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STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

STATE OF OHIO)
)
IN THE MATTER OF:) DOCKET NO. 403098
ERIC A. TISCHER, Individually and dba)
BIG TEN CONSTRUCTION, LLC,)
AKRON-CANTON RESTORATION, and)
TNT BUILDERS, LLC)

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("Assurance") is entered into this 20th day of October, 2011 by the Attorney General of the State of Ohio ("Attorney General"), Big Ten Construction, LLC, Akron-Canton Restoration, TNT Builders, and Eric A. Tischler, individually (hereinafter collectively "Respondents").

For purposes of this Assurance, "Respondents" mean Big Ten Construction, LLC, Akron-Canton Restoration, TNT Builders, and Eric Tischler, individually and doing business under his own name, under the name Big Ten Construction, LLC, Akron-Canton Restoration, TNT Builders, or under any other business names, their agents, representatives, salespersons, employees, instructors, independent contractors, successors and assigns, and all persons acting in concert or participation with them, directly or indirectly, through any corporate device, partnership or association within the State of Ohio.

WHEREAS, the Attorney General, having reasonable cause to believe that Respondents have engaged in acts and practices which violate Chapter 1345 of the Revised Code ("Consumer Sales Practices Act") and Chapter 109:4-3 of the Ohio Administrative Code ("Substantive Rules"), has conducted an investigation pursuant to the authority granted him by Section 1345.06 of the Revised Code; and

WHEREAS, the Attorney General may, pursuant to R.C. 1345.06(F), enter into and accept an Assurance of Voluntary Compliance; and

WHEREAS, this Assurance of Voluntary Compliance is an assurance in writing by Respondents of their intent to comply with the provisions of the Consumers Sales Practices Act and the Substantive Rules adopted thereunder; and

WHEREAS, Respondents expressly deny any violation of any federal, state or local law but Respondents desire to comply with all aspects of the Consumer Sales Practices Act and the Substantive Rules adopted thereunder and therefore, voluntarily enter into this Assurance with the Attorney General; and

NOW THEREFORE, in consideration of the mutual promises and conditions set forth herein, the parties hereto **AGREE** as follows:

- (1) The "Effective Date" shall mean the date indicated on the first page of this Assurance.
- (2) By accepting this written Assurance, the Attorney General agrees to terminate the current investigation of Respondents' business practices and actions occurring on or before the Effective Date of this Assurance.
- (3) By giving this written Assurance, Respondents agree to comply with all the terms of this Assurance and to conduct their business in compliance with all applicable Ohio laws, including without limitation, the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., and the Substantive Rules, Ohio Administrative Code, Section 109:4-3-01 et seq., and Ohio's Home Solicitation Sales Act ("HSSA"), R.C. 1345.21 et seq.

BACKGROUND AND STATEMENT OF FACTS

- (4) Big Ten Construction, LLC ("Big Ten") is an Ohio domestic for-profit limited liability company with its principal place of business located at 700 Morse Road, Suite 210, Columbus, Ohio 43214.
- (5) Big Ten also does business under the name Akron-Canton Restoration ("Akron-Canton").
- (6) TNT Builders, LLC ("TNT") is an Ohio domestic for-profit limited liability company with its principal place of business located in Franklin County.
- (7) Eric A. Tischer ("Tischer") is an individual and currently resides at 4656 Herb Garden, New Albany, Ohio 43054.
- (8) Tischer is the president and owner of Respondent Big Ten and is the owner of Respondent TNT.
- (9) At all times relevant herein, Tischer possessed the authority to set policies and procedures for Respondents Big Ten and TNT, dominated, controlled, and directed the business activities and sales conduct of Respondents Big Ten and TNT, and committed, allowed, caused, directed, participated in, and/or ratified the unlawful acts and practices committed by Respondents Big Ten and TNT.
- (10) Respondents, as described below, are "suppliers" as that term is defined in R.C. 1345.01(C) as Respondents were, at all times relevant herein, engaged in the business of effecting consumer transactions by soliciting, offering for sale and selling home improvement goods and/or services to individual consumers in the State of Ohio, including Franklin County, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).

