

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

**Complainant,**

**-against-**

**PATRIOT HOME REMODELING INC. and  
CHRISTOPHER SMITH,**

**Respondents.**

**DECISION AND ORDER**

**Record Nos:**

**10903-2014-ADJC**

**10908-2014-ADJC**

**NOH No.: 05312921**

**License No.: 1281082 (HIC)**

**License No.: 1031487 (HIS)**

A hearing on the above matters was held on: December 23, 2014, January 14, 2015, January 16, 2015, March 17, 2015, May 19, 2015, May 20, 2015, May 26, 2015, June 2, 2015, June 8, 2015 and June 11, 2015.<sup>1</sup>

Appearances on all days: For the Complainant: Bradley McCormick, Esq., DCA attorney. For the Respondents: Eric Su, Esq., attorney.

Other appearances by persons from DCA Legal Division on select days: Afsaan Saleem, Esq. DCA attorney (December 23, 2014); Jennifer Olivestone, Esq., DCA attorney (January 14, 2015, January 16, 2015); Mary Kwong, DCA (December 23, 2014, January 14, 2015, January 16, 2015, March 17, 2015, May 26, 2015, June 2, 2015, June 8, 2015); Joseph Spedale, Legal Fellow, (May 19, 2015); and Tiya Nandi, Legal Intern.

Appearances by consumers on select days: Giles Hutchinson, consumer (December 23, 2014); Prunella Hutchinson, consumer (Giles Hutchinson's mother) (January 14, 2015 and March 17, 2015); Umilta Al-Uqdah and Saleem Al-Uqdah, consumers (January 16, 2015); Latasha Bannister, consumer (May 20, 2015); Vikki Loudon, consumer (May 19, 2015); Julieta White, consumer (June 2, 2015);

Appearances by respondents and respondents' witness on select days: Christopher C. Smith, corporate officer and salesman, (December 23, 2014, May 26, 2015, June 8, 2015); Adrian Lynch, respondent's witness (June 11, 2015);

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<sup>1</sup> The parties written summations were submitted on July 24, 2015.

The **Third Amended Notice of Hearing, dated May 1, 2015**, charges respondents collectively and separately, with violations as follows:<sup>2</sup>

**Respondents, collectively:**

- 1) Administrative Code of the City of New York (“Administrative Code”) Section 20-700 by engaging in deceptive trade practices in the sale and offering for sale of consumer services by:
  - a. Misrepresenting that Patriot has the approval, status, affiliation, or membership with the BBB. (2 counts);
  - b. Misrepresenting that the business’s name is “Patriot Home Improvement, Inc.” (11 counts)
  - c. Misrepresenting on a home improvement contract that all work will be performed by licensed subcontractors, but hiring unlicensed subcontractors to perform work under a home improvement contract (1 count)
  - d. Making misrepresentations concerning the terms of consumer credit contracts in which the contractor has acted as an agent for the owner or lender (6 counts)
  - e. Misrepresenting that Respondents will furnish consumers with a Certificate of Worker’s Compensation Insurance prior to commencement of work pursuant to the contract (6 counts)
  - f. Making misrepresentations that Respondents have 30 to 40 years of experience in the improvement business (3 counts)<sup>3</sup>
- 2) Administrative Code Section 20-393(3) by perpetrating fraud in the execution of, or in the material alteration of a contract, promissory note and other documents incident to a home improvement transaction (13 counts);
- 3) Administrative Code Section 20-393(4) by acting as an agent for any owner or any mortgage or finance companies to arrange for or to obtain an extension of credit which is used to pay for an owner’s obligations under a home improvement contract, unless the instrument evidencing such owner’s indebtedness complies with subdivision b of section 433.2 of title sixteen of the code of federal

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<sup>2</sup> All references to paragraph numbers are found in the Third Notice of Hearing.

<sup>3</sup> The Department motioned on June 8, 2015 to amend the Notice of Hearing to add three additional counts of Administrative Code Section 20-700. There was no response from the respondents. Motion is granted.

- regulations and the licensee complies with section 771-a of the general business law ( 6<sup>4</sup> counts);
- 4) Administrative Code Section 20-393(8) by conducting a home improvement business under a name other than the name in which the contractor is licensed (11 counts);
  - 5) Administrative Code Section 20-393(11) by failing to perform work under a home improvement contract in a skillful and competent manner (5 counts);
  - 6) Administrative Code Section 20-393(12) by procuring a certificate of completion from an owner prior to the actual completion of performance by the contractor under a home improvement contract (10 counts);
  - 7) Administrative Code Section 20-393(18) by receiving payment from the proceeds of a home improvement loan by an instrument not payable solely to the borrower and by receiving payment through a third-party escrow agent without an agreement signed by the borrower, the lender, and the contractor prior to disbursement (1 count);<sup>5</sup>
  - 8) 6 RCNY Section 2-221(a) by failing to include in the Contract all of the following: (1) the contractor's correct name (11 counts); (2) 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 (7 counts); (3) a description of the materials to be provided to consumers, including make, model number or any other identifying information (6 counts); (9) a clause in which the contractor agrees to procure all permits required by local law (1 count);<sup>6</sup>
  - 9) 6 RCNY Section 2-221(b) by failing to furnish to consumers a separate Notice of Cancellation (3 counts);
  - 10) 6 RCNY Section 2-221(d) by failing to orally notify consumers of their right to cancel the contract within three business days (2 counts);
  - 11) 6 RCNY Section 2-223(a) by failing to secure every permit, license, certificate of occupancy, special exception necessary to the proper

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<sup>4</sup> The Department withdrew four counts.

