RECEIVED BY
NYC D.C.A.

2012 APR 25 PM 4:07

ADJUDICATION DIVISION
MAIL UNIT

CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS

----------X

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

– against –

FRANCES STEWART AGENCY, INC.

FRANCES STEWART AGENCY INC OF DELA

1220 LEXINGTON AVENUE

NEW YORK , NY 10028

Respondent.

----------X

CONSENT ORDER

Violation Number: LL LL006000210

License Number: 1071321

1. Respondent acknowledges that the New York City Department of Consumer Affairs (the "Department") duly served Respondent with a Notice of Hearing on Mar 6, 2012 ("NOH") citing Respondent for a violation of the New York State General Business Law Section 170 et seq ("Employment Agency Law"), New York City Administrative Code ("Code") Section 20-101 et seq. (the "License Enforcement Law"), Code Section 20-700 et seq. (the "Consumer Protection Law"), and Title 6 of the Rules of the City of New York ("Rules").

2. FRANCES STEWART AGENCY, INC., license number 1071321 ("Respondent") consents to this final Consent Order (the "CO") to settle the above violation.

3. David Kaufmann, as president of Respondent, represents and certifies that **[s/he]** is duly authorized to settle this violation and to enter into this CO with the Department on behalf of Respondent.

4. This CO shall apply to Respondent and any other directors, officers, employees, agents, assignees, successors, or other business entities, whose acts, practices, or policies are directed, formulated, or controlled by Respondent. For the purposes of this CO, "employee" means any person employed for hire or permitted to work by Respondent including, but not limited to, any person who manages or oversees the work of another, any person whose main activity is the selling of any goods or services for Respondent, and any person whose earnings are based in whole or in part on work performed for Respondent.

5. Respondent shall maintain a list identifying each employee by name, address, phone number and email address for three years. The list shall include the language each employee speaks.

A. Definitions

6. "Job applicant" or "applicant" means a consumer seeking employment.

7. "Advertisement" or "advertisements" mean all promotional materials, statements, visual descriptions, or other representations of any kind disseminated in print, orally, or electronically by or on behalf of Respondent to consumers including, but not limited to, mailings, flyers, hand-outs, brochures, business cards, classified ads, in-store and window signage, print advertisements, television advertisements, internet advertisements, radio advertisements, text messaging and social media.

8. "Conspicuous" and "conspicuously" mean that the statement, signage, or term (collectively, the "disclosure") is made in a manner that is readily apparent and understandable by an ordinary person from any distance from which an applicant is able to view the main message of the disclosure. Considerations relevant to whether a disclosure is conspicuous include, but are not limited to, relative type size, font, color contrast, and location of disclosure.

B. Injunctive Relief

9. Respondent shall comply with this CO, as well as all applicable laws and regulations, including the Employment Agency Law, the License Enforcement Law, the Consumer Protection Law and the Rules whether or not specifically set forth in this CO. Respondent acknowledges that it is responsible for complying with all amendments to applicable laws and rules.

C. Documents Generally

10. Respondent shall provide all documents and forms it is required to provide pursuant to applicable laws and rules or by this CO, including but not limited to applications, contracts and receipts, in English, as well as in every language in which Respondent advertises or conducts business with consumers.

D. Contracts

11. Respondent shall provide every job applicant with the Department's Model Contract, as updated, attached as Exhibit A and available through the Department's webpage, http://www.nyc/gov/consumers.[1] Respondent shall update, revise or amend its contracts as required by law or rule or, within 10 days of a request by the Department.

E. Fees and Refunds

12. Respondent shall charge a job applicant a fee only for job placement.

---

[1] Also available at: http://www.nyc.gov/html/dca/downloads/pdf/ea_model_contract_english.pdf and http://www.nyc.gov/html/dca/downloads/pdf/ea_model_contract_spanish.pdf.

13. Respondent shall not charge a job applicant a fee prior to job placement unless the applicant is referred to an employer to apply for a position as a domestic, household employee, unskilled or untrained manual workers and laborers (including agricultural workers), non-professional trained or skilled industrial workers, or mechanics. No other job applicants shall be charged a fee until job placement has occurred.

14. Respondent shall not charge a job applicant a registration fee.

15. Except as described in Section 185 of the GBL, Respondent shall not charge a job applicant a fee for any other goods or services including, but not limited to: (i) referring or promising to refer a job applicant to interviews or meetings with employers or prospective employers; (ii) training job applicants; or (iii) photographing job applicants.