- (11) Respondents are “sellers” engaged in the business of conducting “home solicitation sales” as those terms are defined in R.C. 1345.21(A) and (C) as Respondents were, at all times relevant herein, engaged in the solicitation and sale of home improvement goods and/or services to “buyers” at their personal residences in Franklin County and various other Ohio counties for purposes that were primarily personal, family, or household within the meaning specified in R.C. 1345.21(E).

TISCHER AND BIG TEN, DBA AKRON-CANTON

- (12) Although Respondents maintain a business establishment having a fixed permanent location, Respondents routinely engage in sales presentations and contract for work in consumers’ residences.
- (13) Respondents were, and have been at all times relevant to this action, engaged in the business of soliciting, offering for sale and selling home improvement goods and services in the State of Ohio, including in Franklin County.
- (14) Although Respondents’ contracts include the name “Big Ten Construction LLC” at the top, the contract states that “Akron-Canton Restoration” is the “Company” entering into the contract and performing the work.
- (15) Respondents conducted home solicitation sales and entered into contracts with consumers in connection with home improvement services.
- (16) Respondents executed contracts to provide home improvement services, including siding and roof repairs and installation, to consumers throughout the State of Ohio.
- (17) Respondents have made representations and claims, both orally and in writing, regarding Respondents’ work, stating that all costs would be covered by the consumers’ insurance, excluding any applicable insurance deductible required to be paid by the consumer(s) or

any additional work agreed upon between Respondents and the consumers which was not covered under the consumers' insurance company.

- (18) Certain consumers contracted with Respondents for various home improvement services.
- (19) Respondents' contracts contained language, which stated that they were "authorized to perform all insurance prescribed repairs for the full scope of the insurance proceeds," but the contracts did not state what the amount, or estimated amount, of those proceeds would be.
- (20) Respondents conducted home solicitation sales and entered into contracts with consumers in connection with home improvement goods and/or services and certain consumers have alleged that Respondents failed to disclose or incorporate directly or by reference into their purchase contracts the material terms and conditions related to payment terms and any financing agreements, prior to the commencement of the consumer's three-day right to cancel.
- (21) Certain consumers have alleged that Respondents accepted down payments from the consumers' insurance companies for the purchase of home improvement goods and/or services, but failed to deliver the goods and/or services for which consumers' insurance company paid for and failed to refund the down payments to the consumers or the insurance companies.
- (22) Certain consumers have alleged that Respondents failed to begin and/or complete the services for which consumers contracted.
- (23) Certain consumers have alleged that Respondents represented that repairs, services or labor would be completed within a specified time and then allowed unreasonable lengths

of time to elapse without beginning and/or completing the contracted repairs, services or labor.

- (24) Certain consumers have alleged that Respondents have failed to secure the proper permits and licenses for home improvement repairs and services for which permits and/or licenses are required by local ordinance.
- (25) Certain consumers have alleged that Respondents have performed shoddy and unworkmanlike services in connection with consumer transactions and then have failed to correct such work.
- (26) Certain consumers have alleged that Respondents failed to perform contracted home improvement services in a proper manner resulting in harm to the consumers and in some instances required that consumers pay additional money to have the Respondents' work corrected and/or to complete the construction begun by Respondents.
- (27) Certain consumers have alleged that Respondents provided them with inconsistent and inadequate information regarding delivery and service dates, as well as information pertaining to permits required for home improvement work.

TISCHER AND TNT

- (28) On or about June 13, 2008, consumer Len Essick entered into an agreement with Respondents for repair work to his roof due to hail damage, subject to payment by Mr. Essick's insurance company.
- (29) Although the contract contained a reference to insurance checks, the deductible, and the total contract price, Respondents did not complete any of the information on the contract when the agreement was signed on June 13, 2008.