<sup>5</sup> This charge was withdrawn.

<sup>6</sup> 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.

- completion of a home improvement contract in accordance with applicable state or local building laws (1 count);
- 12) 6 RCNY Section 2-223(d) by performing work or services under a home improvement contract prior to the expiration of the three business day cancellation period (6 counts); and
  - 13) 6 RCNY Section 6-42(c) by failing to comply with the terms of a written settlement agreement (1 count).<sup>7</sup>

**Respondent Christopher Smith, alone:**

Administrative Code Section 20-393(15) a by concurrently representing more than one contractor in the solicitation or negotiation of any one home improvement contract from an owner (1 count).<sup>8</sup>

**Findings of Fact**

Christopher Smith (“Smith”) is the President of Patriot Home Remodeling, Inc.,<sup>9</sup> (“Patriot”) also known as Patriot Home Improvement, Inc.(HIC License # 1281082). Smith’s HIS license expired on December 31, 2013 (HIS License # 1031487), and was renewed on July 14, 2014. Smith opened Patriot in 2004, and prior to that, was the owner of another construction company, Green Bay, for 12 years. Patriot employed 10 persons including Christopher Marrow (“Marrow”), a licensed Home Improvement Salesperson (HIS License # 0950841). Smith maintained a business relationship with Gary Feldman (“Feldman”), owner of GFX Consultants. GFX Consultants sold “leads” to Patriot. The contracts entered into with all of the consumers cited below were under the name of Patriot Home Improvement, Inc.

On December 28, 2013, Prunella Hutchinson (“Hutchinson”) entered into a contract with Patriot to perform work at her son Giles Hutchinson’s home located at 1095 DeKalb Avenue in Brooklyn, NY. The contract price was \$67,000. Giles Hutchinson held the deed to the property. Prunella Hutchinson was going to pay for the contract work. Marrow negotiated, and Feldman priced, the contract which included, but was not limited to the following: a new roof with plywood, Timberline shingle installation, fascia and soffit replacement (white); new gutters and leaders; basement to be leveled, cemented; installation of sister beams and an entire cleaning. Also, the contract called for the

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<sup>7</sup> This charge was withdrawn.

<sup>8</sup> This charge was withdrawn.

<sup>9</sup> The respondent is licensed under Patriot Home Remodeling Inc.

installation of two sides of iron fencing (white); siding on the entire house; and new insulation and capping. A Certificate of Completion dated January 2, 2014 for GE Capital Bank bears Hutchinson's signature, and was obtained prior to the completion of the job. There is no Certificate of Completion from GreenSky. Hutchinson received a Notice of Cancellation from Patriot (Hutchinson's Exhibit X). No permits were necessary for this work. Patriot received a \$500 cash deposit from Hutchinson and work commenced immediately. The basement was not cemented; no beams were installed; white siding, and not yellow as requested, was installed; the railing was not replaced; the roof work was not completed. Hutchinson paid \$1,200 to a roofer to repair the roof and leaks over the porch. Hutchinson hired an engineer for \$6,800 to inspect the home and to provide an inspection report (Hutchinson Exhibit M). The report recommended immediate vacancy of the premises due to the safety hazard created by the sagging foundation (see Hutchinson Exhibit T). Hutchinson received bank statements from GE Capital Retail Bank (later Synchrony Bank) and GreenSky. Hutchinson did not authorize any loan applications for financing this contract. Hutchinson filed complaints with the banks asserting that the loans were processed without her authorization. Patriot provided the banks with a "sales slip" and a "certificate of completion" for the Patriot contract. Patriot received \$25,000 from GreenSky and \$16,000 from GE/Synchrony Banks. Hutchinson agreed to pay \$7,200 as settlement to GreenSky for the full satisfaction of the \$25,000 loan for the siding work Patriot had performed on the Hutchinson home. GE informed Hutchinson to hold off paying the loan while an investigation was in progress based on the Hutchinson complaint. Hutchinson did not pay this loan (See Respondent's Exhibit 4). Hutchinson obtained two estimates for basement repairs, the first one for \$64,829 and the second one for \$60,000. An estimate for the roof was \$8,500. Patriot filed a Mechanics Lien September 3, 2014 for \$30,000 on Prunella Hutchinson's cooperative located at 190 Cozine Avenue, Apt. 8B in Brooklyn (Hutchinson's Exhibit Y). The contract lacked certain required terms pursuant to 6 RCNY Section 2-221(a).

