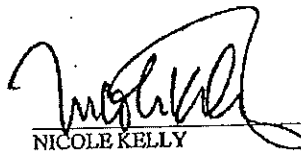


PATRICIA D. PETERSEN  
Chief Hearing Officer  
Presiding Officer

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Brian S. Trotter, Esq., Darren Oved, Esq., Mike Kreidler, Michael G. Watson, Carol Sureau, Esq., Alan M. Singer, Esq., and James T. Odiorne, CPA, JD.

DATED this 27<sup>th</sup> day of January, 2011.



NICOLE KELLY

FILED

2010 JAN 24 A 11:07

THE STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

Hearings Unit, DIC  
Patricia D. Petersen  
Chief Hearing Officer

Docket No. 10-0199

CHW GROUP, INC., doing business as  
CHOICE HOME WARRANTY and  
[www.ChoiceHomeWarranty.com](http://www.ChoiceHomeWarranty.com)  
VICTOR MANDALAWI, "JAMES  
MOSS," DAVID BAILEY, STEVEN  
SAFDIEH, MICHAEL GUTHOLC  
Unauthorized Individuals and Entities,

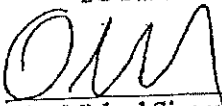
STIPULATION REGARDING  
WITHDRAWAL OF HEARING  
DEMAND

Respondents.

COMES NOW the undersigned Office of the Insurance Commissioner ("OIC") staff attorney and counsel for the above-named Respondents to stipulate as follows:

1. Respondents hereby withdraw their request for a hearing. The undersigned OIC staff attorney and one of the counsel for Respondents, Daren Oved, discussed the matter, and the undersigned OIC staff attorney has no objection to this withdrawal.
2. Respondents understand and agree that by their withdrawal, there will be no hearing, and that the order No. 10-0199 will remain in full force and effect. Respondents have been made no promises for their withdrawal of their hearing request, and there are no side agreements regarding their withdrawal. By their withdrawal, Respondents understand that they are relinquishing any and all right to further contest or appeal OIC's order No. 10-0199.

SO STIPULATED, this 24<sup>th</sup> day of January, 2011.



Alan Michael Singer  
Office of the Insurance Commissioner  
Legal Affairs Division, Staff Attorney



Brian S. Tretter  
Oved & Oved, LLP  
Counsel for Respondents

BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

FILED

2010 DEC 27 P 1:15

In the Matter of:

CHW GROUP, INC., doing business as  
CHOICE HOME WARRANTY and  
[www.ChoiceHomeWarranty.com](http://www.ChoiceHomeWarranty.com),  
VICTOR MANDALAWI, "JAMES  
MOSS," DAVID BAILEY, STEVEN  
SAFDIEH, MICHAEL GUTHOLC  
Unauthorized Individuals and Entities,

Respondents.

Docket No. 10-0199

Hearings Unit, DIC  
Patricia D. Petersen  
Chief Hearing Officer

MOTION FOR TELEPHONE  
TESTIMONY OF PATRICIA RYAN  
AND A. TOM KLINDT

The OIC moves to allow the testimony of two non-party witnesses by telephone at the January 10, 2011 adjudicative hearing in this matter: Patricia Ryan of Spokane, Washington and A. Tom Klindt of Kennewick, Washington.

Ms. Ryan and Mr. Klindt are private citizens who appear to have purchased Choice Home Warranty contracts and have communicated with and received communication from the Respondents. These Washington citizens appear to have received a copy of the Order to Cease and Desist that the Respondents claim to have sent to Washington residents. They will each testify regarding their experiences and interactions with Respondents.

WAC 10-08-180(1) authorizes telephonic testimony "if the rights of the parties will not be prejudiced and if each participant in the hearing has an opportunity to participate in, to hear, and, if technically and economically feasible, in the judgment of the presiding officer, to see the entire proceeding while it is taking place. However, the presiding officer shall grant the motion of any party showing good cause for having the hearing conducted in person at a rescheduled time."

Allowing these Eastern Washington-based non-party fact witnesses to testify telephonically will not prejudice the rights of Respondents and pursuant to WAC 10-08-180(1), the Respondents remain free to

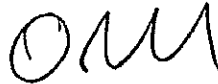
OIC's Motion to Allow Telephonic Testimony of Patricia Ryan and A. Tom Klindt  
Page 1 of 2

AA002878

move to conduct their testimony in person at a rescheduled time should "good cause" arise. Respondents know their customers like Ms. Ryan and Mr. Klindt through their business relationship with them, and thus also know their own experiences and interactions with such consumers. Since Respondents' counsel and the undersigned OIC staff have in the past freely and quickly communicated and shared documents with one another electronically and via facsimile, OIC and Respondents are each free to share any exhibits they see fit with Ms. Ryan and Mr. Klindt, with each other, and with the Presiding Officer prior to the January 10 hearing. Respondents will thus have the opportunity to fully participate in the hearing and to cross-examine Ms. Ryan and Mr. Klindt.

For the foregoing reasons, the OIC moves to allow Ms. Ryan and Mr. Klindt to testify telephonically at the January 10 hearing.

Respectfully submitted this 27<sup>th</sup> day of December, 2010.



Alan Michael Singer  
OIC Staff Attorney



MIKE KREIDLER  
STATE INSURANCE COMMISSIONER

## STATE OF WASHINGTON

OFFICE OF  
INSURANCE COMMISSIONER

Phone: (360) 725-7000  
www.insurance.wa.gov

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2010 DEC -1 P 2: 56

HEARINGS UNIT  
Fax: (360) 664-2782

Patricia D. Petersen  
Chief Hearing Officer  
(360) 725-7105

Hearings Unit, DIC  
Patricia D. Petersen  
Nicole K. Kelly  
Chief Hearing Officer  
Paralegal  
(360) 725-7002  
[nicolek@oic.wa.gov](mailto:nicolek@oic.wa.gov)

BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:

No. 10-0199

CHW GROUP, INC., doing business as  
CHOICE HOME WARRANTY  
and [www.ChoiceHomeWarranty.com](http://www.ChoiceHomeWarranty.com),  
VICTOR MANDALAWI, JAMES MOSS,  
DAVID BAILEY, STEVEN SAFDEIH,  
MICHAEL GUTHOLC,  
Unauthorized Individuals and Entities,

ORDER ON RESPONDENTS'  
MOTION FOR DISCRETIONARY  
STAY

Respondents

TO: Darren Oved  
Oved & Oved LLP  
Attorneys and Counselors at Law  
101 Avenue of the Americas, 15<sup>th</sup> Floor  
New York, NY 10013-1991

COPY TO: Mike Kreidler, Insurance Commissioner  
Michael G. Watson, Chief Deputy Insurance Commissioner  
Carol Sureau, Esq. Deputy Commissioner, Legal Affairs Division  
Alan M. Singer, Esq. Staff Attorney, Legal Affairs Division  
James T. Odiome, CPA, JD, Deputy Commissioner, Company Supervision Div.  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

On November 1, 2010, the Insurance Commissioner ("Commissioner") received a letter from Darren Oved, Esq., in the matter of CHW Group, Inc., Victor Mandalawi, James Moss, David Bailey, Steven Safdeih, and Michael Gutholc, Respondents, which letter shall be considered a

Mailing Address: P. O. Box 40255 • Olympia, WA 98504-0255  
Street Address: 5000 Capitol Blvd. • Tumwater, WA 98501

AA002880

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOME WARRANTY  
ADMINISTRATOR OF NEVADA,  
INC. dba CHOICE HOME  
WARRANTY, a Nevada corporation

Appellant(s),

v.

STATE OF NEVADA,  
DEPARTMENT OF BUSINESS  
AND INDUSTRY, DIVISION OF  
INSURANCE, a Nevada  
Administrative agency,

Respondent(s).

Case No. 80218

First Judicial District Court  
No. 17 OC 00269 1B

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Appeal First Judicial District Court, State of Nevada, County of Carson  
The Honorable James T. Russell, District Judge

**RESPONDENT'S APPENDIX  
VOLUME II OF V**

AARON FORD  
Attorney General  
Joanna N. Grigoriev (Bar. No. 5649)  
Senior Deputy Attorney General  
Richard P. Yien (Bar. No. 13035)  
Deputy Attorney General  
State of Nevada  
Office of the Attorney General  
100 North Carson Street  
Carson City, Nevada 89701  
[jgrigoriev@ag.nv.gov](mailto:jgrigoriev@ag.nv.gov)  
[ryien@ag.nv.gov](mailto:ryien@ag.nv.gov)

*Attorneys for Respondents*

## **RESPONDENT'S APPENDIX CHRONOLOGICAL INDEX**

<b>EXHIBIT DESCRIPTION</b>	<b>DATE</b>	<b>VOL.</b>	<b>PAGE NOS.</b>
AB647: Exhibits C –D April 5, 1999	04/05/99	V	AA003286- AA003295
Exhibit 8: State of Washington Regulatory Action  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	01/27/10	II	AA002874- AA002905
Exhibit 1: California Regulatory Action  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	07/23/10	I	AA002776- AA002791
Exhibit H: Oklahoma Fine: Emergency Cease and Desist Order; Conditional Administrative Order dated January 7, 2014  Continuation from Appellant's Appendix (Vol. III) Hearing Exhibit List by HWAN (Cause No. 17.0050) (09/06/17)	07/29/10	IV	AA003136- AA003180
Exhibit D: Certificate of Incorporation: Home Warranty Administrator of Oklahoma, Inc. (Certified)  Continuation from Appellant's Appendix (Vol. III) Hearing Exhibit List by HWAN (Cause No. 17.0050) (09/06/17)	08/04/10	III	AA003078
Exhibit G: California Fine: Default Decision, Imposition of Monetary Penalty, Demand for Payment  Continuation from Appellant's Appendix (Vol. III) Hearing Exhibit List by HWAN (Cause No. 17.0050) (09/06/17)	10/12/10	IV	AA003133- AA003135
Exhibit 41: South Carolina Department of Insurance Licensing Application;  Continuation from Appellant's Appendix (Vol. IV): Updated Hearing Exhibits and Updated Witness List by Division (Cause No. 17.0050) (09/08/17)	04/05/11	V	AA003252- AA003285
Exhibit 24: Nevada Consumer Complaint #3  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	01/27/12	III	AA003007- AA003010

Exhibit 40: Action 9 Investigates Home Warranties  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	08/19/13	III	AA003076- AA003077
Exhibit 3: Oklahoma Regulatory Actions  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	02/07/14	I	AA002792- AA002830
Exhibit 11: Nevada Consumer Complaints #1 and #2  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	07/16/14	II	AA002930- AA002936
Exhibit 13: New Jersey Attorney General Press Release and Complaint  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	07/28/14	II	AA002937- AA002987
Exhibit F: New Jersey Final Consent Judgment: Hoffman, et al v. CHW Group, Inc. d/b/a Choice Home Warranty  Continuation from Appellant's Appendix (Vol. III) Hearing Exhibit List by HWAN (Cause No. 17.0050) (09/06/17)	06/09/15	III	AA003079- AA003132
Exhibit 6: New Jersey Attorney General Settlement Press Release and Final Consent Judgement  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	07/15/15	I	AA002831- AA002873
Exhibit 17: Rip-off Report Filed by Nevada Vendor  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	01/14/16	III	AA002994- AA002996
Exhibit 16: Rip-off Report Filed by Nevada Consumer  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	04/20/16	III	AA002992- AA002993

Exhibit 15: Rip-off Report Filed by Nevada Consumer  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	07/07/16	III	AA002990- AA002991
Exhibit 19: Click2Houston News Report: "Warranty Company Notorious for Denying Claims"  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	07/11/16	III	AA002999- AA003001
Exhibit 38: Nevada Consumer Complaint #4  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	07/12/16	III	AA003069- AA003072
Exhibit 18: Rip-off Report Review by Nevada Consumer  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	10/12/16	II	AA002995- AA002998
Exhibit 29: South Carolina Civil Action  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	10/17/16	II	AA003030- AA003068
Exhibit 14: Rip-off Report Filed by Nevada Consumer  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	10/31/16	III	AA002988- AA002989
Exhibit 10: Civil Action in New Jersey  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	11/18/16	II	AA002909- AA002929
Exhibit W: Report: DOI Computer Search for HWAN Consumer Complaints  Continuation from Appellant's Appendix (Vol. III) Hearing Exhibit List by HWAN (Cause No. 17.0050) (09/06/17)	11/29/16	IV	AA003207- AA003211

Exhibit 28: DOI Complied List of Complaints  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	03/08/17	III	AA003025- AA003029
Exhibit J: Report: DOI Computer search for HWAN Consumer Complaints  Continuation from Appellant's Appendix (Vol. III) Hearing Exhibit List by HWAN (Cause No. 17.0050) (09/06/17)	03/08/17	IV	AA003181- AA003185
Exhibit 25: Nevada Service Provider Complaint  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	03/28/17	III	AA003011- AA003012
Exhibit 9: Better Business Bureau Report  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	04/07/17	II	AA002906- AA002908
Exhibit 27: CHW Email Advertisements  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	08/21/17	III	AA003016- AA003024
Exhibit 26: CHW Internet Advertisement  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	09/03/17	III	AA003013- AA003015
Exhibit 20: NBC Chicago 5 News Report: Home Warranty Business Accused of Not Paying Up  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	09/05/17	III	AA003002- AA003006
Exhibit 39: Fox 4 Problem Solvers: Overland Park Man Wants to Warn Others About Home Warranty  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	09/05/17	III	AA003073- AA003075

<p>Exhibit HH: HWAN Files for Complainants  (Original Exhibit 1666 Pages)  (Redacted for Relevance and Brevity)  Included Pages: (16-20, 43-47, 86-90,172-176,  359-363, 465-469, 541-545, 831-835)</p> <p>Continuation from Appellant's Appendix (Vol. III)  Hearing Exhibit List by HWAN (Cause No. 17.0050)  (09/06/17)</p>	09/06/17	V	AA003212- AA003251
<p>Exhibit K: Claims Ratio &amp; Analysis 2011-2017</p> <p>Continuation from Appellant's Appendix (Vol. III)  Hearing Exhibit List by HWAN (Cause No. 17.0050)  (09/06/17)</p>	09/06/17	IV	AA003186
<p>Exhibit M: HWAN Customer Testimonials  Included Pgs.: 1-20 (Original Exhibit 867Pgs.)  (Redacted for Relevance and Brevity)</p> <p>Continuation from Appellant's Appendix (Vol. III)  Hearing Exhibit List by HWAN (Cause No. 17.0050)  (09/06/17)</p>	09/06/17	IV	AA003187- AA003206

## **RESPONDENT'S APPENDIX ALPHABETICAL INDEX**

<b>EXHIBIT DESCRIPTION</b>	<b>DATE</b>	<b>VOL.</b>	<b>PAGE NOS.</b>
AB647: Exhibits C –D April 5, 1999	04/05/99	V	AA003286- AA003295
Exhibit 1: California Regulatory Action  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	07/23/10	I	AA002776- AA002791
Exhibit 10: Civil Action in New Jersey  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	11/18/16	II	AA002909- AA002929
Exhibit 11: Nevada Consumer Complaints #1 and #2  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	07/16/14	II	AA002930- AA002936
Exhibit 13: New Jersey Attorney General Press Release and Complaint  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	07/28/14	III	AA002937- AA002987
Exhibit 14: Rip-off Report Filed by Nevada Consumer  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	10/31/16	III	AA002988- AA002989
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Exhibit 19: Click2Houston News Report: "Warranty Company Notorious for Denying Claims"  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	07/11/16	III	AA002999- AA003001
Exhibit 20: NBC Chicago 5 News Report: Home Warranty Business Accused of Not Paying Up  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	09/05/17	III	AA003002- AA003006
Exhibit 24: Nevada Consumer Complaint #3  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	01/27/12	III	AA003007- AA003010
Exhibit 25: Nevada Service Provider Complaint  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	03/28/17	III	AA003011- AA003012
Exhibit 26: CHW Internet Advertisement  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	09/03/17	III	AA003013- AA003015
Exhibit 27: CHW Email Advertisements  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	08/21/17	III	AA003016- AA003024
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Exhibit 3: Oklahoma Regulatory Actions  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	02/07/14	I	AA002792- AA002830
Exhibit 38: Nevada Consumer Complaint #4  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	07/12/16	III	AA003069- AA003072
Exhibit 39: Fox 4 Problem Solvers: Overland Park Man Wants to Warn Others About Home Warranty  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	09/05/17	III	AA003073- AA003075
Exhibit 40: Action 9 Investigates Home Warranties  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	08/19/13	III	AA003076- AA003077
Exhibit 41: South Carolina Department of Insurance Licensing Application;  Continuation from Appellant's Appendix (Vol. IV): Updated Hearing Exhibits and Updated Witness List by Division (Cause No. 17.0050) (09/08/17)	04/05/11	IV	AA003252- AA003285
Exhibit 6: New Jersey Attorney General Settlement Press Release and Final Consent Judgement  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	07/15/15	II	AA002831- AA002873
Exhibit 8: State of Washington Regulatory Action  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	01/27/10	I	AA002874- AA002905
Exhibit 9: Better Business Bureau Report  Continuation from Appellant's Appendix (Vol. II) Proposed Hearing Exhibits and Witness List By Division (Cause No. 17.0050) 09/06/17	04/07/17	II	AA002906- AA002908

<p>Exhibit D: Certificate of Incorporation: Home Warranty Administrator of Oklahoma, Inc. (Certified)</p> <p>Continuation from Appellant's Appendix (Vol. III) Hearing Exhibit List by HWAN (Cause No. 17.0050) (09/06/17)</p>	08/04/10	III	AA003078
<p>Exhibit F: New Jersey Final Consent Judgment: Hoffman, et al v. CHW Group, Inc. d/b/a Choice Home Warranty</p> <p>Continuation from Appellant's Appendix (Vol. III) Hearing Exhibit List by HWAN (Cause No. 17.0050) (09/06/17)</p>	06/09/15	III	AA003079- AA003132
<p>Exhibit G: California Fine: Default Decision, Imposition of Monetary Penalty, Demand for Payment</p> <p>Continuation from Appellant's Appendix (Vol. III) Hearing Exhibit List by HWAN (Cause No. 17.0050) (09/06/17)</p>	10/12/10	IV	AA003133- AA003135
<p>Exhibit H: Oklahoma Fine: Emergency Cease and Desist Order; Conditional Administrative Order dated January 7, 2014</p> <p>Continuation from Appellant's Appendix (Vol. III) Hearing Exhibit List by HWAN (Cause No. 17.0050) (09/06/17)</p>	07/29/10	IV	AA003136- AA003180
<p>Exhibit HH: HWAN Files for Complainants (Original Exhibit 1666 Pages) (Redacted for Relevance and Brevity) Included Pages: (16-20, 43-47, 86-90, 172-176, 359-363, 465-469, 541-545, 831-835)</p> <p>Continuation from Appellant's Appendix (Vol. III) Hearing Exhibit List by HWAN (Cause No. 17.0050) (09/06/17)</p>	09/06/17	IV	AA003212- AA003251
<p>Exhibit J: Report: DOI Computer search for HWAN Consumer Complaints</p> <p>Continuation from Appellant's Appendix (Vol. III) Hearing Exhibit List by HWAN (Cause No. 17.0050) (09/06/17)</p>	03/08/17	IV	AA003181- AA003185
<p>Exhibit K: Claims Ratio &amp; Analysis 2011-2017</p> <p>Continuation from Appellant's Appendix (Vol. III) Hearing Exhibit List by HWAN (Cause No. 17.0050) (09/06/17)</p>	09/06/17	IV	AA003186

Exhibit M: HWAN Customer Testimonials Included Pgs.: 1-20 (Original Exhibit 867Pgs.) (Redacted for Relevance and Brevity)  Continuation from Appellant's Appendix (Vol. III) Hearing Exhibit List by HWAN (Cause No. 17.0050) (09/06/17)	09/06/17	IV/V	AA003187- AA003206
Exhibit W: Report: DOI Computer Search for HWAN Consumer Complaints  Continuation from Appellant's Appendix (Vol. III) Hearing Exhibit List by HWAN (Cause No. 17.0050) (09/06/17)	11/29/16	V	AA003207- AA003211

## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the **RESPONDENT'S APPENDIX (VOLUME II OF V)** with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on June 24, 2020.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system as indicated below:

Constance L. Akridge, Esq.  
Holland and Hart  
[CLAkridge@hollandhart.com](mailto:CLAkridge@hollandhart.com)

/s/ Marilyn Millam  
an employee of the Office of the Attorney General

ORDER ON RESPONDENTS' MOTION FOR DISCRETIONARY STAY  
CHW GROUP, INC., No. 10-0199

Demand for Hearing. The purpose of said Demand for Hearing is to contest the Commissioner's Order to Cease and Desist, No. 10-0199, dated October 21, 2010.

On Monday, November 15, 2010, the undersigned held a first prehearing teleconference in this matter. Mr. Darren Oved, Esq., of Oved & Oved LLP, in New York, New York, appeared on behalf of Respondents. The Commissioner appeared pro se, by and through Mr. Alan M. Singer, Esq., Staff Attorney in the Commissioner's Legal Affairs Division. During said prehearing conference, the undersigned reviewed administrative procedure to be expected at hearing, citing Title 48 RCW, relevant sections of which are set forth in the Order to Cease and Desist, and 34 RCW, the Administrative Procedures Act and addressed all questions and concerns of the parties. By agreement of the parties, a hearing was scheduled to commence at 10:00 a.m. on either January 10, 2011.

During said first prehearing conference, Respondents were advised that RCW 48.04.020(1) does not provide for an automatic stay of the Commissioner's subject Order to Cease and Desist, which was by its terms made effective immediately. The undersigned advised, however, that pursuant to RCW 48.04.020(2), the undersigned would consider a motion for discretionary stay pending the outcome of the hearing. Upon Respondents' request for oral argument on its motion for a discretionary stay, the parties agreed to a schedule for submission of written briefs and agreed that oral argument on Respondents' motion should be held on November 30.

Accordingly, on November 22, 2010, Respondents filed their letter brief in support of their Motion for Discretionary Stay and on November 29 the Commissioner filed his brief in opposition to Respondents' Motion for Discretionary Stay, and on November 30 the parties presented oral argument before the undersigned, by telephone, on this Motion.

Based upon the arguments of the parties both in briefs and during oral argument on Respondents' Motion for Discretionary Stay, and upon RCW 48.04.020, the undersigned has determined that there is insufficient evidence to support a discretionary stay herein, for the reasons stated in the Commissioner's brief. Of particular significance, the Order to Cease and Desist by its terms became effective upon entry on October 21, 2010. While Respondents allege that they have ceased solicitation and sale of the subject product in Washington as ordered (presumably in complete compliance with Order Nos. A through D in the Order to Cease and Desist), said Order also requires that Respondents *shall mail a copy of this order to each Washington resident to whom Respondents have sold a home warranty service contract, and that Respondents report to the OIC all premiums collected or charged for policies they sold covering Washington risks* [i.e. by October 31, 2010]. Respondents argue that 1) the Commissioner is not authorized to include mandates in his Cease and Desist Order such as requiring Respondents to notify their Washington customers or, apparently, reporting to the Commissioner all premiums collected or charged for service contracts they sold covering Washington risks. This argument is without merit: Title 48 RCW and particularly RCW 48.02.080 and related statutes and case law clearly authorize the Commissioner to order Respondents to notify their consumers and report to the Commissioner along with other remedial measures the Commissioner reasonably related to the disciplinary action. Further, 2) Respondents argue that they will suffer irreparable harm if they are required to notify their Washington customers of the Commissioner's action. Based upon the evidence presented,

ORDER ON RESPONDENTS' MOTION FOR DISCRETIONARY STAY  
CHW GROUP, INC., No. 10-0199

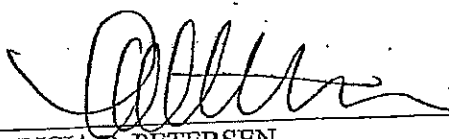
Respondents have presented insufficient evidence to support a conclusion that they will suffer irreparable harm, and the undersigned has concluded that the benefit to consumers of receiving a copy of the Cease and Desist Order from Respondents outweighs any concern of harm, particularly, as suggested by the Commissioner, because Respondents can include their own reasonable letter explaining that they have appealed the Commissioner's action and a final decision has not been made. Finally, 3) the Commissioner's interest in receiving a report from Respondents detailing all premiums collected or charged for service contracts they sold covering Washington risks by October 31, 2010 causes no potential harm to the Respondents.

