

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

ALEXANDRIA PISZCZATOWSKI

-and-

**THE DEPARTMENT OF CONSUMER
AFFAIRS,**

Complainants,

-against-

MINCON LTD.

-and-

RODNEY MOORE

-and-

WAYNE DRINKWINE,

Respondents.

DECISION AND ORDER

Violation No(s):

CD500118928

DD500118928

LL5130927

License No(s):

1107071 (HIC)

1107072 (HIS)

1067588 (HIS)

Date: March 24, 2010

An inquest was held on March 11, 2010.

Appearances: For the Complainants: Alexandria Piszczatowski. Although duly notified of the time and place of the hearing, the respondents failed to appear.

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.

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.
3. **Administrative Code §20-393(1)** by deviating from or disregarding the plans or specifications or any terms and conditions agreed to under a home improvement contract in any material respect without the written consent of the owner, and by abandoning the work prior to completion.
4. **Administrative Code §20-393(2)** by making a substantial misrepresentation in the solicitation or procurement of a home improvement contract- OR- by making a false promise of character likely to influence, persuade or induce.
5. **Administrative Code §20-393(3)** by committing a fraud in the execution of, or by materially altering any contract, mortgage, promissory note or other document incident to a home improvement transaction.
6. **Administrative Code §20-393(11)** by failing to perform work under a home improvement contract in a skillful and competent manner.
7. **Administrative Code §20-393(17)** by acting as an agent for, or advertising, promoting or arranging for the services of a lender or its affiliate to secure a home loan in connection with any home repair or home improvement contract.
8. **6 RCNY §2-221(a) (1)** by failing to include in the contract the salesperson’s name and license number (2 counts).
9. **6 RCNY §2-221(a)(2)** by failing to include in the contract 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 (2 counts).

10. **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 (2 counts).
11. **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 (2 counts).
12. **6 RCNY § 2-221(a)(6)** by failing to provide for progress payments which bear a reasonable relationship to the amount of work to be performed, materials to be purchased, or expenses for which the contractor would be obligated at the time of payment (2 counts).
13. **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 (2 counts).
14. **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 (2 counts).
15. **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 (2 counts).
16. **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 (2 counts).

17. **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 (2 counts).
18. **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 respondents.
19. **6 RCNY §2-223(a)** by failing to secure or see to the securing of a permit- OR-certificate of occupancy-OR- special exception necessary to the proper completion of such contract in accordance with applicable state or local building laws.

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

Findings of Fact

The respondents, Mincon Ltd. and Wayne Drinkwine agreed to perform home improvement work for the consumer for a total price of \$540,000.00¹. The consumer paid the respondents a total of \$167,200.00. No work was performed, and the money was not refunded.

The consumer has had no contact with respondent Rodney Moore.

Opinion

The credible evidence establishes that the consumer is entitled to restitution from the respondents, Mincon Ltd. and Wayne Drinkwine, in the amount of \$167,200.00. The complainants failed to establish any violations with respect to Rodney Moore.

¹ An amended contract dated November 23, 2007 provided for a 5% discount.

ORDER**CD500118928:**

Respondent Mincon Ltd. is found **guilty upon default** of charges 1 through 19, and of violating 6 RCNY Section 1-14, and is hereby

Ordered to pay to the Department a TOTAL FINE of \$9,500.00, as follows:

<u>Charge</u>	<u>Fine</u>
2. Administrative Code §20-700 & 6 RCNY §1-12	\$ 350.00
3. Administrative Code §20-393(1)	\$1000.00
4. Administrative Code §20-393(2)	\$ 500.00
5. Administrative Code §20-393(3)	\$ 500.00
6. Administrative Code §20-393(11)	\$ 500.00
7. Administrative Code §20-393(17)	\$ 1000.00
8. 6 RCNY §2-221(a)(1) (2 counts)	\$ 400.00
9. 6 RCNY §2-221(a)(2) (2 counts)	\$ 400.00
10. 6 RCNY §2-221(a)(4) (2 counts)	\$ 400.00
11. 6 RCNY §2-221(a)(5) (2 counts)	\$ 400.00
12. 6 RCNY §2-221(a)(6) (2 counts)	\$ 400.00
13. 6 RCNY §2-221(a)(8) (2 counts)	\$ 400.00
14. 6 RCNY §2-221(a)(9) (2 counts)	\$ 400.00
15. 6 RCNY §2-221(a)(10) (2 counts)	\$ 500.00
16. 6 RCNY §2-221(b) (2 counts)	\$ 700.00
17. 6 RCNY §1-05 (2 counts)	\$ 400.00

18. 6 RCNY §1-13	\$ 250.00
19. 6 RCNY §2-223(a)	\$ 500.00
6 RCNY §1-14	\$ 500.00
TOTAL FINE	\$9,500.00

In addition, the **Home Improvement Contractor License is REVOKED EFFECTIVE IMMEDIATELY**. The respondent HIC is directed to surrender the license document to the Licensing Division immediately. If the HIC continues to operate with a revoked license, the HIC 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 HIC'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 **Mincon Ltd. and its principals** are deemed unfit to hold any future licenses issued by the Department.