Umilta Al-Uqdah ("Al-Uqdah") entered into a contract with Patriot on August 21, 2014 to install a new roof on her house located at 500 E. 40<sup>th</sup> Street in Brooklyn for a total price of \$14,700. Al-Uqdah gave the respondent \$100 cash on August 21, 2014 to pay for a dumpster. No other money was given directly to the respondent from the consumer. Marrow and Feldman negotiated the contract on behalf of Patriot. Al-Uqdah was not provided with a Certificate of Worker's Compensation, nor a separate Notice of Cancellation form. She was not informed orally of her right to cancel the contract within 3 days. Patriot's employees completed the work on August 26, 2014. Marrow informed Al-Uqdah that they provide loans but Al-Uqdah stated to him that they wanted to pay cash for the job. Al-Uqdah's signature appears on the credit card/loan application and the Certificate of Completion. Al-Uqdah contacted Synchrony Bank, who closed her account, but required her to pay the loan to them. Al-

Uqdah complained about the following defects: 1. Flashing between lower roof and window missing; 2. Plywood on lower was roof exposed; 3. Damaged gutter on the lower roof; 4. Damaged gutter at side of house; 5. Attachment between the gutter and downspout was missing; 6. Capping removed and not replaced in front of house; 7. Flashing loose at back of house; 8. Tiles not flush in chimney area; and 9. Roof between houses not done. (See Al-Uqdah's Exhibit G). Patriot did not return to complete the repairs. Al-Uqdah produced two estimates to complete the work- the first one from New Dynamic Builders for \$4,900 (See Al-Uqdah's Exhibit M) and the other one from Greene Roofing for \$3,020 (See Al-Uqdah's Exhibit L). The contract lacked certain required terms pursuant to 6 RCNY Section 2-221(a).

Julieta White ("White") entered into a contract with Patriot on or about October 18, 2014 for a renovation of a powder room<sup>10</sup> at her residence at 86 East 56<sup>th</sup> Street in Brooklyn. The total price to renovate this room was \$8,700. Feldman and another person, "Lewis", negotiated the contract. White was not provided with a Certificate of Worker's Compensation nor a Notice of Cancellation. Patriot commenced the work on October 21, 2014. White was unsatisfied with the work performed, in that the fixtures' colors were off-white and not white as discussed, and were of inferior quality; the ceiling fan had no vent; there was no pedestal installed under the sink to hide the plumbing. White's signature is on a loan application with Synchrony Bank and on a Certificate of Completion. White paid \$1,200 to Synchrony Bank<sup>11</sup>. White received an estimate from Rosul Contracting Corp. for \$4,500 to complete the powder room. White complained to Synchrony Bank that the work was done improperly. A letter from Synchrony dated April 1, 2015 indicated that Patriot was paid for the job performed, and the Synchrony credit card statement dated April 17, 2015 indicated that the \$8700 loan need not be repaid. The contract lacked certain required terms pursuant to 6 RCNY Section 2-221(a).

Vikki Louden ("Louden") entered into a contract with Patriot on November 4, 2014 to install a new roof at her home located at 174-14 110<sup>th</sup> Avenue in Queens. The cost of the job was \$8,000. Smith negotiated the contract on behalf of Patriot. Louden was not provided with a Certificate of Worker's Compensation. She was provided with a separate Notice of Cancellation form. The work commenced on November 7, 2014. Louden had leaks to the interior of her home after Patriot completed the job. The respondents returned on November 19, 2015 to correct the job. Louden's insurance company, Liberty Mutual, estimated the damages to be \$1499.77. She received \$499.77, less the thousand dollar deductible. Synchrony Bank discharged the \$8,000 owed on the contract. Louden did not sign a certificate

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<sup>10</sup> Ms. White refers to her half-bath near the kitchen as a powder room.

<sup>11</sup> The interest paid to the bank is \$257.12.

of completion form. The respondents' subcontractor was not licensed with the Department of Consumer Affairs. The contract lacked certain required terms pursuant to 6 RCNY Section 2-221(a).

On or about July/August 2014, Latasha Bannister ("Bannister") entered into a contract with Patriot to perform work at her home at 588 Decatur Street in Brooklyn. The estimate was given by Feldman and another person who accompanied him. The work consisted of renovating the outside stairs and railings. The agreed upon price to do the work was \$7,700. Bannister signed her mother's name, Eva Bannister, on the contract. Bannister did not receive a Certificate of Workers' Compensation. The spray paint ate away at the cement and brownstone, and damaged her door. She produced an estimate for \$11,500 to restore the complete stoop that was damaged; redo the iron rails; repair under the stoop to fix the leaking. An estimate for \$4,184.57 to replace the door was submitted by the Department's attorney. Bannister was told by Feldman that the bank would contact her after the job was completed. She received a phone call approximately a month later informing her that she had missed a payment. She explained to the bank that they had not completed the job, and her mother had not signed the documentation. Her account was credited for \$7,700 after the bank completed its investigation. The contract lacked certain required terms pursuant to 6 RCNY Section 2-221(a).

