

IN THE MATTER OF

THE KORMAN CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-3155. Complaint, June 12, 1985—Decision, June 12, 1985

This consent order requires a Trevoze, Pa. homebuilder, developer and real estate manager, among other things, to cease representing that it will correct any problems due to faulty materials, workmanship or design, unless the firm corrects the problems within a reasonable time after being informed of the defect by the homeowner. The firm is also barred from failing to perform its warranty obligations within a reasonable period of time and remedy non-warranted problems that the company has represented that it will correct. Should a written warranty be offered in connection with the sale of a home, a notice has to be conspicuously displayed in sales offices advising that a free copy of the warranty is available upon request. All limitations on, disclaimers of, or exclusions from coverage under the written warranty would have to be clearly and conspicuously disclosed within both the warranty and each sales contract used by the firm. If homes are covered by a written warranty, the firm has to use a prescribed dispute settlement process to resolve warranty disputes, and provide a written description of that process to each home purchaser. The order additionally requires the company to provide repairs or reimbursements, in accordance with redress procedures set forth in the order, to eligible homeowners who bought their homes since Oct. 1, 1978 and still own those homes; and to maintain specified files for a period of three years.

Appearances

For the Commission: *James K. Leonard.*

For the respondent: *Steven A. Arbittier and Roberta D. Liebenberg, Wolf, Block, Schorr & Solis-Cohen, Philadelphia, Pa.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by such Act, the Federal Trade Commission, having reason to believe that The Korman Corporation, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The Korman Corporation is a corporation organized, existing and doing business under and by virtue of the

aws of the State of Pennsylvania with its principal place of business located at 2 Neshaminy Interplex, Trevoise, PA.

Respondent is now, and for some time past has been engaged, in the development of real estate; the construction of homes; the management of commercial and residential buildings; and the offering for sale and/or sale of these products and services to the public in the states of Pennsylvania and New Jersey. Gross revenues of respondent in 1981 were approximately \$40 million.

PAR. 2. In the course and conduct of its business, respondent has caused its property, goods and services to be offered for sale and sold in New Jersey, Pennsylvania and other states to purchasers and prospective purchasers located in New Jersey, Pennsylvania and other States of the United States by means of advertisements placed in newspapers of interstate commerce.

Respondent maintains and has maintained a substantial business, including the acts and practices as hereinafter set forth, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two are incorporated by reference.

PAR. 3. In the course and conduct of its business, respondent has been, directly or by implication, granting or disseminating certain warranties to purchasers of its homes.

1. Respondent has since 1976 provided purchasers with a written warranty under which it will repair, replace, or reimburse for:

a. Specific defects in the home's masonry, landscaping, driveways and walkways, water infiltration in the basement and crawl spaces, and excessive warping of structural members, doors, counter tops and vanities for a period of one year;

b. Specific defects in the roof and in any workmanship or prime materials in the electrical, heating, cooling and plumbing systems for a period of two years; and

c. Major construction defects, as defined in respondent's warranty, for a period of ten years.

2. Respondent has since 1972, by force of Pennsylvania common law, warranted that its new homes in Pennsylvania are fit for habitation.

3. Respondent has since 1979, by force of New Jersey statutory law, warranted that its new homes in New Jersey are:

- a. Free from defects caused by faulty workmanship and defective materials for one year after purchase;
- b. Free from defects caused by faulty installation of plumbing, electrical, heating and cooling delivery systems for two years after purchase; and
- c. Free from major construction defects for ten years after purchase.

PAR. 4. By and through the granting and dissemination of the warranties described in Paragraph Three, respondent has represented, directly or by implication, that:

- 1. Respondent will correct all defects covered by its written warranty within a reasonable time after it receives notice of the defects.
- 2. Respondent will correct all defects covered by the warranties under Pennsylvania State law within a reasonable time after it receives notice of the defects.
- 3. Respondent will correct all defects covered by the warranties under New Jersey State law within a reasonable time after it receives notice of the defects.

PAR. 5. In truth and in fact, respondent has not performed its obligations under the warranties described in Paragraph Three.

