

CHAPTER 45**ADMINISTRATIVE HEARINGS IN THE DIVISION
OF CONSUMER AFFAIRS****Authority**

N.J.S.A. 34:8-54, 45:14D-6, 45:17A-21 and 56:8-4;
and Reorganization Plan No. 008-1998.

Source and Effective Date

R.2007 d.32, effective December 22, 2006.
See: 38 N.J.R. 4400(a), 39 N.J.R. 495(b).

Chapter Expiration Date

Chapter 45, Administrative Hearings in the Division of Consumer Affairs, expires on December 22, 2011.

Chapter Historical Note

Chapter 45, Administrative Hearings in the Division of Consumer Affairs, was adopted as R.1971 d.196, effective November 1, 1971. See: 3 N.J.R. 261(b).

Chapter 45, Administrative Hearings in the Division of Consumer Affairs, was readopted as R.2007 d.32, effective December 22, 2006. As a part of R.2007 d.32, Subchapter 3, Commencement of Formal Administrative Proceedings, was renamed Commencement of Formal Administrative Proceedings; Pleadings; Service of Pleadings; Initiation of Administrative Charges, effective February 5, 2007. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS**13:45-1.1 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Act” means the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. as amended and/or supplemented, or any regulation adopted thereunder.

“Administrative charges” means a formal complaint or such other pleading, including, but not limited to, a notice of violation, provisional orders of discipline or uniform penalty letters.

“Advertisement” means the attempt directly or indirectly by publication, dissemination, solicitation, endorsement or circulation or in any other way to induce directly or indirectly any person to enter or not enter into any obligation or acquire any title or interest in any merchandise or to increase the consumption thereof or to make any loan.

“Attorney for the Division” means an attorney appointed or assigned by the Attorney General of New Jersey to represent and render legal services to the Division.

“Complainant” means the party who requests action or relief by filing a complaint.

“Consumer complaint” means the letter, e-mail, telephone call or other means by which a consumer reports to the Division a violation of the Act or other statutory schemes covered by these rules.

“Contested case” means an adversary proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing. The required hearing must be designed to result in an adjudication concerning the rights, duties, obligations, privileges, benefits or other legal relations of specific parties over which there exist disputed questions of fact, law or disposition relating to the past, current or proposed activities or interests. Contested cases are not informational nor intended to provide a forum for the expression of public sentiment on a proposed agency action or broad policy issues affecting entire industries or large, undefined classes of people.

“Director” means the Director of the Division.

“Division” means the Division of Consumer Affairs, Department of Law and Public Safety.

“Final decision” means a decision by the Director after a hearing conducted in accordance with the rules under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

“Formal complaint” means administrative charges pursued in a pleading asserting an allegation of a violation requiring a form answer.

“Merchandise” means any objects, wares, goods, commodities, services or anything offered, directly or indirectly, to the public for sale.

“Person” means any natural person or his or her legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestuis que trustent thereof.

“Respondent” means the party who answers or responds to a request for relief or action.

“Sale” means any sale, rental or distribution, offer for sale, rental or distribution or attempt directly or indirectly to sell, rent or distribute.

As amended, R.1977 d. 93, eff. March 17, 1977.

See: 9 N.J.R. 184(a).

Amended by R.2007 d.32, effective February 5, 2007.

See: 38 N.J.R. 4400(a), 39 N.J.R. 495(b).

In definition “Act”, substituted “Fraud” for “Protection”; added definitions “Administrative charges”, “Advertisement”, “Consumer complaint”, “Contested case”, “Final decision”, “Formal complaint”, “Merchandise”, “Person” and “Sale”; substituted definition “Attorney for the Division” for definition “Attorney for the division”; rewrote definitions “Complainant” and “Respondent”; in definition “Director”, deleted “of Consumer Affairs” following “Division”; and deleted definition “Hearing Examiner”.

13:45-1.2 Scope

The following rules shall govern the commencement, pleadings and final decision in all contested cases before the Division.

As amended, R.1977 d. 93, eff. March 17, 1977.

See: 9 N.J.R. 184(a).

Amended by R.2007 d.32, effective February 5, 2007.

See: 38 N.J.R. 4400(a), 39 N.J.R. 495(b).

Rewrote the section.

13:45-1.3 Construction

(a) These rules shall be liberally construed to permit the Division to discharge its statutory functions.

(b) Except as stated in (c) below, the Director may, upon notice to all parties, relax or disregard the application of these rules if the Director determines that adherence would result in unfairness or injustice. The Director shall make such determinations and state the reasons for doing so on the record.

(c) The burden of proof shall not be relaxed. Statutory procedural requirements shall not be relaxed or disregarded except when permitted by the controlling Federal or State statutes.

As amended, R.1977 d. 93, eff. March 17, 1977.

See: 9 N.J.R. 184(a).

Amended by R.2007 d.32, effective February 5, 2007.

See: 38 N.J.R. 4400(a), 39 N.J.R. 495(b).

In (a), deleted “of Consumer Affairs” following “Division”; rewrote (b); and added (c).

13:45-1.4 Practice where rules do not govern

(a) The Director may rescind, amend or expand these rules from time to time, provided the same is effected in accordance with the provisions of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(b) In any matter not expressly controlled by these rules or by statute, the Director shall exercise discretion.

As amended, R.1977 d. 93, eff. March 17, 1977.

See: 9 N.J.R. 184(a).

Amended by R.2007 d.32, effective February 5, 2007.

See: 38 N.J.R. 4400(a), 39 N.J.R. 495(b).

Substituted “Director” for “director” throughout.

SUBCHAPTER 2. JURISDICTION

13:45-2.1 Subject matter jurisdiction

(a) The jurisdiction of the Division shall extend to all sales or advertisements for the sale of merchandise or real estate, pursuant to the Act and to contested matters where the Director is authorized to proceed with administrative charges for violations of N.J.S.A. 34:8-43 et seq., 45:17A-18 et seq. or 45:14D-1 et seq.

(b) Nothing in this chapter shall be construed to preclude the Attorney General from pursuing violations of law in any other forum.

As amended, R.1977 d. 93, eff. March 17, 1977.

See: 9 N.J.R. 184(a).

Amended by R.2007 d.32, effective February 5, 2007.

See: 38 N.J.R. 4400(a), 39 N.J.R. 495(b).

Rewrote (a) and (b); and deleted (c) and (d).

13:45-2.2 Procedure where Division is without jurisdiction

Whenever it shall appear that the Division is without jurisdiction as defined in N.J.A.C. 13:45-2.1, the party making the consumer complaint shall be so advised, and where possible, the consumer complaint shall be referred to the appropriate local, State or Federal agency for further action.

Amended by R.2007 d.32, effective February 5, 2007.

See: 38 N.J.R. 4400(a), 39 N.J.R. 495(b).

Section was “Procedure where division is without jurisdiction”. Rewrote the section.