The Department submitted contracts, and related documentation, for 10 additional consumers.<sup>12</sup> The Third Amended Notice of Hearing details violations of the Consumer Protection Law, Title 6 of the Rules of the City of New York and the Administrative Code for these 10 consumers. None of these 10 consumers testified at the hearing. The respondents offered no evidence to rebut the Department's evidence. The contracts for Beaumont and Harris contain the Better Business Bureau (BBB) logo. Patriot was not affiliated with the BBB at the time of their contracts.

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

### **Opinion**

#### **Hutchinson**

With respect to Charge 1, the credible evidence establishes that Patriot violated Administrative Code Section 20-700 by misrepresenting: that its business name was Patriot Home Improvement, Inc.; the terms of consumer credit contracts; and that it would furnish a Certificate of Worker's Compensation Insurance. Smith's assertion, that the printer mistakenly

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<sup>12</sup> Consumers are as follows: Charles, Beaumont, Brockett, Moore, Harris, Newsome, Satchell, Berwick, Garcia and Andrews.

printed the incorrect name of the business on Patriot's contracts, even if true, does not set forth a meritorious defense. Smith offered no other defenses. Accordingly, the charge shall be sustained. As Smith was not the home improvement salesperson, the charge against him is dismissed.

With respect to Charge 2, the Department has failed to establish by a preponderance of the credible evidence that Patriot perpetrated a fraud in the contract or any documents incident to the contract. Although Hutchinson denied signing any loan documents, the Department was unable to establish that the respondents forged her signature or committed any other fraudulent activity. Accordingly, the charge that the respondents violated Administrative Code Section 20-393(3) shall be dismissed.

With respect to Charge 3, the credible evidence establishes that the respondent Patriot violated Administrative Code Section 20-393(4) in that it did not fully disclose the loan financing, nor did it obtain an agreement in writing from the consumer pursuant to New York General Business Law Section 771-a. Accordingly, the charge shall be sustained against respondent Patriot. As Smith did not act as the salesperson with this consumer, the charge against him is dismissed.

With respect to Charge 4, Smith admitted that the contracts were printed with an incorrect name. Accordingly, the charge that the respondents violated Administrative Code Section 20-393(8) shall be sustained. Taken into consideration when assessing the penalty, was Smith's credible testimony, and supporting documentation, that the respondents corrected the contracts and other printed material to reflect its correct business name. As Smith did not act as the salesperson with this consumer, the charge against him is dismissed.

With respect to Charge 5, the Department established by a preponderance of the credible evidence that Patriot violated Administrative Code Section 20-393(11). Hutchinson established by detailed and consistent testimony, and supporting documentation (See Hutchinson Exhibits O, P, and T) that: the roof was not properly repaired in that plywood was not replaced and the rear porch continued to leak; the siding installed was not the selected color as noted on the contract; the railings (fence) were not replaced but instead straightened; and the basement foundation was further damaged when the "jacks" were moved and additional sister beams not installed. Accordingly, the charge is sustained against Patriot. As Smith did not act as the salesperson, the charge against him is dismissed. Hutchinson is entitled to restitution from Patriot in the amount of \$52,915 as follows: The total cost to repair the work (\$6,800 engineer report, \$8,500 roof repair estimate, \$1,200

roof repair, \$62,415 other repairs<sup>13</sup> ) less the amount owed on the original \$67,000 contract<sup>14</sup>.

With respect to Charge 6, the Department established by a preponderance of the credible evidence that Patriot procured a Certificate of Completion prior to the work being completed. The Completion Certificate was dated January 2, 2014, and Hutchinson established that the work had not been completed on January 2, 2014. Smith corroborated Hutchinson's testimony that the work had not been completed. Accordingly, the charge of Administrative Code Section 20-393(12) shall be sustained against Patriot, and as Smith did not act as the salesperson, the charge against him is dismissed.

With respect to Charge 8, the credible evidence establishes that the Patriot's contract was missing required terms and used an incorrect business name. Smith offered no rebuttal testimony. Accordingly, the charge that Patriot violated 6 RCNY Section 2-221(a) shall be sustained.

With respect to Charge 9, the Department failed to establish the charge by a preponderance of the credible evidence. The evidence reflects that there is a Notice of Cancellation with Hutchinson's signature (Hutchinson's Exhibit X). Accordingly, the charge that the respondents violated 6 RCNY Section 2-221(b) shall be dismissed.

With respect to Charge 11, the Department failed to establish the charge by a preponderance of the credible evidence. No evidence was offered to establish if any permits were necessary. Accordingly, the charge shall be dismissed.

