

**CITY OF NEW YORK  
DEPARTMENT OF CONSUMER AFFAIRS**

**JOSHUA DANIEL**

**-and-**

**THE DEPARTMENT OF CONSUMER  
AFFAIRS,**

**Complainants,**

**-against-**

**AFTAB UDDIN d/b/a S A CONSTRUCTION**

**-and-**

**AFTAB UDDIN,**

**Respondent.**

**DECISION AND ORDER**

**Violation No(s):**

**CD500099897**

**DD500099897**

**License No(s):**

**0971267 (HIC)**

**0971268 (HIS)**

**Date: March 3, 2010**

A hearing was held on August 5, 2009, September 24, 2009, November 12, 2009 and January 14, 2010.<sup>1</sup>

Appearances: For the Complainant: Joshua Daniel (all dates) Philip J. Kaplan, Esq. (all dates); John Joshua, witness (September 24, 2009 only); Ismail ("Miles") Cekic, witness (November 2, 2009 only). For the Respondent: Aftab Uddin (all dates); Peter Mollo, Esq. (August 5, 2009, September 24, 2009 and November 12, 2009 only); Mohammad Mominullah, witness (September 24, 2009 only). Language Line Bengali Interpreter # 6372 (January 14, 2010 only).

The Notice of Hearing charged the Respondents with violating the following:

1. **Administrative Code of the City of New York ("Administrative Code") §20-101** for failing to maintain the standards of integrity, honesty, and fair dealing required of licensees.

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<sup>1</sup> The record was left open until January 22, 2010 for the consumer to submit additional documentation, and until January 29, 2010 for the respondent to respond. Both did so within the allotted time period.

2. **Administrative Code §20-700 and Title 6 of the Rules of the City of New York (“6 RCNY”) §1-12** by engaging in a deceptive or unconscionable trade practice by promising to complete the contracted work and failing to do so.
3. **Administrative Code §20-393(11)** by failing to perform and complete work under a home improvement contract in a skillful and competent manner.
4. **6 RCNY §2-221(a)(1)** by failing to include in the contract the contractor’s license number and the salesperson’s license number.
5. **6 RCNY §2-221(a)(2)** by failing to include in the contract the approximate dates, or estimated dates, when the work will begin and be substantially completed, including a statement of any contingencies that would materially change the approximate or estimated completion date, and a specification whether or not the contractor and the owner have determined a definite completion date to be of the essence.
6. **6 RCNY §2-221(a)(3)** by failing to include in the contract the materials to be provided to the owner, including make, model number or any other identifying information, and the agreed upon consideration for the materials.
7. **6 RCNY §2-221(a)(4)** by failing to include in the contract a notice to the owner purchasing the home improvement that the contractor or subcontractor who performs on the contract and is not paid may have a claim against the owner which may be enforced against the property in accordance with the applicable lien laws.
8. **6 RCNY §2-221(a)(5)** by failing to include in the contract a notice to the owner purchasing the home improvement that the home improvement contractor is legally required to deposit all payments received prior to completion in accordance with subdivision four of §71-a of the New York State Lien Law and that, in lieu of such deposit, the home improvement contractor may post a bond or contract of indemnity with the owner guaranteeing the return or proper application of such payments to the purpose of the Contract.

9. **6 RCNY § 2-221(a)(6)** by failing to provide for materials to be purchased, or expenses for which the contractor would be obligated at the time of progress payments.
10. **6 RCNY §2-221(a)(8)** by failing to include in the contract a clause wherein the contractor agrees to furnish the buyer with a Certificate of Workers' Compensation Insurance prior to commencement of work pursuant to the contract.
11. **6 RCNY §2-221(a)(9)** by failing to include in the contract a clause wherein the contractor agrees to procure all permits required by local law.
12. **6 RCNY §2-221(a)(10)** by failing to include in the Contract, in immediate proximity to the space reserved for the signature of the buyer and in bold face type of a minimum size of 10 points, a statement that the buyer has the right to cancel the transaction at any time prior to midnight of the third business day after the date of the transaction.
13. **6 RCNY §2-221(b)** by failing to furnish to the buyer at the time he or she signs the home improvement contract, a separate, completed Notice of Cancellation form, in duplicate and attached to the contract, in form and substance as required by this rule.
14. **6 RCNY §2-221(d)** by failing to orally inform the buyer, at the time he signed the contract of his right to cancel the contract.
15. **6 RCNY §2-223(a)** by failing to secure or see to the securing of a certificate of occupancy.
16. **6 RCNY §1-05** by failing to clearly identify the Home Improvement Contractor and/or Salesperson license number as a New York City Department of Consumer Affairs license number on all advertising, letterhead, receipts or other printed matter of the licensee, and/or by failing to disclose or disseminate the license number in a lawful manner.
17. **6 RCNY §1-13** by failing to respond in writing to the Department about any complaint sent to the respondent(s) by the Department within twenty days of the date that the complaint was sent to the respondent(s).

