

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

**PANOS PHILIPPOU
and
MICHELE PHILIPPOU**

-and-

DEPARTMENT OF CONSUMER AFFAIRS,

Complainants,

-against-

FIORE SCALISE,

Respondent.

DECISION AND ORDER

**Violation No.
C1118214**

**Record Nos.:
10295-2014-adjc**

**License Nos.:
0756743(HIC)
0762840(HIS)**

A hearing on the above matter was held on October 21, 2014 and continued on November 12, 2014.

Appearances: October 21, 2014: For the Complainants: Panos and Michele Philippou, Consumers; For the Respondent: John J. Napolitano, Esq.; Fiore Scalise, respondent. November 12, 2014: For the Complainants: Panos and Michele Philippou, Consumers; Nicholas Philippou, authorized representative. For the Respondent: John J. Napolitano, Esq.; Fiore Scalise, respondent.

The respondent, Fiore Scalise, is charged with 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 received payments 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, in that respondent company abandoned the work, without written consent of the consumer;

3. Administrative Code Section 20-393(11) by failing to perform work under a home improvement contract in a skillful and competent manner;
4. 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;
5. 6 RCNY Section 2-221(a) by failing to furnish to the buyer a fully completed legible copy of the entire home improvement contract at the time of its execution and before any work is done which shall contain all of the following: (1) the contractor's license number; (2) 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; (4) 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; and (5) 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 (4 counts)¹;
6. 6 RCNY Section 2-221(b) by failing to provide a separate Notice of Cancellation to the owner;
7. 6 RCNY Section 1-05 by failing to clearly identify the HIS license number as a New York City Department of Consumer Affairs license number on the Contracts; and
8. Administrative Code Section 20-101 by failing to maintain the standards of integrity, honesty and fair dealing required of licensees.

¹ The charge is drafted in this manner to exclude repeated language in the Notice of Hearing and conforms to the cited section. The drafting of the charges in the charging section of the decision is in conformity with prior hearing decisions by the tribunal.

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

Findings of Fact

On or about April 24, 2013, Panos Philippou and Michele Philippou (“Consumers”) entered into a contract with Fiore Scalise (“Respondent”) to perform work at their residence located at 158-11 91st Street, Queens, New York in exchange for \$15,400. Fiore Scalise acted as both the salesperson and contractor, and had current licenses with the Department to operate as salesperson and contractor. Respondent received \$15,000. The work included, but was not limited to, the following: remove existing shingles and replace it with brick veneer, insulation and black tar paper; new brick steps with granite steps; brick flower boxes on side of steps; concrete the front of the house and driveway. Respondent agreed to obtain permits and remove debris.

Respondent commenced work at Consumers’ residence in the beginning of May 2013. Respondent removed the existing shingles and replaced it with brick veneer. Respondent installed new steps, brick flower boxes, and put down concrete in the driveway. Respondent damaged siding when installing brick veneer. Respondent put down concrete on the sidewalk without wire mesh. Respondent did not obtain any permits for the contracted work, and Consumers paid \$800 in Environmental Control Board (ECB) violations. Consumers hired an architect for \$3,500 after receiving ECB violations.² The concrete work in front of the house was partially done by Respondent. The respondent stopped working at Consumers’ residence upon the architect’s directive. Consumers put down grass in the areas that did not have concrete.

Respondent provided a contract to Consumers. Respondent’s contract did not include the following: the contractor’s license number; 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; 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; and a notice to the owner that the home improvement contractor is legally required to deposit all payments received

² At the time of the hearing only \$3,000 had been paid. The remaining \$500 is owed upon signing off of the property. See Consumer’s Exhibit H.

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. Respondent did not provide a separate Notice of Cancellation to the owner. Respondent's home improvement salesperson's license number was not cited in the contract.

The cost to correct the work not completed, or performed unskillfully, is \$4,440.83.³

Opinion

Consumers established Charge 1 by a preponderance of the credible evidence. It is undisputed that Respondent failed to complete the front of the house as detailed in the contract. Although it was later discovered that the entire front of the house could not be filled with concrete according to Department of Buildings' rules and regulations, Respondent failed to put down grass or other materials as a substitute for the concrete. Respondent testified that he agreed to perform additional work and because he was not compensated for this additional work, it should be considered an "even deal".⁴ However, as Respondent acknowledged that he did not show the physical contract to Consumers; Consumers denied knowledge of this contract although they admitted that the work on this contract was done; and their signatures are not on the contract, I am unable to credit this evidence. Therefore, as Respondent did not fully complete the job, the charge shall be sustained.