1. Respondent has frequently failed to correct defects covered by the warranties described in Paragraph Three. Typical and illustrative of the uncorrected defects are:

- a. Excessive ponding and severe washouts in yards due to insufficient and/or improper grading for water drainage;
- b. Basement water leakage due to improper grading, failure to install foundation drainage tile, failure to properly patch foundation form tie holes, and/or failure to provide drainage in areaways adjacent to basement windows and doors;
- c. Basement foundation cracks due to poor ground preparation and/or excessively wet concrete;
- d. Roof leaks due to faulty workmanship, lack of flashing and counter flashing materials at roof intersections, and/or improper installation of roofing felts, plywood roof sheathing or shingles;
- e. Roof depressions due to undersized and/or improperly installed roof rafters;
- f. Bellied or buckled walls due to undersized or overspaced wall studs, resulting in inadequate support for the floor construction plus the roof load;
- g. Inadequate heating due to undersized heating plants and/or a lack of, or improperly located, heating vents or return registers;
- h. Frozen water pipes due to a lack of insulation and/or the improper placement of insulation in exterior walls;

- i. Cracked concrete driveways and garage floor slabs and cracked and pitted asphalt driveways due to improper ground preparation and/or a lack of correctly located expansion and control joints; and
- j. Spalling and pitting of sidewalks and flat concrete surfaces due to improper ground preparation and/or the use of unclean materials.

2. Where respondent has corrected defects covered by the warranties described in Paragraph Three, purchasers have frequently encountered long delays, often exceeding five months, from the time respondent received notice of the defect to the time respondent corrected the defect.

PAR. 6. Respondent's failure to perform its obligations under the warranties described in Paragraph Three has caused and causes substantial injury to consumers which they could not have reasonably avoided.

PAR. 7. Therefore, the statements, representations, acts and practices alleged in Paragraphs Three, Four and Five were and are unfair, in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Five are incorporated by reference.

PAR. 8. The statements, representations, acts and practices alleged in Paragraphs Three and Four, directly or by implication, have had, and now have, the capacity and tendency to mislead the public and were, and now are, to the prejudice and injury of the public.

PAR. 9. Respondent continued to grant or disseminate the warranties described in Paragraph Three to purchasers of its homes even though respondent knew or should have known of its failure to perform warranty obligations with respect to past purchasers' homes.

PAR. 10. Therefore, the statements, representations, acts and practices alleged in Paragraphs Three and Four were and are deceptive, in violation of Section 5 of the Federal Trade Commission Act.

COUNT III

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two and Three (1.) are incorporated by reference.

PAR. 11. In its written warranty respondent has further warranted that it will correct the following defects if notified by means of a registered letter within three days ("three-day letter") after settle-

1. Significant defects in the appearance of interior and exterior finished surfaces, or in lighting fixtures.
2. Chipping of porcelain, tile, vitreous china, laminated plastic, counter and vanity tops.
3. Broken glass, light covers and mirrors.
4. Loose screws, nuts and bolts.
5. Missing items.

PAR. 12. By and through the granting and dissemination of its written warranty, respondent has represented that it will correct the defects listed in Paragraph Eleven within a reasonable time after it receives notice of the defects in a three-day letter.

PAR. 13. In truth and in fact, respondent has not performed its obligations with respect to items listed by purchasers in their three-day letters.

1. Respondent has frequently failed to correct listed defects.
2. Respondent has frequently failed to furnish missing items listed.
3. Respondent has frequently failed to replace defective items listed.
4. Where respondent has corrected, furnished, or replaced items listed, purchasers have frequently encountered long delays, often exceeding five months, from the time respondent received the three-day letter to the time respondent corrected the item.

PAR. 14. Respondent's failure to perform its obligations under the three-day letter has caused and causes substantial injury to consumers which they could not have reasonably avoided.

PAR. 15. Therefore, the statements, representations, acts and practices alleged in Paragraphs Eleven, Twelve and Thirteen were and are unfair, in violation of Section 5 of the Federal Trade Commission Act.

COUNT IV

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, Three (1.), Eleven, Twelve and Thirteen are incorporated by reference.

PAR. 16. The statements, representations, acts and practices alleged in Paragraphs Eleven and Twelve, directly or by implication, have had, and now have, the capacity and tendency to mislead the public and were, and now are, to the prejudice and injury of the public.

PAR. 17. Respondent continued to grant or disseminate the written warranty described in Paragraphs Three (1.) and Eleven to purchasers of its homes even though respondent knew or should have known of its failure to perform its obligations with respect to items listed by past purchasers in their three-day letters.