With respect to Charge 12, the Department established the charge by a preponderance of the credible evidence. Although Smith claimed that he commenced the job prior to the three day cancellation period because of an emergency at the Hutchinson premises, there was no written statement from Hutchinson corroborating any emergency situation (See 6 RCNY Section 2-221(j)). Accordingly, the charge shall be sustained against Patriot. Again, as Smith was neither licensed or the salesman on this job, the charge against him is dismissed.

### **Al-Uqdah**

With respect to Charge 1, the Department has established that Patriot has violated Administrative Code Section 20-700 by misrepresenting: the

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<sup>13</sup> The two estimates for \$60,000 and \$64,829 were averaged.

<sup>14</sup> Smith testified to receiving \$41,000 from the banks.

business name; the terms of consumer credit contracts; and that it would provide a Certificate of Worker's Compensation. Smith's assertion, that the printer mistakenly printed the incorrect name of the business on Patriot's contracts, even if true, does not set forth a meritorious defense. Smith offered no other defenses. Accordingly, the charge shall be sustained. As Smith was not the home improvement salesperson, the charge against him is dismissed.

With respect to Charge 2, the Department has failed to establish by a preponderance of the credible evidence that the respondents perpetrated a fraud in the contract or any documents incident to the contract. Al-Uqdah testified that it was her and her husband's intention to pay cash for the job and that she does not recall signing any documents besides the contract. However, she admits to all the signatures on the various documents as being hers. Furthermore, the bank's letters to both the consumers and to the law firm of Feldman, Kramer & Monaco, P.C. (See Al-Uqdah's Exhibits C, D and E) indicate that, after researching Al-Uqdah's claim, they have concluded that Al-Uqdah "signed the contract, whether written, verbally or electronically, accepting responsibility for the account." Accordingly, the charge that the respondents violated Administrative Code Section 20-393(3) shall be dismissed.

With respect to Charge 3, the credible evidence establishes that the respondent Patriot violated Administrative Code Section 20-393(4) in that it did not fully disclose the loan financing, nor did it obtain an agreement in writing from the consumer pursuant to New York General Business Law Section 771-a. Accordingly, the charge shall be sustained against respondent Patriot. As Smith did not act as the salesperson with this consumer, the charge against him is dismissed.

With respect to Charge 4, Smith admitted that the contracts were printed with an incorrect name. Accordingly, the charge that Patriot violated Administrative Code Section 20-393(8) shall be sustained. Taken into consideration when assessing the penalty, was Smith's credible testimony, and supporting documentation, that the respondents corrected the contracts and other printed material to reflect its correct business name. As Smith did not act as the salesperson with this consumer, the charge against him is dismissed.

With respect to Charge 5, the credible evidence establishes that Patriot violated Administrative Code Section 20-393(11) by failing to perform the work in a skillful and competent manner. Al-Uqdah's husband, Saleem Al-Uqdah, established by detailed and credible testimony, and supporting documentation, that after the job was performed, he noticed that sections of the gutter were damaged and/or missing and that some of the plywood was hanging. He testified that he believed that the respondent was coming back the following day, but that no one returned to repair the work. The respondent's claim, that

only a part of the fascia is hanging, and that a repair job would cost \$100 is not found credible. As the respondent failed to support his claims that the repairs would be considerably less than the consumer's estimate, the two estimates submitted will be averaged<sup>15</sup> and will be used in determining Al-Uqdah's restitution. Accordingly, the charge shall be sustained against Patriot, and dismissed against Smith as he was not personally responsible for this contract. Al-Uqdah is entitled to restitution from Patriot for \$4,316.95 as follows: Amount paid in excess of contract price (\$100 for dumpster and \$256.95 interest plus the \$3,960 average of the two estimates).

With respect to Charge 6, the Department has established the charge by a preponderance of the credible evidence. Al-Uqdah testified credibly that the certificate was procured prior to the satisfactory completion of the work, in that her husband told her after the respondent left on August 26, 2014 that the work was done poorly and needed repairs. Patriot was notified of the consumer's dissatisfaction, agreed to return, but never did. Accordingly, the charge shall be sustained against Patriot, and dismissed against Smith as he was not personally responsible for this contract.

With respect to Charge 8, the credible evidence establishes that Patriot's contract was missing required terms and used an incorrect business name. Smith offered no rebuttal testimony. Accordingly, the charge shall be sustained.

With respect to Charge 9, the Department established the charge by a preponderance of the credible evidence. Al-Uqdah testified credibly that she did not receive a separate Notice of Cancellation from Patriot. The respondent offered no rebuttal to this charge, although given the opportunity to do so. Accordingly, the charge that Patriot violated 6 RCNY Section 2-221(b) shall be sustained. Again, as Smith was not the salesperson, the charge against him will be dismissed.

With respect to Charge 10, the Department established the charge by a preponderance of the credible evidence. Al-Uqdah testified credibly that she was not informed orally, at the time of the signing of the contract, of her right to cancel. The respondent offered no defense. Accordingly, the charge shall be sustained against Patriot. The charge shall be dismissed against Smith, as he was not present at the signing of the contract.

