

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

DANIEL A. LORBER

-and-

**NYC DEPARTMENT OF CONSUMER
AFFAIRS,**

Complainants,

-against-

**REMODELERS AND FINISHING INC.
d/b/a N & H CONCRETE & SOIL TESTING**

-and-

HEMLALL SURUJNARINE,

Respondents.

DECISION AND ORDER

**Record Nos.:
3896-2014-ADJC
3904-2014-ADJC**

**NOH No.:
C0083813**

**License Nos.:
1386001 (HIC)
1354155 (HIS)**

An inquest was held on April 17, 2014 and June 5, 2014¹.

Appearances: For the Complainants: Daniel A. Lorber, Consumer. Although duly notified of the time and place of the hearing, the Respondents failed to appear.

The Notice of Hearing (“NOH”) charged the Respondent Company with violating the following:

- 2. Administrative Code of the City of New York (“Administrative Code”) § 20-700 and Title 6 of the Rules of the City of New York (“6 RCNY”) § 1-12** by engaging in deceptive trade practice in the negotiation and performance of a Home Improvement Contract,

¹ The reset notice dated May 9, 2014 stated that “If the respondents fail to appear [on June 5, 2014 at 1:30 p.m.], a decision will be rendered based upon the evidence taken at the April 17, 2014 inquest”.

in that Respondent Company received payment for services not performed and promised to complete contracted work but failed to do so (1 count).

3. **Administrative Code § 20-393(1)** of the Code by materially deviating from or disregarding the plans or specifications or any terms and conditions agreed to under a home improvement contract, in that Respondent Company abandoned the work without written consent of the Consumer (1 count).
4. **6 RCNY § 2-223(a)** by failing to secure or see to the securing of a permit and/or certificate of occupancy and/or special exception necessary to the proper completion of such contract in accordance with applicable state or local building laws (1 count).

The NOH charged both Respondents with violating the following:

1. **6 RCNY § 1-15** by failing to satisfy an outstanding judgment against it obtained by a consumer, in connection with the activities for which a license is required, within thirty days of the entry of judgment (1 count).
5. **6 RCNY § 2-221(a)(1)** by failing to include in the Contract the contractor's correct office address and license number; and the salesperson's license number (1 count each).
6. **6 RCNY § 2-221(a)(2)** by failing to include in the Contract the approximate or estimated dates on which the Contract work would begin and be substantially completed; and a statement of any contingencies that would materially change the approximate or estimated completion date; and a statement of whether or not the parties had determined a definite completion date to be of the essence (1 count each).
7. **6 RCNY § 2-221(a)(4)** by failing to include in the contract a notice to the owner 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 (1 count each).
8. **6 RCNY § 2-221(a)(5)** by failing to include in the contract a notice to the owner 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 purposes of the Contract (1 count each).

9. As the contract provides for one or more progress payments before substantial completion of work, Respondents violated **6 RCNY § 2-221(a)(6)** by failing to provide a schedule of progress payments showing the amount of each payment as a sum in dollars and cents and specifically identifying the state of completion of the work or services to be performed including any materials to be supplied before each such progress payment is due.
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 (1 count each).
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 law (1 count each).
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 (1 count each).
13. **6 RCNY § 2-221(b)** by failing to provide a separate Notice of Cancellation to the owner (1 count each).
14. **6 RCNY § 1-13** by failing to respond to a complaint sent by the Department with a request for a response to the complaint within twenty days of the date that the complaint was mailed out.
15. **Administrative Code § 20-101** of the Code by failing to maintain the standards of integrity, honesty and fair dealing required of licensees.

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

Findings of Fact

Consumer, Daniel A. Lorber, was awarded a judgment after inquest against the respondents in the Civil Court of the City of New York, Queens County, Small Claims Part, Index No. S.C. 16196/12 in the total amount of \$5,020 on or about September 12, 2013. Said judgment arose out of activities related to home improvement for which a HIC and/or HIS license are required. No part of the judgment has been paid or collected; nor, has it been stayed or appealed.

Opinion

The credible evidence establishes that the consumer is entitled to restitution against the respondents in the amount of \$5,288.42, said sum calculated as follows: \$5,020 (the judgment amount), plus \$268.42 (interest at 9 percent calculated from September 12, 2013, the date of the judgment entry, to April 17, 2014, the original date of the inquest).