Based upon the above activity,

IT IS HEREBY ORDERED that Respondents' Motion for Discretionary Stay herein is DENIED.

IT IS FURTHER ORDERED that, recognizing that Respondents have not yet sent a copy of the Order to Cease and Desist or, apparently, reported to the OIC all premiums collected or charged for policies they sold covering Washington risks as required in the Order to Cease and Desist, Respondents are therefore hereby ordered to send notice to their customers in accordance with the Order to Cease and Desist immediately. Further, if they have not already done so, Respondents are hereby ordered to immediately report to the Commissioner in accordance with the Order to Cease and Desist.

ENTERED AT TUMWATER, WASHINGTON, this 1st day of December, 2010, pursuant to Title 48 RCW, Title 34 RCW regulations applicable thereto.

  
PATRICIA D. PETERSEN  
Chief Hearing Officer  
Presiding Officer

**DECLARATION OF MAILING**

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery of a true copy of this document to  
Darren Oved, Esq. & Alan M. Singer, Esq.  
DATED this 2nd day of December  
at Tumwater, Washington

Signed: 

THE STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

CHW GROUP, INC., doing business as  
CHOICE HOME WARRANTY and  
www.ChoiceHomeWarranty.com,  
VICTOR MANDALAWI, "JAMES  
MOSS," DAVID BAILEY, STEVEN  
SAFDIEH, MICHAEL GUTHOLC  
Unauthorized Individuals and Entities,

Docket No. 10-0199

OIC'S RESPONSE AND  
OPPOSITION TO CHOICE HOME  
WARRANTY'S REQUEST FOR A  
DISCRETIONARY STAY

Respondents.

**I. INTRODUCTION**

The Washington State Office of the Insurance Commissioner ("OIC") received a Washington consumer's complaint about Choice Home Warranty and its contracts. After learning that Respondents had sold dozens of such contracts to dozens of Washington residents and that none of the Respondents had licenses or other authority to transact insurance or provide service contracts in the State of Washington, OIC entered an Order to Cease and Desist ("Order.")

OIC's Order properly instructed the Respondents immediately to stop transacting the unauthorized business of insurance and stop acting as an unregistered service contract provider. To protect the at least dozens of directly impacted Washington residents, the Order also appropriately directed Respondents to send each such Washington resident a copy of the Order within ten days. In addition, since unauthorized insurers must also pay premium taxes, the Order also appropriately directed the Respondents to inform the OIC of the total amount of Washington premium monies they have collected to date.

Respondents since filed a "letter brief" ("Respondents' Letter Brief"), objecting to the Order and asking for a "discretionary stay." But none of their reasons for a stay has merit:

- They ask for a stay because, essentially, they think the Order is moot. They assert that since they already stopped selling new contracts in Washington, except for "continued fulfillment" of existing contracts, there is no need for an order, so the Order should be stayed. However, Respondents have provided no evidence to



back their assertions, even if it is true that no new contracts are being issued, nor have they given legal grounds why alleged mootness of an order would support staying that order.

- They ask for a stay because they believe the Order's requirement to mail a copy to existing Washington customers "far exceeds the OIC's statutory powers" and will cause "irreparable damage to [Choice Home Warranty's] business and goodwill." Not only are such arguments baseless,<sup>1</sup> they are unsupported by evidence, unaccompanied by supporting legal authority, and are even contrary to the Code.
- They ask for a stay because they think the Order is "entirely too broad" by finding that their product is "insurance" (and "entirely erroneous," to boot), and they speculate that the Order will cause "imminent threat of litigation from consumers, potential criminal prosecution, and potential tax liabilities." Such fears are not grounded in any facts in the record. As with the rest of their arguments, this one is also not supported by evidence or citation to any supporting legal authorities. Respondents submitted no credible evidence to prove that specific litigation, prosecution, or 'tax liability' is even remotely *possible*, let alone "imminent," and because of the OIC's Order.
- They ask for a stay because their attorney writes that he thinks that three of their "employees" (with "Vice President" titles) David Bailey, Steven Safdieh, and Michael Gutholz "may be subject to lawsuits against them personally," and "may have their personal credit impacted negatively if the Order is recorded against them." Again, such speculation has no needed evidentiary support, nor has Respondents' Letter Brief cited any legal authority that would purportedly support this as a good reason to grant their request for a stay.

On the other hand, there are numerous questions as to various unsupported assertions in the Letter Brief. For example, page 1 represents that "CHW believed that its activities in Washington were exempt from regulation pursuant to RCW 48.110.015(1)(a),"<sup>2</sup> and then asserts "but in an abundance of caution CHW contacted OIC to provide it with the information necessary to obtain the appropriate registration in the State of Washington[...]."

<sup>1</sup> Not only is the OIC authorized to include such a requirement in its Order, but Choice Home Warranty's assertion that it has any "goodwill" seems refuted by reading some of the volume of consumer complaints easily found through a simple Internet search using Google and search terms like "Choice Home Warranty and fraud" or "Choice Home Warranty and scam," for example. See e.g., Decl. Singer Exhs. I and M.

<sup>2</sup> The Letter Brief makes this representation without reconciling the definition of "warranty" contained in RCW 48.110.020(21). Nor does the Letter Brief supply any evidence to explain or prove the veracity of the "belief" Choice Home Warranty supposedly held as to its exemption under RCW 48.110.015(1)(a).

1 Yet, the facts of record appear to show that OIC only began investigating Choice Home  
 2 Warranty *after* a Washington consumer's complaint to OIC about Choice Home Warranty and  
 3 its alleged refusal to pay claims, not before. *See* Decl. Singer Exhs. A-B.<sup>3</sup> And while the  
 4 Letter Brief also asserts that "in the interest of full disclosure, CHW provided OIC with a list  
 5 of employees working for CHW and a description of the titles within the company," the  
 6 evidence of record disputes this. The evidence shows that this list was given to OIC only in  
 7 response to a request for all Choice Home Warranty "owners, officers, and principals," not its  
 8 employees, and that other known employees were not included in this supposedly "full  
 disclosure" of 'employees.' *See, e.g.,* Decl. Singer Exhs. D, E, and F.

9 This all amplifies the conclusion that there are not good grounds for a stay. Not only  
 10 does Respondents' Letter Brief fail to dispute that they are not licensed or authorized by OIC,  
 11 it even appears to concede the Code violations forming the basis of the Order: "at most, CHW  
 12 is a service contract provider." *See* Letter Brief at p. 2-3. No stay should be granted.

## 13 II. EVIDENCE RELIED UPON

14 This Response and Opposition relies upon the declaration of Alan Michael Singer  
 15 ("Decl. Singer"), and the Chief Hearing Officer's files and records herein.

## 16 III. STATEMENT OF FACTS

17 On May 28, 2010, a Washington consumer wrote a complaint to OIC about Choice  
 18 Home Warranty, alleging that the company wrongly denied claims and may have been  
 19 operating in violation of the Washington Insurance Code. Decl. Singer Exh. A. The New  
 20 Jersey Better Business Bureau apparently gave the company an "F" rating, and indicated  
 21 "James Moss" is Choice Home Warranty's President. Decl. Singer Exh. B.<sup>4</sup> OIC Investigator

22 <sup>3</sup> In fact, Choice Home Warranty eventually affirmed that it believed its denial of the Washington consumer's  
 23 claims was "proper." Decl. Singer Exh. K.

<sup>4</sup> *See also* Choice Home Warranty's website blog, Decl. Singer Exh. N.

1 Michael Bertrand wrote a June 15, 2010 letter to "James Moss" and asked the company to  
2 answer a number of questions about its activities in Washington. Decl. Singer Exh. C.

3 On July 13, 2010, after the company failed to respond to Investigator Bertrand's letter,  
4 OIC staff made further attempts to ask Choice Home Warranty questions about its activities in  
5 Washington. Decl. Singer Exhs. D-E. The company was asked about the status of the  
6 company's responses to the various questions posed in Mr. Bertrand's letter, and was also  
7 asked several further questions. One such question asked the company to please provide "a  
8 list of [Choice Home Warranty's] owners, officers, and principals," not its employees. Decl.  
9 Singer Exh. E.

10 On July 26, 2010, Choice Home Warranty's (prior) counsel, Art Chartrand, provided  
11 the first responses to some of the OIC's earlier unanswered questions to Choice Home  
12 Warranty. Decl. Singer Exh. F. Consistent with New Jersey incorporation records for the  
13 parent entity "CHW Group, Inc.," Mr. Chartrand's letter identified the company's "officers"  
14 as including Victor Mandalawi -- who was also Choice Home Warranty's "principal" and  
15 "sole stockholder/owner" -- and several "Vice Presidents," David Bailey, Steven Safdieh, and  
16 Michael Gutholc. *Id.* However, "James Moss" was not among them. *Id.*

17 On August 9, 2010, Mr. Chartrand was asked a few follow-up questions based on  
18 some responses in his July 26, 2010 letter. Decl. Singer Exh. G. On August 11, 2010, Mr.  
19 Chartrand sent a responsive e-mail alluding to rolling the Washington Choice Home Warranty  
20 customers into some other, unnamed "corporation" entity. Decl. Singer Exh. H. His  
21 responsive e-mail also attached a PDF document listing "80-some" actual "current"  
22 Washington residents to whom Choice Home Warranty had sold contracts. *Id.*

23 Meanwhile, on July 23, 2010, the California Insurance Commissioner had issued a  
four-page cease and desist order against Choice Home Warranty. Decl. Singer Exh. I. The  
order also notified the company that it could face possible monetary penalties as well. *Id.* On  
August 19, 2010, the California Insurance Commissioner entered another order, this one

1 making its July 23 order against Choice Home Warranty "final," and directing the company to  
2 show cause why monetary penalties should not also be imposed. *Id.* On October 12, 2010,  
3 the California Insurance Commissioner issued yet another order, this one purporting to  
4 impose a \$3,530,000 penalty against Choice Home Warranty. *Id.*

5 On September 1, 2010, the OIC received Victor Mandalawi's August 31, 2010  
6 Application for Registration as a Service Contract Provider in the State of Washington for the  
7 corporation entity, "Home Warranty Administrators. Decl. Singer Exh. J. Mr. Mandalawi's  
8 biography submitted with this application failed to indicate he had any connection to Choice  
9 Home Warranty, though. *Id.*; cf, Decl. Singer Exh. F. And even though the State of  
10 California had by then issued at least two separate cease and desist orders against Choice  
11 Home Warranty and "its officers, directors, employees, trustees, agents, affiliates and service  
12 representatives" (see Decl. Singer Exh. I), Mr. Mandalawi's application failed to mention  
13 such orders existed. Decl. Singer Exh. J. In fact, the application failed to mention "Choice  
14 Home Warranty" or "CHW Group, Inc." at all in his application. On September 15, 2010, Mr.  
15 Mandalawi withdrew the application. *Id.*

16 In one threaded consumer complaint on the Internet concerning "National Home  
17 Protection," some comments alleged a possible connection between Choice Home Warranty  
18 and National Home Protection. See Decl. Singer Exh. O. "James Moss" denied any such  
19 connection. Decl. Singer Exh. M. On August 31, 2010, Mr. Chartrand was asked to provide  
20 a copy of a driver's license of "James Moss" and answer questions about connections between  
21 Choice Home Warranty and one of National Home Protection's principals, Victor Hakim.  
22 While he promised to provide answers by Friday September 10, 2010, but on Monday,  
23 September 13, 2010, Mr. Chartrand withdrew. See Decl. Singer at ¶10 and Exhs. P, Q.

On October 18, 2010, Choice Home Warranty provided a letter to the Washington  
consumer whose complaint led to OIC's investigation, denying nearly all the consumer's  
claims and indicating that it believed denial was "proper." Decl. Singer Exh. K.

#### IV. ARGUMENT

1  
2 **A. The OIC is authorized to issue a cease and desist order to unauthorized insurers or unregistered service contract providers.**

3 The Commissioner "must enforce" the Insurance Code and, in doing so, may "conduct  
4 investigations to determine whether any person has violated any provision of this code."  
5 RCW 48.02.060(2) and (3)(b); *see also* RCW 48.110.120(1). If the Commissioner finds that a  
6 person has violated the Code by having issued insurance or service contracts without being  
7 properly authorized or registered, the Commissioner may issue a cease and desist order. *See*,  
8 e.g., RCW 48.15.023(5)(a)(i), RCW 48.02.080(3)(a), and RCW 48.110.120(2). Protecting  
Washington consumers is of prime importance. *See*, e.g., RCW 48.01.030.

9 **B. Choice Home Warranty's contract is both "insurance" and a "service contract."**

10 Under Washington's Insurance Code it seems clear that Choice Home Warranty's  
11 contract is both "insurance" and a "service contract." The contract's operative terms require  
12 consumers to pay an amount over and beyond the home purchase price, for coverage that lasts  
13 for a set period or duration.<sup>5</sup> In exchange, Choice Home Warranty undertakes to indemnify  
14 the consumer or pay a specified amount upon determinable contingencies. Clearly, this meets  
15 RCW 48.01.040's definition of "insurance," but it is also meets RCW 48.110.020(17)'s  
16 definition of a "service contract" because Choice Home Warranty promises to pay for the  
17 repair or replacement of covered items' failure due to normal wear and tear. This requires  
18 Choice Home Warranty to be fully compliant with Chapter 110 of the Code in order to  
become exempt from other Code provisions. RCW 48.110.033(2).

19 **C. OIC acted well within its authority to issue the Order against Respondents.**

20 OIC learned about Choice Home Warranty because a Washington consumer filed a  
21 complaint not unlike the many other complaints about the company on the Internet. *Compare*  
22 Decl. Singer Exh. A with Exhs. K-M. Choice Home Warranty solicits its home warranties

23 <sup>5</sup> The contract is included in the attached Exhibit F to the Declaration of Alan Michael Singer, filed herewith.

1 through a website ([http://www.choicehomewarranty.com/homeowners\\_whats\\_covered.php](http://www.choicehomewarranty.com/homeowners_whats_covered.php)).  
2 which indicates that a wide variety of systems and appliances within the home are supposedly  
3 "covered" in the event of failure due to normal wear and tear. See, e.g., Decl. Singer Exh. F.  
4 Yet, despite the website's suggestion of providing broad coverage, many consumer  
5 complaints on the Internet appear to allege that the company has acted unfairly and has relied  
6 on extensive limitations, conditions, and exclusions from the coverage it purports to offer.  
7 See Decl. Singer Exh. F; see also Decl. Singer Exhs. K-M. Respondents' counsel informed  
8 OIC that Victor Mandalawi, David Bailey, Steven Saffdieh, and Michael Gutholc were  
9 "officers" of the business; and Mr. Chartrand also informed OIC that Respondents had sold  
10 dozens of contracts to residents of Washington. Decl. Singer Exhs. F and H. In the  
11 complaining Washington consumer's case, Choice Home Warranty felt its denial of almost all  
12 of the Washington consumer's claims was "proper." Decl. Singer Exh. K.

13 In addition, other questions about Choice Home Warranty remain unanswered. For  
14 example, despite references to its "President" being "James Moss" (see e.g., Decl. Singer  
15 Exhs. M and N and <http://www.pr.com/press-release/166783>) and possible connections to  
16 National Home Protection (see [http://www.ag.ny.gov/media\\_center/2009/dec/dec15a\\_09.html](http://www.ag.ny.gov/media_center/2009/dec/dec15a_09.html)  
17 and Decl. Singer Exhs. B, M, N, and O), Respondents never explained who "James Moss" is  
18 or detail what connections, if any, exist or existed between the principals or business of  
19 Choice Home Warranty and any other home warranty companies, including National Home  
20 Protection. See, e.g., Decl. Singer Exhs. P and Q. In addition, Mr. Mandalawi's recent  
21 Chapter 110 registration application failed to note any connection to Choice Home Warranty  
22 and incorrectly suggested there were no regulatory actions taken, despite the California  
23 department's recent actions. See Decl. Singer Exhs. I, J.

Nevertheless, as indicated above, Respondents' contracts are both "insurance" and  
"service contracts." And since none of the Respondents has any license or authority to

1 transact insurance or provide service contracts in the State of Washington, the OIC's Order  
2 was appropriate.

3 **D. Respondents have not presented grounds for a stay.**

4 On the other hand, Respondents' Letter Brief fails to make a credible case for a stay.  
5 It fails to offer evidence or citation to legal authority supporting the stay request. In fact, the  
6 Letter Brief even arguably undercuts Respondents' position by apparently conceding that  
7 Choice Home Warranty is, "at most, [...] a service contract provider." Letter Brief at p. 2-3.  
8 Consistent with this seeming admission that the Order is at least partly well-founded, Mr.  
9 Mandalawi surreptitiously applied for a Chapter 110 registration using a new company name.<sup>6</sup>  
10 Nor does OIC's Order appear to articulate any unique findings or conclusions, particularly  
11 considering the California insurance regulator's recent orders against Choice Home  
12 Warranty.<sup>7</sup> None of these facts supports a stay. Nevertheless, Respondents' Letter Brief  
13 raises a number of arguments for why they believe a stay should issue.

14 One argument for a stay in Respondents' Letter Brief is that they think the Order  
15 somehow improperly concluded that Choice Home Warranty's contract is both "insurance"  
16 under RCW 48.01.040 and a "service contract" under RCW 48.110.020(17) and (19). Not  
17 only does the Letter Brief fail to provide cogent analysis why this is supposedly so, the  
18 argument is also incorrect. No Code provision or other law precludes OIC's conclusion that  
19 Choice Home Warranty's contract is both "insurance" and a "service contract." In fact, at  
20 least one Code provision actually supports OIC's conclusion. This provision, RCW  
21 48.110.033(2), provides that the way for persons to become "exempt from the other  
22 provisions of this title" – including provisions like RCW 48.01.040 and RCW 48.15.023 – is  
23 for them to "comply[] with this chapter." Thus, the Code allows a service contract provider to  
be exempt from many of the various insurance provisions of the Code, but only if it complies

<sup>6</sup> However, this application was soon withdrawn. See Decl. Singer Exh. J.

<sup>7</sup> See Decl. Singer Exh. I.

1 fully with all requirements contained in Chapter 110. If not, nothing prevents *any* other Code  
 2 provisions from applying – including RCW 48.01.040.

3 Respondents also argue that a stay is warranted because the OIC lacks authority to  
 4 require Respondents to mail a copy of the Order to directly impacted Washington consumers.  
 5 This argument seems nothing short of astonishing not only because Respondents seem to be  
 6 trying to prevent a copy of the Order from reaching the hands of the Washington customers  
 7 who are directly and personally impacted by it, but also because it seems to suggest that the  
 8 OIC is powerless to share or order to be shared a copy of the Order with those consumers. On  
 9 both counts, Respondents are wrong. First, RCW 48.02.060(1) not only authorizes the  
 10 Commissioner to act as *expressly* authorized, but also “as reasonably implied from the  
 11 provisions of” the Insurance Code. And further, if dozens of known Washington consumers  
 12 have purchased a product that appears to have been offered illegally, it would be inconsistent  
 13 with the Insurance Code to not tell them about it immediately. Further, since Washington  
 14 courts are loathe to construe one statute in such a way as to render other related statutes  
 15 meaningless,<sup>8</sup> it would be inappropriate to determine that RCW 48.02.060(1) does not  
 16 authorize it to require unauthorized insurers to share a copy of a cease and desist order with its  
 17 Washington customers who are directly impacted. For example, RCW 48.15.030 empowers  
 18 Washington consumers to choose whether to keep illegally effectuated contracts or instead  
 19 void them to take refunds. If consumers aren’t made aware that their contracts may have been  
 20 illegally effectuated by an unauthorized insurer, those consumers can never choose to seek to  
 21 void it. A stay would only forestall Washington consumers learning about the Order and  
 22 thereby prejudice those consumers’ rights, since they one day may face the same fate as the  
 23 Washington consumer whose complaint led to OIC’s Order – they could make claims only to

<sup>8</sup> See, e.g., *Edmonds Shopping Ctr. v. Edmonds*, 117 Wn. App. 344, 356, 71 P.3d 233 (2003) (Washington law requires courts to “construe statutes as a whole to give effect to all the language and to harmonize all provisions”) and *Davis v. Dep’t. of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999) (“[S]tatutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.”)



1 find them denied. Respondents fail to show why impacted consumers must not receive a  
2 copy of the Order *before* their contracts expire or claims arise, rather than after.

3 Moreover, not only does RCW 48.02.060 authorize the OIC to order illegal insurers  
4 and service contract providers to share a copy of the Order with Washington consumers they  
5 sold to, it also makes good sense here. Unauthorized entities are uniquely capable of  
6 communicating with their customers. They know who their customers are, and often, no one  
7 else does. And nothing prevents Respondents from including a letter of their own that sets  
8 forth their own position when they send the Order to their Washington customers. If they do  
9 this, they can assuage any fears they think could arise. While nothing prevents OIC from  
10 sending a copy of the Order to the Washington consumers who bought Choice Home  
11 Warranty's products, no one is in a better position to do this than the Respondents.

12 Finally, the Respondents' Letter Brief also speculates that a number of calamitous  
13 events will come true because of the Order if no stay is granted — things like litigation,  
14 criminal prosecution, tax liability, personal liability, and so forth. But no evidence supports  
15 these dire predictions. And if Respondents send a letter with the Order, explaining their  
16 views, such speculative fears become wholly illusory.

17 **E. Established standards dictate against a stay.**

18 RCW 48.04.020(2) contemplates that the Commissioner may entertain a written  
19 request for a stay and that an aggrieved person may apply to Thurston County Superior Court  
20 if the Commissioner declines to grant the request. Such a request seems akin to a request in a  
21 court action for a preliminary injunction, the requirements for which are summarized in  
22 *Kucera v. Department of Transportation*, 140 Wn.2d 200, 209-210, 995 P.2d 63 (2000):

23 An injunction is distinctly an equitable remedy and is "frequently termed 'the strong  
arm of equity,' or a 'transcendent or extraordinary remedy,' and is a remedy which  
should not be lightly indulged in, but should be used sparingly and only in a clear and  
plain case." 42 Am. Jur. 2d Injunctions sec. 2, at 728 (1969) (footnotes omitted).  
Accordingly, injunctive relief will not be granted where there is a plain, complete,  
speedy and adequate remedy at law. *State v. Ralph Williams' N.W. Chrysler  
Plymouth, Inc.*, 87 Wn. 2d 298, 312, 553 P.2d 423 (1976).

1 The applicable requirements for issuance of a preliminary injunction are well settled:  
 2 "One who seeks relief by temporary or permanent injunction must show (1) that he  
 3 has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate  
 4 invasion of that right, and (3) that the acts complained of are either resulting in or will  
 5 result in actual and substantial injury to him." Since injunctions are addressed to the  
 6 equitable powers of the court, the listed criteria must be examined in light of equity  
 7 including balancing the relative interests of the parties and, if appropriate, the interests  
 8 of the public. *Tyler Pipe Indus., Inc. v. Department of Revenue*, 96 Wn.2d 785, 792,  
 9 638 P.2d 1213 (1982) (quoting *Port of Seattle v. International Longshoremen's &*  
 10 *Warehousemen's Union*, 52 Wn.2d 317, 319, 324 P.2d 1099 (1958); see also RCW  
 11 7.40.020 (grounds for issuance of preliminary injunction). (footnote omitted.) If a  
 12 party seeking a preliminary injunction fails to establish any one of these requirements,  
 13 the requested relief must be denied. *Washington Fed'n*, 99 Wn.2d at 888.

14 Applying the above considerations here yields the conclusion that no stay should issue.  
 15 Respondents have "a plain, complete, speedy and adequate remedy at law" since they will  
 16 receive a hearing. Even assuming Respondents meet the first *Tyler Pipe* element above, they  
 17 give no evidence to prove a "well-grounded fear of immediate invasion of that right," nor that  
 18 not staying the Order "will result in actual and substantial injury." The "public interest" –  
 19 which includes, at minimum, the interest of the dozens of Washington residents who were  
 20 identified as Choice Home Warranty customers – also weighs heavily against a stay. This is  
 21 particularly true here, given the "public interest" mandate to "preserv[e] inviolate" the public  
 22 by preventing deception, dishonesty, and unfairness. RCW 48.01.030.