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<sup>15</sup> The amount used in determining restitution will be \$3,960 based upon the average from Greene Roofing (\$3,020) and New Dynamic Builders (\$4,900).

**White**

With respect to Charge 1, the credible evidence establishes that Patriot violated Administrative Code Section 20-700 by misrepresenting: that its business name was Patriot Home Improvement, Inc.; the terms of consumer credit contracts; that it would furnish a Certificate of Worker's Compensation Insurance; and the amount of years experience in the home improvement business. Smith's assertion, that the printer mistakenly printed the incorrect name of the business on Patriot's contracts, even if true, does not set forth a meritorious defense. Smith offered no other defenses. Accordingly, the charge shall be sustained. As respondent Smith was not the salesperson, the charge against him is dismissed.

With respect to Charge 2, the complainants have failed to establish that the respondents perpetrated fraud in the execution of the contract or other documents incident to the home improvement transaction. White identified her signature on several documents but testified that she had no recollection of whether or not she was shown these documents at the time she signed the contract, or whether she in fact had signed them. As White was uncertain of the details at the time the contract was executed, the charge that the respondents violated Administrative Code Section 20-393(3) shall be dismissed.

With respect to Charge 3, the credible evidence establishes that the respondent Patriot violated Administrative Code Section 20-393(4) in that it did not fully disclose the loan financing, nor did it obtain an agreement in writing from the consumer pursuant to New York General Business Law Section 771-a. Accordingly, the charge shall be sustained against respondent Patriot. As Smith did not act as the salesperson with this consumer, the charge against him is dismissed.

With respect to Charge 4, Smith admitted that the contracts were printed with an incorrect name. Accordingly, the charge that Patriot violated Administrative Code Section 20-393(8) shall be sustained. Taken into consideration when assessing the penalty, was Smith's credible testimony, and supporting documentation, that the respondents corrected the contracts and other printed material to reflect its correct business name.

With respect to Charge 5, the credible evidence establishes that the respondent Patriot has violated Administrative Code Section 20-393(11) by failing to perform the work in a skillful and competent manner. White established by detailed and credible testimony that after the job was performed, there was no vent attached to the exhaust fan, the exhaust fan was installed incorrectly causing lights to go out, and there was no pedestal under the sink to cover the plumbing. Her testimony that the fixtures were of poor

quality were unsupported by any documentation. Furthermore, her assertion that the fixtures were to be off-white, and not white, even if true, was not supported by any language in the contract. In light of the foregoing, the charge shall be sustained. Again, this charge against Smith is dismissed, as he did not negotiate the contract.

Restitution to White is as follows: White's Exhibit E includes a statement from Synchrony Bank that reads "Payment of Amount in dispute \$8700 not required. As White has paid \$1,200 towards this disputed amount, and an additional \$257.12 in interest, she is entitled to receive the total of \$1,457.12 returned to her. Any additional restitution would constitute an unjust enrichment.

With respect to Charge 6, the Department established the charge by a preponderance of the credible evidence. White's signature is on a Completion Certificate dated October 22, 2014, and the testimony elicited was that the work was completed the following week. The respondent offered no defense to this charge. Accordingly, the charge that Patriot violated Administrative Code Section 20-393(12) shall be sustained. As Smith was not a licensed salesperson, nor was he personally involved in this contract, the charge against him will be dismissed.

With respect to Charge 8, the credible evidence establishes that Patriot's contract was missing required terms and used an incorrect business name. Smith offered no rebuttal testimony. Accordingly, the charge shall be sustained.

With respect to Charge 12, the credible evidence establishes that Patriot violated 6 RCNY Section 2-223(d) in that the contract was dated October 18, 2014 and the respondent commenced work on October 21, 2014. As the consumer was not given three full days in which to cancel the contract, the charge shall be sustained against Patriot. Smith was not licensed, nor was he involved in this contract.

### **Louden**

With respect to Charge 1, the credible evidence establishes that the respondents violated Administrative Code Section 20-700 by misrepresenting: that its business name was Patriot Home Improvement, Inc.; that all work was performed by licensed subcontractors; the terms of consumer credit contracts; and that it would furnish a Certificate of Worker's Compensation Insurance. Smith's assertion, that the printer mistakenly printed the incorrect name of the business on Patriot's contracts, even if true, does not set forth a meritorious

defense. Smith offered no other defenses. Accordingly, the charge shall be sustained against both respondents.

With respect to Charge 2, the complainants have failed to establish by a preponderance of the credible evidence that the respondents perpetrated any fraud in the execution of its contract or any other documents incident to the contract. Louden testified that Patriot had previously done work at her home and there was an existing credit card to pay for the instant contract costs. She further testified that Smith told her that he would charge the \$8,000 on the same existing line of credit. As the testimony and documentary evidence does not support a finding of fraud, the charge that the respondents violated Administrative Code Section 20-393(3) shall be dismissed.