Based on the evidence in the record, I **RECOMMEND** the following:

## **Findings of Fact**

On July 14, 2005, the consumer Joshua Daniel entered into a written contract with respondent Aftab Uddin d/b/a S.A. Construction for home improvements to be performed on his residential property located at 344 Elvin Street, Staten Island, NY in exchange for \$142,000. The contract provided for a \$80,000 deposit, \$31,000 on delivery of construction materials, and \$31,000 on completion.

The contract provided for the following work:

1. Existing one floor house has to be two floor house by renovation. Existing first floor kitchen & living room has to be demo late [sic] & build a new living & kitchen room.
2. All interior wall & ceiling of first floor has to be removed & build a new wall with ceiling with plaster & painting.
3. All plumbing & electric picture [sic], kitchen cabinet & all kind of door & window with lack [sic] will be regular if any kind of custom made or expensive Picture [sic] demand by owner has to be pay for extra.
4. Second floor room accommodation has to be done as per architectural drawing.
5. Second floor exterior wall will be regular stucco except front side wall.
6. Contractor will provide all kind of materials including electrical & plumbing picture [sic].
7. Contractor has to be arrange only main entrance door for the first floor others door and window will be arrange by contractor for first and second floor [sic].

House of three sides, first floor 12 feet, fancy brick. Front, top to bottom, fancy brick. Brick job is extra 12,000. First floor, renovation & renew. Cost comes to extra 10,000. Front steps also brick & workway [sic], flower brick. All way around, 8 inch brick with sand block.

The contract did not contain: (a) the name and license number of the salesperson or identify them as NYC DCA license numbers, as required by 6 RCNY Sections 2-221(a)(1) and 1-05; (b) the approximate dates, or estimated dates, when the work will begin and be substantially completed, including a statement of any contingencies that would materially change the approximate or estimated completion date, and a specification whether or not the contractor and the owner have determined a definite completion date to be of the essence, as required by 6 RCNY Section 2-221(a)(2); (c) the materials to be provided to

the owner, including make, model number or any other identifying information, and the agreed upon consideration for the materials, as required by 6 RCNY Section 2-221(a)(3); and (d) a clause wherein the contractor agrees to procure all permits required by local law, as required by 6 RCNY Section 2-221(a)(9).

The contract also did not include the language required by 6 RCNY Sections 2-221(a)(4), (5), and (10). The contract did not provide for materials to be purchased, or expenses for which the contractor would be obligated at the time of progress payments, nor did it state that the contract would provide the owner with a copy of the certification of workers compensation insurance before work is started, as required by 6 RCNY Section 2-221(a)(8). The respondent did not provide the consumer with a separate Notice of Cancellation form, as required by 6 RCNY Section 2-221(b), nor did the respondent orally inform the consumer, at the time he signed the contract, of his right to cancel the contract, as required by 6 RCNY Section 2-221(d).

The consumer paid the respondent a total of \$138,500. He paid an additional \$1,560 for a front door, after the respondent supplied an inadequate one. He also paid \$1,570 for electrical fixtures, for which the respondent agreed to reimburse him. The consumer also paid an additional \$6,069 for reinstallation of kitchen countertops and cabinets that the respondent had improperly installed.

The respondent began work around mid-July 2005. He or his foreman, subcontractor or workers were there until October 2005, when he stopped work over a dispute about what, if any, work was additional to the contract and how much, if anything, the consumer owed him.

After meeting with the consumer's attorney, the respondent returned in December 2005 and installed the kitchen counter. When he stopped working, tile and plumbing work in four bathrooms was incomplete. There were no fixtures installed in the house. The wood floors were not finished. The gutter was broken. Some windows were installed too low in the kitchen, so all the kitchen cabinets had to be taken out and re-installed.

The contractor did not secure or see to the securing of a certificate of occupancy. However, the consumer had an illegal kitchen in the basement, which precluded getting a certificate of occupancy. He did not remove the illegal kitchen until December 2005, after the contractor stopped working.

