

OFFICE OF INSURANCE REGULATION

KEVIN M. MCCARTY
COMMISSIONER

IN THE MATTER OF:

Case No.: 102492-09

NATIONWIDE HOME WARRANTY

ORDER TO CEASE AND DESIST

TO:

NATIONWIDE HOME WARRANTY
John Ryan, President
P.O. BOX 341
New York, New York 10013

NATIONWIDE HOME WARRANTY
John Ryan, President
100 Church Street, 8th Floor
New York, New York 10007-2621

NATIONWIDE HOME WARRANTY
John Ryan, President
P.O. BOX 301
New York, New York 10013

YOU ARE HEREBY NOTIFIED that pursuant to the Florida Insurance Code, including Sections 634.301, 634.303, 634.338, 634.401, 634.403, 634.438, Florida Statutes, the State of Florida, Office of Insurance Regulation (hereinafter "OFFICE"), has caused an investigation to be made of the warranty-related activities of NATIONWIDE HOME WARRANTY. The OFFICE has information that the aforementioned company is an unauthorized entity and does not hold a license to transact warranty business in the state of Florida. Accordingly, the Office intends to enter a Final Order requiring the above-referenced parties to cease and desist from providing or offering to provide home and/or service warranties in the State of Florida.

As a result of that investigation, the OFFICE finds:

GENERAL ALLEGATIONS

1. The OFFICE has jurisdiction over the parties and the subject matter pursuant to Sections 634.301, 634.303, 634.338, 634.401, 634.403, 634.438, Florida Statutes.

2. NATIONWIDE HOME WARRANTY (hereinafter referred to as "NHW") is currently unlicensed and unauthorized to provide home and/or service warranties in Florida.

3. NHW is located in the State of New York and its address of record is: 100 Church Street, 8th Floor, New York, New York 10007. JOHN RYAN is the President of NATIONWIDE HOME WARRANTY.

4. Despite the absence of any license or any other authorization to provide or offer to provide home and/or service warranty business in Florida or act as an administrator pursuant to Sections 634.301, 634.303, 634.401, and 634.403, Florida Statutes, NHW has engaged and **currently engages** in the unlicensed, unauthorized, and therefore, illegal business of providing home and/or service warranties to Florida residents.

5. NHW engaged in the business of offering and contracting to provide a home and/or service warranty for certain conditions of their consumer's homes. NHW transacts, administers and markets these warranty contracts to consumers located within the State of Florida. NHW has in operation a web-site advertising their unauthorized warranty product that is operational as of the issuance of this Order.

6. On or about January 4, 2008, NHW issued a warranty product to Cynthia Matthews-Hamad for her home. Ms. Matthews-Hamad submitted three claims for various repairs and all were denied.

7. NHW issued a warranty product to William Mars of North Palm Beach, Florida. Mr. Mars submitted a repair claim for his heating and cooling unit and NHW has not responded to the claim.

COUNT I. NATIONWIDE HOME WARRANTY IS IN VIOLATION OF SECTIONS 634.303 AND 634.338, FLORIDA STATUTES.

8. Paragraphs one through seven herein are re-alleged and incorporated by this reference.

9. Section 634.301(3), Florida Statutes, states, in pertinent part:

"Home warranty" or "warranty" means any contract or agreement:

- (a) Offered in connection with the sale of residential property;
- (b) Offered in connection with a loan of \$5,000 or more which is secured by residential property that is the subject of the warranty, but not in connection with the sale of such property; or
- (c) Offered in connection with a home improvement of \$7,500 or more for residential property that is the subject of the warranty, but not in connection with the sale of such property; whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss. However, this part does not prohibit the giving of usual performance guarantees by either the builder of a home or the manufacturer or seller of an appliance, as long as no identifiable charge is made for such guarantee. This part does not permit the provision of indemnification against consequential damages arising from the failure of any structural component or appliance of a home, which practice constitutes the transaction of insurance subject to all requirements of the insurance code. This part does not apply to service contracts entered into between consumers and nonprofit organizations or cooperatives the members of which consist of condominium associations and condominium owners and which perform repairs and maintenance for appliances or maintenance of the residential property. This part does not apply to a contract or agreement offered in connection with a sale of residential property by a warranty association in compliance with part III, provided

such contract or agreement only relates to the systems and appliances of the covered residential property and does not cover any structural component of the residential property.