## 23 V. CONCLUSION

Based on the foregoing, the OIC's order should not be subjected to any stay.  
 Respondents should be ordered to issue a copy of the Order to all impacted Washington  
 consumers within five days, and be reminded that they can simply accompany the Order with  
 their own letter to assuage their customers. The Respondents' stay request should be denied.

DATED this 29<sup>th</sup> day of November, 2010.

OFFICE OF INSURANCE COMMISSIONER

By: 

Alan Michael Singer

1  
2 **CERTIFICATE OF SERVICE**

3 The undersigned certifies under the penalty of perjury under the laws of the State of  
4 Washington that I am now and at all times herein mentioned, a citizen of the United States, a  
5 resident of the State of Washington, over the age of eighteen years, not a party to or interested  
6 in the above-entitled action, and competent to be a witness herein.

7 On the date given below I caused to be served the foregoing RESPONSE AND  
8 OPPOSITION TO CHOICE HOME WARRANTY'S REQUEST FOR A DISCRETIONARY  
9 STAY on the following individuals in the manner indicated:

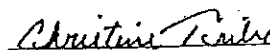
10 Copy to:

11 Darren Oved, Esq.  
12 Oved & Oved, LLP  
13 101 Avenue of the Americas  
14 15th Floor  
15 New York, New York 10013  
(XXX) Via U.S. Mail  
(XXX) Via E-Mail ([Darren@ovedlaw.com](mailto:Darren@ovedlaw.com))

16 Original to:

17 Hon. Patricia Petersen  
18 Chief Hearing Officer  
19 Hearings Unit  
20 Washington State Office of the Insurance Commissioner  
21 5000 Capitol Blvd.  
Tumwater, WA 98501  
(XXX) Via Hand Delivery  
(XXX) Via E-Mail to Nicole Kelly ([NicoleK@oic.wa.gov](mailto:NicoleK@oic.wa.gov))

22 SIGNED this 29th day of November, 2010, at Tumwater, Washington.

23   
Christine Tribe

Nov. 22. 2010 3:27PM

No. 6509 P. 2/5

**OVED & OVED LLP**  
 ATTORNEYS AND COUNSELORS AT LAW  
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 15TH FLOOR  
 NEW YORK NY 10013-1991  
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TELEPHONE 212 226 2376

FACSIMILE 212 226 7555

November 22, 2010

VIA FACSIMILE

Honorable Patricia D. Petersen  
 Administrative Law Judge  
 Hearings Unit  
 Office of the Insurance Commissioner  
 PO Box 40255  
 Olympia, WA 98504-0255

Re: Respondents' Request for Discretionary Stay of  
Order to Cease and Desist, No. 10-0199

Dear Judge Petersen:

This law firm represents Respondents in the above captioned matter and respectfully submit this letter brief in support of Respondents' request that this Court exercise its discretion to stay the implementation of the State of Washington Office of the Insurance Commissioner's ("OIC") Order to Cease and Desist to Respondents dated October 21, 2010 (the "Order").

By way of brief background, CHW Group, Inc. d/b/a Choice Home Warranty ("CHW") sells warranties for household goods providing for the repair or replacement of these goods if they are rendered unusable after ordinary wear and tear. These warranties are paid for by the consumer at the point of sale and are paid for with separate and additional consideration, i.e., they are not included in the purchase price of the goods purchased. Initially, CHW believed that its activities in Washington were exempt from regulation pursuant to RCW 48.110.015(1)(a), but in an abundance of caution CHW contacted OIC to provide it with the information necessary to obtain the appropriate registration in the State of Washington as a service contract provider if such a registration were necessary. In the context of its communication with OIC and in the interests of full disclosure, CHW provided OIC with a list of employees working for CHW and a description of their titles within the company. In June 2010, CHW also voluntarily agreed to cease selling its warranties in the State of Washington until it obtained the requisite registration if a determination was made that CHW was providing services not specifically exempted from Title 48 of the Washington Code. Rather than use the information voluntarily provided by CHW to make these determinations and process any request for registration, OIC used this information to issue the Order.

AA002895

No. 6509 P. 3/5

Nov. 22. 2010 3:27PM

Honorable Patricia D. Petersen  
November 22, 2010  
Page 2 of 4

The Order requires CHW to cease and desist from:

- A. engaging in or transacting the unauthorized business of insurance or acting as an unregistered service contract provider in the State of Washington;
- B. seeking, pursuing and obtaining any insurance or service contract business in the State of Washington and from participating, directly or indirectly, in any act of an insurance company or service contract provider;
- C. soliciting Washington residents to sell any insurance or service contract issued or to be issued by an unauthorized insurer or unregistered service contract provider;
- D. soliciting Washington residents to induce them to purchase any insurance contract or service contract.

Order at 1.

As noted above, CHW voluntarily ceased all operations in the State of Washington (other than the continued fulfillment of the warranties already sold to Washington residents) so CHW has no activity to cease and desist. The Order, however, also requires CHW to mail a copy of the Order to each Washington resident who purchased a warranty from CHW.

The Order's mandates, which are made against not just CHW but the remaining Respondents the majority of whom are simply employees of CHW, not principals, are based upon OIC's findings that, *inter alia*, the warranties constitute "insurance" under RCW 48.01.040.

Upon receipt of the Order, CHW demanded a hearing and requested a stay of its implementation pending that hearing. At the preliminary conference, held telephonically on November 15, 2010, at Respondents' request, the Court directed Respondents to submit this letter brief in further support of their request for a stay. This Court should exercise its discretion to grant a stay for several reasons.

First, as a threshold matter, that part of the Order requiring a mailing to CHW's existing customers far exceeds the OIC's statutory powers. RCW 48.02.080 explicitly delineates the OIC's enforcement powers in the context of a perceived violation of Title 48, which are to (1) issue a cease and desist order, and/or (2) bring an action for an injunction in any court of competent jurisdiction. It does not grant the OIC, even under the guise of a cease and desist letter, to unilaterally issue a mandatory injunction requiring a respondent to take affirmative action such as the mailing requirement contained in the Order.<sup>1</sup> Accordingly, at the very minimum, the mailing requirement contained in the Order must be stayed because it far exceeds the OIC's enforcement powers.

Next, the Order as written is entirely too broad and its entirely erroneous findings and references to CHW's sale of "insurance" potentially amounts to a binding (albeit erroneous) finding that CHW is an "insurer." As noted in Respondents' demand for a hearing, at most,

<sup>1</sup> In addition, if CHW prevails at its hearing, it cannot be meaningfully compensated for the irreparable damage to its business and goodwill caused by complying with this unilateral mandatory injunction.

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Nov. 22, 2010 3:28PM

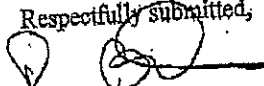
No. 6509 P. 5/5

Honorable Patricia D. Petersen  
November 22, 2010  
Page 4 of 4

these three employees did anything outside the scope of their employment that should subject them to personal liability. If no stay is issued, these individuals may be subject to lawsuits against them personally especially if CHW is required to mail the Order to its Washington customer and may have their personal credit impacted negatively if the Order is recorded against them. Such a result is unjust and inequitable. As such, implementation of the Order must be stayed.

For all of the foregoing reasons, Respondents respectfully request that the Court exercise its discretion to stay the implementation of the Order pending the outcome of the hearing in this matter.

Respectfully submitted,

  
Darren Oved

cc: Alan M. Singer, Esq. (via facsimile)

AA002898

MIKE KREIDLER  
STATE INSURANCE COMMISSIONER

## STATE OF WASHINGTON

Phone: (360) 725-7000  
www.insurance.wa.gov



FILED

**DECLARATION OF MAILING**

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery of a true copy of this document to Darren Oved, Esq.,  
Nan Singer, Esq.  
DATED this 2 day of November  
at Tumwater, Washington.

Signed:

OFFICE OF  
INSURANCE COMMISSIONER

2010 NOV -3 A 10: 06

**HEARINGS UNIT**

Fax: (360) 664-2782

Hearings Unit, DIC  
Patricia D. Petersen  
Chief Hearing Officer

Patricia D. Petersen  
Chief Hearing Officer  
(360) 725-7105

Nicole Kelly  
Paralegal  
(360) 725-7002  
NicoleK@oic.wa.gov

**NOTICE OF RECEIPT OF DEMAND FOR HEARING**

To: Mr. Darren Oved, Esq.  
Oved & Oved LLP  
Attorneys and Counselors at Law  
101 Avenue of the Americas  
15<sup>th</sup> Floor  
New York, NY 10013-1991

From: Patricia D. Petersen, Chief Hearing Officer

Date: November 2, 2010

Hearing: No. 10-0199

This is to advise you that on Monday, November 1, 2010, the Hearings Unit received and filed your Demand for Hearing.

Unless a date is entered at the end of this Notice, in approximately 5 working days, you will be contacted by the Hearings Unit to schedule a date for a first prehearing conference in this matter. This prehearing conference, which will be held by telephone, will include: 1) Darren Oved, Esq., on behalf of Respondents, and any client representatives and/or others at his request; 2) Alan Michael Singer, Esq., on behalf of the Insurance Commissioner, and any other representatives at his request; and 3) the Chief Hearing Officer. The purpose of the prehearing conference is to discuss basic procedure to be followed before, during and after the hearing. In addition, based upon the fact that the Order to Cease and Desist was by its terms made effective immediately, RCW 48.04.020(1) does not provide for an automatic stay of said Order. Respondents have asked, in the event an automatic stay is not available under RCW 48.04.020(1), that the undersigned grant them a discretionary stay pursuant to RCW 48.04.020(2). For this reason, at the first prehearing conference, the parties should be prepared to indicate whether they would like to submit written argument on this issue and/or present oral argument (by telephone if requested). Due to the nature of this issue, it is expected that presentation of any argument on the issue of a discretionary stay followed by a ruling thereon, will be scheduled promptly.



Notice of Receipt of Demand for Hearing  
No. 10-0199  
Page 2

For your information, we have included a brief outline of hearing procedure below.

If you have any questions concerning this Notice, please contact Nicole Kelly, Paralegal, Hearings Unit, at the above telephone number or address.

HEARING PROCEDURES – OFFICE OF THE INSURANCE COMMISSIONER

The following is a brief summary of hearing procedure. Following the prehearing conference referred to above, a Notice of Hearing will be entered advising you of the date scheduled for the hearing. The specific rules which govern the hearing procedure, which include many more details, can be found primarily at Chapter 34.05 RCW (the Administrative Procedure Act) and Chapter 10-08 WAC. Your hearing will be presided over by an administrative law judge who handles cases where actions of the Insurance Commissioner are appealed, such as yours. It will be conducted in a fairly formal manner; however, it will be as flexible as possible to accommodate the needs of the parties and any witnesses which may appear. You will be allowed to submit documents to support your version of the facts. Testimony may also be presented in the form of live witnesses, including the parties themselves; also, if requested, witnesses are allowed to testify over the telephone at the discretion of the judge.

The hearing normally begins with each party presenting an opening statement summarizing what they intend to prove; then each party presents its case-in-chief which includes presentation of documents and testimony, subject to cross examination by the opposing party; then the hearing concludes with each party presenting its closing arguments summarizing what they believe they have shown.

The judge is an individual who has not had any involvement with this case. The judge will hear and make the final decision in the case without any communication, input or review by the Insurance Commissioner or staff or any other individual who has knowledge of the case. The judge's final decision may 1) uphold the Commissioner's action; 2) reverse the Commissioner's action; or 3) impose penalties which are less than those contained in the Commissioner's action.

Please note that, pursuant to General Rule 24, Washington Rules of Court, attorneys representing individuals or entities in adjudicative proceedings in Washington, such as this proceeding, need not be licensed in Washington State.

AA002900

**OVED & OVED LLP**  
 ATTORNEYS AND COUNSELORS AT LAW  
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 15TH FLOOR  
 NEW YORK NY 10013-1991  
 WWW.OVEDLAW.COM

FILED

2010 NOV -1 A 8:28

TELEPHONE 212 226 2376

Facsimile, B/E 226 7555  
 Patricia D. Petersen  
 Chief Hearing Officer

November 1, 2010

**VIA FACSIMILE  
 AND ELECTRONIC MAIL**

Ms. Carol Sureau  
 Office of Insurance Commissioner  
 5000 Capitol Blvd  
 Tumwater, WA 98501

Re: Demand for Hearing  
Order to Cease and Desist, No. 10-0199

Ms. Sureau:

This law firm has been retained by CHW Group, Inc. ("CHW"), in connection with the above-referenced matter. We are in receipt of the October 21, 2010 Order to Cease and Desist (the "Order", a copy of which is attached hereto as **Exhibit A**) issued from the Office of Insurance Commissioner (the "OIC"), and hereby formally demand a hearing before an administrative law judge pursuant to RCW 48.04.10, *et seq.*, to challenge the findings and directions of the Order on the grounds set forth below. Additionally, by virtue of this request and pursuant to RCW 48.04.020, all of the Order's terms, directions, conditions and obligations are automatically stayed pending the outcome of the requested hearing. In the event the OIC disagrees with our interpretation of applicable law as providing for an automatic stay of the Order, CHW hereby requests, in writing, pursuant to RCW 48.04.020 (2), that the OIC grant a stay pending the resolution of the requested hearing.

Specifically, the Order, as so written, is overbroad, unduly burdensome, misstates and assumes untrue statements, and seeks to hold mere employees of CHW, acting within the scope of their employment, personally liable and responsible for CHW's alleged misconduct. In fact, the OIC's power to regulate service contract providers is contained in and limited to the statutory scheme set forth in RCW 48.110, *et seq.*, rendering the Order's numerous references to other statutory provisions regulating insurers, not service contract providers, irrelevant, inapplicable and inapposite. Indeed, Washington's purposeful statutory carve-out for service contract providers and intentional statutory delineation of the difference between an insurer and service contract providers underscores the inapplicability of the majority of the Order to CHW. See, e.g., RCW 48.110.080(1), ("a service contract provider...shall not use in its name the words

AA002901

insurance, casualty, guaranty, surety, mutual, or any other words descriptive of the insurance, casualty, guaranty or surety business.")

In fact, the distinction in the statute is both reasonable and logical since service contract providers provide a service no insurer would ever provide – the repair or replacement of goods rendered unusable as a result of normal wear and tear as opposed to indemnity for damage resulting from a calamitous or unexpected event. Accordingly, the Order is overly broad and generally inapplicable to CHW. As such, full compliance with the Order, as written, will cause irreparable damage to not only CHW's operations in Washington, but also its duly licensed and registered business activities in other states. Indeed, many of the inaccurate premises and conclusions drawn in the Order will serve only to tarnish and slander the name of CHW and its affiliates; despite CHW's past good-faith efforts to comply with Washington's licensing requirements. Accordingly, a stay is necessary pending resolution of the requested hearing in order to prevent this irreparable injury.

As you are undoubtedly well-aware, our client intends to comply with Washington's licensing requirements. To that end, upon receipt of your letter in July of 2010, our client not only voluntarily ceased soliciting new business in Washington, but also formulated a plan, in connection with guidance from the OIC, to issue partial refunds to each and every Washington customer. In light of the foregoing, our client was shocked to receive the Order, as its issuance is markedly inconsistent with our client's continued cooperation with the OIC. As indicated in previous correspondence and conversations with the OIC, CHW's ultimate goal is to maintain and grow its business in the State of Washington pursuant to the full satisfaction of any and all statutes and regulations. As such, and in the interest of foregoing the expense and disruption of further formal proceedings, CHW remains fully committed to informally resolving this matter by way of a settlement agreement. However, given the gravamen of the allegations against our client, we are obligated to pursue this contemporaneous course of action through the administrative hearing process.

CHW reserves the right to advance further and distinct arguments and evidence in support of its position, and this correspondence is not intended as a complete recitation of all of the facts and circumstances in this matter and is written without prejudice to any of our client's rights or remedies, whether legal or equitable, all of which are hereby expressly reserved.

Please do not hesitate to contact us with any questions or concerns.

Very truly yours,



Darren Oved

AA002902

EXHIBIT A

AA002903

MIKE KREIDLER  
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON



OFFICE OF  
INSURANCE COMMISSIONER

FILED  
Phone: (360) 725-7000  
www.insurance.wa.gov

2010 NOV - 1 A 8:28

In the Matter of

CHW GROUP, INC, doing  
business as CHOICE HOME WARRANTY  
and www.ChoiceHomeWarranty.com,  
VICTOR MANDALAWI, "JAMES MOSS,"  
DAVID BAILEY, STEVEN SAFDIEH,  
MICHAEL GUTHOLC  
Unauthorized Individuals and Entities,

No. 10-0199

ORDER TO CEASE  
AND DESIST

Hearings Unit, DIC  
Patricia D. Petersen  
Chief Hearing Officer

Respondents.

Pursuant to RCW 48.02.080, RCW 48.15.020, RCW 48.15.023, RCW 48.110.030, and RCW 48.110.055, the Insurance Commissioner of the State of Washington orders the above-named Respondents, and their officers, directors, trustees, employees, agents, and affiliates ("Respondents") to immediately cease and desist from:

- A. engaging in or transacting the unauthorized business of insurance or acting as an unregistered service contract provider in the State of Washington;
- B. seeking, pursuing and obtaining any insurance or service contract business in the State of Washington and from participating, directly or indirectly, in any act of an insurance company or service contract provider;
- C. soliciting Washington residents to sell any insurance or service contract issued or to be issued by an unauthorized insurer or unregistered service contract provider;
- D. soliciting Washington residents to induce them to purchase any insurance contract or service contract.

THIS ORDER IS BASED ON THE FOLLOWING:

1. Respondent CHW Group, Inc. was incorporated in New York by Jack A. Aini and also in New Jersey by Aini & Lazar PLLC. The New York corporation's principal place of business is 244 Madison Avenue, New York, New York, 10016, and the New Jersey corporation's principal place of business is 510 Thornall Street, Edison, New Jersey, 08837. Both corporations do business as Choice Home Warranty and www.ChoiceHomeWarranty.com. The corporations' President is Victor Mandalawi (who is also principal and sole stockholder/owner) and "James Moss." Other CHW Group Inc. officers include David Bailey (Vice President of Customer Service), Steven Safdieh (Vice President of Sales & Marketing), and Michael Gutholc (Vice President of Contractor Relations.) Respondents have sold at least ninety-two (92) home warranty service contracts.

Mailing Address: P. O. Box 40255 • Olympia, WA 98504-0255  
Street Address: 5000 Capitol Blvd. • Tumwater, WA 98501

AA002904

to Washington residents covering repair or replacement on major systems and appliances in the purchaser's home and promising that Choice Home Warranty will pay for repair or replacement of such systems and appliances in the event such systems or appliances fail. These contracts constitute both a service contract under RCW Chapter 48.110 *et seq* and also a contract to indemnify another or pay a specified amount upon determinable contingencies -- "insurance" under RCW 48.01.040.

2. None of the Respondents is authorized to transact insurance in Washington and none is registered in Washington as a service contract provider.

3. Respondents' above-described conduct violates the Insurance Code of the State of Washington, including RCW 48.05.030, certificate of authority required, RCW 48.15.020, solicitation by unauthorized insurer prohibited, and RCW 48.110.030, service contract provider registration required.

IT IS FURTHER ORDERED THAT Respondents, within ten (10) days of the date of this order, shall mail a copy of this order to each Washington resident to whom Respondents have sold a home warranty service contract, and that Respondents report to the OIC all premiums collected or charged for policies they sold covering Washington risks.

IT IS FURTHER ORDERED that nothing herein shall prevent Respondents from fulfilling the terms of contracts formed prior to the effective date of this Order pursuant to RCW 48.15.020(2)(b), from providing a refund when requested by a Washington consumer pursuant to RCW 48.15.030, or, upon request of the OIC, further ordering the replacement of Respondents' Washington contracts with an authorized insurer pursuant to RCW 48.15.020(3).

Any violation of the terms of this Order by Respondents, their officers, directors, agents, or employees, or affiliates, will render the violator(s) subject to the full penalties authorized by RCW 48.02.080, 48.15.023, and other applicable sections of the Insurance Code of the State of Washington.

Respondents have the right to demand a hearing pursuant to RCW Chapters 48.04 and 34.05. This Order shall remain in effect subject to the further order of the Commissioner.

THIS ORDER IS EFFECTIVE IMMEDIATELY AND IS ENTERED at Tumwater, Washington, this 21<sup>st</sup> day of October, 2010.

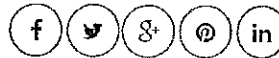
MIKE KREIDLER  
Insurance Commissioner

By: 

Alan Michael Sirger, Staff Attorney  
Legal Affairs Division

ORDER TO CEASE AND DESIST  
Page 2 of 2

AA002905



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Featured  
member

Ritax, Inc.  
1043 West 164th  
Street  
Gardena, CA 90247  
Phone: (310) 217-  
1373

Get Quote

View Rating

Read Reviews

## Reputation Report

## Choice Home Warranty

File Complaint

Category: Homeowner Insurance and  
Warranty Services

Address: 1090 King Georges Post  
Road Bldg 10  
Edison, NJ 08837

Phone: (888) 531-5403

Website: <http://www.choicehomewarranty.com>

Social:

YouTube

Hours: 24 hours a day, 7 days a  
week at (888) 531-5403.

Primary Customer Service  
Contact:

Business 6/2/2008  
Started:

This company's business is providing  
homeowner warranty services.

1,077 inquiries

## Company Rating

The rating assigned to a  
business is determined by our  
composite score of such  
factors as its type of business...

F

Full Rating Explanation →

Membership  
Information

This business is not a member of Business  
Consumer Alliance. This fact does not  
disparage the company in any way.

Are you looking for  
reputable Homeowner  
Insurance and Warranty  
Services?  
Browse our Member  
Directory and shop with  
confidence!

Member  
Directory

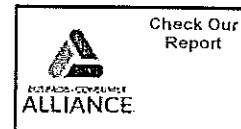
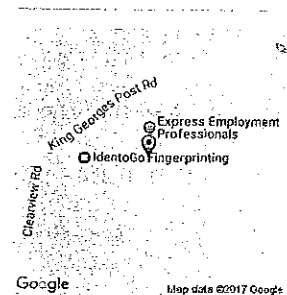
**CHOICE**  
Home Warranty

See more photos and videos on Business  
Reviews →

Promote  
Your  
Business

Shares

Add our dynamic seal to  
your website →

Map &  
Directions

Get Directions →

Additional  
Information

DBAs:  
CHW Group, Inc.

Websites:  
<http://www.choicehomewarr.com>  
<http://www.choicehomewarr.com>

AA002906

## BCA Company Reviews

### Reviews for Choice Home Warranty



based on 1 review.

[Customer Reviews](#)

[Write Review](#)

[Ask Question](#)

## Licensing

We know of no licensing or registration requirement for companies engaged in this company's stated type of business.

<http://www.choicehomewarr> 2/3

<http://www.choicehomewarr>:

<http://www.choicehomewarr>:

#### Contacts:

E. Broadnax  
David Bailey (VP  
Customer Service)  
CHW Marketing  
Tracy Mleczynski (CHW  
Customer Advocate)  
Victor Mandalawi  
(President)  
Victor Hakim (Principal)

#### Addresses:

244 Madison Avenue,  
New York, NY, 10016  
510 Thornall Street,  
Edison, NJ, 08837

## Complaint Closing Statistics

Responses to complaints over the last 3 years:

No. Complaints	Type of Response
3	Making a full refund, as the consumer requested
1	Making a partial refund
1	Agreed to make an adjustment
0	Refusing to make an adjustment
3	Refuse to adjust, relying on terms of agreement
21	Unanswered
0	Unassigned

Total: 29 complaints

21%

### Complaint Resolution Index (CRI)

CRI Explanation →

BCA's Summary and Analysis of customer complaints and company responses:

Our complaint history for this company shows that the company responded to and gave proper consideration to most complaints. However, one or more complaints are unresolved meaning the company failed to properly address the complaint allegations or their response was inadequate.

[View summaries of the complaint descriptions, responses and text of the complaints.](#)

[View Complaints](#)

Shares

## Comments and Analysis

### BCA's Comments and Analysis

We have no further comment about this company's business practices or analysis of its offer that may assist you in your consideration of this company.