With respect to Charge 4, Smith admitted that the contracts were printed with an incorrect name. Accordingly, the charge that the respondents violated Administrative Code Section 20-393(8) shall be sustained. Taken into consideration when assessing the penalty, was Smith's credible testimony, and supporting documentation, that the respondents corrected the contracts and other printed material to reflect its correct business name.

With respect to Charge 5, the credible evidence establishes that the respondents have violated Administrative Code Section 20-393(11) by failing to perform the work in a skillful and competent manner. Louden established by detailed and credible testimony that after the job was performed, there was water leaking into the interior of her home. Louden, however, testified to the following: that the respondents returned approximately 10 days later and corrected the job; that there have not been any further leaks since the job was corrected. As the work was not initially performed skillfully, the charge shall be sustained.

Louden testified to redoing the roof and paying \$9,000 after Patriot completed the repairs. However, she failed to establish why the roof needed to be redone, and offered no estimate or invoice for the recent roofing job. Additionally, the Department in its summation, is only seeking damages of \$1,000 for Louden's homeowner's insurance deductible. As Louden testified credibly that the respondents' contract was \$8,000 and this amount was cancelled by the bank issuing the credit card, any restitution would constitute an unjust enrichment. Accordingly, no restitution is awarded to Louden.

With respect to Charge 6, the complainants have failed to establish the charge by a preponderance of the credible evidence. Louden testified to not signing any certificate of completion. As there was no "procurement" of a certificate of completion, the charge shall be dismissed against both respondents.

With respect to Charge 8, the credible evidence establishes that the respondents' contract was missing required terms and used an incorrect business name. The respondents offered no rebuttal testimony. Accordingly, the charge shall be sustained against both respondents.

With respect to Charge 12, the credible evidence establishes that the respondents violated 6 RCNY Section 2-223(d) in that the contract was dated November 4, 2014 and the respondents commenced work on November 7, 2014. As the consumer was not given three full days in which to cancel the contract, the charge shall be sustained against both respondents.

### **Bannister**

With respect to Charge 1, the credible evidence establishes that Patriot violated Administrative Code Section 20-700 by misrepresenting: that its business name was Patriot Home Improvement, Inc.; the terms of consumer credit contracts; that it would furnish a Certificate of Worker's Compensation Insurance; and the amount of years experience in the home improvement business. Smith's assertion, that the printer mistakenly printed the incorrect name of the business on Patriot's contracts, even if true, does not set forth a meritorious defense. Smith offered no other defenses. Accordingly, the charge shall be sustained. As respondent Smith was not the salesperson, the charge against him is dismissed.

With respect to Charge 2, the Department has failed to establish by a preponderance of the credible evidence that the respondents perpetrated a fraud in the documents incident to the contract, specifically the loan financing. Bannister testified to the following: she entered into a contract with Patriot and that Feldman negotiated the terms; the job would be paid through loan financing and she would receive the loan payback information after the job was completed; she received a call before the job was completed that she had missed a payment. As the testimony indicates that she was aware of loan financing, the charge that the respondents violated Administrative Code Section 20-393(3) shall be dismissed.

With respect to Charge 3, the credible evidence establishes that the respondent Patriot violated Administrative Code Section 20-393(4) in that it did not fully disclose the loan financing, nor did it obtain an agreement in writing from the consumer pursuant to New York General Business Law Section 771-a. Accordingly, the charge shall be sustained against respondent Patriot. As Smith did not act as the salesperson with this consumer, the charge against him is dismissed.

With respect to Charge 4, Smith admitted that the contracts were printed with an incorrect name. Accordingly, the charge that Patriot violated Administrative Code Section 20-393(8) shall be sustained. Taken into consideration when assessing the penalty, was Smith's credible testimony, and supporting documentation, that the respondents corrected the contracts and other printed material to reflect its correct business name. However, as respondent Smith was not the salesperson, the charge against him is dismissed.

With respect to Charge 5, the credible evidence establishes that the respondent Patriot has violated Administrative Code Section 20-393(11) by failing to perform the work in a skillful and competent manner. Bannister established by detailed and credible testimony that after the job was performed, her steps, railing and front door were damaged. She presented two estimates<sup>16</sup>, one for \$11,500 to repair the damage, and the second one for \$4,184.57 for a replacement of the door.<sup>17</sup> The respondent did not rebut Bannister's testimony, but asserted that the costs for the repairs were excessive. However, as the respondent failed to support his claims that the costs of the repairs would be considerably less than the consumer's estimates, the estimates are deemed credible, and will be used in determining Bannister's restitution. Bannister is entitled to restitution from Patriot for \$7,984.50 as follows: Total amount of estimates for repairs (\$11,500 plus \$4,184.50) less the \$7,700 credited back to Bannister from the bank. Any additional restitution would constitute unjust enrichment. Again, this charge against Smith is dismissed, as he did not negotiate the contract.

