

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

**LYUDMILA MIRAKOVA (YAKUTILOV) AND  
IOSIF (“YURIY”) YAKUTILOV,**

**-and-**

**DEPARTMENT OF CONSUMER AFFAIRS,**

**Complainants,**

**-against-**

**VICTORY CONSTRUCTION OF NY CORP.**

**-and-**

**MISHAEL SADYKOV,**

**Respondents.**

**DECISION AND ORDER**

**Record Nos.:**

**CD500133383-ADJC**

**DD500133383-ADJC**

**NOH Nos.:**

**CD500133383**

**DD500133383**

**License Nos.:**

**1346547(HIC)**

**1000300(HIS)**

A hearing on the above matters was held on the following dates: October 8, 2013; November 14, 2013; December 26, 2013; February 11, 2014; April 10, 2014; May 6, 2014; July 22, 2014, and September 16, 2014.

Appearances: For the Complainants: Lyudmila Mirakova, consumer; Iosif Yakutilov, consumer; and Daniel Yakutilov, witness. For the Respondents: Mishael Sadykov, respondent. On February 11, 2014: For the Respondents: Giovany Izquierdo, witness. On April 10, 2014: For the Respondents: Nikolay Radchenko, witness. On May 6, 2014: For the Respondents: Olga Sadykova, witness.

The respondent company, Victory Construction of NY Corp. (“Victory”) is charged with violating the following:

1. Administrative Code of the City of New York (“Administrative Code”) Section 20-700 and Title 6 of the Rules of the City of New York (“6 RCNY”) Section 1-12 by engaging in a deceptive trade practice in the negotiation and performance of a home improvement contract, in that respondent company received payment for services not performed and promised to complete the contracted work but failed to do so;

2. Administrative Code Section 20-393(1) by materially deviating from or disregarding the plans or specifications or any terms and conditions agreed to under a home improvement contract;
3. Administrative Code Section 20-393(11) by failing to perform work under a home improvement contract in a skillful and competent manner;

The respondent company, Victory, and the respondent salesperson, Mishael Sadykov (“Sadykov”) are charged with violating the following:

4. Administrative Code Section 20-393(2), Administrative Code Section 20-700 and 6 RCNY Section 1-12 by engaging in a deceptive trade practice in the negotiation and performance of a home improvement contract, in that respondent company misrepresented to consumers that work would be done only under proper Department of Building permits;
5. 6 RCNY Section 2-221(a)(1) by failing to include in the contract the signatures of all parties and/or the salesperson’s license number;
6. 6 RCNY Section 2-221(a)(2) by failing to include in the contract the approximate or estimated dates on which the contract work would begin; by failing to include in the contract the approximate or estimated dates on which the contract work would be substantially completed; a statement of any contingencies that would materially change the approximate or estimated dates; and a statement of whether or not the parties had determined a definite completion date to be of the essence;
7. 6 RCNY Section 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;
8. 6 RCNY Section 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 Section 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;

9. 6 RCNY Section 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;
10. 6 RCNY Section 2-221(a)(9) by failing to include in the contract a clause wherein the contractor agrees to procure all permits required by law;
11. 6 RCNY Section 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;
12. 6 RCNY Section 2-221(b) by failing to provide a separate Notice of Cancellation to the owner;
13. 6 RCNY Section 2-223(a) by failing to secure or see to the securing of a permit necessary to the proper completion of such contract in accordance with applicable state or local building laws;
14. Administrative Code Section 20-393(6) by willfully or deliberately disregarding and violating the building laws of this city; and
15. Administrative Code Section 20-101 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**

On or about May 8, 2011, the consumers and respondents entered into an agreement for the performance of work to the consumers' residence located at 6717 21<sup>st</sup> Avenue, Apt. 3B, in Brooklyn, New York, for a total price of \$142,100. The consumers occupy a single apartment in a six apartment building. The entire amount of the contract was paid to the respondents. An additional \$9,916 for extras including the architectural and Department of Buildings filing fees was paid to the respondents. Mr. Sadykov negotiated the contract and oversaw the work done by Victory. The work to be performed

included, but was not limited to, the following: interior demolition; new walls, new ceilings, electrical work; plumbing work; heated floors; parquet flooring; molding work, tiling in bathrooms and kitchen; installation of Jacuzzi in bathroom, and painting.