- (30) Mr. Essick then submitted the claim to his insurance company and on or about July 24, 2008, the insurance company issued a check for repairs, made payable to "Len E. Essick and First National Bank of Ohio Ins. Svc. Dept. and CitiMortgage, Inc."
- (31) Subsequently, Mr. Essick endorsed the check issued by his insurance company and provided the check to Mr. Tischer. Mr. Tischer stated that he would drop off the check to CitiMortgage for the company to sign. Instead, Mr. Tischer then endorsed the check over to his wife and into his own account. Neither First National Bank of Ohio nor CitiMortgage ever signed the check.
- (32) It is alleged that Respondents never returned to execute the contract with Mr. Essick or begin the work noted in the agreement.
- (33) On or about November 7, 2008, Bob Myers from Associated Underwriters contacted Respondents, advising them to return the funds to Mr. Essick.
- (34) It is alleged that Respondents never returned the funds to Mr. Essick.
- (35) It is alleged that Respondents accepted a down payment from consumer Len Essick, via the consumer's insurance company, for the purchase and installation of siding, roofing, and gutters for the consumer's residence, failed to deliver the goods and/or services for which consumer paid, and failed to refund the down payment to the consumer or the consumer's insurance company.
- (36) It is alleged that Respondents provided consumer Len Essick with inconsistent and inadequate information pertaining to the endorsement and deposit of the insurance check.

COMPLIANCE PROVISIONS

- (37) In connection with the advertising and sale of all home improvement goods, repairs and services, Respondents shall comply with the CSPA, R.C. 1345.01 et seq., and the Substantive Rules enacted thereunder, and the HSSA, R.C. 1345.21 et seq.
- (38) In connection with the advertising and sale of all home improvement goods, repairs and services, Respondents shall refrain from:
- (A) Committing an unfair or deceptive act or practice in connection with a consumer transaction, in violation of the CSPA, R.C. 1345.02(A);
 - (B) Committing an unfair or deceptive act or practice in connection with a consumer transaction, in violation of the HSSA, R.C. 1345.21 et seq.;
 - (C) Committing an unconscionable act or practice in connection with a consumer transaction, by entering into a consumer transaction on terms Respondents know are substantially one-sided in their favor, in violation of the CSPA, R.C. 1345.03(A), as set forth by R.C. 1345.03(B)(5);
 - (D) Failing to disclose the cost, or estimated cost, of the home improvements goods and/or services that they are contracting to provide to consumers, in violation of the CSPA, R.C. 1345.02(A), and the Repairs or Services Rule, Ohio Admin. Code 109:4-3-05;
 - (E) Accepting down payments for home improvement goods or services and then failing to deliver those goods or services or allowing more than eight (8) weeks to elapse without delivering the goods or services or making a full refund of the down payments, in violation of the CSPA, R.C. 1345.02(A), and the Failure to Deliver Rule, Ohio Admin. Code 109:4-3-09;

(F) Performing shoddy and unworkmanlike services in connection with a consumer transaction and then failing to correct such work, in violation of the CSPA, R.C. 1345.02(A); and

(G) Failing to respond to consumer inquiries and failing to give consumers accurate information about material facts related to delivery and service dates, information pertaining to permits required for home improvement work, and the endorsement and deposit of insurance and down payment checks, in violation of the CSPA, R.C. 1345.02(A).

GENERAL PROVISIONS

- (39) Respondents understand and agree this Assurance applies to Big Ten Construction, Akron-Canton Restoration, TNT Builders, and to any other business Eric Tischer operates, their principals, officers, directors, agents, representatives, salespersons, employees, instructors, independent contractors, successors and assigns, jointly and severally.
- (40) This Assurance shall be governed by the laws of the State of Ohio.
- (41) This Assurance does not constitute an approval by the Attorney General of any of Respondents' business practices and Respondents shall not represent directly or indirectly, or in any way whatsoever, that the Attorney General has sanctioned, condoned or approved any part or aspect of Respondents' business practices.
- (42) This Assurance sets forth the entire agreement between the Attorney General and Respondents (the "Parties") and supersedes all prior agreements or understandings, whether written or oral, between the Parties and/or their respective counsel with respect

to the subject matter hereof. This Assurance may be amended by written agreement between the Parties, subject to any further requirements under state law.