## Other Considerations

We know of no other matter or practice relating to this company that may assist you in your consideration of this company.

AA002907



## Government Actions

## Advertising Reviews

Agency: New Jersey Attorney General  
Description:

BCA has no information regarding advertising review at this time.

On July 22, 2014, the New Jersey Attorney General ("Attorney General") filed a Complaint against CHW Group, Inc. doing business as, Choice...Read more →

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- » Apply For Membership
- » Member Toolkit

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- » File a Complaint
- » Ask the Experts
- » Helpful Tips

### Help

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- » Contact Us

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- » Blog
- » Terms of Service
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**AA002908**

## AA002909

("CFA") (Count One) and the Truth in Consumer Contract, Warranty and Notice Act ("TCCWNA") (Count Two), and also breached implied covenants of good faith and fair dealing (Count Three) based on the improper sale of a home maintenance warranty. Defendants sought to dismiss Plaintiff's November 30, 2015 Complaint (the "Complaint") pursuant to R. 4:6-2(e). In a May 27, 2016 oral Opinion and Order, the Court denied Defendants' motion. In this application, Home Warranty seeks reconsideration of the Court's May 27, 2016 Order. For the reasons that follow, Defendants' motion is denied.<sup>1</sup>

First, the Court's May 27, 2016 decision was not based on a palpably incorrect or irrational basis nor did the Court fail to consider appropriate probative and competent evidence. Stated differently, the Court's decision was neither arbitrary, capricious nor unreasonable. The Court's May 27, 2016 ruling concluded that the Complaint, when viewed with the necessary liberality, stated viable causes of action under New Jersey law.

Second, the "new evidence" submitted in support of this reconsideration application was available and could have been obtained and submitted by Defendants in support of their initial application. It is therefore improper for consideration on the instant motion. Motions for reconsideration should not be used as vehicles for record supplementation. Moreover, the submitted evidence, specifically the Certification of Victor Mandalawi ("Mandalawi Cert.") and attached Exhibits, would improperly transform the initial R. 4:6-2(e) application to a proceeding guided by the standards of R. 4:46. Any application filed pursuant to R. 4:46 would be denied at this stage of the proceedings as the parties have not engaged in any discovery.

---

<sup>1</sup>On November 3, 2016, the Court denied Defendants' motion for reconsideration, issued a conforming Order and detailed the bases for its decision in an oral opinion in accordance with R. 1:6-2(f). This written Opinion is provided as further support for the Court's November 3, 2016 Order.

## II. Procedural and Factual Background

In or about April 2015, Plaintiff purchased a home maintenance warranty from Defendants for \$1,050.00 (the "April 2015 Warranty Contract"). Plaintiff alleges that the April 2015 Warranty Contract is a contract of adhesion to which no negotiation took place with respect to any material term. The first page of the contract describes the contract term as "4/23/2015 – 10/23/2018." **Plaintiff alleges in the Complaint that the three-year plus contract term was material to Plaintiff's** decision to purchase the home maintenance warranty. However, the second page of the April 2015 Warranty Contract, according to Plaintiff, purports to limit its term. It provides:

Coverage starts 30 days after acceptance of application by Us and receipt of applicable contract fees and continues for 365 days from that date. Your coverage may begin before 30 days if We receive proof of prior coverage, showing no lapse of coverage, through another carrier within 15 days of the order date.

The warranty further contains a limitation on damages provision. Specifically, it limits any damages arising from "claims, judgments and awards" to a maximum of \$1,500.00 for out of pocket expenses, precludes the recovery of attorneys' fees, and further contains a clause that purports to require any dispute arising out of the warranty to be resolved through arbitration. The arbitration provision in the April 2015 Warranty Contract is detailed at page five of the five-page document in a section titled "Mediation." It provides:

### G. Mediation

**In the event of a dispute over claims or coverage You agree to file a written claim with Us and allow Us thirty (30) calendar days to respond to the claim. The parties agree to mediate in good faith before resorting to mandatory arbitration in the State of New Jersey. Except where prohibited, if a dispute arises from or relates to this Agreement or its breach, and if the dispute cannot be settled through direct discussion you agree that:**

1. Any and all disputes, claims and causes of action arising out of or connected with this Agreement shall be resolved individually, without resort to any form of class action.

2. Any and all disputes, claims, and causes of action arising out of or connected with this Agreement (including but not limited to whether a particular dispute is arbitrable hereunder) shall be resolved exclusively by the American Arbitration Association in the State of New Jersey under its Commercial Mediation Rules. Controversies or claims shall be submitted to arbitration regardless of the theory under which they arise, including without limitation contract, tort, common law, statutory, or regulatory duties or liability.
3. Any and all claims, judgments, and awards shall be limited to actual out-of-pocket costs incurred to a maximum of \$1500 per claim, but in no event attorneys fees.

As noted, Count I of Plaintiff's Complaint alleges a violation of the CFA. Plaintiff avers that Defendant made "affirmative misrepresentations regarding the terms of Plaintiff's and the Class members' warranties." Complaint at Count One, paragraph 31. Plaintiff further states that these actions "constitute knowing omissions, suppressions and/or concealments of material facts, made with the intent that Plaintiff and the Class members rely upon such [...]." *Id.* at paragraph 32. Finally, Plaintiff asserts that the improper sale of a warranty for a term fewer than the three years represented resulted in Plaintiff sustaining an ascertainable loss causally related to Defendants' wrongful actions. Count II of Plaintiff's Complaint alleges a violation of the TCCWNA. Specifically, Plaintiff maintains that the warranty violates the clearly-established right to treble damages and attorney fees under the CFA. Complaint at Count Two, paragraph 37. Count III of Plaintiff's Complaint alleges a breach of the implied covenant of good faith and fair dealing. This count is based upon breaches of the April 2015 Warranty Contract, and violations of the CFA and TCCWNA described above.

### III. Contentions of the Parties

Defendants' primary basis for this reconsideration application is their discovery that Plaintiff cancelled the April 2015 Warranty Contract and obtained a full refund from Defendants prior to filing the Complaint. Based upon this information, Defendants argue that Plaintiff does not have standing to bring her claims as the warranty forming the basis of the Complaint was

"nonexistent" at the time the Complaint was filed. This new information is proffered through the Certification of Victor Mandalawi, a representative of Defendants. Mr. Mandalawi certifies that Exhibit A, attached to his certification, is a true and correct copy of claim notes related to the April 2015 Warranty Contract. According Mr. Mandalawi, Exhibit A establishes that the warranty was cancelled on June 19, 2015 and that Plaintiff received a "full refund" on June 22, 2015. Also attached to his certification is Exhibit B, which purports to be a true and correct copy of the account summary for a separate warranty, sold by Defendants to Plaintiff. According to Mr. Mandalawi, Exhibit B confirms that Plaintiff made a number of claims under that distinct warranty—including some made during the pendency of this litigation—and has received benefits under that warranty. Mr. Mandalawi further certifies that he had not (not that he could not have) discovered this information prior to the Court's May 27, 2016 Order.

Defendants do not argue that the Court's May 27, 2016 Order was "either (1) . . . based upon a palpably incorrect or irrational basis, or (2) . . . that the Court . . . did not consider, or failed to appreciate the significance of probative, competent evidence." See Fusco v. Bd. of Educ. of City of Newark, 349 N.J. Super. 455, 462 (App. Div. 2002) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). Rather, Defendants assert that reconsideration should be granted based upon the information proffered by Mr. Mandalawi. In support, Defendants rely upon the following portion of the Chancery Division's decision in D'Atria v. D'Atria:

...if a litigant wishes to bring new or additional information to the Court's attention which it could not have provided on the first application, the Court should, in the interest of justice (and in the exercise of sound discretion), consider the evidence.

D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990).

The remainder of Defendants' arguments are identical, or nearly so, to those advanced in their original motion to dismiss. These positions, however, are now supplemented and augmented based upon the information contained in the Mandalawi Certification. For example, Defendants

assert that Plaintiff fails to state a claim upon which relief can be granted under the CFA because she cannot claim an ascertainable loss for a warranty that was cancelled and refunded and she cannot prove a misrepresentation or omission as she would have learned that the April 2015 Warranty Contract was a three warranty had she not cancelled the policy prematurely. Likewise, Defendants now assert that Plaintiff's claims under the TCCWNA and her claims for breach of the duty of good faith and fair dealing must be dismissed for failing to state a claim as the warranty forming the basis for these claims did not exist at the time the Complaint was filed. Finally, Defendants assert, based on identical arguments as those made in their motion to dismiss, that the Court should enforce the warranty's arbitration clause and dismiss the case.

In response, Plaintiff argues that Defendants' motion for reconsideration should be denied because Defendants fail to make any showing that the Court's May 27<sup>th</sup> Order was grounded in a palpably incorrect or irrational basis. Plaintiff next maintains that Defendants' motion should be denied because Defendants failed to establish that the Mandalawi Certification and Exhibits were unavailable at the time the initial application was filed. In this regard, Plaintiff notes that if Mr. Mandalawi is a "representative" of Defendants, then it is fair to assume that he was under Defendants' control. Finally, Plaintiff points out that if the Court were to consider this "new" information, it would convert Defendants' application into a motion for summary judgment as the Mandalawi Certification and Exhibits are materials outside the pleadings.

#### IV. Conclusions of Law

##### A. Motion for Reconsideration

R. 4:49-2 provides:

Except as otherwise provided by R. 1:13-1 (clerical errors) a motion for rehearing or reconsideration seeking to alter or amend a judgment or order shall be served not later than 20 days after service of the judgment or order upon all parties by the party obtaining it. The motion shall state with specificity the basis on which it is made,

including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred...<sup>2</sup>

Courts generally disfavor the practice of litigants attempting to reargue their positions multiple times due to dissatisfaction with a trial court's decision. Michel v. Michel, 210 N.J. Super. 218, 223-224 (Ch. Div. 1985). The purpose of R. 4:49-2 is to "...allow the losing party to make 'a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred.'" State v. Fitzsimmons, 286 N.J. Super. 141, 147 (App. Div. 1995) (quoting R. 4:49-2). The Appellate Division has instructed that:

[r]econsideration should be used only for those cases which fall into that narrow corridor in which either (1) the Court has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence.  
Fusco, supra, 349 N.J. Super. at 462 (quoting D'Atria, supra, 242 N.J. Super. at 401).

Furthermore, the moving party carries the heavy burden of showing that the court acted in an arbitrary, capricious or unreasonable manner when rendering its decision. D'Atria, supra, 242 N.J. Super. at 401. As stated by the Appellate Division in Lahue v. Pio Costa, 263 N.J. Super. 575, 598 (App. Div. 1993), R. 4:49-2 was not intended to allow the party moving for reconsideration to raise new issues or make new arguments. Instead, the Rule was designed to ensure that the judge hearing the original matter did not overlook anything that was before the Court when the original motion was heard. Lahue, supra, 263 N.J. Super. at 598 (citing D'Atria, supra, 242 N.J. Super. at 401). "A motion for reconsideration is designed to seek review of an order based on the evidence before the court on the initial motion, not to serve as a vehicle to introduce new evidence in order to cure an inadequacy in the motion record." Capital Fin. Co. of Delaware Valley, Inc. v.

<sup>2</sup>The deadlines contained in R. 4:49-2 apply to final judgments and orders. Interlocutory orders, such as the Court's May 27, 2016 Order, may be reconsidered by the Court at any time prior to final judgment. See Bender v. Walgreen E. Co. Inc., 399 N.J. Super. 584, 593 (App. Div. 2008).



Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008) (quotation and internal citation omitted). Simply put, a party may not seek to expand the record by way of a motion for reconsideration. Id. However, new or additional evidence that could have been proffered in the original motion may be properly considered if the evidence addresses an issue that was not originally raised or argued, and the evidence is in furtherance of the movant's argument that the original decision was based on an incorrect basis. Id. at 310-11.

#### B. Motion to Dismiss

Dismissals for failure to state a claim are governed by R. 4:6-2(e). When considering a motion pursuant to R. 4:6-2(e), a court must search "...the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989) (quotations omitted). As every reasonable inference of fact must be accorded to the plaintiff, a motion under R. 4:6-2(e) is rarely granted by the court, but in the cases where such motion must be granted, the dismissal is ordinarily without prejudice. Id. at 746, 771-72 (citation omitted). "At this preliminary stage of the litigation the Court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint." Id. at 746 (citing Somers Constr. Co. v. Bd. of Educ., 198 F. Supp. 732, 734 (1961)). A motion to dismiss for failure to state a claim must be granted only if even a generous reading of the complaint fails to articulate a legal basis for recovery. See Camden Cty. Energy Recovery Assocs., L.P. v. N.J. Dept. of Env'tl. Prot., 320 N.J. Super. 59, 64-65 (App. Div. 1999), *aff'd* 170 N.J. 246 (2001). "If a generous reading of the allegations merely suggests a cause of action, the complaint will withstand [a] motion [to dismiss]." F.G. v. MacDonell, 150 N.J. 550, 556 (1997) (citing Printing Mart-Morristown, *supra*, 116 N.J. at 746); See also Velantzas v. Colgate-Palmolive

Co., 109 N.J. 189, 192 (1988).

1. Consumer Fraud Act

The New Jersey CFA proscribes:

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, is declared to be an unlawful practice...

N.J.S.A. 56:8-2 (emphasis added).

"To state a claim under the CFA, a private 'plaintiff must allege each of three elements: (1) unlawful conduct by the defendants; (2) an ascertainable loss on the part of the plaintiff; and (3) a causal relationship between the defendant's unlawful conduct and the plaintiff's ascertainable loss.'" Dabush v. Mercedes-Benz USA, LLC, 378 N.J. Super. 105, 114 (App. Div. 2005) (quoting New Jersey Citizen Action v. Schering-Plough Corp., 367 N.J. Super. 8, 12-13 (App. Div. 2003), certif. denied, 178 N.J. 249 (2003) (citation omitted)).

"The purpose of the [CFA] was to prevent deception, fraud or falsity, whether by acts of commission or omission, in connection with the sale and advertisement of merchandise and real estate." Fenwick v. Kay Am. Jeep, Inc., 72 N.J. 372, 376-377 (1977). In establishing a violation of the CFA,

...a plaintiff need not prove an unconscionable commercial practice. Rather, the [CFA] specifies the conduct that will amount to an unlawful practice in the disjunctive, as 'any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing[] concealment, suppression, or omission of any material fact'... . N.J.S.A. 56:8-2. Proof of any one of those acts or omissions or of a violation of a regulation will be sufficient to establish unlawful conduct under the [CFA].

Cox v. Sears Roebuck & Co., 138 N.J. 2, 19 (1994).

Plaintiff alleges two theories in support of the CFA cause of action. First, Plaintiff alleges that Defendant made affirmative misrepresentations with respect to the terms of the warranty. See Complaint, Count One, paragraphs 31, 1-15. "A violation based on one of the affirmative acts does not require proof that the defendant intended to commit an unlawful act or intended to deceive the plaintiff." Suarez v. Eastern Intern. College, 428 N.J. Super. 10, 30 (App. Div. 2012) (citing Cox, supra, 138 N.J. at 17-18) (citation omitted)). An affirmative misrepresentation is "...one which is material to the transaction and which is a statement of fact, found to be false, made to induce the buyer to make the purchase." Gennari v. Weichert Co. Realtors, 288 N.J. Super. 504, 535 (App. Div. 1996), *aff'd*, 148 N.J. 582 (1997). A fact is material if a reasonable person would deem the fact important in determining his or her course of action. Suarez, supra, 428 N.J. Super. at 33 (citation omitted).

Plaintiff's second theory is that Defendant committed a fraudulent omission, suppression and/or concealment "of material facts, made with the intent that Plaintiff" rely upon such material facts. Complaint at Count One, paragraphs 32; 1-15. "[The CFA] specifically provides that acts of omission must be 'knowing' and committed with 'intent' to induce reliance." Vagias v. Woodmont Properties, L.L.C., 384 N.J. Super. 129, 134 (App. Div. 2006) (citing N.J.S.A. 56:8-2; Chattin v. Cape May Greene, Inc., 243 N.J. Super. 590, 598 (App. Div. 1990), *aff'd per curiam*, 124 N.J. 520 (1991)).

With respect to an ascertainable loss, as noted, Plaintiff asserts that the contract cost is the ascertainable loss as she contends that she believed she obtained, and paid for, a three-year warranty when in fact she purchased a one-year warranty. Complaint at Count One, paragraph 34. The CFA requires a party to sustain an "ascertainable loss of moneys or property" as a result of a CFA violation. N.J.S.A. 56:8-19; Weinberg v. Sprint Corp., 173 N.J. 233, 250 (2002); Carroll v.

Cellco P'ship, 313 N.J. Super. 488, 502 (App. Div. 1988). Because the CFA provides for the enhanced remedies of treble damages and attorneys' fees, "[t]he ascertainable loss requirement operates as an integral check upon the balance struck by the CFA between the consuming public and sellers of goods." Thiedemann v. Mercedes-Benz USA, LLC, 183 N.J. 234, 251 (2005).

Courts have cautioned that it is premature to render a determination about an ascertainable loss on a motion to dismiss. As noted by the Appellate Division:

Here, Plaintiff alleged in her complaint that she suffered an ascertainable loss. She did not allege the nature of that loss, nor was she so required at that stage. Defendant's motion to dismiss, unlike the summary judgment procedure, did not require, in order to avoid dismissal, that Plaintiff provide evidential material to rebut defendant's contention that she had not sustained an ascertainable loss.

Perkins v. DaimlerChrysler Corp., 383 N.J. Super. 99, 111 (App. Div. 2006).

Viewed through the prism of a R. 4:6-2(e) application, Plaintiff has unquestionably plead a cause of action under the CFA including appropriate allegations detailing an ascertainable loss. Specifically, the complaint avers that when "Plaintiff entered into her consumer contract for the home maintenance warranty, she paid the Defendants approximately \$1,050.00 and acquired a single family home maintenance warranty...." See Complaint at paragraph 10. According to Plaintiff, the warranty "expressly states that its term is from April 23, 2015 through October 23, 2018, which would have been three and half years." Id. at paragraph 11. Plaintiff maintains that the length of the warranty was material to her decision to enter the agreement. Plaintiff further maintains that other provisions in the written warranty limit the coverage period to one year. See Complaint, paragraph 12.

As to the ascertainable loss incurred by Plaintiff as a result of the aforementioned alleged affirmative misrepresentations, in paragraph 34 under Count One, titled "New Jersey Consumer Fraud Act", Plaintiff specifically states that she "suffered an ascertainable loss by entering into the

consumer contract with the Defendants and purchasing the warranty for a term less than negotiated between Plaintiff and the Defendants.” Thus, Plaintiff has alleged that she sustained an ascertainable loss in the amount of the purchase price of the April 2015 Warranty Contract. The ascertainable loss is further tied to the averred misrepresentation. Specifically, Plaintiff paid \$1,050.00 for the April 2015 Warranty Contract, believing it was for a three-year term, yet contends she did not receive the benefit of her bargain as she was provided with only a one-year warranty. The Defendants’ claim that the April 2015 Warranty Contract was cancelled and therefore Plaintiff had neither standing nor an ascertainable loss rests entirely on evidence outside the pleadings. An untésted Certification and unchallenged internal documents cannot properly support dismissal at this stage of the proceedings.<sup>3</sup>

In Defendants’ briefs, they advocate for a restrictive interpretation of the term “ascertainable loss” under the CFA that is inconsistent with New Jersey law. For example, in Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 7-8 (2004), plaintiff purchased a carpet and later contended that the carpet sold was defective and smaller than represented at the time of sale. Defendant sought dismissal of plaintiff’s complaint and asserted that plaintiff had not suffered an ascertainable loss because it had offered to refund the purchase provide or provide a replacement carpet for an additional amount. Furst, supra, 182 N.J. 1, 1-2. The Supreme Court noted that the

<sup>3</sup>The Court’s decisions denying Defendants’ motions to dismiss and for reconsiderations are based on a review and evaluation of the allegations contained in Plaintiff’s initial, November 30, 2015, Complaint. However, the Court notes that on September 16, 2016, the Court granted, over Defendants’ objection, Plaintiff’s request to amend the Complaint. See September 16 Order and Oral Opinion. In that amended pleading, Plaintiffs named additional defendants and detailed additional alleged wrongful activities. Further, Plaintiff included additional claims supporting her claim that she sustained an ascertainable loss. Specifically, the Amended Complaint at paragraphs 47-50 states that plaintiff sustained an ascertainable loss “by defendants denying plaintiff’s claims for repair or replacement and/or by being forced to accept “buyouts” of her contract...for hundreds of dollars less than the costs of repairing or replacing Plaintiff’s home systems or appliances.” Further, plaintiff maintains that she did not receive the “benefit of her bargain with the defendants.” Id. at paragraph 49. According to plaintiff “defendants’ deceptive business practices ... prevented plaintiff from receiving the full value of her contract...” which entitles her to the “contract price.” Amended Complaint at paragraphs 49-50.

remedies afforded in the CFA exist "...not only to make whole the victim's loss, but also to punish the wrongdoer and to deter others from engaging in similar fraudulent practices." *Id.* at 12 (citing *Cox, supra*, 138 N.J. at 21). In language, particularly relevant to the facts presently before the Court, the *Furst* court stated that in breach of contract cases, courts seek, primarily, to make the aggrieved party whole. *Id.* at 13 (citing *Cox, supra*, 138 N.J. at 21). But, to accomplish that end, it may be necessary to afford "the innocent party... the 'benefit of [her] bargain' and placed in 'as good a position as [she] would have been in had the contract been performed.'" *Id.* (citation and quotation omitted). Here, plaintiff's ascertainable loss, as plead, need not be limited to any out of pocket expenses (which Defendant maintains do not exist) but rather can include the benefit of the bargain. In the *Furst* case, that was the replacement value of the carpet. Here, it is the value of the contract and services for which Plaintiff had entered into the contract. Accordingly, the aforementioned factual allegations, in the November 30<sup>th</sup> Complaint adequately plead a cause of action under the CFA, and specifically, of an ascertainable loss.

## 2. TCCNWA

Count Two of the Complaint alleges violation of the TCCWNA. Specifically, Plaintiff avers that "Defendants' actions and the terms of their warranties clearly established rights under New Jersey law, including, but not limited to, the right to be awarded treble damages, punitive damages and attorneys 'fees' under the CFA." *See* Complaint at Count Two, paragraph 37. Defendants contend that the TCCWNA claim should be dismissed because the April 2015 Warranty Contract is not a "writing", and Count Two fails to identify a "clearly established legal right."

The TCCNWA provides in pertinent part:

No seller, lessor, creditor, lender or bailee shall . . . enter into a written consumer contract or give or display any written consumer warranty . . . which includes any

provision that violates any clearly established legal right of a consumer or responsibility of a seller, lessor, creditor, lender or bailee as established by State or Federal law at the time the offer is made or the consumer contract is signed...

N.J.S.A. 56:12-15.

By its plain terms, the TCCWNA sets forth certain statutory requirements. First, prohibitive conduct must have occurred by a "seller, lessor, creditor, lender or bailee" who targets a consumer or prospective consumer by making an "offer" or entering into a "written consumer contract." N.J.S.A. 56:12-15. Any written contract cannot "include any provision that violates any clearly established legal right of a consumer . . ." Id. Clearly, the TCCWNA applies only to consumers, see Shelton v. Restaurant.com, Inc., 214 N.J. 419, 429 (2013), who are defined to include any "individual who buys, leases, borrowers or bails any money, property, or service which is primarily for personal, family or household purposes." N.J.S.A. 56:12-15.

Defendants' arguments seeking reconsideration of the Court's ruling denying their request to dismiss Plaintiff's TCCWNA claim mirror in large part those made in their initial motion to dismiss. First, Defendants maintain, because Plaintiff cancelled the warranty, no writing exists. Clearly, Plaintiff has plead the existence of a writing – namely the April 2015 Warranty Contract. Again, the Mandalawi Certification and evidence submitted in which Plaintiff purportedly cancelled the contract are improper proofs for consideration on a R. 4:6-2(e) motion. Further, the Court notes that TCCWNA also prohibits the enumerated exhibits from "...offer[ing] to any consumer or prospective consumer or enter[ing] any written consumer contract . . ." See N.J.S.A. 56:12-15 (emphasis supplied); See also Barrows v. Chase Manhattan Mortg. Corp., 465 F. Supp. 2d 347, 361 (D.N.J. 2006).