### **Opinion**

I credit the consumer's testimony that the respondent refused to complete the job over a dispute about money. In particular, although the

respondent presented a list of “additional work” and a demand for \$24,750 in September 2005, there was no credible evidence to prove that the consumer requested or agreed--either orally or in writing--to any of the alleged extra work, or that the respondent’s refusal to complete the job, despite having been paid \$138,500 of the total of \$142,000 by mid-October 2005, was justified. Given the vagueness of the contract and lack of specificity as to materials to be provided, I find it more plausible than not that the consumer believed that at least some of the items on the September list were part of the contract. I do not credit the respondent’s itemized list of work inasmuch as none of it was substantiated by receipts or invoices for purchases actually made. Furthermore, the respondent admitted that he did not provide or install at least one item on his list of “additional work”, # 6, a new boiler, itemized at \$1,000.

The foregoing establishes that the respondent violated Administrative Code § 20-700 because he accepted payment from the consumer but failed to complete the contracted work. The violation is also established by the respondent’s demand that the consumer pay for additional non-contracted work. Accordingly, charge 2 shall be sustained.

The respondent violated Administrative Code Section § 20-393(11). I credit the consumer’s testimony as to the deficiencies in this respondent’s work. While Mr. Uddin acknowledged that certain work was indeed left incomplete (holes in the wall), he argued that these were minor omissions and that the reason the work was not completed was because the consumer owed him money for extra work. As stated above, I determine that the consumer did not owe the respondent for alleged extra work.

I credit the consumer’s testimony that the respondent left the inside of the house unfinished and not in move-in condition. Mr. Uddin’s testimony that nearly all of the contracted-for work was completed is not credible.

The consumer established that he is entitled to \$5,669 in restitution as follows:

\$142,000	Contract Price
<u>-\$138,500</u>	Amount paid to the respondent
\$ 3,500	Amount unpaid on Contract
\$9,199	Consumer’s cost to correct and complete the work
<u>- 3,500</u>	Amount unpaid on Contract
\$5,699	Restitution

Mr. Daniel presented a receipt from Home Depot totaling \$6,069 for kitchen countertops and cabinets for which he stated Mr. Uddin had agreed to

pay. He also testified credibly as to the cost of the replacement front door he purchased for \$1,560 after the respondent presented him with an inadequate one, and the \$1,570 in electrical materials that Mr. Uddin had authorized.

The consumer did not establish the cost of other items that needed to be redone. I do not credit the contract from All Boro Construction, dated June 9, 2006. The consumer testified that he contracted with, and paid, All Boro Construction Corp. to complete the work left incomplete by the respondent in the amount of \$25,000. However, one of the five items listed, "fabricate five walk-in clothing cabinets," is not part of the consumer's contract with the respondent. Moreover, All Boro's contract does not itemize how much each of the items listed would cost.

Although the consumer presented, post-hearing, receipts for items purchased between September and December 2005, I do not credit these for purposes of determining possible restitution, inasmuch as many of these were for miscellaneous items such as batteries, paper towels, a mop and "items unknown." Such items were not included in the original contract.

The credible evidence further establishes that the respondent violated 6 RCNY §§ 2-221(a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6) (a)(8), (a)(9), (a)(10) and 1-05 by failing to include in the contract required clauses or language. The evidence further establishes that the respondent violated 6 RCNY §§ 2-221(b) and 2-221(d) by failing to provide the consumer with a separate Notice of Cancellation and failing to orally inform him of his right to cancel. Accordingly, charges 4 through 14 and 16 shall be sustained.

In light of all the foregoing, I conclude that the respondent failed to maintain the standards of integrity, honesty and fair dealing required of licensees in violation of Administrative Code § 20-101, warranting revocation of respondent's home improvement contractor and home improvement salesperson's license. Accordingly, charge 1 shall be sustained.

The respondent did not secure or see to the securing of a certificate of occupancy. However, the consumer's illegal kitchen in the basement precluded obtaining a certificate of occupancy. In light of the foregoing and inasmuch as the basement was not part of the contract, charge 15 shall be dismissed.

No evidence was presented by the complainants that the respondent violated 6 RCNY § 1-13. Therefore, charge 17 shall be dismissed.