- (43) The Parties acknowledge that no other promises, representations or agreements of any nature have been made or entered into by the Parties. The Parties further acknowledge that this Assurance constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.
- (44) Respondents shall continue to negotiate in good faith, and resolve, through the office of the Attorney General, any consumer complaints filed with this office concerning Respondents' conduct occurring prior to or after the Effective Date of this Assurance.
- (45) This Assurance is a public record and shall be maintained in the Public Inspection File.

RESTITUTION AND PAYMENT TO THE STATE

- (46) As part of the consideration for the termination of the Attorney General's investigation of the Respondents under the Consumer Sales Practices Act, R.C. 1345.01 et seq., the Parties hereby acknowledge that Respondents have made restitution to the consumers identified in Addendum A, attached, in the aggregate total of One Thousand Seven Hundred Two and 01/100 Dollars (\$1,702.01).
- (47) Respondents affirm that they have released the mechanics' liens listed on Addendum B, attached, and have provided written notice confirming the release to the undersigned Assistant Attorney General.
- (48) Respondents affirm that they have caused to be null and void the consumer contracts listed on Addendum C, attached, and have ceased any and all collection activities related to those accounts. Any action taken to date, including enforcement and collection

attempts, have been dismissed with any costs incurred to date paid by Respondents. Respondents further affirm that they have contacted any collection agencies to which these accounts were reported and have alerted those agencies that such accounts are no longer delinquent or in need of collection.

- (49) As part of the consideration for the termination of the Attorney General's investigation of Respondents under the CSPA, R.C. 1345.01 et seq., Respondents shall pay Fifteen Thousand Dollars (\$15,000.00) to the Office of the Ohio Attorney General to be placed in the Consumer Protection Enforcement Fund of the Ohio Attorney General's Office, of which Thirteen Thousand Dollars (\$13,000.00) shall be suspended upon full and complete compliance with the terms of this Assurance. The remaining payment of Two Thousand Dollars (\$2,000.00) shall be due upon execution of this Assurance and shall be made by delivering a certified check or money order, made payable to the "Ohio Attorney General's Office," to:

**Patricia Anderson
Administrative Secretary
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215**

PENALTIES FOR FAILURE TO COMPLY

- (50) The Attorney General may assert any claim that Respondents have violated this Assurance in a separate civil action to enforce this Assurance, or to seek any other relief afforded by law, including attorney fees, investigative costs, payment of the suspended Thirteen Thousand Dollars (\$13,000.00) noted in Paragraph (49) above, and a civil penalty of \$25,000.00 for each separate and appropriate violation the Attorney General asserts Respondents have committed. In any such action or proceeding, relevant

evidence of conduct that occurred before the Effective Date shall be admissible on any material issue, including alleged willfulness, intent, knowledge, contempt or breach, to the extent permitted by law. By this paragraph, Respondents do not waive any evidentiary objection or any other objection they may have as permitted by law to the admissibility of any such evidence.

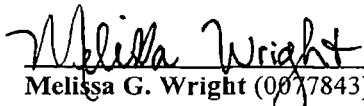
- (51) Pursuant to R.C. 1345.06(F), this Assurance is not, and shall not be construed as, evidence of any violation of the Consumer Sales Practices Act or the Substantive Rules adopted thereunder, by Respondents. Evidence of a violation of an Assurance of Voluntary Compliance, though, is prima-facie evidence of an act or practice in violation of the CSPA, R.C. 1345.01 et seq., if presented after the violation in an action brought under the CSPA, R.C. 1345.01 et seq.
- (52) This Assurance shall in no way exempt Respondents from any other obligations imposed by law, and nothing contained herein shall relieve Respondents of any legal responsibility for any acts or practices engaged in by Respondents other than those acts specifically resolved by this Assurance.
- (53) Nothing in this Assurance shall in any way preclude any investigative or enforcement action against Respondents under any legal authority granted to the Attorney General:
 - (A) With respect to the transactions or occurrences which are the subject of this enforcement action, if the terms of this Assurance are not fully obeyed; or
 - (B) With respect to transactions or occurrences which are not the subject of this action.