16. In addition to the logs required by Section 179 of the GBL, Respondent shall maintain on its premises a separate log book, in the English language, of all requests for refunds. Respondent shall maintain such log book on its premises for three years. Respondent shall make such records available for inspection upon Department's demand. Each entry in the log book shall include all the following:

a. the name of the job applicant requesting a refund;
b. the date of such request;
c. the fee originally paid by the job applicant;
d. refunds paid;
e. amount of refund paid;
f. the date refund was paid;
g. the reason for refund; and
h. method refund paid, whether cash, check, or credit.

F. <u>Job Orders</u>

17. Respondent shall maintain on its premises a register, in the English language that includes all of the following:

a. the name and address of every employer who pays a fee;
b. the name and address of every employer to whom an applicant paying a fee is referred;
c. the date each employer requested or assented to the furnishing of applicants;
d. the kind of positions for which applicants are requested;
e. the names of the applicants paying a fee who were sent to the employer, including a designation of the applicant hired;
f. the amount of the fee charged; and
g. the rate of wages or compensation agreed upon.

18. Respondent shall maintain on its premises a register, in the English language, of all fees, deposits and other money charged and/or collected. Each entry in the register shall

include all of the following:

a. the name address, and phone number of every job applicant;
b. the date and amount of money charged;
c. the date and amount of money paid;
d. the name of the person making the payment;
e. the purpose of the payment;
f. positions job applicant applied or interviewed for, if any;
g. the date the job applicant started work, if any;
h. the date, amount, and reason the job applicant requested a full or partial refund, if any; and
i. the date, amount, and reason Respondent refunded money to the job applicant, if any.

19. Respondent shall only send or refer job applicants to legitimate job openings which are (i) obtained from a representative of the employer and reflect an actual job opening and (ii) verified by Respondent as a current job opening no less than once every seven (7) days.

G. Receipts

20. Whenever Respondent receives any deposit, fee or other money from a job applicant, Respondent immediately shall provide the job applicant a written receipt that complies with Section 181 of the GBL, and is substantially similar to the Department's "Model Receipt," as updated, attached as Exhibit B and available through the Department's webpage, http://www.nyc/gov/consumers.[2] The receipt shall:

a. have the word "Receipt" written clearly and conspicuously at the top;
b. state the name of the applicant;
c. state the name and address of the employment agency;
d. state the date and amount of the fee;
e. state the reason for the fee;
f. include the DCA license number;
g. contain a written confirmation that any and all fees that the employment agency requires job applicants to pay are consistent with the law; and
h. include the signature, printed name, and title of the person receiving the deposit, fee, or other charge on behalf of the employment agency.

21. Respondent shall update, revise or amend its receipts as required by law or rule or, within 10 days of a request by the Department.

H. Signs

22. Respondent shall display conspicuously in the reception or waiting area: (i) the poster provided by the Department (the "DCA Law Card") containing Sections 178, 181,

---

[2] Also available at: http://www.nyc.gov/html/dca/downloads/pdf/ea_model_contract_english.pdf and http://www.nyc.gov/html/dca/downloads/pdf/ea_model_contract_spanish.pdf.

185 and 186 of the GBL; and (ii) the New York State Anti-Discrimination Poster Respondent. These posters are available at the Department's Licensing Center located at 42 Broadway, 5th Floor, New York, NY 10004.

23. Respondent shall display conspicuously in the reception or waiting area a sign in English and in every language in which Respondent advertises or conducts business with consumers in any way, that states the following:

> **NOTICE:** It is against the law for an employment agency to charge a registration or application fee. The agency can only collect a deposit if you are applying for certain types of jobs. If an agency charges you an improper fee, you are entitled to a refund. If you are not given a refund or you have a complaint or need more information call 3-1-1.

I. Advertisements

24. Respondent shall not publish, or cause to be published, any false, fraudulent or misleading information, representation, promise, notice or advertisement.

25. Respondent shall not advertise that it can "guarantee" jobs or placement.

26. Respondent shall not advertise that it is "no fee," unless it is an employer fee paid employment agency, as defined in Section 191 of the GBL.

27. Respondent shall include its Department issued license number and the word "agency" in all advertising.

28. Respondent shall maintain records of the dates and location of each advertisement that Respondent publishes, distributes or causes to be published or distributed for three years.

J. Compliance and Training

29. If the Department conducts a training in the future, an employee of Respondent with management responsibility shall attend the training, on a date and time set forth by the Department.