PAR. 18. Therefore, the statements, representations, acts and prac-

tices alleged in Paragraphs Eleven and Twelve were and are deceptive, in violation of Section 5 of the Federal Trade Commission Act.

COUNT V

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two are incorporated by reference.

PAR. 19. In the course and conduct of its business, respondent has provided purchasers with an opportunity to inspect its homes approximately three days before and approximately thirty days after settlement while accompanied by respondent's representative and to have all readily apparent defects or incomplete items listed on a "Pre-/Post-Settlement Inspection Report" or other inspection report provided by respondent.

PAR. 20. Respondent has represented, directly or by implication, that it will correct or complete all listed items within a reasonable time after the post-settlement inspection.

PAR. 21. In truth and in fact, respondent has not performed its obligations with respect to listed items.

1. Respondent has frequently failed to correct defects listed. Typical and illustrative of the uncorrected defects are the following: uneven or bulging floors; buckling or poorly installed carpeting; severely cracked drywall surfaces; damages or defective shingles or siding; and improperly installed or poorly fitted windows and doors.

2. Respondent has frequently failed to complete all incomplete items listed. Typical and illustrative of the incomplete items are the following: missing insulation; missing doors, screens and storm windows; unfinished driveways; missing tile or fixtures; and missing gutters, downspouts or splash blocks.

3. Where respondent has corrected or completed listed items, purchasers have frequently encountered long delays, often exceeding five months, from the time of the post-settlement inspection to the time respondent corrected or completed the item.

PAR. 22. Respondent's failure to perform its obligations with respect to items listed on the Pre-/Post-Settlement Inspection Report or other inspection report has caused and causes substantial injury to consumers which they could not have reasonably avoided.

PAR. 23. Therefore, the statements, representations, acts and practices alleged in Paragraphs Nineteen, Twenty and Twenty-One were and are unfair, in violation of Section 5 of the Federal Trade Commission Act.

COUNT VI

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, Nineteen, Twenty and Twenty-One are incorporated by reference.

PAR. 24. The statements, representations, acts and practices alleged in Paragraphs Nineteen and Twenty, directly or by implication, have had, and now have, the capacity and tendency to mislead the public and were, and now are, to the prejudice and injury of the public.

PAR. 25. Respondent continued to use the inspection procedure described in Paragraph Nineteen even though respondent knew or should have known of its failure to perform its obligations to past purchasers with respect to items listed on the Pre-/Post-Settlement Inspection Report or other inspection report.

PAR. 26. Therefore, the statements, representations, acts and practices alleged in Paragraphs Nineteen and Twenty were and are deceptive, in violation of Section 5 of the Federal Trade Commission Act.

The acts and practices of respondent alleged in Counts I through VI are continuing and will continue in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondent The Korman Corporation, and respondent having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

Respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the

procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent The Korman Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 2 Neshaminy Interplex, in the City of Trevose, State of Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent, and the proceeding is in the public interest.

ORDER

For purposes of this order and all appendices attached hereto, the following definitions shall apply:

1. *Korman* shall mean respondent The Korman Corporation and its successors and assigns.

2. *Home* shall mean a new single-family residential unit in the United States which is a detached structure or an attached or semi-attached townhouse or twin unit and which is offered for sale or is sold to the general public by Korman.

3. A *specific problem* shall mean any single problem or any set of problems resulting from the same cause and involving the same component(s) or defect(s). For example, two or more leaking windows caused by improper installation shall be deemed a *specific problem*.

I.

It is ordered, That respondent The Korman Corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the construction, advertising, offering for sale, or sale of any home in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Representing, directly or by implication, that Korman will correct or otherwise remedy any problem due to faulty materials, workmanship or design unless Korman does, in fact, correct or otherwise remedy such problem within a reasonable time after the homeowner

may specify the method(s) that a homeowner must use to so notify Korman.

B. Failing to perform any warranty obligation, including correction of any problem inadequately repaired by Korman, within a reasonable time after the homeowner has made a request for warranty work; *provided, however*, that Korman may specify in its warranty the method(s) that a homeowner must use to make such a request, and *provided further*, that nothing herein shall preclude Korman from denying or contesting in good faith a warranty claim reasonably believed to be without merit, or in such cases from invoking any rights provided by law.

C. Failing, when Korman represents, directly or by implication, that it will correct or otherwise remedy any problem not covered by a warranty, to correct or otherwise remedy such problem within a reasonable time after the homeowner has notified Korman of the problem; *provided, however*, that Korman may specify the method(s) that a homeowner must use to so notify Korman.