The work on the contract began after Memorial Day, and was completed several months later. On many occasions throughout the construction period, the consumers expressed their dissatisfaction with much of the work. They primarily complained that the walls, cabinets and floors were not level, but also stated that the doors had scratches, and several bathroom tiles were cracked. The respondents offered to “touch-up” some of the minor defects, but failed to correct the unaligned floors and walls. The cost to correct the respondents’ work is \$78,000.<sup>1</sup>

The contract contained the signatures of the parties required by 6 RCNY Section 2-221(a)(1), but did not contain the salesperson’s license number required by that section. The contract contained the approximate date that the work would be completed, but did not contain the additional language required by 6 RCNY Section 2-221(a)(2). Additionally, the contract did not contain the language required by 6 RCNY Sections 2-221(a)(4), (a)(5), (a)(6), (a)(8), (a)(9), and (a)(10). The consumers did not receive a separate Notice of Cancellation, pursuant to 6 RCNY Section 2-221(b).

## **Opinion**

### Charges 1 and 2 (Administrative Code Sections 20-700, 6 RCNY Section 1-12 and 20-293(1))

The consumers have not established these charges by a preponderance of the credible evidence. The record establishes that Victory completed the job according to plans and specifications. Its failure to complete the job in a skillful and competent manner is not a violation of these charges. Accordingly, these charges will be dismissed.

### Charge 3 (Administrative Code Section 20-393(11))

The consumers have established this charge by a preponderance of the credible evidence. Ms. Mirakova testified credibly that she and her husband were made aware of the sloping in their apartment by Nikolay Radchenko, the cabinet and furniture maker, and informed Mr. Sadykov. Mr. Sadykov’s testimony, that the sloping was the result of a shifting of the building’s foundation, and not a result of his work, is found credible. However, this

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<sup>1</sup> See Consumer’s Exhibit J.

knowledge does not excuse his responsibility to the consumers of either refusing to go forward with the contract, or in the alternative, to correct the sloping. Mr. Sadykov attempted to use filler in certain areas to correct the sloping. However, the problem persisted and, as a result, the walls, floors, tiles, cabinets and doors were crooked and unaligned. In light of the foregoing, the charge will be sustained.

Charge 4 (Administrative Code Section 20-393(2), Administrative Code Section 20-700 and 6 RCNY Section 1-12)

The consumers have failed to establish these charges by a preponderance of the credible evidence. Although the consumers allege that the permits were obtained with forged signatures, the architect, hired by the consumers, and not the respondents, is responsible for allegedly obtaining any illegal permits. Accordingly, the charge will be dismissed.

Charges 5 through 12 (6 RCNY Sections 2-221(a)(1), (a)(2), (a)(4), (a)(5), (a)(8), (a)(9),(a)(10) and (b))

With regard to 6 RCNY Section 2-221(a)(1), although the signatures of the parties are included in the contract, the contract fails to include the salesperson's license number. Accordingly, the charge will be sustained.

With regard to 6 RCNY Section 2-221(a)(2), although the contract contains a statement as to the approximate date on which the work would be completed, the other language required in this section is not included. Accordingly, the charge will be sustained.

With regard to 6 RCNY Sections 2-221(a)(4), (a)(5), (a)(8), (a)(9), and (a)(10)), the contract fails to contain the appropriate language required. Accordingly, these charges will be sustained.

With regard to 6 RCNY Section 2-221(b), the respondent admitted to not providing a separate Notice of Cancellation to the consumers. Accordingly, this charge will be sustained.

Charges 13 and 14 (6 RCNY Section 2-223(a) and Administrative Code Section 20-393(6))

The record fails to establish that the respondents violated 6 RCNY Section 2-223(a) or Administrative Code Section 20-393(6). The construction permit was obtained by the architect, who was hired by the consumers. Giovany Izquierdo, the project manager for the architectural firm, Dankann &

Associates, Inc., testified that he signed Ms. Mirakova's name on certain Department of Building forms. Mr. Izquierdo explained that this is regularly done in the industry and that he did this solely to expedite the application process. The respondents were neither made aware of this, nor were they responsible for supervising the application process.

Although the consumers asserted that the respondents were responsible for the plumbing sign-off after the boiler was installed, the credible testimony supported by the engineer's report<sup>2</sup> indicates that all the boilers in the building had been installed incorrectly, were not registered with the Department of Buildings, and were in violation since 2002.

In light of the foregoing, the charges will be dismissed.

Charge 15 (Administrative Code Sections 20-101)

Based on the entire record and the respondent's good faith attempts to correct the poorly constructed apartment, albeit unsuccessful, the respondents' actions do not rise to the level of failing to maintain the standards of integrity, honesty and fair dealing required of licensees. Accordingly, the charge will be dismissed and the respondents' respective licenses will neither be suspended nor revoked with regard to the instant matters.