10. Section 634.303(1), Florida Statutes, provides, in pertinent part:

No person in this state shall provide or offer to provide home warranties unless authorized therefore under a subsisting license issued by the office.

11. Section 634.338(1), Florida Statutes, provides in pertinent part:

Whenever the ... office has reason to believe that any person has engaged, ...is engaging in the business of home warranty without being properly licensed as required by this part, and that a proceeding by the ... office in respect thereto would be in the interest of the public, the ... office shall conduct or cause to have conducted a hearing in accordance with chapter 120.

12. Section 634.338(3), Florida Statutes, provides in pertinent part:

A statement of charges, notice, or order under this part may be served by anyone duly authorized by the ... office, either in the manner provided by law for service of process in civil actions or by certifying and mailing a copy thereof to the person affected by such statement, notice, order, or other process at her or his or its residence or principle office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of the service, is proof of the same; and the return postcard receipt for such statement, notice, order, or other process, certified and mailed as provided in this subsection, is proof of service of the same.

WHEREFORE, pursuant to the Florida Insurance Code and other applicable statutes, the OFFICE finds that because NATIONWIDE HOME WARRANTY has transacted the business of providing or offering to provide home warranties without proper licensure, the OFFICE intends to enter a Final Order to Cease and Desist against NATIONWIDE HOME WARRANTY for the violations enumerated herein, pursuant to Chapter 634, Florida Statutes.

COUNT II. NATIONWIDE HOME WARRANTY IS IN VIOLATION OF SECTIONS 634.403 AND 634.438, FLORIDA STATUTES.

13. Paragraphs one through seven herein are re-alleged and incorporated by this reference.

14. Section 634.401(13), Florida Statutes, provides in pertinent part:

"Service warranty" means any warranty, guaranty, extended warranty or extended guaranty, maintenance service contract equal to or greater than 1 year in length or which does not meet the exemption in paragraph (a), contract agreement, or other written promise for a specific duration to perform the repair, replacement, or maintenance of a consumer product, or for indemnification for repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling in return for the payment of a segregated charge by the consumer.

15. Section 634.403(1), Florida Statutes, provides in pertinent part:

No person in this state shall provide or offer to provide service warranties unless authorized therefor under a subsisting license issued by the office.

16. Section 634.438(1), Florida Statutes, provides in pertinent part:

Whenever the ... office has reason to believe that any person has engaged, ...or is engaging in the business of service warranty without being properly licensed as required by this part, and that a proceeding by the ...office in respect thereto would be in the interest of the public, the ... office shall conduct or cause to have conducted a hearing in accordance with chapter 120.

17. Section 634.438(3), Florida Statutes, provides in pertinent part:

A statement of charges, notice, or order under this part may be served by anyone duly authorized by the ... office, either in the manner provided by law for service of process in civil actions or by certifying and mailing a copy thereof to the person affected by such statement, notice, order, or other process at her or his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of the service, is proof of the same; and the return postcard receipt for such statement,

notice, order, or other process, certified and mailed as provided in this subsection, is proof of service of the same.

WHEREFORE, pursuant to the Florida Insurance Code and other applicable statutes, the OFFICE finds that because NATIONWIDE HOME WARRANTY has transacted the business of providing or offering to provide service warranties without proper licensure, the OFFICE intends to enter a Final Order to Cease and Desist against NATIONWIDE HOME WARRANTY for the violations enumerated herein, pursuant to Chapter 634, Florida Statutes.

Accordingly, IT IS HEREBY ORDERED:

A. NATIONWIDE HOME WARRANTY shall forthwith **CEASE AND DESIST** from providing, offering to provide, or renewing home warranties and/or service warranties for Florida consumers, including individuals and businesses.