II.

It is further ordered, That, in connection with any offering for sale of a home for which Korman provides a written warranty, Korman shall:

A. Clearly and conspicuously display in each sales office a notice that a copy of the warranty may be obtained free of charge upon request.

B. Provide a copy of the warranty to each prospective purchaser upon request.

C. Provide a copy of the warranty to each purchaser before or at the time of execution of the sales contract for the home.

D. Disclose clearly and conspicuously within the warranty and within each sales contract used by Korman any limitations on, disclaimers of, or exclusions from coverage under the written warranty or under any warranty under state law; *provided, however*, that Korman shall not make any representation, written or oral, concerning any such limitation, disclaimer or exclusion where such limitation, disclaimer or exclusion is prohibited by state or federal law.

III.

It is further ordered, That, in connection with any sale after the date of service of this Order of a home for which Korman provides a written warranty, Korman shall use a dispute settlement process

conforming to Appendix A of this order to handle disputes concerning Korman's performance under the warranty and shall provide each purchaser with a written description of such dispute settlement process before or at the time of execution of the sales contract for the home; *provided, however*, that nothing herein shall prohibit Korman from using a form of sales contract which clearly and conspicuously provides that the homeowner agrees to resort to such dispute settlement process before pursuing any other remedy provided by law.

IV.

It is further ordered, That if after the date of service of this order Korman denies a request for warranty work Korman shall, within forty-five (45) days after receipt of the request, provide the homeowner with a detailed written statement of reasons for the denial, together with notice of the homeowner's right to submit any warranty dispute to a dispute settlement process conforming to Appendix A of this order and with notice that at the homeowner's request Korman will send the homeowner a written description of such process and the form(s) needed to initiate such process; *provided, however*, that Korman shall not be deemed to have denied a request for warranty work if it informs a homeowner who has made an oral complaint that a complaint must be made in writing.

V.

It is further ordered, That, for each homeowner who purchased a home from Korman from October 1, 1978, to the date of service of this order and who is still an owner of that home as of the date of service of this order, Korman shall establish and abide by redress procedures conforming to Appendix B of this order for any claim relating to the pre- or post-settlement inspection of such homeowner's home or made by such homeowner under Korman's written warranty, *provided*, that:

A. In the case of a claim relating to a pre- or post-settlement inspection, the problem had been listed on the Pre-/Post-Settlement Inspection Report or other inspection report at the time of the pre- or post-settlement inspection; or in the case of a warranty claim, the homeowner made the claim to Korman within the time period required by the warranty and there is credible written evidence in Korman's or the homeowner's possession to establish that the claim was then made; *provided, however*, that a record of a telephone mes-

sage in Korman's possession shall not by itself establish that the claim was then made;

B. The claim has not been satisfied, and the value of the unsatisfied claim relating to a specific problem is established by credible written evidence to be \$500 or more, measured:

1. For repairs already made, by the homeowner's out-of-pocket expenses to make the repairs or have them made; and
2. For repairs not yet made, by the estimated cost of repair by a contractor; and

C. In the case where the homeowner has modified the home in a manner that substantially increases the cost of repairing or otherwise correcting a problem, Korman shall not be required to bear the increase in cost of repair or correction resulting from the modification.

VI.

It is further ordered, That Korman shall maintain the following records and shall make such records available to the Commission for inspection and copying upon reasonable notice:

A. For three years after the date of service of this order, all documents related to requests for redress under Part V of this order, including action taken in response thereto; and

B. For three years after the sale of any home, all documents relating to any such home and to:

1. Korman's issuance of a written warranty to any purchaser;
2. Any request for warranty work, including action taken in response thereto; and
3. Any dispute handled under the dispute settlement process required by Part III of this order.

VII.

It is further ordered, That Korman shall notify the Commission at least thirty (30) days before any proposed change in Korman's corporate status, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

VIII.

It is further ordered, That Korman shall, within thirty (30) days of the date of service of this order, distribute a copy of this order to (a) each of Korman's operating subsidiaries and divisions, and (b) each officer and supervisory employee of Korman and of said subsidiaries and divisions who is engaged in the construction, advertising, offering for sale, or sale of any home or in customer service related to any home sold by Korman.

IX.