Second, Defendants maintain there is no "clearly established legal right" for the payment of attorneys' fees under the CFA, particularly because of the purported "fluid state or lack of legal

precedent regarding attorneys' fees in this context." See Defendants' Brief in Support of Motion for Reconsideration at p. 12.

Claiming that the right to attorneys' fees under the CFA is not a clearly established right ignores (1) the language of the CFA and (2) a legion of Supreme Court and Appellate Division precedent. First, the plain language of the CFA provides that in successful actions pursuant to the statute, a court "shall . . . award threefold the damages . . . [and] shall also award reasonable attorneys' fees . . . ." See N.J.S.A. 56:8-19. This right was recognized by the New Jersey Supreme Court in Cox v. Sears Roebuck & Co., 138 N.J. 2, 24 (1994). See also Delta Funding Corp. v. Harris, 189 N.J. 28, 49 (2006); BJM Insulation & Const., Inc. v. Evans, 287 N.J. Super. 513, 516-17 (App. Div. 1996); Performance Leasing Corp. v. Irwin Lincoln-Mercury, 262 N.J. Super. 23, 33-34 (App. Div. 1993), certif. denied, 133 N.J. 443 (1993).

Defendants maintain that despite the language of the CFA, and the reported decisions interpreting it, a series of unpublished and published federal cases support their position that the right to attorneys' fees under the CFA is not a clearly established right. See Defendants' Brief in Support of Motion for Reconsideration at pp. 10-14 (citing Johnson v. Wynn's Extended Care, Inc., No. 12-00079, 2014 WL 5292318 (D.N.J. 2014), *rev'd*, 635 Fed. Appx. 59 (3d Cir. 2015); McGarvey v. Penske Auto Group, Inc., No. 08-5610, 2011 WL 1325210 (D.N.J. 2011), *aff'd*, 486 Fed. Appx. 276 (3d Cir. 2012); Salvadori v. Option One Mortg. Corp., 420 F. Supp. 2d 349 (D.N.J. 2006).

However, and as counsel for Plaintiff aptly notes, these non-binding cases simply do not support the proposition that the right to attorney fees pursuant to the CFA is not clearly established. For example, in Johnson v. Wynn's Extended Care, Inc., 635 Fed. Appx. 59 (3d Cir. 2015) the trial court concluded, on a motion to dismiss, that an arbitration agreement that precluded the



prevailing party from recovering attorney fees was not a violation of the TCCWNA. However, the Third Circuit reversed and specifically held:

...we hold that the District Court erred in dismissing this claim at the pleading stage. To find a violation of the TCCWNA, Johnson had to allege that the service contract presented to her by Wynn 'include[d] any provision that violates any clearly established legal right of a consumer . . . as established by State or Federal law.' N.J.S.A. § 56:12-15. Drawing all reasonable inferences in favor of the plaintiff, we conclude that the service contract's provision waiving attorney's fees and splitting costs violates a clearly established legal right under New Jersey law.

This is so because the New Jersey Supreme Court has clearly held that clauses preventing the recovery of attorney's fees and costs, when mandated by statute, are unconscionable. See Delta Funding Corp. v. Harris, 189 N.J. 28, 912 A.2d 104, 114 (N.J. 2006) ('Like the attorney's fees provision discussed above, the [provision requiring the appealing party to bear costs] is unconscionable to the extent that it would bar Harris from being awarded costs if she prevailed on her appeal.') In this case, both the CFA and the TCCWNA mandate the provision of attorney's fees and costs for the prevailing party. N.J.S.A. § 56:8-19 ('In all actions under [the Consumer Fraud Act], . . . the court shall also award reasonable attorneys' fees, filing fees and reasonable costs of suit.'). N.J.S.A. § 56:12-17 ('Any person who violates the provisions of [the TCCWNA] shall be liable to the aggrieved consumer for a civil penalty of not less than \$100.00 or for actual damages, or both at the election of the consumer, together with reasonable attorney's fees and court costs.') N.J.S.A. § 56:12-16 (stating that under the TCCWNA '[n]o consumer contract . . . shall contain any provision by which the consumer waives his rights under this act'). Johnson's TCCWNA claim is therefore sufficient to survive a motion to dismiss. Accordingly, we will reverse the judgment of the District Court only with respect to the alleged violation of the TCCWNA discussed above and will remand for further proceedings.

Johnson, supra, 635 Fed. Appx. at 60-61.

### 3. Breach of Duties of Good Faith and Fair Dealing

Defendants' also claimed, in their initial motion and on reconsideration, that the Complaint does not plead a cognizable claim under New Jersey law for a breach of the duty of good faith and fair dealing. The Court notes that in its initial brief seeking to dismiss Count Three of the Complaint, Defendants maintained that the lack of good faith and fair dealing counts should be dismissed because "the facts of the complaint do not state a claim under either the CFA or TCCWNA" and, relatedly, there is no claim that defendants breached the warranty provisions of

the April 2015 contract. See Defendants' Brief at p.12. In support of their reconsideration application, Defendants maintain that Count Three should be dismissed because plaintiff "had cancelled the contract before bringing this lawsuit. Because there is no contract upon which [plaintiff] can base her breach of good faith and fair dealing claim, the claim must be dismissed with prejudice." See Defendants Brief in Support of Motion for Reconsideration at p. 14.

Defendants' initial basis to dismiss Count Three, and their re-casted argument in the reconsideration application, is without merit. It is well settled in New Jersey that every contract has an implied covenant of good faith and fair dealing such that "...neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract[.]" Wood v. N.J. Mfrs. Ins. Co., 206 N.J. 562, 577 (2011) (quoting Kalogeras v. 239 Broad Ave., L.L.C., 202 N.J. 349, 366 (2010)). The purpose of these implied duties and obligations is to ensure that each party's "reasonable expectations" are protected and the purpose of the contract is achieved. Sons of Thunder v. Borden, Inc., 148 N.J. 396, 418 (1997) (quotation omitted). The November 30, 2015 Complaint alleges that Plaintiff purchased the April 2015 Warranty Contract from Defendants, that Defendants made affirmative misrepresentations and misrepresentations of omission and that the warranty, on its face, precluded plaintiff from receiving the full benefit of the contract. See Complaint at Paragraphs 10-15. Plaintiff's claims clearly state a cause of action for a breach of the implied duty of good faith and fair dealing.

#### 4. Arbitration Provision

It is well settled that arbitration is a "favored method of resolving disputes" but like all alternative resolution methods it has limits. See e.g., Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124, 132 (2001); New Jersey Arbitration Act, N.J.S.A. §§ 2A:23B-1-32. In Martindale v. Sandvik Inc., 173 N.J. 76, 83, 92 (2002), the Court identified a

two-step process when evaluating a motion to compel arbitration. The first inquiry requires a court to determine if the arbitration agreement at issue is enforceable. Martindale, supra, 173 N.J. at 83. Second, a judicial determination must be made if the dispute at issue is within the scope of the agreement's arbitration provision. Id. at 92. Only the first question must be answered to resolve the issue presently before the Court.

Defendants' request to dismiss the Complaint in favor of arbitration is denied because the "arbitration provision" in the April 2015 Warranty Contract fails clearly to advise Plaintiff that she is relinquishing her right to prosecute any claims in court. It is therefore inconsistent with the New Jersey Supreme Court decision in Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430 (2014). In Atalese, the Court refused to enforce an arbitration provision in a consumer service agreement (for debt adjustment services) because the clause did not contain language that clearly and unambiguously advised plaintiff that she was waiving her right to seek relief in court. Atalese, supra, 219 N.J. at 446. More specifically, the Court invalidated the ambiguous and unclear arbitration clause in that case because it failed to explain the difference between proceeding in court and arbitration and was not drafted in plain and ordinary language that "...would be clear and understandable to the average consumer that she is waiving statutory rights." Id. The Court held that a proper arbitration provision "...[a]t least in some general and sufficiently broad way, must explain that the plaintiff is giving up her right to bring her claims in court or have a jury resolve the dispute. Id. at 447.

The Atalese Court observed that an arbitration provision is like any other contract and, as such, "'must be the product of mutual assent, as determined under customary principles of contract law.'" Id. at 442 (quoting NAACP of Camden Cnty. E. v. Foulke Mgmt. Corp., 421 N.J. Super.

404, 424 (App. Div. 2011), certif. granted, 209 N.J. 96 (2011), and appeal dismissed, 213 N.J. 47 (2013)).

When evaluating the sufficiency of any mutual assent, Justice Albin, writing for a unanimous court stated:

Mutual assent requires that the parties have an understanding of the terms to which they have agreed. An effective waiver requires a party to have full knowledge of his legal rights and intent to surrender those rights. By its very nature, an agreement to arbitrate involves a waiver of a party's right to have her claims and defenses litigated in court. But an average member of the public may not know – without some explanatory comment – that arbitration is a substitute for the right to have one's claim adjudicated in a court of law.

Moreover, because arbitration involves a waiver of the right to pursue a case in a judicial forum, courts take particular care in assuring the knowing assent of both parties to arbitrate, and a clear mutual understanding of the ramifications of that assent.

Atalese, *supra*, 219 N.J. at 442-43 (internal citations and quotations omitted).

The Atalese court also stressed that any contractual provision, arbitration or otherwise, that seeks to waive a party's rights, "must be clearly and unmistakably established." *Id.* at 444 (citation and internal quotations omitted). The Court noted:

Thus, a clause depriving a citizen of access to the courts should clearly state its purpose. We have repeatedly stated that the point is to assure that the parties know that in electing arbitration as the exclusive remedy, they are waiving their time-honored right to sue.

No particular form of words is necessary to accomplish a clear and unambiguous waiver of rights. It is worth remembering, however, that every consumer contract in New Jersey must be written in a simple, clear, understandable and easily readable way. Arbitration clauses – and other contractual clauses – will pass muster when phrased in plain language that is understandable to the reasonable consumer.

*Id.* (internal citations and quotations omitted).

Finally, the Atalese court identified three examples that appropriately informed a party that arbitration was an explicit waiver of the right to proceed in court. The Court summarized the holdings as follows:

For example, in [*Martindale v. Sandvik, Inc.*, 173 N.J. 76 (2002)], we upheld an arbitration clause because it explained that the plaintiff agreed ‘to waive [her] right to a jury trial’ and that ‘all disputes relating to [her] employment . . . shall be decided by an arbitrator.’ 173 N.J. at 81-82, 96, 800 A. 2d 872 (stating that ‘arbitration agreement not only was clear and unambiguous, it was also sufficiently broad to encompass reasonably plaintiff’s statutory causes of action’). In [*Griffin v. Burlington Volkswagen, Inc.*, 411 N.J. Super. 515, 518 (App. Div. 2010)], the Appellate Division upheld an arbitration clause, which expressed that ‘[b]y agreeing to arbitration, the parties understand and agree that they are waiving their rights to maintain other available resolution processes, such as a court action or administrative proceeding, to settle their disputes.’ 411 N.J. Super. at 518, 988 A.2d 101. In [*Curtis v. Cellco P’ship*, 413 N.J. Super. 26 (App. Div. 2010), *certif. denied*, 203 N.J. 94 (2010)], the Appellate Division found the arbitration provisions were ‘sufficiently clear, unambiguously worded, satisfactorily distinguished from the other [a]greement terms, and drawn in suitably broad language to provide a consumer with reasonable notice of the requirement to arbitrate.’ 413 N.J. Super. at 33, 992 A.2d 795. The arbitration agreement in *Curtis* stated:

Instead of suing in court, we each agree to settle disputes (except certain small claims) only by arbitration. The rules in arbitration are different. There’s no judge or jury, and review is limited, but an arbitrator can award the same damages and relief, and must honor the same limitations stated in the agreement as a court would. *Id.* at 31, 992 A.2d 795 (emphasis omitted).

*Id.* at 444-45.

Applying these legal principles to the “arbitration provision” in the April 2015 Warranty Contract it is clear that it is non-compliant with *Atalese* and New Jersey law. The provision is not written in a clear and straightforward manner and is not satisfactorily distinguished from other contract terms. See *Atalese, supra*, 219 NJ at 445 (citing *Curtis, supra*, 413 N.J. Super. at 33). Indeed, the provision at issue is contained at page five in a five-page contract of adhesion within a paragraph titled “Mediation.” The first two sentences are bolded and advise that the parties shall engage in a two stage dispute resolution process. Initially, the parties agree to mediate disputes “before resorting to mandatory arbitration in the State of New Jersey.” The next paragraph provides that any and all disputes arising out of or connected with the April 2015 Warranty Contract shall be resolved individually “without resort to any form of class action.” Paragraph two provides that all claims “arising out of or connected with” the April 2015 contract “shall be

resolved exclusively by the American Arbitration Association under its Commercial Mediation Rules.” Paragraph two continues to require all claims be submitted to arbitration regardless of the theory of liability. Finally, paragraph 3 of the “Mediation” provision limits recovery to \$1500 per claim, “but in no event attorneys fees.”

Contrary to Defendants’ contention, the language that any and all claims be resolved “exclusively” by arbitration does not adequately inform Plaintiff that she is waiving her right to proceed in court. For sure, the April 2015 Warranty Contract is utterly silent as to the right of Plaintiff to a jury trial and that by agreeing to the “Mediation” provision she is waiving this significant right, unlike the acceptable arbitration provision in Martindale, supra. Nor does it, when read in context and without improper parsing and truncation of certain words and phrases, advise Plaintiff she was waiving other available resolution processes such as court actions, as the arbitration clause in Griffin, supra, informed. Finally, while paragraph 2 identifies AAA and the commercial arbitration rules, it does not remotely explain the differences between arbitration and judicial proceedings as did the arbitration provision in Curtis, supra.

#### IV. Conclusion

For the aforementioned reasons, the Court denies Defendants’ motion for reconsideration of the Court’s May 27, 2016 Order.

Dated: November 18, 2016

Honorable Arnold L. Natali Jr., J.S.C.

07-17-2014

# Problem Report Information Inquiry

Page 1 of 3

Problem Report ID: 33091

Problem Report Type: Complaint

Responsible Section: Consumer Services

Status: Open

Opened Date: 07-16-2014

Closed Date:

Closure Reason:

## Problem Report Details

### Type of Problem

Claim Denial/Delay

### Description

### Consumer Detail of Complaint

On June 26, 2014, my air-conditioning abruptly stopped working, I contacted Choice Home Warranty to file a claim. Choice Home Warranty dispatched Priority Plumbing & Air to my home. The technician advised me that the compressor in my air-conditioning unit was no longer working and it needed to be replaced. When Choice Home Warranty was notified of this professional assessment, it disputed the diagnosis and ultimately denied my claim leaving me with no choice but to pay \$1,025.00 out of pocket for this necessary and covered repair. I spoke to a supervisor, Giselle, at Choice Home Warranty and requested a written explanation as to why Choice Home Warranty refused to accept my claim. Giselle stated that it is against their policy to provide a denial explanation in written form.

### Consumer Desired Resolution

Reimbursement for the \$1,025.00 that I had to pay "out of pocket" for the replacement of the compressor in my air-conditioning unit

### Consumer is Complaining Against

My Insurance Company

### Consumer is represented by an attorney?

No

### How did the consumer know about us?

Other

### Has the consumer previously reported this problem to our office or any other agency?

No

### Purchased Insurance on the Health Care Exchange?

No

Respondent Name and Address

EIN/SSN

Employment Type

NAIC ID

Representative

Complaint Confirmed

Source

Complaint Type

Incident Date Received Date Priority

Consumer

General

06-26-2014

Location

Location Date

Finding Type

Incident Group

Subject

Subject Additional Details

AA002930.5-1

07-17-2014

## Problem Report Information Inquiry

Page 2 of 3

Problem Report ID: 33091

Problem Report Type: Complaint

Responsible Section: Consumer  
Services

Status: Open

Opened Date: 07-16-2014

Closed Date:

Closure Reason:

State ID	System Source CNSMRPRTL		
Insurer Choice Home Warranty Coverage Type	Agent/Agency	Type of Insurance Homeowners Coverage Level	Self-Funded Health Plan No Coverage Sublevels
Name of Insured Levy, David Wolf Insurance Card ID	Policy Number 628975268 Claim Number 51918606	Type of Policy	Policy Period Begin Date End Date Policy Issued State Nevada Location of Loss 2300 Steamers Ave, Unit 103, Las Vegas, NV 89183
Is the Insured Medicare No	Medicare Supp. Plan	Other Party's Policy or Claim Number	
Complainant Name and Address Levy, David Wolf 10624 S Eastern Ave Suite A-217 Henderson, NV 89052	SSN	Organization	
	Role Insured Age Group	Representative	
	Medical Info. Authorization No		
<b>Involved Parties</b>			
Involved Party Comment Choice Home Warranty	Involved Party Type Portal - Company	Organization	
Levy, David Wolf	Portal - Insured		
<b>Staff Members</b>			
Staff Member Brown Tanishia	Begin Date 07-16-2014	End Date	Responsible Yes

AA002931 3.7.5-1



07-17-2014

**Problem Report Information Inquiry**

Page 3 of 3

Problem Report ID: 33091

Problem Report Type: Complaint

Responsible Section: Consumer  
Services

Status: Open

Opened Date: 07-16-2014

Closed Date:

Closure Reason:

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**Independent Review Details**

Request Type	Life Threatening Decision Date	Court Ordered Level of Review	Experimental/ Investigational	Due Date	Received Date
Decision					
Specialty of Reviewer					
Service Denials					
Primary Diagnosis	Service Begin Date	Service End Date			

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AA002932 12.7.5-1

Problem Report ID: 34153

Problem Report Type: Complaint

Responsible Section: Consumer  
Services

Status: Closed

Opened Date: 11-19-2014

Closed Date: 03-18-2015

Closure Reason:

---

Problem Report Details

## Type of Problem

Claim Denial/Delay

## Description

Warranty company is denying claim.

## Consumer Detail of Complaint

On 4-30-14, I signed up for home owners insurance, based on an Internet ad. from Choice Home Warranty, the CHW Internet ad stated "Get coverage today with a Choice Home Warranty" (I have a copy of the ad) I signed up and paid my first month payment \$36.50, the same day. On 5-25-2014, a water pipe broke flooding my living room...I called CHW claim dept. and the customer service entered my claim request and gave me a claim # 51748571, I was told a plumber would call me in 2 hours...NO ONE CALLED..being a emergency I called a plumber and they repaired the leak and charged me \$862.00..I submitted this bill to CHW AND WAS DENIED...CHW said that my policy was not in effect until 30 days after I signed up???? I said you advertised "GET COVERAGE TODAY WITH A CHW" you also gave me a claim # and promised a plumber would call me...now why wouldnt I think I had insurance coverage...CHW denied my claim and would not respond to my claim of false, misleading, Internet advertising. I have filed several complaints against CHW, with no action...I have noticed that CHW had not advertise "GET COVERAGE TODAY WITH CHW" since my complain....I assume the realized their Internet ad was misleading.

## Consumer Desired Resolution

I would like to be reimbursed for the \$826.00, cost to repair the broken water pipe...I have in the interium filed a complant with the LV and NJ...BBB...this is very frustrating and I feel CHW has been missleading and decitfull in their Internet advertising...when you advertise "GET COVERAGE TODAY" and take a payment, why wouldnt you assume you have insurance coverage TODAY!!!!

## Consumer is Complaining Against

My Insurance Company

## Consumer is represented by an attorney?

No

## How did the consumer know about us?

Insurance Department Web Page

## Has the consumer previously reported this problem to our office or any other agency?

Yes

## Purchased Insurance on the Health Care Exchange?

## Other Agency Name

confidential

## Respondent Name and Address

HOME WARRANTY ADMINISTRATOR OF NEVADA,  
INC. DBA CHOICE HOME WARRANTY  
90 WASHINGTON VALLEY RD  
BEDMINSTER, NJ 07921-2118

## EIN/SSN

90-0594950

## NAIC ID

## Employment Type

State Specific

Representative

## Complaint Confirmed

Yes

03-18-2015

## Problem Report Information Inquiry

Page 5/7 of 4

Problem Report ID: 34153

Problem Report Type: Complaint

Responsible Section: Consumer  
Services

Status: Closed

Opened Date: 11-19-2014

Closed Date: 03-18-2015

Closure Reason:

<b>Source</b>	<b>Complaint Type</b>	<b>Incident Date</b>	<b>Received Date</b>	<b>Priority</b>
Consumer	General	05-25-2014	11-19-2014	
<b>Location</b>	<b>Location Date</b>	<b>Finding Type</b>	<b>Incident Group</b>	
Carson City	11-21-2014			
<b>Subject</b>	<b>Subject Additional Details</b>			
<b>State ID</b>	<b>System Source</b>			
KK	CNSMRPRTL			

<b>Insurer</b>	<b>Agent/Agency</b>	<b>Type of Insurance</b>	<b>Self-Funded Health Plan</b>	
choice home warranty		Homeowners	No	
<b>Coverage Type</b>	<b>Coverage Level</b>	<b>Coverage Sublevels</b>		
Miscellaneous	Extd Warranty & Serv Contracts			
<b>Name of Insured</b>	<b>Policy Number</b>	<b>Policy Period Begin Date</b>	<b>Policy Period End Date</b>	<b>Policy Issued State</b>
naughten, larry s	465308123			New Jersey
<b>Insurance Card ID</b>	<b>Claim Number</b>	<b>Type of Policy</b>	<b>Location of Loss</b>	
	51748571		9541 eagle valley dr	
<b>Is the Insured Medicare</b>	<b>Medicare Supp. Plan</b>	<b>Other Party's Policy or Claim Number</b>		
No				

<b>Complainant Name and Address</b>	<b>SSN</b>	<b>Organization</b>
NAUGHTEN, LARRY S 9541 eagle valley dr las vegas, NV 89134		
	<b>Role</b>	<b>Representative</b>
	Insured	
	<b>Age Group</b>	
	<b>Medical Info. Authorization</b>	
	No	

<b>Reasons</b>		
<b>Category</b>	<b>Reason Types</b>	<b>Respondent</b>
CH	Denial of Claim	HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. DBA CHOICE HOME WARRANTY

## Actions

AA002934

v14.1-1

03-18-2015

## Problem Report Information Inquiry

Page 3 of 4 <sup>6/7</sup>

Problem Report ID: 34153

Problem Report Type: Complaint

Responsible Section: Consumer Services

Status: Closed

Opened Date: 11-19-2014

Closed Date: 03-18-2015

Closure Reason:

Action	Action	Letter Description	Due Date	Received Date
03-18-2015	Phone			
	Involved Party Name	Staff Member Kim Kuhlman	Time 0.13	Batch Qty

## Comment

Rcvd. a call from Victor at CHW inquiring if I had a document. He also advised that they will be paying the claim. I advised him to reach out to the Naughtens to see if they have additional information. I advised complainant that company may be contacting him.