ORDER

C0083813 (HIC)

Respondent **Remodelers and Finishing Inc. d/b/a N & H Concrete & Soil Testing** is found **guilty upon default** of the charges 1 through 15, and of violating 6 RCNY Section 1-14, and is hereby

Ordered to pay to the Department of Consumer Affairs (DCA) a TOTAL FINE of \$12,850, which is immediately due and owing, as follows:

	<u>Charge</u>	<u>Fine</u>
1.	6 RCNY § 1-15	\$500
2.	Administrative Code § 20-700	\$350
3.	Administrative Code § 20-393(1)	\$1000
4.	6 RCNY § 2-223(a)	\$1000
5.	6 RCNY § 2-221(a)(1)	\$1000
6.	6 RCNY § 2-221(a)(2)	\$1000
7.	6 RCNY § 2-221(a)(4)	\$1000
8.	6 RCNY § 2-221(a)(5)	\$1000
9.	6 RCNY § 2-221(a)(6)	\$1000
10.	6 RCNY § 2-221(a)(8)	\$1000
11.	6 RCNY § 2-221(a)(9)	\$1000
12.	6 RCNY § 2-221(a)(10)	\$1000
13.	6 RCNY § 2-221(b)	\$1000
14.	6 RCNY § 1-13	\$500
	6 RCNY § 1-14	\$500

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 **Remodelers and Finishing Inc. d/b/a N & H Concrete & Soil Testing**. is deemed unfit to hold any license issued by the Department.

C0083813 (HIS)

Respondent **Hemlall Surujnarine** is found **guilty upon default** of the charges numbered 1 and 5 through 15, and of violating 6 RCNY Section 1-14, and is hereby

Ordered to pay to the Department of Consumer Affairs (DCA) a TOTAL FINE of \$10,500, which is immediately due and owing, as follows:

	<u>Charge</u>	<u>Fine</u>
1.	6 RCNY § 1-15	\$500
5.	6 RCNY § 2-221(a)(1)	\$1000
6.	6 RCNY § 2-221(a)(2)	\$1000
7.	6 RCNY § 2-221(a)(4)	\$1000
8.	6 RCNY § 2-221(a)(5)	\$1000
9.	6 RCNY § 2-221(a)(6)	\$1000
10.	6 RCNY § 2-221(a)(8)	\$1000
11.	6 RCNY § 2-221(a)(9)	\$1000
12.	6 RCNY § 2-221(a)(10)	\$1000
13.	6 RCNY § 2-221(b)	\$1000
14.	6 RCNY § 1-13	\$500
	6 RCNY § 1-14	\$500

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 **Hemlall Surujnarine** is deemed unfit to hold any license issued by the Department.

C0083813 (HIC and HIS)

The Respondents are ORDERED to pay RESTITUTION to the Consumers in the amount of \$5,288.42, which is immediately due and owing, and for which they are each jointly and severally liable.

The award must be paid by certified check, money order or attorney trust account. The respondents are further **Ordered** to provide to the Department proof of payment of restitution to the consumers within thirty (30) days of the date of this decision to the following address: "NYC Department of Consumer Affairs, Collections Division-Accounts Receivable, 42 Broadway, 9th floor, New York, New York 10004" or by emailing such proof to: collections@dca.nyc.gov The failure to pay restitution or to provide to the Department proof of payment within thirty (30) days of the date of this decision will result in the revocation of any license held by the respondents, without further notice to the respondents.

This constitutes the recommendation of the Administrative Law Judge.

**David S. Paul
Administrative Law Judge**

DECISION AND ORDER

The recommendation of the Administrative Law Judge is approved.

This constitutes the Decision and Order of the Department. The Department may suspend any DCA license(s) held by the respondent if the respondent fails to comply with this Decision and Order, including payment of the fine, within thirty (30) days. Payment with a check that is dishonored or a credit card transaction that is denied or reversed will not be considered compliance with this Decision and Order. Such license(s) will not be reinstated until the respondent has served any suspension period ordered in this Decision and has paid ALL fines owed to the Department.

Date: June 30, 2014



**Richard J. Zeitler
Principal Administrative Law Judge**

cc: Daniel A. Lorber via email: dlorber@gmail.com

Remodelers and Finishing Inc. d/b/a N & H Concrete & Soil Testing
91-23 116th Street
Richmond Hill, NY 11418

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

APPEALS

RESPONDENT(S): 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 a meritorious defense to the charge(s) in the Notice of Hearing. You must include with your motion a check or money order for \$25 payable to DCA; and a check or money order payable to DCA for the entire restitution amount you were ordered to pay in the decision. You may file your Motion to Vacate either by email or regular mail, as follows:

BY EMAIL: Send your motion to myappeal@dca.nyc.gov and, at the same time, mail the \$25 appeal fee and the restitution to: DCA Administrative Tribunal, 66 John Street, 11th Floor, New York, NY 10038. Make sure to write the violation number(s) on your check or money order. **NOTE**: The determination on your motion to vacate may be sent to you by email if you choose to submit your motion to us by email.

BY REGULAR MAIL: Send your motion, along with the \$25 fee and the restitution, to: Director of Adjudication, Department of Consumer Affairs, 66 John Street, 11th Floor, New York, NY 10038. **Make sure to include in your motion** some indication or proof that you have sent copies of the motion **TO THE CONSUMER** at the consumer's address, **AND to DCA'S LEGAL 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 may file your Appeal either by email or regular mail, as follows: **BY EMAIL**: Send your appeal to myappeal@dca.nyc.gov. **NOTE**: The determination on your motion to vacate may be sent to you by email if you choose to submit your motion to us by email.

BY REGULAR MAIL: Send your appeal 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.