It is further ordered, That within ninety (90) days after the date of service of this order, and again within ninety (90) days after the completion of Korman's obligations under Part V of this order or within two years after the date of service of this order, whichever comes first, Korman shall file with the Commission a report, in writing, setting forth in detail the manner in which it has complied with this order.

X.

It is further ordered, That all provisions of this order except Part I shall expire ten (10) years after the date of service of this order.

APPENDIX A

Dispute Settlement Process

The dispute settlement process required by this order shall include the following:

1. The process shall be organized and staffed to ensure the fair and timely disposition of all disputes.
2. The process shall be available to homeowners for a filing fee of up to \$75 during the three years after the date of service of this order, a fee of up to \$100 during the fourth through sixth years after the date of service of this order, and a fee of up to \$125 thereafter. One filing fee shall cover multiple disputes that are filed simultaneously. The filing fee shall be refunded if each dispute filed under the fee is settled before a hearing is held under Paragraph 6 below.
3. After a homeowner files a dispute, written acknowledgement of the filing shall be sent to the homeowner.
4. The process shall use an independent Dispute Settler who is knowledgeable about home construction.
5. The Dispute Settler shall:
 - (a) Be bound by the provisions of Korman's written warranty and any express or implied warranties arising from state law and
 - (b) Use a consistent set of standards, such as the Home Owners Warranty Program

Quality Standards, relevant provisions of the building code in the jurisdiction in which the home is located, and other relevant information to interpret the warranty provisions.

6. Unless otherwise agreed to by the homeowner and Korman, the Dispute Settler shall hold a hearing and render a decision in writing within sixty (60) days after the dispute is filed or, if Korman is a participant in an informal dispute settlement procedure for which the Commission has granted an exemption to the 40-day requirement in 16 C.F.R. 703.5(d), within the time period established by such exemption, whichever is longer. The decision shall determine:

(a) What corrective action, if any, Korman shall take in response to the homeowner's warranty claim(s); and

(b) The time allowed after Korman receives the homeowner's acceptance of a decision for Korman to perform such corrective action or otherwise settle the dispute.

A copy of the decision shall be mailed to the homeowner within one week after the Dispute Settler renders the decision. If the homeowner is required by the sales contract to resort to this dispute settlement procedure before pursuing any other remedy provided by law, he/she will be deemed to have fulfilled that requirement if a decision is not rendered within the required time period.

7. The Dispute Settler's decision shall be binding on both Korman and the homeowner if the homeowner accepts the decision. If the homeowner rejects the decision, he/she shall have the right to pursue any other legal remedies available. At the time the homeowner receives a copy of the decision, he/she shall be provided with a form enabling him/her to accept the decision, along with notice that if the homeowner does not accept the decision by signing and returning it to Korman within forty-five (45) days of receiving a copy of the decision and the aforesaid form, the homeowner shall be deemed to have rejected the decision, and Korman shall be under no obligation to comply with the decision.

8. If the homeowner accepts the decision, Korman shall comply with the decision.

APPENDIX B

Redress Procedures

The redress procedures required by this order shall include the following:

1. Within sixty (60) days after the date of service of this order, Korman shall send by postage-paid first-class mail addressed to the original owner(s) of any home sold by Korman from October 1, 1978, to the date of service of this order a letter identical in content to that in Appendix C together with a copy of the written warranty for such home and claim forms identical in content to those in Appendix D; *provided, however*, that Korman is not required to make such a mailing to any home which Korman knows is no longer owned, in whole or in part, by any person who purchased the home from Korman.

2. Within sixty (60) days after the date of the mailing required by Paragraph 1, the homeowner shall mail or deliver a claim to Korman or forfeit any right to repairs or reimbursement under this order.

3. Within sixty (60) days after receipt of any claim for redress, Korman shall provide the homeowner with a written description of the dispute settlement process required by Paragraph 5 of this Appendix and with the form(s) needed to initiate such process and shall respond in writing to the homeowner by either:

(a) Offering to settle the claim within a stated time by performing specified remedial measures and/or paying an amount of money, and at the same time informing the homeowner of his/her right to accept or reject the offer, along with notice that:

(i) If the homeowner accepts the offer, he/she has the right to submit any dispute over Korman's performance under the offer to the dispute settlement process; and

(ii) If the homeowner rejects the offer, he/she has the right to submit the disputed claim to the dispute settlement process; or

(b) Denying the claim and at the same time giving the homeowner a detailed written statement of reasons for the denial, along with notice that the homeowner has the right to submit the denied claim to the dispute settlement process.

