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STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

ORIGINAL

CALIFORNIA LIVING & ENERGY (a
division of William Lilly & Associates,
Inc.) and DUCT TESTERS, INC.,

Complainants,

vs.

MASCO CORPORATION and
ENERGYSENSE, INC.,

Respondents.

Docket Number 08-CRI-01

ANSWER OF RESPONDENTS MASCO
CORPORATION AND
ENERGYSENSE, INC. TO
COMPLAINT/REQUEST FOR
INVESTIGATION.

DOCKET
08-CRI-1
DATE _____
RECD. AUG 29 2008

Respondents Masco Corporation and EnergySense, Inc. (hereinafter referred to as "Masco" or "EnergySense," respectively, or "respondents") hereby respond to the complaints filed by California Living & Energy and Duct Testers, Inc. (hereinafter "complainants") as follows:

1. Respondents admit that EnergySense is a subsidiary of Masco Corporation, but deny that the relationship violates the relevant California Code of Regulations, including but not limited to Title 20, sections 1670-1673.

2. Respondents deny that Masco, EnergySense, and/or any other Masco subsidiary are in violation of California Code of Regulations, Title 20, sections 1670-1673 and Title 24, Chapter 7 of the ACM Manual.

3. Respondents deny that Masco and/or its subsidiaries violated the requirements of the 2005 Residential ACM Manual as alleged in part III, paragraphs A through F of the complaint filed by California Living & Energy (respondents understand that Duct Testers, Inc. has simply joined in the complaint filed by California Living & Energy; accordingly, respondents' answer does not specifically address the joinder letter filed by Duct Testers, Inc.).

To the extent not specifically admitted or denied above, respondents hereby deny each and every remaining material allegation alleged in the complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense:

The complainants are entitled to no relief under the facts alleged because the complaint fails to allege facts sufficient to constitute a cause of action.

Second Affirmative Defense:

The complaint is without merit because all of respondents' alleged actions were lawful and in full compliance with all applicable codes and statutes, including but not limited to California Code of Regulations, Title 20, Section 1673.

Specifically, to the extent EnergySense, Inc. has inspected and/or tested installation work performed by other Masco companies, it has done so within the parameters of the relevant statutes. Section 1673(i) requires a rater to be an "independent entit[y]" from the builder or contractor. An "independent entity" is defined as "having no financial interest in, and not advocating or recommending the use of any product or service as a means of gaining increased business with," a builder or subcontract installer. Cal. Code of Regs. § 1671. A "financial interest" is defined as "an ownership interest, debt agreement, or employer/employee relationship. . . ." Cal. Code of Regs. § 1671.

EnergySense has performed no inspection or testing work directly for Masco Corporation. Rather, EnergySense has inspected and tested installation work for builders through contracts it has entered into with separate Masco subsidiaries, Builder Services Group, Inc. ("BSG"), American National Services, Inc. ("ANS"), and Masco Contractor Services of California, Inc. ("MCS of CA"). Consistent with the terms of the relevant statutes, EnergySense has no financial interest in and operates independently of those Masco subsidiaries:

- There is no direct or indirect ownership or subsidiary relationship between EnergySense and BSG, ANS or MCS of CA.
- EnergySense has no debt agreements with BSG, ANS or MCS of CA.
- EnergySense shares no employees with BSG, ANS or MCS of CA.
- Although EnergySense, BSG, ANS and MCS of CA are fully owned by Masco Corporation, the parent company is a holding company that provides

administrative and high-level corporate governance support.

Moreover, the business relationship between EnergySense and the other Masco subsidiaries is governed by contract and not by Masco Corporation:

- The contracts EnergySense has entered into with BSG, ANS and MCS of CA establish EnergySense as an independent contractor.
- Under the terms of the contracts, EnergySense is accountable directly to the builders for the services it provides.
- The contracts between EnergySense and each of the other three Masco subsidiaries are not exclusive and provide that neither company is obligated to use the other.
- The contracts prohibit EnergySense from recommending or referring work to the other three Masco subsidiaries.

Finally, the thoroughness, accuracy and independence of the rating services performed by EnergySense are demonstrated and assured by:

- The EnergySense raters' accountability to HERS provider California Home Energy Efficiency Rating Services ("CHEERS") to maintain their individual certifications.
- Routine monitoring by CHEERS of the testing and inspection results of EnergySense's raters.
- The actions taken by EnergySense raters to reject installation work performed by other Masco subsidiaries that failed to meet Title 24 standards.