30. Respondent shall comply with Department instructions on submitting proof of attendance.

31. Respondent shall notify the Department within ten (10) days of receipt of any (i) complaints, actions or proceedings filed against you by consumers in any forum, including state and federal courts, the Better Business Bureau, the Office of the Attorney General of the State of New York, the New York State Division of Human Rights, the New York City Commission on Human Rights, the New York State Workers' Compensation Board, the New York State Department of Labor, the Equal Employment Opportunity Commission, or

any other agency or association, (ii) actions, proceedings or investigations by any government agency against you; and (iii) results of any actions, proceedings or investigations against you that resulted in the revocation or suspension of a license, the imposition of fines or restitution, a voluntary settlement, a court order, a criminal guilty plea, or conviction.

32. This CO does not resolve any consumer complaints against Respondent that are filed with, or otherwise brought to, the attention of the Department and does not waive the Department's right to seek relief on behalf of aggrieved Consumers.

33. Respondent shall in good faith make all reasonable efforts to resolve any consumer complaints filed with the Department within twenty (20) days of receipt of a complaint. In all instances, Respondent shall respond in writing to the Department regarding a consumer complaint within twenty (20) days of receipt of any complaint as required by Section 1-13 of the Rules.

34. Respondent shall maintain for inspection by the Department files of all consumer complaints it receives from any state or local agency, including the Department, in a manner that is organized and readily accessible.

35. Respondent shall make all documents, registers, records or logs required to be maintained by this CO and applicable laws available for inspection at the Department's offices or at Respondent's place of business upon demand, in a form as requested by the Department. All documents, registers, records or logs maintained by Respondent must be maintained on Respondent's premises for three years.

36. If Respondent maintains any documents, registers, records or logs electronically, Respondent must produce such documents, records or logs to the Department for inspection upon demand in a form as requested by the Department.

K. <u>Fines and Other Penalties</u>

37. Respondent agrees to pay a fine of $ 1,750.00 by Apr 24, 2012 .

38. Respondent agrees to waive any further right to a hearing or appeal on the above-referenced citation under Section 20–104 of the Code or under Article 78 of the New York State Civil Practice Law and Rules, Sections 7801-7806.

39. Respondent acknowledges that any breach of this CO by Respondent or its agents shall, upon issuance of a new violation and hearing thereon: (i) be deemed grounds for revocation of Respondent's license; (ii) be assessed at the maximum penalties allowed by law; (iii) be deemed a separate, knowing violation of the Consumer Protection Law subject to the maximum penalties defined therein; (iv) be deemed proof that any person with an equity interest of ten (10) percent or more, or with significant managerial responsibility for the operation of Respondent's business, is not possessed of the integrity, honesty, and fair dealing required to hold a license issued by the Department; and (vi) require payment by

Respondent of all costs and expenses associated with the Department's investigation and prosecution of the new violation.

40. Non-payment or untimely payment of the settlement fine shall constitute a breach and violation of this CO.

41. Respondent shall incur a late fee of $100 if Respondent does not pay the above fine by the date specified above, and the entire balance (including the late fee) due under this CO shall be due immediately.

42. Failure to utilize documents submitted to the Department as part of any license application or license renewal shall result in an additional fine of $1,000.

43. Upon the termination of a license by revocation, expiration, denial, or surrender, Respondent shall immediately cease employment agency activities.

44. The acceptance of this CO by the Department shall not be deemed approval by the Department of any of Respondent's business practices, and Respondent shall make no representation to the contrary.

45. This matter will be considered settled upon execution of this CO and payment of the settlement sum as set forth above.

MAIL PAYMENTS TO:
Department of Consumer Affairs
Collections Division
42 Broadway, 9th Floor
New York, NY 10004

LL006000210

DATE: 4/23/12

Accepted for Respondent

FRANCES STEWART AGENCY, INC., by:

David Kaufmann
Name

President
Title

David Kaufmann
Signature

Accepted for Jonathan Mintz,
Commissioner of Consumer Affairs
for the City of New York by:

W V López, S.O.
Name and Title

Signature

4/30/2012

Businesses licensed by the Department of Consumer Affairs (DCA) must comply with all relevant local, state and federal laws. Copies of New York City licensing and consumer protection laws are available in person at DCA's Licensing Center, located at 42 Broadway, 5th Floor, New York, NY, by calling 311, New York City's 24 hour Citizen Service Hotline, or by going online at www.nyc.gov/consumers. License application requirements for employment agencies are available at www.nyc.gov/html/dca/html/licenses/034.shtml.

Mr. David Kaufman
Frances Stewart Agency Inc.
1220 Lexington Ave Apt 2B
New York, NY 10028

NEW YORK NY 100

24 APR 2012 PM 6 L

RECEIVED BY
NYC D.C.A.
2012 APR 25 PM 12: 17
ADMINISTRATION DIVISION
RECEIVED

NYC. Dept of Consumer Affairs
66 John St.
11th Floor
Attention W.V López
N10038972199 10038