4. If the homeowner accepts the offered remedy, Korman shall perform the remedy within the time promised.

5. The dispute settlement process shall include the following:

(a) The process shall be organized and staffed to ensure the fair and timely disposition of all disputes.

(b) The process shall be available to homeowners for a filing fee of up to \$75. One filing fee shall cover multiple disputes that are filed simultaneously. The filing fee shall be refunded if a decision rendered under subparagraph (f) below includes an award of reimbursement of the filing fee.

(c) After a homeowner files a dispute, written acknowledgement of the filing shall be sent to the homeowner.

(d) The process shall use an independent Dispute Settler who is knowledgeable about home construction.

(e) To decide warranty claims and to decide claims relating to a pre- or post-settlement inspection, the Dispute Settler shall:

(i) Be bound by the provisions of Korman's written warranty, the relevant pre- or post-settlement inspection report, and any express or implied warranties arising from state law and

(ii) Use a consistent set of standards, such as the Home Owners Warranty Program Quality Standards, relevant provisions of the building code in the jurisdiction in which the home is located, and other relevant information to interpret the warranty provisions and the pre- or post-settlement inspection report.

(f) Unless otherwise agreed to by the homeowner and Korman, the Dispute Settler shall hold a hearing and render a decision in writing within sixty (60) days after the dispute is filed. The decision shall:

(i) Include reimbursement of the filing fee unless the arbitrator determines that each of the homeowner's claims was not substantially justified;

(ii) Determine what corrective action, if any, Korman shall take in response to the homeowner's warranty claim(s) or claim(s) relating to a pre- or post-settlement inspection; and

(iii) Determine the time allowed after Korman receives the homeowner's acceptance of a decision for Korman to perform such corrective action or otherwise settle the dispute.

A copy of the decision shall be mailed to the homeowner within one week after the Dispute Settler renders the decision.

(g) The Dispute Settler's decision shall be binding on both Korman and the homeowner if the homeowner accepts the decision. At the time the homeowner receives a copy of the decision, he/she shall be provided with a form enabling him/her to accept the decision, along with notice that:

(i) If the homeowner accepts the decision, both he/she and Korman shall be bound by the decision, and the homeowner shall have the right to submit any dispute over the actual performance of the decision to the dispute settlement process at no cost to the homeowner; *provided, however*, that the homeowner's submission of such dispute must be made within sixty (60) days after Korman's performance of the decision;

(ii) If the homeowner does not accept the decision, neither he/she nor Korman shall be bound by the decision, and the homeowner shall have the right to pursue any other legal remedies available; and

(iii) If the homeowner does not accept the decision by signing and returning it to Korman within forty-five (45) days of receiving a copy of the decision and the aforesaid form, the homeowner shall be deemed to have rejected the decision, and Korman shall be under no obligation to comply with the decision.

(h) If the homeowner accepts the decision, Korman shall comply with the decision.

APPENDIX C

Redress Letter

Dear Korman Homeowner:

This letter is to notify you that you may be entitled to have certain repairs made to your home at no cost to you. You may also qualify for reimbursement of money you have already spent repairing your home. Korman is doing this because of an agreement with the Federal Trade Commission and our desire to make you, the Korman homeowner, a comfortable and satisfied homeowner.

If you purchased your home from us on or after October 1, 1978, and if you were still the owner on (date of service of the order), you may be entitled to certain repairs or reimbursement for claims you made under Korman's written warranty or for items listed during the pre- or post- settlement inspection of your home. A copy of the warranty is enclosed.

For a warranty claim to be eligible for repairs or reimbursement, it must be a claim covered by the warranty and there must be credible written evidence that you made the claim within the time period required by the warranty. A claim related to a pre- or post-settlement inspection must be for a problem that was listed on your inspection report.

A claim is eligible for repair or reimbursement only if the claim relates to a specific problem and the value of the claim is \$500 or more. A "specific problem" is any single problem or a set of problems resulting from the same cause and involving the same component(s) or defect(s). For example, two or more leaking windows caused by improper installation would be a "specific problem." To determine whether a claim meets the \$500 requirement, you can measure the value of the claim like this:

For repairs which have already been done, the value of a claim is measured by your out-of-pocket expenses to make the repairs or have them made. You must have written evidence (cancelled checks, receipts, etc.) of your out-of-pocket expenses and must submit this evidence with your claim.