WHEREFORE, the parties hereto affix their signatures in recognition and acceptance of the terms contained herein on this 20th day of October 2011.

SIGNATURES

ACCEPTED BY:

FOR THE OHIO ATTORNEY GENERAL, MICHAEL DEWINE



Melissa G. Wright (0077843)

Assistant Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
(614) 466-8169

(866) 528-7423 (facsimile)

Counsel for the Ohio Attorney General

Date 10/7/11

FOR ERIC A. TISCHER, Individually

ERIC A. TISCHER
4656 Herb Garden Drive
New Albany, Ohio 43054

Date

FOR BIG TEN CONSTRUCTION, LLC, DBA AKRON-CANTON RESTORATION

ERIC A. TISCHER, President and Owner
700 Morse Road, Suite 210
Columbus, Ohio 43214

Date

FOR TNT BUILDERS, LLC

ERIC A. TISCHER, Owner
4656 Herb Garden Drive
New Albany, Ohio 43054

Date

SIGNATURES

ACCEPTED BY:

FOR THE OHIO ATTORNEY GENERAL, MICHAEL DEWINE

Melissa G. Wright (0077843)

Assistant Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
(614) 466-8169
(866) 528-7423 (facsimile)
Counsel for the Ohio Attorney General

Date

FOR ERIC A. TISCHER, Individually

ERIC A. TISCHER

4656 Herb Garden Drive
New Albany, Ohio 43054

10-20-11
Date

FOR BIG TEN CONSTRUCTION, LLC, DBA AKRON-CANTON RESTORATION

ERIC A. TISCHER, President and Owner
700 Morse Road, Suite 210
Columbus, Ohio 43214

10-20-11
Date

FOR TNT BUILDERS, LLC

ERIC A. TISCHER, Owner
4656 Herb Garden Drive
New Albany, Ohio 43054

10-20-11
Date



RYAN L. THOMAS (0084828)

Tyack, Blackmore & Liston Co., L.P.A.

536 South High Street

Columbus, Ohio 43215

(614) 221-1341

(614) 228-0253 (facsimile)

10 | 20 | 2011
Date

*Counsel for Eric A. Tischer, Big Ten Construction, dba Akron-Canton Restoration,
and TNT Builders*

**ERIC A. TISCHER, INDIVIDUALLY AND DBA
BIG TEN CONSTRUCTION, LLC,
AKRON-CANTON RESTORATION, AND
TNT BUILDERS, LLC**

**INVESTIGATIVE DOCKET NO. 403098
ADDENDUM A**

CONSUMER RESTITUTION PAID

	CONSUMER	ADDRESS	REFUND AMOUNT
1	Diana Burford	948 Kyle Avenue Columbus, Ohio 43207	\$ 695.00
2	Kim Pack	2907 Louise Avenue Grove City, Ohio 43123	\$ 1,007.01

**ERIC A. TISCHER, INDIVIDUALLY AND DBA
BIG TEN CONSTRUCTION, LLC,
AKRON-CANTON RESTORATION, AND
TNT BUILDERS, LLC**

**INVESTIGATIVE DOCKET NO. 403098
ADDENDUM B**

MECHANICS' LIENS RELEASED

1. Diana Burford
948 Kyle Avenue
Columbus, Ohio 43207

Filed 9/21/10 - Franklin County, Ohio
Released 8/2/11

**ERIC A. TISCHER, INDIVIDUALLY AND DBA
BIG TEN CONSTRUCTION, LLC,
AKRON-CANTON RESTORATION, AND
TNT BUILDERS, LLC**

**INVESTIGATIVE DOCKET NO. 403098
ADDENDUM C**

CONTRACTS DEEMED NULL AND VOID

1. Diana Burford
948 Kyle Avenue
Columbus, Ohio 43207
2. Teresa Burrell
1045 Lavender Lane
Columbus, Ohio 43207
3. Thomas Wilds
2924 Louise Avenue
Grove City, Ohio 43123