DD500118928:

Respondent Rodney Moore is found **not guilty upon default** of charges 1-19, as he had no contact with the consumer. However, respondent Rodney Moore is found **guilty** of violating 6 RCNY Section 1-14, and is hereby **Ordered to pay to the Department a TOTAL FINE of \$500.00**.

LL5130927:

Respondent Wayne Drinkwine is found **guilty upon default** of charges 1-19, and of violating 6 RCNY Section 1-14, and is hereby

Ordered to pay to the Department a TOTAL FINE of \$9,500.00, as follows:

<u>Charge</u>	<u>Fine</u>
2. Administrative Code §20-700 & 6 RCNY §1-12	\$ 350.00
3. Administrative Code §20-393(1)	\$1000.00
4. Administrative Code §20-393(2)	\$ 500.00
5. Administrative Code §20-393(3)	\$ 500.00
6. Administrative Code §20-393(11)	\$ 500.00
7. Administrative Code §20-393(17)	\$ 1,000.00
8. 6 RCNY §2-221(a)(1) (2 counts)	\$ 400.00
9. 6 RCNY §2-221(a)(2) (2 counts)	\$ 400.00
10. 6 RCNY §2-221(a)(4) (2 counts)	\$ 400.00
11. 6 RCNY §2-221(a)(5) (2 counts)	\$ 400.00
12. 6 RCNY §2-221(a)(6) (2 counts)	\$ 400.00
13. 6 RCNY §2-221(a)(8) (2 counts)	\$ 400.00
14. 6 RCNY §2-221(a)(9) (2 counts)	\$ 400.00
15. 6 RCNY §2-221(a)(10) (2 counts)	\$ 500.00
16. 6 RCNY §2-221(b) (2 counts)	\$ 700.00
17. 6 RCNY §1-05 (2 counts)	\$ 400.00
18. 6 RCNY §1-13	\$ 250.00
19. 6 RCNY §2-223(a)	\$ 500.00
6 RCNY §1-14	\$ 500.00
TOTAL FINE	\$9,500.00

In addition, the **Home Improvement Salesperson's License is REVOKED EFFECTIVE IMMEDIATELY.** The Home Improvement Salesperson is directed to surrender his or her license document to the Licensing Division immediately. If the he or she continues to operate with a revoked license, he or she 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 his or her business and/or the removal of items sold, offered for sale, or utilized in the operation of his or her 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 Wayne Drinkwine is deemed unfit to hold any future licenses issued by the Department.

CD500118928 & LL5130927

Respondents Mincon Ltd. and Wayne Drinkwine and are hereby ORDERED to pay RESTITUTION to the Consumer in the amount of \$167,200.00, for which they are each jointly and severally liable.

This constitutes the recommendation of the Administrative Law Judge.

Esther Simon
Administrative Law Judge

DECISION AND ORDER

The recommendation of the Administrative Law Judge is approved.

This constitutes the Decision and Order of the Department.

Bruce M. Dennis
Deputy Director of Adjudication

APPEALS

RESPONDENT(S): If you would like to request a new hearing, you may file a **MOTION TO VACATE** this decision **within 15 days** from the date you knew or should have known of this decision. Your motion must include: 1) the reason you did not appear at the hearing; AND 2) a sworn statement outlining your defense to the charges. You must include with your motion a check or money order for \$25 payable to DCA. Send the motion and the \$25 fee to: Director of Adjudication, Department of Consumer Affairs, 66 John Street, 11th Floor, New York, NY 10038. **Make sure to send copies of your motion TO THE CONSUMER** at the consumer's address **AND to DCA'S LEGAL SERVICES DIVISION**, 42 Broadway, 9th Floor, New York, NY 10004.

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

IMPORTANT NOTICE TO BOTH PARTIES: YOUR MOTION OR 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.

Mail payment in the enclosed envelope addressed to:
NYC Department of Consumer Affairs
Collections Division
42 Broadway, 9th Floor
New York, NY 10004