Third Affirmative Defense:

The complaint is without merit because the actions of the raters employed by EnergySense were lawful and in full compliance with all applicable codes and statutes, including but not limited to California Code of Regulations, Title 20, Section 1673. Consistent with the relevant statutes, the raters are independent entities from the builders and from contractors such as BSG, ANS or MCS of CA. The raters have no financial interest in the builders or contractors, including subcontractor installers, and do not advocate the use of any

product or service as a means of gaining increased business with a builder or contractor.

Fourth Affirmative Defense:

Respondents currently have insufficient knowledge or information on which to form a belief as to whether they may have additional, as yet unstated, defenses available. Respondents reserve the right to assert additional defenses in the event that they would be appropriate.

REQUEST FOR HEARING

Pursuant to Article IV, Title 20, Section 1234 of the California Code of Regulations, and in order to protect respondents' due process rights, respondents hereby request a hearing before the Commission of sufficient duration to allow respondents ample opportunity to present and cross-examine witnesses. In order to adequately prepare for the hearing, respondents respectfully request that the hearing commence on or after October 6, 2008. Respondents anticipate the hearing will last several days.

PRAYER FOR RELIEF

WHEREFORE, respondents pray that the Commission:

1. Deny complainants' complaint;
2. Dismiss the present action with prejudice; and
3. Grant such other and further relief as the Commission deems just and proper.

Dated: August ___, 2008

SONNENSCHN NATH & ROSENTHAL LLP

By 

IVOR E. SAMSON (State Bar No. 52767)
JESSICA WOELFEL (State Bar No. 226939)
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Attorneys for Respondents
MASC0 CORPORATION and
ENERGYSENSE, INC.

DECLARATION

I, DAVID R. BELL, declare as follows:

I have read the "Answer of Respondents Masco Corporation and EnergySense, Inc to Complaint/Request for Investigation" and know its contents. I declare to the best of my knowledge and under penalty of perjury to the truth and accuracy of all factual allegations contained in this Answer.

Date: 8/27/08

David R. Bell

David R. Bell

President, EnergySense Inc.

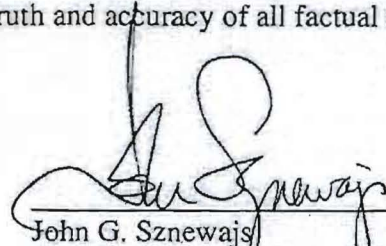
SONNENSCHEN NATH & ROSENTHAL LLP
525 MARKET STREET, 26TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105-2708
(415) 882-5000

DECLARATION

I, John G. Sznewajs, declare as follows:

I have read the "Answer of Respondents Masco Corporation and EnergySense, Inc to Complaint/Request for Investigation" and know its contents. I declare to the best of my knowledge and under penalty of perjury to the truth and accuracy of all factual allegations contained in this Answer.

Date: August 28, 2008



John G. Sznewajs
Vice President - Corporate Development,
Treasurer and Chief Financial Officer

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3 Testing Services (CalCERTS)
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5 Folsom, CA 95630

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6 Robert Scott
7 California Home Energy Efficiency
8 Rating System (CHEERS)
9 20422 Beach Boulevard
10 Huntington Beach, CA 92648

- 11 ☒ U.S. MAIL: I am personally and readily familiar with the business practice of
12 Sonnenschein Nath & Rosenthal for collection and processing of correspondence
13 for mailing with the United States Postal Service, pursuant to which mail placed for
14 collection at designated stations in the ordinary course of business is deposited the
15 same day, proper postage prepaid, with the United States Postal Service.
- 16 ☐ FACSIMILE TRANSMISSION: I caused such document to be sent by facsimile
17 transmission at the above-listed fax number for the party.
- 18 ☐ FEDERAL EXPRESS: I served the within document in a sealed Federal Express
19 envelope with delivery fees provided for and deposited in a facility regularly
20 maintained by Federal Express.
- 21 ☐ HAND DELIVERY: I caused such document to be served by hand delivery.

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct, and that this declaration was executed on August 28, 2008, at
24 San Francisco, California.

25 

DIANE VIVIAN DONNER

26 [27282008]