

**CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS**

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

PENZIM PRODUCE CORP.,

Respondent.

CONSENT ORDER

Violation Numbers:

LL005117173

LL005142378

LL005166591

LL005297737

License Number:

0989072

Penzim Produce Corp. ("Respondent") hereby consents to entry of this Consent Order to settle LL005117173, LL005142378, LL005166591, LL005297737 and all potential fines for unlicensed activity in violation of Section 20-233(a) of the Administrative Code of the City of New York ("Code") through the date of the execution of this Consent Order:

Relevant Factual Background

1. On or about August 17, 2012, the Department served upon Respondent a Corrected Notice of Hearing in LL005297737, amending the Notice of Hearing served on August 17, 2012, and alleging that Respondent maintained sixteen (16) stoopline stands that exceeded five (5) feet in width in violation of Code § 20-237(b).
2. On or about August 20, 2012, the Department issued an Appeal Determination in *Department of Consumer Affairs v. Penzim Produce Corp.*, LL005117173, LL005142378, and LL005166591, finding Respondent guilty of eleven (11) charges, imposing fines upon Respondent, and revoking Respondent's license to maintain seventeen (17) stoopline stands not exceeding five (5) feet in width.
3. Respondent has continuously maintained seventeen (17) stoopline stands from August 20, 2012 to the date of execution of this Consent Order.
4. The parties seek to resolve this dispute amicably and to avoid further costly litigation.

Fines

5. Respondent shall pay a fine of \$150,000.00 to settle the above-captioned violations and in full satisfaction of any fines for unlicensed activity for which it may be liable through the date this Consent Order is executed.
6. Payment shall be made on the following schedule:
 - a. Respondent will deliver to the Department at or before execution of this Consent Order a bank check or money order in the amount of \$50,000.

- b. On or before December 20, 2012, Respondent shall pay to the Department \$50,000.
- c. On or before March 20, 2013, Respondent shall pay to the Department \$50,000.

Operating Letter

7. Upon Respondent's delivery of the first payment set forth in ¶ 6(a) and execution of this Consent Order and approval of the Consent Order pursuant to ¶17 below, the Department will issue to Respondent a letter permitting it to operate seventeen stoop line stands until December 20, 2012.
8. Upon Respondent's delivery of the second payment set forth in ¶ 6(b), and subject to the limitation set forth in ¶10 below, the Department will issue to Respondent a letter permitting it to operate seventeen stoop line stands until March 20, 2013.

Issuance of License

9. Upon Respondent's completion of payment of the fines set forth in ¶6, and provided that Respondent is then in compliance with the stoopline stand laws, regulations and rules applicable to the operation of stoopline stands in the City of New York, and upon payment of any licensing or other applicable fees, the Department will renew Respondent's stoopline stand license no. 0989072 permitting to maintain seventeen stoopline stands or such other number as Respondent shall seek and may maintain in conformance with the requirements of the law.

Injunctive Relief

10. Not later than October 31, 2012, Respondent shall take such action as is necessary to ensure that the width and length of every stoop line stand that it maintains on the sidewalk adjacent to its premises do not exceed the dimensions permitted by Code § 20-237 then in effect and any rules promulgated thereunder.
11. On October 31, 2012, or such later date as the Department in its sole discretion shall set, Respondent, by one of its officers or owners, shall submit to the undersigned counsel for the Department a sworn affidavit affirming that the dimensions of the stoopline stands comply with the requirements of Code § 20-237 then in effect, any rules thereunder, and the terms of the operating letter or license that Respondent then maintains, and providing photographs demonstrating such compliance. Respondent shall submit such sworn affidavits and photographs on every three months for a period of twenty-four months from the date of the first affidavit submitted pursuant to this paragraph.
12. Respondent shall not violate any provision of the laws, regulations, and rules applicable to the operation of stoopline stands in the City of New York.

Consequences of Breach

13. Respondent's failure to comply with the requirements of ¶10 shall result in (a) the termination any operating letter then in effect, (b) permanent revocation of any Department license Respondent then maintains, and (c) issuance of a determination that Respondent and every person with an interest or beneficial interest of 10 per cent or more of the stock of Respondent is not fit to hold a license issued by the Department.
14. Any of the following shall be a basis for automatic revocation if found guilty, after notice and hearing, of license(s) issued to Respondent by the Department:
- a. Respondent fails to pay any restitution or fine ordered by the Department's administrative tribunal; or
 - b. Respondent fails to pay any consumer restitution awarded by any other court of competent jurisdiction within thirty days of Respondent's receipt of the decision of such court.

Waiver of Appeals

15. Respondent waive Respondent's right to a hearing on, appeal of and/or any challenge of, in any forum, the facts alleged by the above-referenced violations under Sections 20-104 or 20-105 of the Code or under Article 78 of the New York State Civil Practice Law and Rules, Sections 7801-7806.

Miscellaneous

16. Nothing in this agreement shall be construed to limit in any way the authority of the Department to exercise its enforcement powers under Chapter 1, Title 20 or under Chapter 2, Title 20 of the Code.
17. This Consent Order will take effect upon notification from the Director of Adjudication that this Consent Order supersedes the Appellate Determination dated August 20, 2012.

Dated: New York, New York
September 20, 2012

Agreed to by:



Signature



Attorney for Respondent

Accepted for Jonathan Mintz,
Commissioner:



Senior Staff Attorney



Deputy General Counsel