

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

**MARK LaFLAMME on behalf of his father
ROGER LaFLAMME¹**

-and-

DEPARTMENT OF CONSUMER AFFAIRS,

Complainants,

-against-

GURU NANAK CONSTRUCTION INC.

-and-

KAMALJIT SINGH,

Respondents.

DECISION AND ORDER

Record Nos.:

8243-2014-ADJC

8249-2014-ADJC

NOH No.:

C0472014

License No.:

1414974 (HIC)

1414973 (HIS)²

An inquest was held on September 23, 2014.

Appearances: For the Complainants: Mark LaFlamme, consumer complainant. Although duly notified of the time and place of the hearing, the respondents failed to appear.

The Notice of Hearing charges the respondent company, Guru Nanak Construction Inc. with violating the following:

1. 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 a deceptive trade practice in the negotiation and performance of a Home Improvement Contract by: receiving payment for services not performed and by promising to complete the contracted work and failing to do so;

¹ Roger LaFlamme was unable to appear at the hearing (See Consumer's Exhibit L).

² The respondent's home improvement salesperson's license expired on October 31, 2013, and has not been renewed.

and by promising to refund \$5,000³ to the consumer but failing to do so (2 counts);

2. Administrative Code § 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, in that respondent company abandoned the work, without written consent of the consumer;
3. Administrative Code § 20-393(11) by failing to perform work under a home improvement contract in a skillful and competent manner;
4. 6 RCNY § 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;
5. Administrative Code § 20-393(6) by willfully or deliberately disregarding and violating the building, sanitary, fire and health laws of this city; and
6. 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.

The Notice of Hearing charges the respondent company, Guru Nanak Construction Inc., and the respondent salesperson, Kamaljit Singh, with violating the following:

7. 6 RCNY § 2-221(a)(1) by failing to include in the contract the contractor's license number and the salesperson's name and license number;
8. 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; 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;
9. 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

³ The amount to be refunded was amended at the hearing, as there was a typographical error in the Notice of Hearing.

owner which may be enforced against the property in accordance with the applicable lien laws;

10. 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;
11. 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;
12. 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;
13. 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;
14. 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;
15. 6 RCNY § 2-221(b) by failing to provide a separate Notice of Cancellation to the owner;
16. 6 RCNY § 1-05 by failing to clearly identify the license numbers as New York City Department of Consumer Affairs license numbers on the Contract; and
17. 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

On or about October 28, 2013, Roger LaFlamme⁴ entered into a written contract with the respondent company for work to be done at his residence at 64-27 Madison Street in Queens, New York. The work included, but was not limited to, the following: installation of sheetrock of ceiling; installation of kitchen and bathroom on second floor; and installation of closets. The contract price was \$19,100. The consumer paid the respondent company \$12,000. Additionally, the consumer purchased a bathtub from Home Depot for \$1,434.38. It was agreed that the respondents would reimburse the consumer for the cost of the bathtub.

The respondents failed to complete the work, and the consumer paid \$20,500⁵ to three other contractors to complete the job. Additionally, the consumer was not reimbursed \$1,434.38 for the bathtub purchased, and incurred an additional cost of \$425 for repair of the bell system damaged by the respondents.

Opinion

The credible evidence establishes that the consumer is entitled to restitution in the amount of \$15,259.38, as follows:

Amount to repair and complete job:	\$22,359.38 ⁶
Less amount owed on the contract:	7,100.00
Restitution Due:	\$15,259.38

ORDER

Respondent Guru Nanuk Construction Inc. is found **guilty upon default** of the charges set forth in the Notice of Hearing, and of violating 6 RCNY § 1-14, and is hereby

⁴ The contract was signed by his son Mark.

⁵ The consumer paid \$7,300 to Tavella Plumbing & Heating Corp. for bathtub installation and installation of new waste line for kitchen and bath (Consumer's Exhibit F), \$12,000 to Thomas Contracting for tiling, cabinet and counter installation (Consumer's Exhibit G), and \$1,200 to Manny Construction Inc. for closet installation (Consumer's Exhibit H).

⁶ This amount was determined by adding the repairs (\$20,500), the cost of the bathtub (\$1434.38) and the cost of the repair of the bell system (\$425).

ORDERED to pay to the Department of Consumer Affairs a TOTAL FINE of \$5,400⁷, which is immediately due and owing, as follows:

1) Administrative Code § 20-700 (\$250 per count, for 2 counts)	\$ 500
2) Administrative Code § 20-393(1)	\$ 300
3) Administrative Code § 20-393(11)	\$ 300
4) 6 RCNY § 2-223(a)	\$ 300
5) Administrative Code § 20-393(6)	\$ 300
6) 6 RCNY § 2-221(a)(1)	\$ 300
7) 6 RCNY § 2-221(a)(2)	\$ 300
8) 6 RCNY § 2-221(a)(4)	\$ 300
9) 6 RCNY § 2-221(a)(5)	\$ 300
10) 6 RCNY § 2-221(a)(6)	\$ 300
11) 6 RCNY § 2-221(a)(8)	\$ 300
12) 6 RCNY § 2-221(a)(9)	\$ 300
13) 6 RCNY § 2-221(a)(10)	\$ 300
14) 6 RCNY § 2-221(b)	\$ 300
15) 6 RCNY § 1-05	\$ 250
16) 6 RCNY § 1-13	\$ 250
17) 6 RCNY § 1-14	\$ 500