For repairs which have not yet been done, the value of a claim is measured by the

estimated cost of repair by a contractor. The contractor's estimate must be in writing and must be detailed enough to show how the estimate was calculated. You must submit the estimate with your claim.

Please note that if you have modified the part of your home affected by a problem, and if you made the modification in a manner that substantially increases the cost of repairing the problem, we will not bear the increase in repair cost resulting from the modification. For example, if you finished your basement and thus covered up a problem, we are not responsible for the cost of refinishing your basement after our repair work.

The eligibility requirements for warranty claims and for claims related to your pre- or post-settlement inspection are summarized below.

Warranty Claims

You are eligible for repairs or reimbursement under the warranty if all of the following are true:

1. You experienced a problem that was covered by the warranty. See the enclosed warranty for a description of covered problems.
2. You or Korman has credible written evidence that you made a claim concerning the problem within the time period required by the warranty. If you do not have a copy of a letter or some other record showing that you made a claim, we will check our customer files for any record of your complaint about the problem. If our files contain, for example, a letter from you or a Korman work order authorizing repair of the problem, this would show that you made a warranty claim. But a phone message in our files will not by itself establish that you made a claim.
3. The value of a claim related to a specific problem is \$500 or more.
4. Korman did not repair the problem or inadequately repaired the problem. Repair is considered to be inadequate if it failed to meet industry standards.

Claims Related to the Pre- or Post-Settlement Inspection

You are eligible for repairs or reimbursement for this type of claim if all of the following are true:

1. The problem was listed on your "Pre-/Post-Inspection Report" or other inspection report. If you do not have a copy of your inspection report, we will check our files for it.
2. The value of a claim related to a specific problem is \$500 or more.
3. Korman did not repair the problem or inadequately repaired the problem. Repair is considered to be inadequate if it failed to meet industry standards.

WHAT YOU MUST DO

If you think you are eligible for repairs or reimbursement, please fill out the enclosed "Claim Form" and mail it in the enclosed pre-addressed envelope to:

(Name)
The Korman Corporation
2 Neshaminy Interplex
Trevose, PA 19407

You must mail or deliver this claim form to us by (60 days from the mailing date of this

letter). If you miss this deadline, you will not be eligible for repairs or reimbursement. Remember to keep a copy of your claim and a record of the date you mail it, just in case your claim gets lost in the mail.

Korman will review your claim(s) in accordance with industry standards for home-builders. Within 60 days of receiving your letter we will tell you whether we will honor your claim. If we dispute any part of your claim, we will tell you why. If you are not satisfied with what we offer you as a repair or reimbursement, you will have the right to take the dispute to an impartial arbitrator. We will explain the details of the arbitration program when we reply to your claim.

If you have any questions about this repair and reimbursement program, call (name of Korman representative) at (phone number) between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday.

Very truly yours,

The Korman Corporation

Enclosures: Copy of your warranty
Claim forms
Self-addressed envelope

APPENDIX D

Claim Form

This claim form must be mailed or delivered to us by (60 days from the mailing date of the letter of notification). If you miss this deadline, you will not be eligible for repairs or reimbursement.

Today's date _____

I. HOMEOWNER INFORMATION

Name(s) of Homeowner(s) _____

Telephone (Home) _____

(Work) _____

Mailing Address _____

(Street)

(City) (State) (Zip Code)

II. ADDRESS OF KORMAN HOME

The address of my (our) Korman home is:

(Street)

(City) (State) (Zip Code)

(Name of Subdivision)

III. ELIGIBILITY TO SUBMIT A CLAIM

A. I (we) bought my (our) home:

MARK ONE () From Korman

() From another party

NOTE: To be eligible for repairs or reimbursement, you must have bought *directly* from Korman.

B. The date of settlement/closing on my (our) Korman home was:

(Enter date you took title)NOTE: To be eligible for repairs or reimbursement, you must have bought your home *on or after October 1, 1978*.

C. On (date of service of the Order):

MARK ONE () I was (we were) the owner of this Korman home.

() I was (we were) no longer the owner of the Korman home.

NOTE: To be eligible for repairs or reimbursement, you must have been the owner as of (date of service of the Order).