Action	Action	Letter Description	Due Date	Received Date
03-17-2015	Other			
	Involved Party Name	Staff Member Kim Kuhlman	Time 0	Batch Qty

## Comment

Reviewed file with Derick. I asked the company to reconsider and cover this claim as the complainant was not aware that he could provide evidence of previous coverage with no lapse to avoid the waiting period. kmk

Action	Action	Letter Description	Due Date	Received Date
11-21-2014	Letter	CO		
	Involved Party Name	Staff Member Kim Kuhlman	Time 0	Batch Qty

## Comment

Action	Action	Letter Description	Due Date	Received Date
11-21-2014	Letter	ACK		
	Involved Party Name	Staff Member Kim Kuhlman	Time 0	Batch Qty

## Comment

## Involved Parties

Involved Party  
Comment

choice home warranty

Involved Party Type

Portal - Company

Organization

AA002935 14.1-1

03-18-2015

## Problem Report Information Inquiry

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Problem Report ID: 34153

Problem Report Type: Complaint

Responsible Section: Consumer  
Services

Status: Closed

Opened Date: 11-19-2014

Closed Date: 03-18-2015

Closure Reason:

Naughten, Larry S

Portal - Insured

## Dispositions

Date	Type	Requested Amount	Disposition Amount	Paid Amount
03-18-2015	Compromised Settlement/Resol.	\$0.00	\$500.00	\$500.00

## Staff Members

Staff Member	Begin Date	End Date	Responsible
Kuhlman Kim	11-20-2014	03-18-2015	Yes

## Independent Review Details

Request Type	Life Threatening Decision Date	Court Ordered Level of Review	Experimental/ Investigational Due Date	Received Date
Decision			Specialty of Reviewer	
Service Denials				
Primary Diagnosis	Service Begin Date	Service End Date		

AA002936 14.1-1



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News Release

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Christopher S. Porrino  
Attorney General

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For Immediate Release:  
July 28, 2014

For Further Information:

Media Inquiries-

Jeff Lamm or  
Neal Buccino  
973-504-6327

Citizen Inquiries-

609-984-5828

**Office of The Attorney General**

- John J. Hoffman, *Acting Attorney General*

**Division of Consumer Affairs**

- Steve C. Lee, *Acting Director*

**Division of Law**

- Jeffrey S. Jacobson, *Director*

**New Jersey Division of Consumer Affairs Files Complaint  
Against "Home Warranty" Company That Allegedly Used  
Deceptive Tactics to Refuse Consumers' Claims for Repair  
of Crucial Home Systems and Appliances**

[View Complaint](#)

NEWARK – The New Jersey Division of Consumer Affairs has filed a Complaint against CHW Group, Inc., d/b/a "Choice Home Warranty," an Edison-based company that allegedly induced consumers to buy "comprehensive" coverage for crucial home systems and appliances, and then denied consumers' claims for repair or replacement through the use of various deceptive tactics. As a result, consumers who paid hundreds of dollars for CHW's so-called "home warranties" – which are actually residential service contracts – were forced to pay out-of-pocket for air conditioning, refrigerator, or other repairs that allegedly should have been covered under their "warranties" with CHW.

"This company's alleged false advertising and flagrant violations of the terms of its residential service contracts affected consumers not just in New Jersey, but in at least 25 other states from here to Nevada, according to the Division's consumer complaints," Acting Attorney General John J. Hoffman said. "It is time to bring these alleged violations to a close and prevent further harm to consumers."

Division of Consumer Affairs Acting Director Steve Lee said, "The Division alleges that Choice Home Warranty refused to provide the basic services that consumers were paying for, and pocketed the money paid by consumers. Such deceptive practices will not be tolerated in New Jersey."

As set forth in the State's complaint, filed by the Division of Law on behalf of the Division of Consumer Affairs:

CHW advertises that its so-called "home warranties" provide "comprehensive" coverage and "peace of mind" by protecting consumers against the high costs of unexpected repairs or replacements of home systems and appliances. The company's advertisements promise that, should consumers need service for their covered systems or appliances, CHW will "quickly" respond by dispatching a local technician who is duly licensed and insured. The company's advertisements further promised that consumers will "Never Pay For Covered Home Repairs Again!"

[free PDF plugin](#)

AA002937

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In-reality, however, CHW and its current and former principals, Victor Mandalawi, Victor Hakim, and David Seruya, all believed to be of Brooklyn (collectively, the defendants), repeatedly made it difficult if not impossible for consumers to realize the benefits of their so-called "warranties."

CHW and its principals often denied claims based on consumers' supposed failure to properly maintain their covered home systems or appliances. The defendants also often denied claims based on supposed pre-existing defects. The company denied claims even when technicians declared that the covered home systems or appliances had been properly maintained, and/or had failed for reasons not related to poor maintenance or pre-existing problems.

As a way of denying claims, the defendants on many occasions demanded that the consumers provide years' worth of records to prove they performed regular maintenance on the covered items. One consumer was told her claim could not be approved unless she could provide 12 years of maintenance records for her air conditioning unit. This denial, in addition to many others made on similar grounds, were issued despite the fact that CHW's residential service contract does not state that the company can demand maintenance records from consumers.

Additionally, when consumers requested specific explanations for their denial of claims in writing, CHW on many occasions failed or refused to provide written explanations.

CHW also promised consumers that if covered items could not be repaired, the company would replace them. However, when consumers needed to replace covered items, the company often required consumers to accept cash "buy-outs." These "buy-outs" were hundreds of dollars less than the consumers' cost to replace the items. For example, CHW offered one customer a \$180 "buy-out" for a dryer that allegedly would have cost \$600 to repair. When the consumer disputed this, the company offered a \$285 "buy-out."

CHW also repeatedly failed to deliver on its promises for prompt service. In several cases this was because the company failed to pay its contracted technicians. On at least one occasion, CHW assigned three different technicians to a consumer's claim, and all three technicians told the consumer they would not do so because CHW had failed to pay them for prior services. To date, the Division of Consumer Affairs has received 16 complaints from technicians who stated CHW had not paid outstanding invoices totaling at least \$21,690.92.

CHW's residential service contract states that, upon receiving a request for service, the company will contact a local technician within two days during normal business hours and four days on weekends and holidays. However, CHW did not have contracted technicians in some areas. Consumers in those areas had to find their own technicians, then pay the technicians directly and seek reimbursement from CHW. On other occasions, contractors sent to consumers' homes by CHW turned out to be unlicensed and/or uninsured.

Despite these alleged failures to honor the terms of consumers' residential service contracts, CHW paid Mandalawi at least \$2.6 million from January 2011 to September 2013, paid Hakim at least \$3.7 million between December 2010 and September 2013, and paid Seruya at least \$2.1 million between January 2011 and April 2013.


The Division of Consumer Affairs has received complaints from a total of 116 consumers, including 18 from New Jersey, seven from New York, and five from Pennsylvania. The balance of the complaints were filed by consumers from outside the tri-state area, in states such as Maryland, Texas and Nevada. The Division also has been provided with 902 complaints that were filed by individuals from various states with the Better Business Bureau.

The State's Complaint, filed in Superior Court in Middlesex County, ultimately requests that the Court, among other things, find that the defendants violated the Consumer Fraud Act and Advertising Regulations; order defendants to pay consumer restitution; declare

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CHW's residential service contracts with consumers to be null and void; and impose civil penalties.

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Investigator Brian Morgenstern, of the Division of Consumer Affairs Office of Consumer  
Statewide Home Services, of the Department of Community Affairs  
Print to Email News Release  
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Deputy Attorney General David Reap, of the Consumer Fraud Prosecution Section within the Division of Law, is representing the State in this action.

Consumers who believe they have been cheated or scammed by a business, or suspect any other form of consumer abuse, can [file a complaint online](#) with the State Division of Consumer Affairs or by calling 1-800-242-5846 (toll free within New Jersey) or 973-504-6200.

###

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AA002939



JOHN J. HOFFMAN  
 ACTING ATTORNEY GENERAL OF NEW JERSEY  
 Division of Law  
 124 Halsey Street - 5<sup>th</sup> Floor  
 P.O. Box 45029  
 Newark, New Jersey 07101  
 Attorney for Plaintiffs

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By: David M. Reap (025632012)  
 Deputy Attorney General

SUPERIOR COURT OF NEW JERSEY  
 CHANCERY DIVISION  
 MIDDLESEX COUNTY  
 DOCKET NO. C-135-14

JOHN J. HOFFMAN, Acting Attorney General of the  
 State of New Jersey, and STEVE C. LEE, Acting Director  
 of the New Jersey Division of Consumer Affairs,

Plaintiffs,

v.

CHW GROUP INC. d/b/a CHOICE HOME  
 WARRANTY; VICTOR MANDALAWI; VICTOR  
 HAKIM; DAVID SERUYA; JANE AND JOHN DOES 1-  
 20, individually and as officers, directors, shareholders,  
 founders, owners, managers, agents, servants, employees,  
 representatives, sales representatives and/or independent  
 contractors of CHW GROUP, INC. d/b/a CHOICE HOME  
 WARRANTY; and XYZ CORPORATIONS 1-20,

Defendants.

Civil Action

**COMPLAINT**

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

AA002940

**PRELIMINARY STATEMENT**

1. Since at least December 2008, CHW Group Inc. d/b/a Choice Home Warranty ("CHW") has advertised, offered for sale and sold merchandise to consumers in the State of New Jersey ("State" or "New Jersey") and elsewhere.

2. CHW advertises on the internet and elsewhere that it provides consumers with "peace of mind" and that its "home warranties" protect consumers against the "high cost" of "unexpected" repair or replacement of home systems and appliances. CHW further advertises that it provides "comprehensive" coverage of crucial home systems and appliances such as air conditioning systems, heating systems, water heaters, and refrigerators. Contrary to such advertisements, CHW does not actually sell to consumers "home warranties" providing "comprehensive" coverage, but residential services contracts ("RSCs") with coverage that is reduced by numerous and substantial exclusions and limitations of liability.

3. Additionally, CHW advertises on the internet and elsewhere that it "quickly" arranges for repair or replacement of home systems and appliances by "local" technicians. To the contrary, CHW has repeatedly failed to arrange for technicians to service customers' claims because it has no "CHW contractor network" technicians in certain geographic areas. Moreover, technicians have refused to service CHW customers because it has not paid them for past services rendered. Despite CHW's representations that customers will "enjoy a hassle-free relationship" with the "CHW contractor network," consumers often were left to find technicians on their own.

4. Further, CHW serves as the administrator of claims under the RSC, and in that capacity has engaged in a variety of deceptive tactics to deny claims for repair or replacement of home systems and appliances. Among other things, CHW has denied claims when customers are

unable to submit multiple years of "maintenance records," even though CHW does not inform consumers at the time they purchase RSCs that they are required to retain any "maintenance records." Additionally, CHW has denied claims due to "lack of maintenance" or "pre-existing conditions" although the technicians that inspected the home systems or appliances reported to CHW that they failed for other reasons, such as normal wear and tear. At times, CHW has denied claims verbally and refused to provide written, specific explanations.

5. Ultimately, consumers, many of whom are elderly and/or disabled, paid for repairs or replacement of crucial home systems and appliances out-of-pocket – the very circumstance they sought to guard against by purchasing a CHW "home warranty."

6. At varying times, Victor Mandalawi ("Mandalawi"), Victor Hakim ("Hakim") and David Seruya ("Seruya") have been owners and principals of CHW and have controlled, managed, directed and/or participated in its business operations.

7. To date, the New Jersey Division of Consumer Affairs ("Division") has received 116 complaints from consumers concerning, among other things, the CHW business practices outlined above.

8. The Division has also received 877 complaints from the Better Business Bureau ("BBB") as to CHW. Additionally, at varying times, the BBB has given CHW an F, D- or C-rating.

9. The conduct of CHW, Mandalawi, Hakim and Seruya (collectively, "Defendants") constitutes multiple violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), and the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq. ("Advertising Regulations"). The Attorney General and the Director submit this

Complaint to end Defendants' deceptive and unconscionable business practices and to prevent consumers from suffering further harm.

### **PARTIES AND JURISDICTION**

10. The Attorney General is charged with the responsibility of enforcing the CFA and the Advertising Regulations. The Director is charged with the responsibility of administering the CFA and the Advertising Regulations on behalf of the Attorney General.

11. By this action, the Attorney General and Director (collectively, "Plaintiffs") seek injunctive relief and other relief for violations of the CFA and the Advertising Regulations. Plaintiffs bring this action pursuant to their authority under the CFA, N.J.S.A. 56:8-8, 56:8-11, 56:8-13 and 56:8-19.

12. Venue is proper in Middlesex County, pursuant to R. 4:3-2, because it is the county in which CHW has maintained a business address and otherwise conducted business.

13. On June 2, 2008, CHW Group Inc. was registered as a Domestic Business Corporation with the New York State Department of State, Division of Corporations ("NYS Division of Corporations").

14. CHW Group Inc.'s address for receipt of process was identified as 244 Madison Avenue, New York, New York 10016.

15. According to the NYS Division of Corporations, as of October 26, 2011, CHW Group Inc.'s "Current Entity Status" in New York is "INACTIVE – Dissolution by Proclamation / Annulment of Authority."

16. On May 28, 2009, CHW Group Inc. ("CHW") was registered as a Domestic Business Corporation with the New Jersey Division of Commercial Recording.

17. At times, CHW has maintained a principal and business address of 1090 King George Post Road, Building 10, Edison, New Jersey 08837.

18. At varying times, CHW has also maintained a business address of 510 Thornall Street, Edison, New Jersey 08837.

19. CHW's registered agent in the State is identified as Mandalawi, with the following address: 1090 King George Post Road, Building 10, Edison, New Jersey 08837.

20. At all relevant times, Mandalawi has been the President and owner of CHW.

21. Upon information and belief, Mandalawi has a mailing address of [REDACTED]  
[REDACTED]

22. At all relevant times, Hakim has been a principal and/or owner of CHW.

23. Upon information and belief, Hakim has a mailing address of [REDACTED]  
[REDACTED]

24. At least until April 2013, Seruya has been a principal and/or owner of CHW.

25. Upon information and belief, Seruya has a mailing address of [REDACTED]  
[REDACTED]

**GENERAL ALLEGATIONS COMMON TO ALL COUNTS:**

**A. Prior Advertisement, Offering for Sale  
and Sale of RSCs by Hakim and Seruya:**

26. On August 10, 2006, United Home Warranty, Inc. ("UHW") was registered as a Domestic Business Corporation with the NYS Division of Corporations.

27. UHW maintained a business address of P.O. Box 1157, Oakhurst, New Jersey 07755.

28. At least as of November 2006, UHW advertised, offered for sale, and sold RSCs.

29. Upon information and belief, Seruya was a principal and/or owner of UHW.

30. Upon information and belief, Hakim was a principal and/or owner of UHW.
31. According to the NYS Division of Corporations, as of October 26, 2011, UHW's "Current Entity Status" in New York is "INACTIVE – Dissolution by Proclamation / Annulment of Authority."
32. Upon information and belief, UHW is no longer doing business.
33. On November 28, 2005, National Home Protection, Inc. ("NHP") was registered as a Domestic Business Corporation with the NYS Division of Corporations.
34. NHP maintained a business address at 33 Wood Avenue South, Iselin, New Jersey 08830.
35. At least as of December 2005, NHP advertised, offered for sale, and sold RSCs.
36. Upon information and belief, Seruya was a principal and/or owner of NHP.
37. Upon information and belief, Hakim was a principal and/or owner of NHP.
38. The Division received at least 33 consumer complaints concerning NHP's business practices, and forwarded such complaints to the Office of the New York Attorney General ("NY AG").
39. On December 14, 2009, NHP, Seruya, and Hakim entered into a Consent Order and Judgment with the NY AG in The People of the State of New York v. National Home Protection, Inc., et al., Index No. 400431/09, pursuant to which NHP, Seruya, and Hakim were, among other things, enjoined from "engaging in any deceptive, fraudulent, or illegal practices" in connection with the advertisement, offering for sale or sale of RSCs and ordered to pay restitution and civil penalties.

40. According to the NYS Division of Corporations, as of October 26, 2011, NHP's "Current Entity Status" in New York is "INACTIVE – Dissolution by Proclamation / Annulment of Authority."

41. Upon information and belief, NHP is no longer in business.

**B. CHW's Business Operations, Generally:**

42. At least as of December 2008, CHW has maintained a website at [www.choicehomewarranty.com](http://www.choicehomewarranty.com) ("CHW Main Website").

43. Upon information and belief, at least as of December 2008, CHW has advertised, offered for sale, and sold RSCs. (CHW's current RSC is attached as Exhibit A.)

44. Upon information and belief, Mandalawi's responsibilities as CHW's President and owner include, but are not limited to:

- (a) arranging for technicians to service claims;
- (b) communicating with technicians regarding diagnoses of failures of home systems and appliances;
- (c) reviewing claims;
- (d) reviewing "maintenance records";
- (e) determining whether claims should be approved or denied;
- (f) communicating with consumers regarding cancellation of RSCs; and
- (g) offering release agreements to consumers to settle disputes.

45. Upon information and belief, from January 2011 to September 2013, Mandalawi was compensated by CHW and/or received other payments from CHW totaling at least \$2,662,450.00.

46. Upon information and belief, Hakim's responsibilities as CHW's principal and/or owner include, but are not limited to:

- (a) ensuring arrangements are made for technicians to service claims;
- (b) reviewing claims;
- (c) reviewing "maintenance records"; and
- (d) determining whether claims should be approved or denied.

47. Upon information and belief, from December 2010 to September 2013, Hakim was compensated by CHW and/or received other payments from CHW totaling at least \$3,758,526.19.

48. Upon information and belief, Seruya's responsibilities as CHW's principal and/or owner include, but are not limited to:

- (a) arranging for technicians to service claims;
- (b) ensuring arrangements are made for technicians to service claims;
- (c) communicating with consumers regarding denials of claims;
- (d) communicating with consumers regarding cancellation of RSCs;
- (e) cancelling consumers' RSCs;
- (f) communicating with consumers regarding refunds;
- (g) providing consumers with refunds;
- (h) communicating with consumers regarding BBB complaints; and
- (i) communicating with state and local agencies regarding denial of claims.

49. Upon information and belief, from January 2011 to April 2013, Seruya was compensated by CHW and/or received other payments from CHW totaling at least \$2,133,350.00.

**C. CHW's Advertisement of  
"Home Warranties":**

50. At varying times, CHW has sent emails to consumers. (See, for example, a copy of such an email ("CHW Email Advertisement") attached as Exhibit B.)

51. The CHW Email Advertisement states "NEVER PAY FOR COVERED HOME REPAIRS AGAIN!"

52. The CHW Email Advertisement states "A home warranty is a renewable service contract that covers the repair or replacement of many of the most frequently occurring breakdowns of system components and appliances."

53. On or around November 21, 2013, CHW posted two (2) commercials on YouTube, titled "Choice Home Warranty Commercial" and "Choice Home Warranty Benefits"



(collectively referred to as "CHW Commercial Advertisements"). (The CHW Commercial Advertisements are available for viewing at <http://www.youtube.com/user/ChoiceHomeWarranty> and are provided in CD format as Exhibit C.)

54. During the Choice Home Warranty Commercial, an actor states as follows: "Wouldn't it be nice to have a coverage plan, sort of like insurance, to cover your Heating, Air Conditioning, Plumbing and Appliances for one low monthly fee? With Choice Home Warranty you get peace of mind when things breakdown." *Choice Home Warranty Commercial*, at 0:00 – 0:14.

55. During the Choice Home Warranty Commercial, an actor states as follows: "With a Choice Home Warranty, you can call twenty-four-seven, and we'll arrange for a licensed, pre-screened, local contractor to repair or replace your equipment quickly and professionally." *Choice Home Warranty Commercial*, at 0:22 – 0:32.

56. During the Choice Home Warranty Commercial, while an actor is making the above-referenced statement, the graphic below appears on the screen:



57. During Choice Home Warranty Benefits, an actor states as follows: "Wouldn't it be nice to have a coverage plan, sort of like insurance, to cover your Heating, Air Conditioning, Plumbing and Appliances for about a dollar a day? Choice Home Warranty offers comprehensive coverage, one-stop service and peace of mind." *Choice Home Warranty Benefits*, at 0:00 – 0:14.

58. During Choice Home Warranty Benefits, an actor states as follows: "You'll get twenty-four-seven access to our call center, quick appointments with licensed, pre-screened, local contractors all for a low monthly fee." *Choice Home Warranty Benefits*, at 0:16 – 0:24.

59. During Choice Home Warranty Benefits, an actor states as follows: "Get the coverage you need in minutes and never pay for covered home repairs again." *Choice Home Warranty Benefits*, at 0:42 – 0:46.

60. At varying times, CHW has maintained various websites that directed consumers to the CHW Main Website.

61. The Additional Websites include, but are not limited to, the following:

- [www.choicehomeaz.com](http://www.choicehomeaz.com);
- [www.choicehomenv.com](http://www.choicehomenv.com);
- [www.choichomeus.com](http://www.choichomeus.com);
- [wwwwww.choicehomewarranty.biz](http://wwwwww.choicehomewarranty.biz);
- [www.choicehomewarranty.info](http://www.choicehomewarranty.info);
- [www.choicehomewarranty.me](http://www.choicehomewarranty.me);
- [www.choicehomewarranty.mobi](http://www.choicehomewarranty.mobi);
- [www.choicehomewarranty.net](http://www.choicehomewarranty.net);
- [www.choicehomewarranty.org](http://www.choicehomewarranty.org);
- [www.chwplan.com](http://www.chwplan.com);
- [www.chwplans.com](http://www.chwplans.com); and
- [www.warrantymyhome.com](http://www.warrantymyhome.com).

62. The website located at [www.chwplan.com](http://www.chwplan.com) ("CHW Plan Additional Website") provides limited information to consumers and directs them to the CHW Main Website. (The CHW Plan Additional Website is attached as Exhibit D.)

63. The CHW Plan Additional Website states "Never Pay for Covered Home Repairs Again!"

64. The CHW Plan Additional Website states "If We Cant [sic] Fix it. We'll Replace it."

65. The CHW Plan Additional Website states "Local Pre-Screened Technicians."

66. The CHW Plan Additional Website states "A home warranty is a renewable service contract that covers the repair or replacement of many of the most frequently occurring breakdowns of system components and appliances."

67. The CHW Plan Additional Website states "Plus finding a qualified professional to solve your problems can be stressful and inconvenient."

68. The CHW Plan Additional Website provides the following disclosure at the bottom of the webpage:

\* [Click Here](#) to view complete limits of liability and any exclusions. See policy for specifics on response times. CHW reserves the right to offer cash back in lieu of repair or replacement in the amount of CHW's actual cost (which at times may be less than retail) to repair or replace any covered system, component or appliance. [View our Privacy Policy](#)

69. The website located at [www.choicehomeaz.com](http://www.choicehomeaz.com) ("CHW-AZ Additional Website") provides limited information to consumers and directs them to the CHW Main Website. (The CHW-AZ Additional Website is attached as Exhibit E.)

70. The CHW-AZ Additional Website states "Never Pay for Covered Home Repairs Again!!!"

71. The CHW-AZ Additional Website states: "If a covered system in your home breaks down just call the 24/7 claims hotline and CHW will dispatch a local, licensed and insured technician to service your claim. If the covered item is beyond repair, CHW will replace it!\*"

72. The CHW-AZ Additional Website provides the following disclosure at the bottom of the webpage:

\* Click Here to view complete limits of liability and any exclusions. See policy for specifics on response times. CHW reserves the right to offer cash back in lieu of repair or replacement in the amount of CHW's actual cost (which at times may be less than retail) to repair or replace any covered system, component or appliance.  
[View our Privacy Policy](#)

73. The CHW Main Website has been active since December 2008.

74. The CHW Main Website homepage appears as follows:

75. When consumers selected the “Homeowners” tab on the CHW Main Website homepage, they are able to access other webpages titled, among others, “Home Protection,” “Why a Warranty,” “What’s Covered,” and “Common Questions.”

76. The “Home Protection” section of the CHW Main Website states:

#### **Fast & Dependable Home Warranty Service From Local Technicians**

A home warranty can be very beneficial and save you money when it is understood and used for its intended purpose, which is to cover systems and

appliances for normal wear and tear, that were in working condition before the contract took effect.\* You never know for certain when a covered major system or appliance in your home will break down. But sooner or later, everything wears out. Whether it's your heating system or even a dishwasher - nothing lasts forever.

It's simple! If a covered system in your home breaks down due to normal wear and tear, just call the 24/7 claims hotline and CHW will dispatch a local, licensed, and insured technician to service your home warranty claim.\*\* If the covered item is beyond repair, CHW will replace your unit with a similar or like feature model, or even send you a check to buy a new item!\*\*\*

...

[Y]ou'll enjoy a hassle-free relationship with the home warranties contractor network saving you both time and money.

77. The "Home Protection" section also includes the following disclosures at the bottom of the webpage:

\* [Click Here](#) to view complete limits of liability and any exclusions.

\*\* See policy for specifics on response times.

\*\*\*CHW reserves the right to offer cash back in lieu of repair or replacement in the amount of CHW's actual cost (which at times may be less than retail) to repair or replace any covered system, component or appliance.

78. The "Why a Home Warranty?" section of the CHW Main Website states: "Why flip through the yellow pages searching for a reputable service technician? At CHW, we strive to find the most honest, established vendors to service your claim."

**D. CHW Representatives' Representations to Consumers:**

79. At all relevant times, CHW has maintained a toll free telephone number, specifically (888) 531-5403, to address consumer questions regarding, among other things, the coverage provided by CHW "home warranties."