Respondent, Kamaljit Singh, is found **guilty upon default** of the charges set forth in the Notice of Hearing, and is hereby

ORDERED to pay to the Department of Consumer Affairs a TOTAL FINE of \$2,950⁸, which is immediately due and owing, as follows:

1) 6 RCNY § 2-221(a)(1)	\$ 300
2) 6 RCNY § 2-221(a)(2)	\$ 300
3) 6 RCNY § 2-221(a)(4)	\$ 300

⁷ Penalties are assessed pursuant to Administrative Code § 20-401.1.b, Administrative Code § 20-104e. (1), and NYC Charter Chapter 64 §§ 2203(h)(1) and (h)(2), and reflect that the respondent has no violations within the past two years.

⁸ See Footnote 6.

4) 6 RCNY § 2-221(a)(5)	\$ 300
5) 6 RCNY § 2-221(a)(6)	\$ 300
6) 6 RCNY § 2-221(a)(8)	\$ 300
7) 6 RCNY § 2-221(a)(9)	\$ 300
8) 6 RCNY § 2-221(a)(10)	\$ 300
9) 6 RCNY § 2-221(b)	\$ 300
10) 6 RCNY § 1-05	\$ 250

The respondent is found **not guilty** of violating 6 RCNY § 1-14, and this charge is **dismissed**.⁹

The Respondents are ORDERED to pay RESTITUTION to the Consumers in the amount of \$15,259.38, for 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, 9th Floor, New York, NY 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 of the respondents’, without further notice to the respondents.

In addition, for violating Administrative Code §20-101, **the Home Improvement Contractor License (“HIC”) and Home Improvement Salesperson’s (“HIS”) license¹⁰ are each REVOKED, EFFECTIVE IMMEDIATELY.** The respondents are directed to surrender all license documents to the Licensing Division immediately. Continued operation with revoked licenses subjects the respondents to CRIMINAL PROSECUTION and/or civil penalties of \$100 per day for each day of unlicensed activity, as well as the closing of the unlicensed business and/or the removal of items sold, offered for sale, or utilized in the operation of the unlicensed business, pursuant to the

⁹ 6 RCNY § 1-14 states in pertinent part: “A ***licensee*** must appear in person at the Department to answer a notice of hearing or a subpoena duces tecum served upon that ***licensee***. (Bolded and italicized for emphasis) Licensee is defined in 6 RCNY § 6-02 as “any person who holds a license issued by the Department or who has applied to the Department for such a license and said application is pending.” Furthermore, Administrative Code § 20-386(7) defines a “Licensee” as “a person permitted to engage in the home improvement business under the provisions of this subchapter”. As the respondent does not currently hold a license with the Department, does not have a pending application, and is not permitted to engage in home improvement activity without such license, this section does not apply to this respondent.

¹⁰ There is no current HIS license.

Administrative Code of the City of New York Sections 20-105 and 20-106 (the “Padlock Law”).

There was insufficient evidence presented to **DECLARE** that each respondent is deemed unfit to hold any license issued by the Department in the future.

This constitutes the recommendation of the Administrative Law Judge.

**Esther Simon
Administrative Law Judge**

DECISION AND ORDER

Upon an independent review of the record, the recommendation of the Administrative Law Judge is **modified**.

6 RCNY § 1-14 states, in relevant part, that “[a] licensee must appear at the Department to answer a notice of hearing...served upon that licensee.” At the time the violations occurred, respondent was licensed as a home improvement sales person.¹¹ Furthermore, all violations arose from respondent engaging in activity for which respondent was licensed (see Notice of Hearing, p. 3, ¶¶ 2, 3).

As the respondent Kamaljit Singh failed to appear, the respondent is found in violation of 6 RCNY § 1-14. Accordingly, in addition to the fines imposed in the Administrative Law Judge’s recommendation, the respondent Kamaljit Singh is also ordered to pay \$500.

In light of the foregoing,

Respondent KAMALJIT SINGH is found guilty upon default of the charges set forth in the Notice of Hearing and 6 RCNY § 1-14, and is hereby

ORDERED to pay to the Department of Consumer Affairs a **TOTAL FINE of \$3,450., which is immediately due and owing.**

The remainder of the Administrative Law Judge’s recommendation remains in effect.

¹¹ See license no. 1414973.

This constitutes the Decision and Order of the Department.

Date: October 3, 2014

Eryn DeFontes
Associate Director of Adjudication

cc: Susan Kassapian, Esq., Senior Counsel, DCA Legal Division
Jordan Cohen, Esq., Assistant Director, DCA Legal Division

**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.