**ORDER****CD500099897 and DD500099897:**

**Respondent Aftab Uddin, individually and d/b/a S A Construction,** is found of charges 1 through 14 and 16, and is hereby

**Ordered to pay to the Department a TOTAL FINE of \$3,500,** as follows:

<b><u>Charge</u></b>	<b><u>Fine</u></b>
2. Administrative Code §20-700 & 6 RCNY §1-12	\$ 350
3. Administrative Code §20-393(11)	\$ 500
4. 6 RCNY §2-221(a)(1)	\$ 200
5. 6 RCNY §2-221(a)(2)	\$ 200
6. 6 RCNY §2-221(a)(3)	\$ 200
7. 6 RCNY §2-221(a)(4)	\$ 200
8. 6 RCNY §2-221(a)(5)	\$ 200
9. 6 RCNY §2-221(a)(6)	\$ 200
10. 6 RCNY §2-221(a)(8)	\$ 200
11. 6 RCNY §2-221(a)(9)	\$ 200
12. 6 RCNY §2-221(a)(10)	\$ 250
13. 6 RCNY §2-221(b)	\$ 350
14. 6 RCNY §2-221(d)	\$ 250
15. 6 RCNY §1-05	\$ 200
<b>TOTAL FINE</b>	<b>\$3,500</b>

Charges 15 and 17 shall be **dismissed**.

**Respondent Aftab Uddin, individually and doing business as S A Construction is hereby ORDERED to pay RESTITUTION to the Consumer in the amount of \$5,699.**

In addition, the **Home Improvement Contractor (“HIC”) and Home Improvement Salesman (“HIS”) Licenses are REVOKED EFFECTIVE IMMEDIATELY.** The respondent is directed to surrender the license documents to the Licensing Division immediately. If the respondent continues to operate with revoked licenses, the respondent is subject to CRIMINAL PROSECUTION and/or civil penalties of \$100 per day for each day of unlicensed activity, as well as the closing of the respondent’s business and/or the removal of items sold, offered for sale, or utilized in the operation of the HIC’s business, pursuant to the Administrative Code of the city of New York Sections 20-105 and 20-106 (the “Padlock Law”).

I also hereby **DECLARE** that respondent **Aftab Uddin, individually and d/b/a S A Construction,** is deemed unfit to hold any license issued by the Department.

**This constitutes the recommendation of the Administrative Law Judge.**

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Judith Gould  
Administrative Law Judge

**DECISION AND ORDER**

The recommendation of the Administrative Law Judge is approved.

**This constitutes the Decision and Order of the Department.**

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Bruce M. Dennis  
Deputy Director of Adjudication

cc: Philip J. Kaplan, Esq.  
350 St. Mark’s Place  
Staten Island, NY 10301

**Mail payment in the enclosed envelope addressed to:**

NYC Department of Consumer Affairs  
Collections Division  
42 Broadway, 9<sup>th</sup> Floor  
New York, NY 10004

**APPEALS**

**RESPONDENT(S)**: You may file an **APPEAL** of this decision **within 30 days from the date of the decision**. You must include with your appeal: (1) a check or money order for \$25 payable to DCA; (2) a check or money order payable to DCA for the full amount of the fine you were ordered to pay in the decision; and (3) a check or money order payable to DCA for the entire restitution amount you were ordered to pay in the decision. If you cannot pay the fine because of financial hardship, you may submit a copy of your most recent tax returns along with a request for a waiver of the requirement to pay the fine. Send your appeal and any request to: Director of Adjudication, Department of Consumer Affairs, 66 John Street, 11<sup>th</sup> Floor, New York, NY 10038. **Make sure to send copies of your appeal TO THE CONSUMER at the Consumer's address, AND to DCA'S LEGAL COMPLIANCE AND FITNESS DIVISION at 42 Broadway, 9<sup>th</sup> Floor, New York, NY 10004.**

**CONSUMER**: You may file an **APPEAL** of this decision **within 30 days of the date of the decision**. You must include with your appeal a check or money order for \$25 payable to DCA. Send your appeal to: Director of Adjudication, Department of Consumer Affairs, 66 John Street, 11<sup>th</sup> Floor, New York, NY 10038. **Make sure to send a copy of your appeal to each of the respondents listed in the caption on the Notice of Hearing.**

**IMPORTANT NOTICE TO BOTH PARTIES: YOUR APPEAL MAY BE DENIED IF YOU DO NOT INCLUDE SOME INDICATION THAT YOU HAVE SENT A COPY OF IT TO EACH OF THE OPPOSING PARTIES LISTED IN THE NOTICE OF HEARING.**