Charge 2 has not been established by a preponderance of the credible evidence. I find Respondent's testimony that he was told by the architect to leave the job and to return when contacted, to be credible. Accordingly, the charge shall not be sustained.

Consumers established Charge 3 by a preponderance of the credible evidence. Respondent did not act competently in performing the home improvement contract for the following reasons: he agreed to concrete the entire front of the house, unaware that this would result in Department of Buildings' violations; he agreed to concrete the sidewalk with wire mesh, despite the city's prohibition of adding wire mesh to a sidewalk; and he damaged the siding when installing the brick veneer. Accordingly, the charge shall be sustained.

³ The cost is calculated as follows: \$800 (ECB violations); \$3,500 (architect's fees); \$540.83 (grass and related costs) minus \$400 owed on the contract. There was insufficient testimony to establish the necessity for an asbestos report, or repair to the siding.

⁴ See Respondent's Exhibit 3.

Consumers argued that there was a gap between the brick façade and the roof. Respondent denied a gap and testified that water could not seep in. I decline to make a determination as to whether or not there was a gap, as Consumers failed to provide an estimate to repair the gap, although given the opportunity to do so. Consumers testified that Respondent caused damage to the siding when installing the brick façade, and submitted an estimate to repair the siding⁵. However, there was insufficient evidence and/or evidence to support this testimony. Therefore, I decline to include this estimate when determining restitution.

Consumers established Charge 4 by a preponderance of the credible evidence. Respondent admitted that there were no permits obtained prior to the commencement of the work. Accordingly, the charge shall be sustained.

The contract does not include any of the statements/clauses stated in Charge 5 of this Notice of Hearing. Although it appears from the contract that Respondent's home improvement contractor's license number is included, Department records indicate that the license number in the contract is that of the home improvement salesperson. Accordingly, all 4 counts of this charge shall be sustained.

Consumers testified that they did not receive a separate Notice of Cancellation. Accordingly, Charge 6 is sustained.

The contract does not properly identify the home improvement salesperson's license number.⁶ Accordingly, Charge 7 is sustained.

Respondent's actions do not rise to the level of a failure to maintain the standards of integrity, honesty and fair dealing required of licensees. Respondent is a long time licensee with this Department and has not had any prior violations. Accordingly, Charge 8 is not sustained.

⁵ See Consumer's Exhibit O.

⁶ According to Department records the HIC license number cited in the contract (756743) is actually Respondent's home improvement salesperson's license number. The license numbers are reversed in the Notice of Hearing.

ORDER

The Respondent, Fiore Scalise, is found **guilty** with respect to the following charges as set forth in the Notice of Hearing, and is hereby

Ordered to pay to the Department a TOTAL FINE of \$2,250⁷ which is immediately due and owing, as follows:

Charge 1:	§ 20-700 and 6 RCNY § 1-12	\$ 250
Charge 3:	§ 20-393(11)	\$ 250
Charge 4:	6 RCNY §2-223(a)	\$ 250
Charge 5:	6 RCNY § 2-221(a) (\$250 per count, for 4 counts)	\$ 1,000
Charge 6:	6 RCNY § 2-221(b)	\$ 250
Charge 7:	6 RCNY § 1-05	\$ 250
<u>Total Fine Due:</u>		\$ 2,250

The respondent is found **not guilty** of Charges 2 and 8 and they are hereby **dismissed**.

The Respondent is further ORDERED to pay RESTITUTION to the consumers in the amount of \$4,440.83, which is immediately due and owing.

⁷ The fines for the charges were mitigated for the following reasons: the respondent is a long-standing licensee with the Department and has no prior violations; he testified that he is semi-retired and has not prepared any contracts in the past year; and he testified that in the event he continues to operate as a home improvement contractor in the future, he will revise his contracts to conform with the Department's rules and regulations.

The Respondent is further **ORDERED** to 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 held by the respondents, without further notice to the respondent.

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.

The Department will suspend the respondent's DCA license(s) if the respondent fails to comply with this Decision and Order, including payment of the fine. 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. The 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: February 13, 2015

**Eryn DeFontes
Associate Director of Adjudication**

cc: For the Consumers:
via email: michele.philippou@gmail.com
pefepon98@earthlink.net

For the Respondent:
John J. Napolitano, Esq.
55 Woodlawn Drive
Oyster Bay, NY 11771
Via email: cbnapo@aol.com
and
Fiore Scalise
149-14 116th Street
South Ozone, NY 11420

For the Department:
Jordan Cohen, Esq.
Assistant Director
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 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 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, 11th 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, 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, 11th 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, 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. **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, 11th 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.