80. During telephone conversations with consumers, CHW representatives stated that, when home systems or appliances cannot be fixed, CHW will replace home systems or appliances.

81. During telephone conversations with consumers, CHW sales representatives stated that CHW does not require consumers to retain and/or submit documents such as "maintenance records."

82. At varying times, CHW sales representatives also sent emails to consumers.

83. Upon information and belief, in emails to consumers, CHW sales representative stated that, when home systems or appliances cannot be fixed, CHW will replace the home systems or appliances.

**E. CHW's Sale of "Home Warranties":**

84. During telephone conversations with consumers and/or in emails to consumers, CHW sales representatives provided consumers with price quotes on "home warranties."

85. CHW offered "home warranties" that provided a year of coverage at a price (sometimes referred to as a "rate") of roughly \$350 to \$500.

86. Additionally, CHW offered "home warranties" that would provide more than a year of coverage for an increased price.

87. After consumers provided their payment information to CHW sales representatives, consumers received confirmation emails from CHW titled "Choice Home Warranty Purchase Confirmation" ("CHW Confirmation Email").

88. The CHW Confirmation Email requested that consumers review their "policy information," which included coverage plan purchased (i.e. Total Plan or Basic Plan); service call fee (i.e. deductible); Optional Coverage purchased, if any; and method of payment.

89. Additionally, the CHW Confirmation Email stated: "A hard copy policy as well as the terms of service will arrive in the mail shortly."

90. Upon information and belief, since at least September 2013, CHW has mailed an 18-page booklet ("CHW Booklet") to consumers, which includes, among other things, the RSC. (A copy of the Booklet is attached as Exhibit F.)

91. The CHW Booklet, on the cover page, states "Home Warranty Contract Enclosed."

92. The CHW Booklet, on the second page, states "REQUESTING CHW SERVICE IS EASY!" The second page further states:

**1. Make a Service Request**

When a covered system or appliance breaks down, simply contact our Claims Department at (888) 531-5403 or file a claim online at [www.ChoiceHomeWarranty.com](http://www.ChoiceHomeWarranty.com).

**2. Schedule a Service Appointment**

Once you submit your claim, you will be assigned a pre-screened, licensed, and insured technician to handle your request. We will provide you with their contact information so you can schedule a mutually convenient appointment.

**3. Pay Your Service Fee**

The service technician will collect the deductible from you upon arrival. If your service request covers more than one item, or if more than one trade is needed to complete your repair (e.g. electrician and plumber), multiple deductibles may apply.

**4. Have Your Covered Item Repaired or Replaced**

Our service technician will diagnose the claim and contact us with the details so we can determine coverage eligibility and the best course of action – repair, replacement, or possibly a claim buyout. Please review your contract carefully for limitations and exclusions.

...

93. The CHW Booklet, on the third page, sets forth the "Coverage Details" which include the rate; the service call fee; the Coverage Plan (i.e. Total Plan or Basic Plan), the covered home systems and components; and Optional Coverage, if any.

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94. The CHW Booklet, on the fifth page, sets forth "Common Questions" and answers, which include:

**Q. Does a home warranty cover older systems and appliances?**

**A.** A home warranty provides repair or replacement of all covered systems and appliances that were in the home and in proper operating condition on the agreement effective date, and that have been properly installed and maintained, no matter their age, make or model.

**Q. How do I know my service technician is qualified?**

**A.** All CHW Service are pre-screened, licensed, and independently insured. Performance is constantly monitored to ensure quality work and professionalism. Your satisfaction is our biggest priority.

95. The CHW Booklet, from the sixth to fourteenth pages, sets forth "Your Service Agreement," which is the RSC.

96. The CHW RSC is organized as follows:

**A. COVERAGE**

**B. COVERAGE PERIOD**

**C. SERVICE CALLS – TO REQUEST SERVICE: 1-888-531-5403**

**D. COVERAGE (COVERAGE DEPENDENT ON PLAN)**

**E. OPTIONAL COVERAGE (Requires Additional Payment)**

**F. LIMITATIONS OF LIABILITY;**

**G. Mediation**

**H. Severability**

**I. BUILDING AND ZONING CODE REQUIREMENTS OR VIOLATIONS**

**J. MULTIPLE UNITS AND INVESTMENT PROPERTIES**

**K. TRANSFER OF CONTRACT & RENEWALS**

**L. CANCELLATION**

**AA002955**



97. The section titled "**A. COVERAGE**" of the CHW RSC, in relevant part, states:

During the coverage period, Our sole responsibility will be to arrange for a qualified service contractor ("Service Provider") to repair or replace, at Our expense (up to the limits set forth below), the systems and components mentioned as "Included" in accordance with the terms and conditions of this contract so long as such systems and components:

...

2. Become inoperative due to normal wear and tear; and
3. Are in place and in proper working order on the effective date of this home warranty contract. This contract does not cover any known or unknown pre-existing conditions. . . . Coverage is subject to limitations and conditions specified in this contract. . . . NOTE: This is not a contract of insurance, residential service, warranty, extended warranty, or implied warranty.

98. The section titled "**C. SERVICE CALLS – TO REQUEST SERVICE: 1-888-531-5403**" of the CHW RSC, in relevant part, states:

1. You or your agent (including tenant) must notify Us for work to be performed under this contract as soon as the problem is discovered. We will accept service calls 24 hours a day, 7 days a week, 365 days a year at 1-888-531-5403. Notice of any malfunction must by [sic] given to Us prior to expiration of this contract.
2. Upon request for service, We will contact an authorized Service Provider within two (2) days during normal business hours and four (4) days on weekends and holidays. The authorized Service Provider will contact You to schedule a mutually convenient appointment during normal business hours. We will determine what repairs constitute an emergency and will make reasonable efforts to expedite emergency service. If You should request Us to perform non-emergency service outside of normal business hours, You will be responsible for payment of additional fees and/or overtime charges.
3. We have the sole and absolute right to select the Service Provider to perform the service; and We will not reimburse for services performed without prior approval.
4. You will pay a \$60 trade service call fee ("Service Fee") per claim or the actual cost, whichever is less. The Service Fee is for each visit by Our approved Service Provider, except as noted in Section C (5), and is payable to Our approved Service Provider at the time of each visit. The service fee applies to each call dispatched and scheduled, including but not limited to those calls wherein coverage is included, excluded, or denied.

99. The section titled "**D. COVERAGE (COVERAGE DEPENDENT ON PLAN)**" of the RSC, in relevant part, states:

The Coverage is for no more than one unit, system, or appliance, unless additional fees are paid. If no additional fees are paid, covered unit, system, or appliance is at Our sole discretion; certain limitations of liability apply to Covered systems and appliances.

...

### 3. KITCHEN REFRIGERATOR

NOTE: Must be located in the kitchen.

*INCLUDED:* All components and parts, including integral freezer unit, except:

*EXCLUDED:* Racks - Shelves - Lighting and handles - Freon - Ice makers, ice crushers, beverage dispensers and their respective equipment - Water lines and valve to ice maker - Line restrictions - Leaks of any kind - Interior thermal shells - Freezers which are not an integral part of the refrigerator - Wine coolers or mini refrigerators - Food spoilage - Doors - Door seals and gaskets - Hinges - Glass - Audio/Visual equipment and internet connection components.

### 4. AIR CONDITIONING/COOLER

NOTE: Not exceeding 5 (five) ton capacity and designed for residential use.

*INCLUDED:* Ducted electric central air conditioning, ducted electric wall air conditioning. All components and parts, for units below 13 SEER and when We are unable to facilitate repair/replacement of failed covered equipment at the current SEER rating, repair/replacement will be performed with 13 SEER equipment and/or 7.7 HSPF or higher compliant, except:

*EXCLUDED:* Gas air conditioning systems - Condenser casings - Registers and Grills - Filters - Electronic air cleaners - Window units - Non-ducted wall units - Water towers - Humidifiers - Improperly sized units - Chillers - All exterior condensing, cooling and pump pads - Roof mounts, jacks, stands or supports - Condensate pumps - Commercial grade equipment - Cost for crane rentals - Air conditioning with mismatched condensing unit and evaporative coil per manufacturer specifications - Improper use of metering devices - Thermal expansion valves - Refrigerant conversion - Leak detections - Water leaks - Drain line stoppages - Maintenance - Noise. No more than two systems covered unless purchased separately at time of enrollment. We are not responsible for the costs associated with matching dimensions, brand or color made. We will not pay for

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any modifications necessitated by the repair of existing equipment or the installation of new equipment.

...

#### 6. WATER HEATER (Gas and/or Electric)

*INCLUDED:* All components and parts, including circulating pumps, except:

*EXCLUDED:* Access – Insulation blankets – Pressure reducing valve – Sediment build-up – Rust and corrosion - Main, Holding or storage tanks - Vents and flues - Thermal expansion tanks - Low boy and/or Squat water heaters - Solar water heaters - Solar components - Fuel, holding or storage tanks - Noise - Energy management systems - Commercial grade equipment and units exceeding 75 gallons - Drain pans and drain lines - Tankless water heaters.

100. The section titled “**F. LIMITATIONS OF LIABILITY**” on the sixth page of the CHW RSC identifies 19 limitations of liability.

101. Among the limitations of liability in the CHW RSC is “routine maintenance.”

102. Regarding the limitation of liability for “routine maintenance,” the CHW RSC states:

12. We are not liable for normal or routine maintenance. We will not pay for repairs or failures that result from the Contract holder's failure to perform normal or routine maintenance. For example, You are responsible for providing maintenance and cleaning pursuant to manufacturers' specifications, such as periodic cleaning of heating and air conditioning systems, evaporator coils and condenser coils, as well as periodic filter replacement.

103. The CHW RSC does not state that CHW has the right to request “maintenance records” from consumers.

104. The UHW RSC also included a limitation of liability for “routine maintenance.” But, the UHW RSC stated that UHW had the right to request “maintenance records” from consumers.

105. Specifically, the UHW RSC stated:

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UHW does not perform routine maintenance. You are responsible for providing maintenance and cleaning on covered items as specified by the manufacturer to ensure continued coverage on such items. UHW reserves the right to request copies of maintenance records on such items. For example: heating and air conditioning systems require periodic cleaning and/or replacement of filters and cleaning of evaporator and condenser coils. Water heaters require periodic flushing.

[(Emphasis added.)]

106. The NHP RSC also included a limitation of liability for "routine maintenance."

But, the NHP RSC stated that NHP had the right to request "maintenance records" from consumers.

107. Specifically, the NHP RSC stated:

NHP does not perform routine maintenance. You are responsible for providing maintenance and cleaning on covered items as specified by the manufacturer to ensure continued coverage on such items. NHP reserves the right to request annual maintenance records. For example: heating and air conditioning systems require periodic cleaning and/or replacement of filters and cleaning of evaporator and condenser coils. Water heaters require periodic flushing.

[(Emphasis added.)]

108. Among the limitations of liability in the CHW RSC are "pre-existing conditions."

109. Regarding the limitation for "pre-existing," the CHW RSC states

18. We will not pay for the repairs or replacement of any covered systems or appliances if they are inoperable as a result of known or unknown pre-existing conditions, deficiencies and/or defects.

[(Emphasis added.)]

110. Also among the limitations of liability in the CHW RSC is the following: "We reserve the right to offer cash back in lieu of repair or replacement in the amount of Our actual cost (which at times may be less than retail) to repair or replace any covered system, component or appliance."

**F. CHW's Responses to Claims for  
Repair or Replacement of Home Systems and Appliances:**

111. Upon information and belief, consumers submitted claims in various ways, including, but not limited to, via telephone and the CHW Main Website by accessing the "Home Warranty Account Management Center."

112. In some instances, after consumers submitted claims, CHW sent emails stating "CHW HAS RECEIVED YOUR NEW CLAIM." The emails provided a claim number and further stated that "Your claim is being processed and a service technician will be assigned shortly."

113. However, in some geographic areas, CHW had no "CHW contractor network" technicians.

114. The CHW RSC states "Upon request for service, We will contact an authorized Service Provider [(technician)] within two (2) days during normal business hours and four (4) days on weekends and holidays."

115. However, in some instances, because CHW had no "CHW contractor network" technicians in some geographic areas, CHW was unable to arrange for a technician to service consumers' claims for more than four (4) days.

116. Upon information and belief, in one instance, because CHW had no "CHW contractor network" technicians in a geographic area, CHW was unable to arrange for a technician to service a consumer's claim for over three (3) weeks.

117. In other instances, because CHW had no "CHW contractor network" technicians in some geographic areas, CHW was unable to arrange for technicians to service consumers' claims at all, thus requiring them to locate technicians on their own.

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118. Consumers who became responsible for locating technicians to service their claims paid the technicians directly for repair or replacement of home systems and appliances.

119. Consumers who paid technicians directly were required to seek reimbursement from CHW by submission of a "Claim Reimbursement Form."

120. At times, CHW was able to assign technicians to service claims, but it failed to confirm the assigned technicians were willing to service CHW customers.

121. In general, CHW sent emails to consumers with the following subject heading: "A technician has been assigned to service your CHW service request." The email further stated that "Your claim has been assigned to [(name of technician)]; an authorized CHW service technician. Please contact the technician at [(technician's telephone number)] to schedule a service appointment."

122. As a result, when some consumers contacted technicians CHW assigned to service their claims, those technicians refused to service the consumers' claims because CHW had failed to pay them for prior services rendered to CHW customers.

123. Upon information and belief, in one instance, CHW assigned three (3) different technicians to service a consumer's claim, and all three (3) stated to the consumer that they would not service his claim because CHW had failed to pay them for prior services rendered to CHW customers.

124. When "CHW contractor network" technicians refused to service consumers' claims, consumers were responsible for locating technicians to service their claims and for paying the technicians directly.

125. At times, CHW assigned "CHW contractor technicians" to service consumers' claims that, unbeknownst to consumers, were unlicensed and/or uninsured.

126. Mandalawi was among the CHW representatives who spoke with consumers regarding the assignment of "CHW contractor technicians" that were unlicensed and/or uninsured.

**G. CHW's Authorization Process for  
Repair or Replacement of Home Systems and Appliances:**

127. Upon information and belief, CHW provides a "pre-set authorization limit" of \$100.00 in connection with claims for repairs or replacement of home systems and appliances.

128. Upon information and belief, when repair or replacement of home systems or appliances is estimated to exceed \$100.00, technicians and/or consumers must obtain further authorization from CHW's Authorizations Department for the repair or replacement.

129. To that end, the CHW Service Work Order ("CHW SWO") sent to "CHW contractor network" technicians states:

All CHW service contractors are given pre-set \$100 authorization limits for covered repairs. If the gross estimate exceeds the authorization limit, the technician must call the Choice Home Warranty Authorizations Department for authorization before performing the work. Repairs can be made up to the amount of those limits without calling Choice Home Warranty for authorization all other work orders completed without authorization will not be paid.

130. Additionally, the CHW Claim Reimbursement Form states:

In the event that you will be selecting your own Service Provider to service your claim, please follow the Rules & Regulations below to ensure proper claim reimbursement.

- All consumers are given a pre-set \$100 Authorization Limit.
- If the gross repair estimate exceeds the pre-set \$100 Authorization Limit, please call the Authorizations Department for further authorization before performing any repairs.

131. At all relevant times, CHW required its technicians to complete and submit a "Choice Home Warranty Vendor Application" ("CHW Vendor Application").

132. The CHW Vendor Application states that technicians shall “provide CHW and its Customers with a prompt, accurate and thorough diagnosis of each service call upon which CHW will rely.” (Emphasis added.)

133. Additionally, the CHW SWO states that:

If a technician should find a . . . malfunction resulting from other than normal wear and tear, or poor maintenance, a call should be placed to the Authorizations department . . . Choice Home Warranty does not cover these exceptions, and needs to be made aware of them while [the] technician is at the customer’s home so that we can explain the contract coverage to the customer. When the technician calls CHW from the customer’s home it prevents delay in service for the customer [and] prevents possible miscommunication[.]

[(Emphasis added.)]

134. Upon information and belief, technicians generally provided their diagnoses to CHW via telephone.

135. CHW enters technicians’ diagnoses into electronic forms (“Diagnosis Form”) which contain, among others, the following input fields: “Cause”; “Happening Since”; and “Prop Maint.”

136. Upon information and belief, the Diagnosis Form utilized for a particular claim depends on the type of home system or appliance that is the subject of that claim.



137. For example, the Diagnosis Form for air conditioning units is as follows:

Walter Jarvis		01/05/12 03:14:07 PM		<a href="#">Edit Diagnosis</a>	
Higher Standard A/C & Heating (Leo)			Total \$750.00		
Called In:	Tech	Type:	Split System SC		
At Home:	Yes	# Units:	2		
There:	01/05/12	Condenser Location:	Ground		
Make:	General Electric	Evaporator Location:	Attic		
Model:	BT0736A11A0	Area Cooled:	Downstairs (Main)		
Serial:	W14297609	Efficiency:	10 SEER		
Age:	24	Refrigerant:	R-22		
Size:	3 Ton	Condenser Condition:	Average		
Rust Corrosion:	None	Evaporator Condition:	Average		
Mold or Mildew:	None	Leaks:	No		
Condition:	Poor	Leak Size:			
Properly Matched:	Yes	Properly Sized:	Yes		
Filter Cond:	Clean				
Cause:	Normal WT	Prop Installed:	Yes		
Happening Since:	01/02/12	Prop Maint:	Yes		
Part:	Coil	Price:	\$525.00		
Part:		Price:	\$0.00		
Part:		Price:	\$0.00		
Part:		Price:	\$0.00		
Lbs of Freon:	\$0.00 p lbs	Freon Total:	\$0.00		
3.00 Hrs of Labor:	\$75.00 p hr	Labor Total:	\$225.00		
SCF	-\$45.00	Diagnosis Fee:	\$45.00		
SCF Paid By		Tax:	\$0.00		
Completion by:	Not Taken	Total:	\$750.00		
<p>The unit has no freon and a hole in the evaporator coil, this suddenly happened this is in the coil and can not be repair</p> <p>They will call back with pricing</p> <p>Permit fee of \$125.00          Disposal \$95.00          Reclaim \$175.00          Duct mods \$350.00</p>					
<a href="#">Submit Diagnosis</a>					

138. After CHW representatives review the Diagnosis Form, they request "maintenance records" from consumers.

139. In one instance, a CHW representative made the following electronic notation regarding a request for "maintenance records" from a consumer: "WAIT TILL TECH LEAVES HOME CALL CUST REQUEST RECORDS[.]".

140. Mandalawi was among the CHW representatives who requested "maintenance records" from consumers.

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141. Mandalawi memorialized his communications with a consumer regarding his request for "maintenance records" in the following manner: "Spoke to customer i [sic] showed him where it says he must provide us with maintenance records, he finally agreed and said hell [sic] send in the records."

142. At times, CHW representatives requested "maintenance records" from consumers even when the Diagnosis Form stated "Prop Maint: Yes."

143. At times, CHW representatives requested "maintenance records" from consumers even when technicians otherwise informed CHW (e.g. via telephone, letter or email) that the consumer's home system or appliance was properly maintained.

144. At times, CHW representatives requested "maintenance records" from consumers even when the Diagnosis Form provided that "Cause:" was something other than "Lack of Maintenance" (e.g. "Normal WT").

145. At times, CHW representatives requested "maintenance records" from consumers even when technicians otherwise informed CHW (e.g. via telephone, letter or email) that the failure of the home system or appliance was the result of something other than lack of maintenance.

146. Upon information and belief, CHW representatives informed consumers that claims would not be approved, would remain pending, and/or would remain denied until they submitted "maintenance records."

147. At times, CHW representatives memorialized their requests for "maintenance records" as follows:

- "spoke how CHW needs to see the units [sic] service history to move fwd on any failure / any claim"

**AA002965**

- “CALLED CUSTOMER INFORMED WE NEED TO SEE MAINTENANCE RECORDS TO MOVE FORWARD[.]”
- “NO SERVICE HISTORY – NO COVERAGE”
- “CUSTOMER CALLED IN TOLD HIM WE NEED RECORDS . . . [the consumer] FINALLY GOT IT THROGUH HIS HEAD THAT WE WONT [sic] DO ANYTHING WITHPOUT [sic] RECORDS[.]”

[(Emphasis added.)]

148. At times, consumers who submitted some documents to CHW were told that the documents were insufficient for varying reasons (e.g. additional years of “maintenance records” were required to be submitted).

149. Specifically, upon information and belief, a CHW representative told a consumer that her claim would remain denied unless she could produce 12 years of “maintenance records.”

150. Additionally, CHW would not accept documents, such as home inspection reports, in lieu of “maintenance records.”

151. Mandalawi was among the CHW representatives who reviewed documents submitted by consumers, and determined they were insufficient (e.g. “maintenance records” did not include model or serial number of the home system or appliance).

152. Hakim was among the CHW representatives who reviewed documents submitted by consumers, and determined they were insufficient (e.g. “maintenance records” for 2005, 2006, 2007, 2008, 2009, and 2011 provided, but missing 2010).

153. When CHW determined that consumers had submitted insufficient documents, CHW closed the consumer’s claim as denied.

154. Once it denied a consumer’s claim, CHW sent an email and/or message through the CHW Main Website which informed the consumer as follows: “Please contact Choice Home Warranty regarding your claim.”

**AA002966**

155. In general, when consumers contacted CHW, CHW representatives verbally denied claims.

156. At times, CHW denied claims on the basis of "lack of maintenance," even when the Diagnosis Form indicated that the home system or appliance was properly maintained ("Prop Maint.: Yes").

157. At times, CHW denied claims on the basis of "lack of maintenance," even when the technician otherwise informed CHW (e.g. via telephone, letter or email) that the home system or appliance was properly maintained.

158. At times, CHW denied claims on the basis of "lack of maintenance," even when the Diagnosis Form indicated that the failure of the home system or appliance was the result of something other than lack of maintenance (e.g. "Cause: Normal WT").

159. At times, CHW denied claims on the basis of "lack of maintenance," even when the technician otherwise informed CHW (e.g. via telephone, letter or email) that the failure of the home system or appliance was the result of something other than lack of maintenance, such as normal wear and tear.

160. At times, CHW denied claims on the basis of "pre-existing condition," even when the Diagnosis Form indicated that the failure of the home system or appliance was the result of normal wear and tear ("Cause: Normal WT").

161. At times, CHW denied claims on the basis of "pre-existing condition," even when the technician otherwise informed CHW (e.g. via telephone, letter or email) that the failure of the home system or appliance was the result of normal wear and tear, rather than any previous failures.

**AA002967**

162. CHW denied claims on the basis of "pre-existing condition," even when CHW representatives memorialized communications with technicians regarding claims in the following manner:

- "TECH DOESN'T KNOW ABOUT PE."
- "tech no [sic] sure how long its [sic] been going on for or if there was any problems prior to this one"

163. Upon information and belief, when consumers owned more than two (2) air conditioning units, CHW denied claims for the repair and/or replacement of a particular air conditioning unit by stating that it has "sole discretion" as to which two (2) air conditioning units are covered by the RSC.

164. At times, CHW representatives memorialized their communications with consumers who had more than two (2) air conditioning units as follows:

- "spoke how we only cover two units – and this 3<sup>rd</sup> unit there is no coverage . . . we apply coverage to the two working units"
- "FOR THE 3 SYSTEMS . . . IT IS THE SOLE DISCRETION OF HOW TO APPLY COVERAGE TO A CLAIM OR NOT[.]"
- "customer wants to know which 2 of the 4 [air condition units] are covered – informed her we cannot do that[.]"

([Emphasis added.])

165. Upon information and belief, when consumers requested specific explanations for denials in writing, CHW representatives failed to provide specific written explanations.

166. Upon information and belief, CHW did not replace home systems or appliances that required replacement, but instead required that consumers accept "buy-outs" or other payments that were hundreds of dollars less than the replacement cost.

167. At times, CHW representatives memorialized conversations with consumers regarding "buy-outs" in the following manner:

- "called customer, advised him the unit isnt [sic] worth replacing so we are offering a bo of \$180. he said inst [sic] the warranty for replacement? advised him we offer a bo when going the route of replacement. he said we're offering \$180 and his unit is going to be \$600 to replace."
- "cust wants more money...full replacement...\$600. advised him LIMITS OF LIABILITY 16. We reserve the right to offer cash back in lieu of repair or replacement in the amount of Our actual cost (which at time may be less than retail) to repair or replace any covered, system, component or appliance. . . . SPOKE WITH CUST INFORMED HIM MAX B/O 285 HE ACCEPTED BUT WASNT [sic] HAPPY THAT WERE [sic] NOT GIVING HIM \$600 FOR A NEW UNIT"

([Emphasis added.])