B. NATIONWIDE HOME WARRANTY also shall inform such persons and entities who apply for a new contract or seek to renew their existing contract in writing that they are unlicensed and that no further applications will be accepted, nor any new contract entered. Contracts that are in effect at the time of the execution of this agreement shall be honored for the duration stated in the contract terms.


C. Subject to the other mandates of this Order, NATIONWIDE HOME WARRANTY shall continue to be responsible for the defense and payment of claims and otherwise for the timely fulfillment of their contractual obligations to each person or entity covered until all Florida claims have been paid, or until further action or order of the OFFICE to the contrary.

D. The entry of this Order, or any amendment thereto, shall not be interpreted as having, nor shall it have, the effect of abrogating any statutory, common law, or contractual rights of any person or entity insured by or who or which may be a third-party beneficiary of

coverage under any policy, contract, or certificate of coverage, nor of any person or entity that has relied upon the existence of a policy, contract, or certificate of coverage with NATIONWIDE HOME WARRANTY, in granting or allowing any right, privilege, or chose in action.

DONE AND ORDERED this 15TH day of OCTOBER, 2009.





KEVIN M. MCCARTY
Commissioner
Office of Insurance Regulation

NOTICE OF RIGHTS

Pursuant to Sections 120.569 and 120.57, Florida Statutes and Rule Chapter 28-106, Florida Administrative Code (F.A.C.), you may have a right to request a proceeding to contest this action by the Office of Insurance Regulation (hereinafter the "Office"). You may request a proceeding by filing a Petition. Your Petition for a proceeding must be in writing and must be filed with the General Counsel acting as the Agency Clerk, Office of Insurance Regulation. If served by U.S. Mail the Petition should be addressed to the Florida Office of Insurance Regulation at 612 Larson Building, Tallahassee, Florida 32399-4206. If Express Mail or hand-delivery is utilized, the Petition should be delivered to 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0300. The written Petition must be received by, and filed in the Office no later than 5:00 p.m. on the twenty-first (21) day after your receipt of this notice. Unless your Petition challenging this action is received by the Office within twenty-one (21) days from the date of the receipt of this notice, the right to a proceeding shall be deemed waived. Mailing the response on the twenty-first day will not preserve your right to a hearing.

If a proceeding is requested and there is no dispute of material fact the provisions of Section 120.57(2), Florida Statutes may apply. In this regard you may submit oral or written evidence in opposition to the action taken by this agency or a written statement challenging the grounds upon which the agency has relied. While a hearing is normally not required in the absence of a dispute of fact, if you feel that a hearing is necessary one may be conducted in Tallahassee, Florida or by telephonic conference call upon your request.

If you dispute material facts which are the basis for this agency's action you may request a formal adversarial proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes. If you request this type of proceeding, the request must comply with all of the requirements of Rule Chapter 28-106.2015, F.A.C., including but not limited to:

- a) A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so state; and
- b) A statement of when the respondent received notice of the agency's action.

These proceedings are held before a State administrative law judge of the Division of Administrative Hearings. Unless the majority of witnesses are located elsewhere the Office will request that the hearing be conducted in Tallahassee.

In some instances you may have additional statutory rights than the ones described herein.

Failure to follow the procedure outlined with regard to your response to this notice may result in the request being denied. Any request for administrative proceeding received prior to the date of this notice shall be deemed abandoned unless timely renewed in compliance with the guidelines as set out above.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing ORDER TO CEASE AND DESIST has been furnished by Certified U.S. Mail to Jack Ryan, President, Nationwide Home Warranty, P.O. Box 341, New York, New York 10013, Jack Ryan, President, Nationwide Home Warranty, P.O. Box 301, New York, New York 10013, and Jack Ryan, President, Nationwide Home Warranty, 100 Church Street, 8th Floor, New York, New York 10007-2621 this 15th day of October, 2009.

Annush Arakalia Brunguicci

Christopher L. Meadows
Fla. Bar #0028131
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