**ORDER**

**On CD500133383-ADJC**

Respondent **Victory** is found **guilty** of Charges 3, 5, 6, 7, 8, 9, 10, 11, 12 as set forth in the Notice of Hearing, and is hereby

**Ordered to pay to the Department a TOTAL FINE of \$2,100<sup>3</sup>, which is immediately due and owing, as follows:**

- Charge 3: \$ 500
- Charge 5: \$ 200
- Charge 6: \$ 200
- Charge 7: \$ 200
- Charge 8: \$ 200
- Charge 9: \$ 200
- Charge 10: \$ 200

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<sup>2</sup> See Consumer's Exhibit L.

<sup>3</sup> The fines reflect that the respondents have no prior violations of these sections.

- Charge 11: \$ 200
- Charge 12: \$ 200

The respondent is found **not guilty** of Charges 1,2,4,13,14, and 15 and these charges are **dismissed**.

**On DD500133383-ADJC**

Respondent Mishael **Sadykov** is found **guilty** of Charges 5, 6, 7, 8, 9, 10, 11, 12, as set forth in the Notice of Hearing, and is hereby

**Ordered to pay to the Department a TOTAL FINE of \$1,600, which is immediately due and owing, as follows:**

- Charge 5: \$ 200
- Charge 6: \$ 200
- Charge 7: \$ 200
- Charge 8: \$ 200
- Charge 9: \$ 200
- Charge 10: \$ 200
- Charge 11: \$ 200
- Charge 12: \$ 200

The respondent is found **not guilty** of Charges 4, 13, 14 and 15, and these charges are **dismissed**.<sup>4</sup>

**On CD500133383-ADJC and DD500133383-ADJC**

**The respondents are ORDERED to pay RESTITUTION to the Consumers Lyudmila Mirakova and Iosif Yakutilov in the amount of \$78,000, in which they are jointly and severally liable.** The award must be paid by certified check, money order or attorney trust account. The respondents must provide to the Department proof of payment of the restitution to the Consumer 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, 9<sup>th</sup> Floor, New York, NY 10004” or by emailing such proof to: [collections@dca.nyc.gov](mailto: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.

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<sup>4</sup> The respondents are not deemed unfit to hold Department licenses in the future.

**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. Failure to comply with this order within thirty (30) days shall result in the suspension of the license(s) at issue, and may result in the suspension of any other Department of Consumer Affairs license(s) held by the Respondent.**

**Date: October 10, 2014**

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**Eryn DeFontes  
Associate Director of Adjudication**

cc: Lyudmila Mirakova  
via email: [lmirakova@yahoo.com](mailto:lmirakova@yahoo.com)

Mishael Sadykov  
via email: [mikesadykov@yahoo.com](mailto:mikesadykov@yahoo.com)

Susan Kassapian, Esq.  
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Assistant Director  
Legal Division

**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 request for a waiver of the requirement to pay the fine. You must submit a copy of your most recent tax returns along with this request. You may file your Appeal by email or regular mail, as follows:

**BY EMAIL:** Send your appeal to [myappeal@dca.nyc.gov](mailto:myappeal@dca.nyc.gov) and, at the same time, mail the \$25 appeal fee, total fine (if not requesting a waiver) and restitution to: DCA Administrative Tribunal, 66 John Street, 11<sup>th</sup> Floor, New York, NY 10038. (Make sure to write the violation number(s) on your check or money order.) You may pay the fine online at [www.nyc.gov/consumers](http://www.nyc.gov/consumers), or mail a check or money order to: DCA, Collections Division, 42 Broadway, NY, NY 10004.

**BY REGULAR MAIL:** Send your appeal, appeal fee, total fine (if not requesting a waiver) and restitution to: : Director of Adjudication, Department of Consumer Affairs, 66 John Street, 11<sup>th</sup> Floor, New York, NY 10038. (Make sure to write the violation number(s) on your check or money order.) You may pay the fine online at [www.nyc.gov/consumers](http://www.nyc.gov/consumers), or mail a check or money order to: DCA, Collections Division, 42 Broadway, NY, NY 10004.

**CONSUMER:** You may file an **APPEAL** of this decision **within 30 days of the date of the decision**. You may file your Appeal by email or regular mail, as follows:

**BY EMAIL:** Send your appeal to [myappeal@dca.nyc.gov](mailto:myappeal@dca.nyc.gov). **NOTE:** The Appeal Determination 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, 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 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.**