#### H. CHW's Responses to Consumers' Disputes of Claim Denials:

168. At times, consumers sent letters and/or emails to CHW to dispute claim denials and request review of the denials.

169. Some consumers' letters and emails indicated that the CHW denial was based upon the consumers' failure to submit "maintenance records."

170. Upon information and belief, one consumer sent the following email to CHW:

This email is to confirm that I received a call from Mike in the claims department denying my claim due to lack of documentation of an HVAC technician servicing my unit twice a year, one time for each season. Despite reiterating the fact that nowhere in the user agreement does it state that any documentation is required, I am told this is the sole reason for the denial.

([Emphasis added.])

171. At times, other consumers' letters and emails indicated that CHW's denial of a claim was not consistent with the technician's diagnosis of their home systems or appliances.

AA002969

172. At times, consumers attached to their letters and emails statements from technicians who serviced their claims.

173. One consumer who disputed CHW's denial of a claim for "lack of maintenance," provided a statement from a technician that read, in pertinent part: "The unit was in good to excellent condition . . . there were no poor maintenance issues . . . there was no indication that this malfunction was due to anything other than normal wear and tear."

174. One consumer who disputed CHW's denial of a claim for "pre-existing condition," provided a statement from a technician that read, in pertinent part: "This problem in my opinion had nothing to do with the" previous failure of the home system or appliance.

175. In some instances, CHW responded with letters and/or emails, to consumers who disputed claim denials.

176. In one instance, CHW responded with a letter that included a printout of a Diagnosis Form that, upon information and belief, CHW had altered.

**AA002970**

177. The original Diagnosis Form in CHW's electronic system appeared as follows:

Walter Jarvis		08/25/11 06:46:58 PM	<a href="#">Edit Diagnosis</a>
A Better Place LLC (j)		Total \$1700.00	
Called In:		Type:	SC
At Home:		# Units:	
There:	Not Taken	Condenser Location:	
Make:	WEATHER KING	Evaporator Location:	
Model:	MBH42DQA	Area Cooled:	
Serial:		Efficiency:	
Age:	1985	Refrigerant:	R-22
Size:	3.5 Ton	Condenser Condition:	
Rust Corrosion:	Severe	Evaporator Condition:	
Mold or Mildew:		Leaks:	
Condition:	Poor	Leak Size:	
Properly Matched:		Properly Sized:	
Filter Cond:			
Cause:		Prop Installed:	
Happening Since:	Not Taken	Prop Maint:	No
Part:	NEW UNIT W/ INSTALL	Price:	\$1700.00
Part:		Price:	\$0.00
Part:		Price:	\$0.00
Part:		Price:	\$0.00
Lbs of Freon:	\$0.00 p lbs	Freon Total:	\$0.00
Hrs of Labor:	\$0.00 p hr	Labor Total:	\$0.00
SCF	-\$45.00	Diagnosis Fee:	\$45.00
SCF Paid By		Tax:	\$0.00
Completion by:	Not Taken	Total:	\$1700.00
<p>The tech is calling and saying that the power supply seems to be severed there is no power supply to unit from the breaker</p> <p>THE COMPRESSOR IS SHORTED TO GROUND</p> <p>TECH SAID FILTER 100% CLOGGED COIL CAN USE A CLEANING HE SAID THIS CONTRIBUTED TO THE FAILURE</p> <p>UNIT HAS TONS OF RUST BUT TECH DOESNT THINK IT HAD TO DO WITH IT</p> <p>UNIT NOT WORTH REPAIR</p>			
<p><a href="#">Submit Diagnosis</a></p>			

AA002971



178. The altered Diagnosis Form that CHW forwarded to the consumer appeared as follows:

Rich White 08/25/11 06:46:58 PM	
A Better Place HVAC LLC	
Called in: 08/25/11	Type: SC
At Home:	# Units:
There: 08/25/11	Condenser Location:
Make: WEATHER KING	Evaporator Location:
Model: MBM42DQA	Area Cooled:
Serial:	Efficiency:
Age: 1985	Refrigerant: R-22
Size: 3.5 Ton	Condenser Condition: Poor
Rust Corrosion: Severe	Evaporator Condition: Poor
Mold or Mildew:	Leaks: Yes
Condition: Poor	Leak Size: Large
Properly Matched:	Properly Sized:
Filter: Filthy	Prop Installed:
Cause: Lack of maintenance	Prop Maint: No
Happening Since:	Price: \$1700.00
Part: NEW UNIT W/ INSTALL	Price: \$0.00
Part:	Price: \$0.00
Part:	Price: \$0.00
Part:	Price: \$0.00
Lbs of Freon: \$0.00 p lbs	Freon Total: \$0.00
Hrs of Labor: \$0.00 p hr	Labor Total: \$0.00
SCF: -\$45.00	Diagnosis Fee: \$45.00
SCF Paid By:	Tax: \$0.00
Completion by: Not Taken	Total: \$1700.00

The r power supply seems to be severed there is no power supply to unit from the breaker. The conduit to service disconnect is melted.

THE COMPRESSOR IS SHORTED TO GROUND  
ELECTRICAL CONTACTOR & CAPACITOR BURNT  
COMP SAFETY PRESSURE SWITCH BYPASSED -TAMPERED  
ACID TEST FREON. REFRIGERANT GRITTY

FILTER 100% CLOGGED  
EVAP COIL CORRODED AND CLOGGED. RESIDUE IN HOUSING  
LACK OF MAINT AND CLOGGED COILD CONTRIBUTED TO THE FAILURE  
TXV RUSTED

UNIT HAS TONS OF RUST ,COND COIL HAS METAL FATIGUE  
NO SERVICE FOLDER, NO SERVICE DECALS

UNIT NOT WORTH REPAIR .UNIT NOT MAINTAINED PROPERLY

AA002972

179. The original Diagnosis Form in CHW's electronic system provided no information in the "Filter Cond.:" or "Cause:" input fields. The altered Diagnosis Form, however, provided the following: "Filter Filthy" and "Cause: Lack of maintenance."

180. Additionally, the altered Diagnosis Form contained the following notes that did not appear in the original Diagnosis Form:

**LACK OF MAINTENANCE . . . CONTRIBUTED TO THE FAILURE**

...

**UNIT NOT MAINTAINED PROPERLY**

181. In some instances, once consumers submitted letters, emails or otherwise disputed denials, CHW agreed to cover the claims only when state and/or local agencies questioned CHW about the denials

182. Seruya was among the CHW representatives who spoke with members of state and/or local agencies regarding claim denials.

183. When some consumers filed complaints against CHW with the BBB, CHW provided the following response to the BBB:

Please note that the consumer's claim was properly handled in accordance with the CHW terms & conditions. The contract specifically excludes coverage on units that are not maintained properly. Furthermore, proof of proper maintenance records is required by CHW policy.

[(Emphasis added.)]

184. Seruya was among the CHW representatives who spoke with consumers regarding complaints filed with the BBB.

185. Upon information and belief, on occasion, CHW required that consumers enter into Release Agreements to resolve the complaints the consumers filed with the BBB.

186. The CHW Release Agreements included the following provision:

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Releasor agree not to make any statements, written or verbal, or cause or encourage others to make any statements, written or verbal, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct Choice Home Warranty [sic]. Releasor acknowledges that this prohibition extends to statements, written or verbal, made to anyone, including but not limited to, the news media, investors, strategic partners, vendors, employees(past and present), and clients."

187. Upon information and belief, when disputes could not be resolved, CHW representatives informed consumers about participating in mediation and/or arbitration, as provided in the RSC.

188. The section titled "G. Mediation" of the RSC provides, in relevant part:

**In the event of a dispute over claims or coverage You agree to file a written claim with Us and allow Us thirty (30) calendar days to respond to the claim. The parties agree to mediate in good faith before resorting to mandatory arbitration in the State of New Jersey.**

Except where prohibited, if a dispute arises from or relates to this Agreement or its breach, and if the dispute cannot be settled through direct discussions you agree that:

1. Any and all disputes, claims and causes of action arising out of or connected with this Agreement shall be resolved individually, without resort to any form of class action.
2. Any and all disputes, claims and causes of action arising out of or connected with this Agreement (including but not limited to whether a particular dispute is arbitrable hereunder) shall be resolved exclusively by the American Arbitration Association in the state of New Jersey under its Commercial Mediation Rules. Controversies or claims shall be submitted to arbitration regardless of the theory under which they arise, including without limitation contract, tort, common law, statutory, or regulatory duties or liability.
3. Any and all claims, judgments and awards shall be limited to actual out-of-pocket costs incurred to a maximum of \$1500 per claim, but in no event attorneys' fees.

([Emphasis added.] )

189. However, upon information and belief, the American Arbitration Association ("AAA"), at least as of March 2012, no longer administers disputes between CHW and consumers because of CHW's failure and/or refusal to participate in arbitration.

190. Upon information and belief, at least as of March 2012, the AAA requested that CHW remove its name from the RSC.

191. To date, the AAA's name remains in the RSC.

**I. CHW's Failure to  
Pay Technicians:**

192. CHW's "Vendor Application" states that authorized payments to technicians "shall be due and payable net 30 days after CHW's approval and verification of [technicians'] Invoices."

193. Upon information and belief, at times, CHW failed to and/or refused to pay technicians in a timely fashion or at all.

194. To date, the Division has received 16 complaints from technicians, in which they state that CHW failed to pay them for services rendered to CHW customers, even in those cases where the CHW Authorizations Department provided further authorization to repair or replace home systems and appliances.

195. Based upon the technician complaints to date, it appears that CHW has not paid outstanding invoices in an amount totaling at least \$21,690.92.

196. Upon information and belief, in some instances, when CHW failed to and/or refused to pay technicians in a timely fashion or at all, technicians demanded payment from consumers.

**AA002975**

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

197. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 196 above as if more fully set forth herein.

198. 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. . .

199. 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).

200. The RSCs advertised, offered for sale and sold by CHW comprise merchandise within the meaning of the CFA.

201. Since at least December 2008, CHW, through its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors, including, but not limited to, Mandalawi, Hakim and Seruya, has advertised, offered for sale and sold RSCs to consumers in this State and elsewhere.

202. In so doing, CHW, through its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors, including, but not limited to, Mandalawi, Hakim and Seruya, has engaged in the use of unconscionable commercial practices and deception.

**AA002976**

203. Defendants' conduct in violation of the CFA includes, but is not limited to, the following unconscionable commercial practices:

- a. Failing to arrange for technicians to service consumers' claims for repair of home systems or appliances, thus requiring consumers to locate technicians, make direct payment to technicians and then seek reimbursement from CHW;
- b. Assigning technicians to service consumers' claims who refused to provide service due to CHW's failure to pay the technicians for prior services rendered;
- c. Assigning "CHW contractor technicians" to service consumer claims who were unlicensed and/or uninsured;
- d. Requesting "maintenance records" from consumers, even when the Diagnosis Form indicated, or the technician otherwise informed CHW, that the home system or appliance has been properly maintained;
- e. Requesting "maintenance records" from consumers, even when the Diagnosis Form indicated, or the technician otherwise informed CHW, that the failure of the home system or appliance resulted from something other than lack of maintenance;
- f. Denying claims on the basis that consumers submitted insufficient "maintenance records," when the RSC does not state this as a reason CHW may deny coverage;
- g. Denying claims on the basis of "lack of maintenance," even when the Diagnosis Form indicated, or the technician otherwise informed CHW, that the home system or appliance has been properly maintained;
- h. Denying claims on the basis of "lack of maintenance," even when the Diagnosis Form indicated, or the technician otherwise informed CHW, that the failure of the home system or appliance resulted from something other than lack of maintenance;
- i. Denying claims on the basis of "pre-existing condition," even when the Diagnosis Form indicated, or the technician otherwise informed CHW, that the failure of the home system or appliance resulted from normal wear and tear and not from previous failures, if any previous failures had occurred;
- j. Denying claims for repair or replacement of air conditioning units, when consumers owned more than two (2) units, on the basis that CHW was

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exercising its discretion to exclude from coverage the unit that had failed and required repair or replacement;

- k. Verbally denying consumer claims and then failing and/or refusing to provide specific, written explanations of denials;
- l. Requiring consumers, instead of replacing their home systems or appliances, to accept "buy-outs" for hundreds of dollars less than the cost of replacement home systems or appliances;
- m. Responding to a consumer's dispute of a claim denial by providing an altered Diagnostic Form which, among other things, was changed from "Filter Cond.: \_\_\_\_\_" and "Cause: \_\_\_\_\_" to "Filter Filthy" and "Cause: Lack of maintenance";
- n. Including in the "Mediation" Section of the RSC a referral to mandatory arbitration and a limitation on CHW's liability to "actual out-of-pocket costs incurred to a maximum of \$1,500 per claim, but in no event attorneys' fees";
- o. Using the AAA's name in the RSC, when the AAA no longer administers disputes between it and consumers; and
- p. Failing to and/or refusing to pay technicians, thus resulting in technicians seeking direct payment from consumers.

204. Defendants' conduct in violation of the CFA includes, but is not limited to, the following acts of deception:

- a. In CHW Email Advertisements, representing that "[a] home warranty . . . covers the repair or replacement" of home systems and appliances, when CHW, instead of replacing home systems or appliances, requires consumers to accept cash "buy-outs";
- b. In the Choice Home Warranty Commercial, using a graphic that states "Repair & Replacement Coverage," when CHW, instead of replacing home systems or appliances, requires consumers to accept cash "buy-outs";
- c. In the Choice Home Warranty Commercial, representing that CHW will "arrange" for technicians to "repair or replace your equipment," when CHW, instead of replacing home systems or appliances, requires consumers to accept cash "buy-outs";

**AA002978**

- d. On the CHW Main Website, representing that "If the covered item is beyond repair, CHW will replace your unit with a similar or like feature model, or even send you a check to buy a new item," when CHW requires consumers to accept cash "buy-outs" that are hundreds of dollars less than the cost to replace home systems or appliances;
- e. During telephone conversations with consumers, stating that CHW will replace home systems or appliances that cannot be repaired, when CHW, instead of replacing home systems or appliances, requires consumers to accept cash "buy-outs";
- f. In emails to consumers, stating that CHW will replace home systems or appliances that cannot be repaired, when CHW, instead of replacing home systems or appliances, requires consumers to accept cash "buy-outs";
- g. In the CHW Booklet, under the title "Have Your Covered Item Repaired or Replaced," stating that CHW will determine whether a claim warrants "replacement or possibly a claim buyout," when CHW requires consumers to accept such cash "buy-outs" that are hundreds of dollars less than the costs to replace home systems or appliances; and
- h. In the CHW Booklet, stating that "[a] home warranty provides repair or replacement" of home systems or appliances, when CHW, instead of replacing home systems or appliances, requires consumers to accept cash "buy-outs."

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

## COUNT II

### **VIOLATION OF THE CFA BY DEFENDANTS (FALSE PROMISES AND/OR MISREPRESENTATIONS AND/OR KNOWING OMISSIONS OF MATERIAL FACT)**

206. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 205 above as if more fully set forth herein.

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

**AA002979**



- a. In the CHW Commercial Advertisements, CHW Additional Websites, and the CHW Main Website, representing that CHW arranges for "local" technicians to service claims, when such was not the case;
- b. In the Choice Home Warranty Commercial, representing that CHW arranges for technicians to service claims "quickly," when such was not the case;
- c. In the Choice Home Warranty Commercial, representing that CHW will "arrange" for technicians to service claims, when such was not the case;
- d. In the CHW-AZ Additional Website and the CHW Main Website, representing that CHW will "dispatch" technicians to service claims, when such was not the case;
- e. In the CHW Main Website, representing that consumers will have a "hassle-free relationship with the home warranties contractor network saving you both time and money," when such was not the case;
- f. In the CHW Email Advertisements, CHW Commercial Advertisements, the CHW Additional Websites, and CHW Main Website, representing that consumers will "never pay for covered home repairs again," when such was not the case;
- g. In the CHW-AZ Additional Website and the CHW Main Website, representing that CHW will "dispatch" a "licensed" and "insured" technician to service claims, when such was not the case;
- h. In the CHW Commercial Advertisements, representing that CHW arranges for, or that consumers will "get . . . appointments with," "licensed" technicians to service claims, when such was not the case;
- i. In the CHW Booklet, representing that consumers "will be assigned a . . . licensed[] and insured service technician," when such was not the case; and
- j. During telephone conversations with consumers, representing that consumers are not required to retain and/or submit "maintenance records" in connection with claims, when such was not the case.

208. CHW's conduct in violation of the CFA includes, but is not limited to, the following knowing omissions of fact:

- a. Failing to disclose to consumers that CHW requires them to retain and/or submit "maintenance records" in connection with claims; and

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- b. Failing to provide in the RSC that CHW reserves the right to request that consumers submit "maintenance records."

209. Each false promise and/or misrepresentation and knowing omission of fact by Defendants constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

### COUNT III

#### VIOLATION OF THE ADVERTISING REGULATIONS BY DEFENDANTS

210. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 209 above as if more fully set forth herein.

211. The Advertising Regulations enumerate certain "practices" that are "unlawful with respect to all advertisements[.]" N.J.S.A. 13:45A-9.2(a)1-13.

212. Among the unlawful practices enumerated in the Advertising Regulations is "the obscuring of any material fact":

The use of any type, size, location, lighting, illustration, graphic depiction, or color resulting in the obscuring of any material fact. Disclaimers permitted or required under this section, such as "terms and conditions apply" and "quantities limited," shall be set forth in a type size and style that is clear and conspicuous relative to the other type sizes and styles used in the advertisement.

[N.J.A.C. 13:45A-9.2 (a)(5).]

213. Also among the unlawful practices enumerated in the Advertising Regulations is "[t]he making of false or misleading representations of fact concerning . . . the nature of an offering . . ." N.J.A.C. 13:45A-9.2 (a)(9).

214. Through their advertisement and offering for sale of RSC, Defendants have engaged in the following conduct in violation of the Advertising Regulations, N.J.A.C. 13:45A-9.2(a)(5):

**AA002981**

- a. In the CHW Plan Additional Website, stating "If We Cant [sic] Fix it. We'll Replace it." while setting forth, in small text at the bottom of the webpage, that "CHW reserves the right to offer cash back in lieu of . . . replacement in the amount of CHW's actual cost (which at times may be less than retail) to . . . replace any covered system, component or appliance";
- b. In the CHW-AZ Additional Website, stating "If the covered item is beyond repair, CHW will replace it!" while setting forth, in small text at the bottom of the webpage, that "CHW reserves the right to offer cash back in lieu of . . . replacement in the amount of CHW's actual cost (which at times may be less than retail) to . . . replace any covered system, component or appliance"; and
- c. On the CHW Main Website, stating "If the covered item is beyond repair, CHW will replace your unit with a similar or like feature model, or even send you a check to buy a new item" while setting forth, in small text at the bottom of the webpage, that "CHW reserves the right to offer cash back in lieu of . . . replacement in the amount of CHW's actual cost (which at times may be less than retail) to . . . replace any covered system, component or appliance";

215. Through their advertisement and offering for sale of RSCs, Defendants' have engaged in conduct in violation of the Advertising Regulations, N.J.A.C. 13:45A-9.2(a)(9):

- a. In the CHW Commercial Advertisements, the CHW Additional Websites, and the CHW Main Website, representing that CHW arranges for "local" technicians to service consumers' claims, but having no "CHW contractor network" technicians in some geographic areas;
- b. In the Choice Home Warranty Commercial, representing that it arranges for technicians to service consumers' claims "quickly," then failing to arrange for technicians to service consumers' claims in a timely fashion (i.e. within four (4) days);
- c. In the Choice Home Warranty Commercial, representing that CHW will "arrange" for technicians to service consumers' claims, then failing to arrange for technicians to service consumers' claims;
- d. In the CHW-AZ Additional Website and the CHW Main Website, representing that CHW will "dispatch" technicians to service consumers' claims, then failing to dispatch technicians to service consumers' claims;
- e. In the CHW Main Website, representing that consumers will have a "hassle-free relationship with the home warranties contractor network

**AA002982**

saving you both time and money,” when consumers had difficulty in obtaining service from technicians (e.g. three (3) assigned technicians, stating to a consumer they would not service the consumer’s claim because CHW failed to pay them for prior services rendered to CHW customers);

- f. In the CHW Email Advertisement, CHW Commercial Advertisements, CHW Additional Websites, and the CHW Main Website, representing that consumers will “never pay for covered home repairs again,” then requiring consumers to pay technicians directly and seek reimbursement from CHW;
- g. In the CHW-AZ Additional Website and the CHW Main Website, representing that it will “dispatch” a “licensed” and “insured” technician to service consumers’ claims, then assigning unlicensed and/or uninsured technicians to service consumers’ claims;
- h. In the CHW Commercial Advertisements, representing that CHW arranges for, or that consumers will “get . . . appointments with,” “licensed” technicians to service consumers’ claims, then assigning unlicensed and/or uninsured technicians to service consumers’ claims;
- i. In the CHW Booklet, representing that consumers “will be assigned a . . . licensed[] and insured service technician,” then assigning unlicensed and/or uninsured technicians to service consumers’ claims;
- j. In the CHW Email Advertisement, representing that “[a] home warranty . . . covers the repair or replacement” of home systems and appliances, then instead of replacing home systems or appliances, requiring consumers to accept cash “buy-outs”;
- k. In the Choice Home Warranty Commercial, using a graphic that states “Repair & Replacement Coverage,” then, instead of replacing home systems or appliances, requiring consumers to accept cash “buy-outs”;
- l. In the Choice Home Warranty Commercial, representing that CHW will “arrange” for technicians to “repair or replace your equipment,” then, instead of replacing home systems or appliances, requiring consumers to accept cash “buy-outs”;
- m. On the CHW Main Website, representing that “If the covered item is beyond repair, CHW will replace your unit with a similar or like feature model, or even send you a check to buy a new item,” then requiring consumers to accept cash “buy-outs” that are hundreds of dollars less than the cost to replace home systems or appliances;

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- n. In the CHW Booklet, under the title "Have Your Covered Item Repaired or Replaced," stating that CHW will determine whether a claim warrants "replacement or possibly a claim buyout," then requiring consumers to accept cash "buy-outs" that are hundreds of dollars less than the costs to replace home systems or appliances; and
- o. In the CHW Booklet, stating that "[a] home warranty provides repair or replacement" of home systems or appliances, then, instead of replacing home systems or appliances, requiring consumers to accept cash "buy-outs."

216. Each violation of the Advertising Regulations by Defendant constitutes a per se violation of the CFA, N.J.S.A. 56:8-2.

#### COUNT IV

#### VIOLATION OF THE CFA AND THE ADVERTISING REGULATIONS BY MANDALAWI

217. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 216 above as if more fully set forth at length here.

218. At all relevant times, Mandalawi has been the President and/or owner of CHW, and has controlled, managed, directed and/or participated in the management operation of CHW, including the conduct alleged in this Complaint.

219. Mandalawi's conduct makes him personally liable for the violations of the CFA and the Advertising Regulations committed by CHW.

AA002984

**COUNT V****VIOLATION OF THE CFA AND  
THE ADVERTISING REGULATIONS BY HAKIM**

220. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 219 above as if more fully set forth at length here.

221. At all relevant times, Hakim has been an owner of CHW, and has controlled, managed, directed and/or participated in the management operation of CHW, including the conduct alleged in this Complaint.

222. Hakim's conduct makes him personally liable for the violations of the CFA and the Advertising Regulations committed by CHW.

**COUNT VI****VIOLATION OF THE CFA AND  
THE ADVERTISING REGULATIONS BY SERUYA**

223. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 222 above as if more fully set forth at length here.

224. At least until April 2013, Seruya has been an owner of CHW, and has controlled, managed, directed and/or participated in the management operation of CHW, including the conduct alleged in this Complaint.

225. Seruya's conduct makes him personally liable for the violations of the CFA and the Advertising Regulations committed by CHW.

**AA002985**