IV. WARRANTY CLAIMS*Instructions*

- List each problem separately, using additional sheets of paper if necessary.
- Remember that each problem must have a value of \$500 or more.
- Describe in detail the nature of each problem.
- Attach a copy (*not* originals) of any written evidence you have that shows you made a claim concerning the problem within the time period required by the warranty. This can be a copy of a letter or any other record showing that you notified us about the problem. If you do not have written evidence that you made a warranty claim about a problem, we will check our customer files to see if we have any record showing that you made a claim within the warranty time period. A telephone message in our files will not by itself establish that you made a timely warranty claim. *If there is no other written evidence in either our possession or yours that you made a timely claim, we can deny your claim for a problem.*
- If you are requesting repair of a problem, describe the repair below and attach a copy (*not* the original) of a contractor's estimate of the cost of repair. The contractor's estimate must be detailed enough to show how the estimate was calculated.
- If you are requesting reimbursement of money you spent for repairs, describe the repairs and your expenses below and attach a copy (*not* originals) of cancelled checks or receipts showing that you paid for repairs. Also attach a copy (*not* originals) of any other document(s) showing what repairs were made and what you paid for them.

Claim(s) for repairs or reimbursement under the warranty

I (we) request The Korman Corporation to make repairs or reimbursement under the warranty for the following problem(s):

[Describe the repairs which you request and/or the repairs and expenses for which you request reimbursement]

V. CLAIMS RELATED TO THE PRE-SETTLEMENT OR POST-SETTLEMENT INSPECTION

Instructions

- List each problem separately, using additional sheets of paper if necessary.
- Remember that each problem must have a value of \$500 or more.
- Describe in detail the nature of each problem.
- Attach a copy (*not* originals) of your "Pre-/Post-Settlement Inspection Report" or other inspection report. If you do not have your inspection report, we will look for it in our files. If a problem was not listed on the inspection report, it is *not* eligible for repair or reimbursement.
- If you are requesting repair of a problem, describe the repair below and attach a copy (*not* the original) of a contractor's estimate of the cost of repair. The contractor's estimate must be detailed enough to show how the estimate was calculated.
- If you are requesting reimbursement of money you spent for repairs, describe the repairs and your expenses below and attach a copy (*not* originals) of cancelled checks or receipts showing that you paid for repairs. Also attach a copy (*not* originals) of any other document(s) showing what repairs were made and what you paid for them.

Claim(s) for repairs or reimbursement under the pre- or post-settlement inspection

I (we) request The Korman Corporation to make repairs or reimbursement for the following problem(s) related to the pre- or post-settlement inspection:

[Describe the repairs which you request and/or the repairs and expenses for which you request reimbursement]

IN THE MATTER OF

CRAFTMATIC/CONTOUR ORGANIZATION, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF THE
FEDERAL TRADE COMMISSION ACT AND THE MAGNUSON-MOSS
WARRANTY—FEDERAL TRADE COMMISSION IMPROVEMENT ACT*Docket C-3156. Complaint, June 13, 1985—Decision, June 13, 1985*

This consent order requires two Trevo, Pa. sellers of electric adjustable beds and their individual owner, among other things, to cease denying responsibility of their written warranties; failing to fully and promptly honor valid warranty claims; and failing to disclose relevant information concerning any other guarantor. The firms are required to clearly and prominently disclose in advertisements and promotional materials offering any product warranty, either the nature and extent of all material limitations and exclusions of the warranty (including any requirement that consumers seeking to obtain warranty performance are obliged to arrange for shipping and/or pay shipping charges) or a statement advising that the warranty contains major limitations and exclusions and should be consulted by the prospective buyer prior to purchase. The order also bars the companies from disseminating to their door-to-door sellers written promotional materials that do not contain copies of all written warranties offered and disclose to prospective buyers that the sales representative has copies of such warranties available for the consumer's inspection. The companies are further required to comply fully with the Pre-Sale Availability Rule; maintain specified records concerning warranty performance for a period of four years; and provide their current distributors and retailers with a copy of the order and the attached notice.

Appearances

For the Commission: *Rachel Miller.*

For the respondents: *Charles B. Chernofsky, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, amended, and of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act ("Warranty Act") and the implementing Rules promulgated under the Warranty Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Craftmatic/Contour Organization, Inc., Craftmatic Comfort Mfg. Corp., corporations, and Stanley Kraft, individually and as an officer and director of said corporations, respondents") have violated the provisions of those Acts and implementing Rules, and it appearing to the Commission that a proceeding