With respect to Charge 6, the Department has established the charge by a preponderance of the credible evidence. Bannister testified credibly that the certificate was procured prior to the satisfactory completion of the work. Her testimony was corroborated by both Smith, who agreed to return to complete the work, and the bank that received the claim, and ultimately credited her account. Accordingly, the charge shall be sustained against Patriot, and dismissed against Smith as he did not negotiate the contract.

With respect to Charge 8, the credible evidence establishes that Patriot's contract was missing required terms and used an incorrect business name. Smith offered no rebuttal testimony. Accordingly, the charge shall be sustained.

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<sup>16</sup> The estimate for the door was presented at a later date by the Department's attorney.

<sup>17</sup> Bannister's Exhibits D and F.

**Charles**

With respect to Charge 1, the credible evidence establishes that Patriot violated Administrative Code Section 20-700 by misrepresenting: that its business name was Patriot Home Improvement, Inc.; and that it would furnish a Certificate of Worker's Compensation Insurance. Smith's assertion, that the printer mistakenly printed the incorrect name of the business on Patriot's contracts, even if true, does not set forth a meritorious defense. Smith offered no other defenses. Accordingly, the charge shall be sustained. As respondent Smith was not the salesperson, the charge against him is dismissed.

With respect to Charge 2, the Department has failed to establish by a preponderance of the credible evidence that the respondents perpetrated a fraud in the documents incident to the contract, specifically the loan financing. Paulette Charles affirms the following: she and her husband entered into a contract with Patriot and that Feldman and "Tom" negotiated the terms; she signed several documents; she was not aware that she had applied for any credit card. Despite her affirmations, the Department offered no testimony that any of statements contained in the affidavits support a finding of fraud. Accordingly the charge that the respondents violated Administrative Code Section 20-393(3) shall be dismissed.

With respect to Charge 3, the credible evidence establishes that the respondent Patriot violated Administrative Code Section 20-393(4) in that it did not fully disclose the loan financing, nor did it obtain an agreement in writing from the consumer pursuant to New York General Business Law Section 771-a. Accordingly, the charge shall be sustained against respondent Patriot. As Smith did not negotiate the contract, the charge against him is dismissed.

With respect to Charge 4, Smith admitted that the contracts were printed with an incorrect name. Accordingly, the charge that Patriot violated Administrative Code Section 20-393(8) shall be sustained. Taken into consideration when assessing the penalty, was Smith's credible testimony, and supporting documentation, that the respondents corrected the contracts and other printed material to reflect its correct business name. However, as respondent Smith was not the salesperson, the charge against him is dismissed.

With respect to Charge 6, the Department has failed to establish the charge by a preponderance of the credible evidence. The facts contained in the affidavits are insufficient to support a finding of a violation of Administrative Code Section 20-393(12). Accordingly, the charge shall be dismissed.

With respect to Charge 8, the credible evidence establishes that Patriot's contract was missing required terms and used an incorrect business name. Smith offered no rebuttal testimony. Accordingly, the charge shall be sustained.

With respect to Charge 9, the Department established the charge by a preponderance of the credible evidence. Both affidavits affirm that the Charles' did not receive a separate Notice of Cancellation from Patriot. The respondent offered no rebuttal to this charge, although given the opportunity to do so. Accordingly, the charge that Patriot violated 6 RCNY Section 2-221(b) shall be sustained. Again, as Smith was not the salesperson, the charge against him will be dismissed.

With respect to Charge 10, the Department established the charge by a preponderance of the credible evidence. The Charles' affirm that they were not informed orally, at the time of the signing of the contract, of their right to cancel. The respondent offered no defense. Accordingly, the charge shall be sustained against Patriot. The charge shall be dismissed against Smith, as he was not present at the signing of the contract.

### **Beaumont**

With respect to Charge 1, the Department has established the charge by a preponderance of the credible evidence. Department's Exhibit E, the contract between Patriot and Claude and Ulda Beaumont, indicate the incorrect name of the business and the BBB (Better Business Bureau) logo. Smith acknowledged that Patriot is no longer accredited by the BBB. Furthermore, the Department has established that Patriot is licensed under Patriot Home Remodeling Inc. and not Patriot Home Improvement, Inc. Accordingly, the charge shall be sustained against Patriot. The charge against Smith is dismissed, as he was not the licensed salesperson who negotiated the contract.

With respect to Charge 4, Smith admitted that the contracts were printed with an incorrect name. Accordingly, the charge that the respondents violated Administrative Code Section 20-393(8) shall be sustained against Patriot. Taken into consideration when assessing the penalty, was Smith's credible testimony, and supporting documentation, that the respondents corrected the contracts and other printed material to reflect its correct business name. The charge against Smith is dismissed, as he was not the licensed salesperson who negotiated the contract.

With respect to Charge 8, the credible evidence establishes that Patriot's contract was using an incorrect business name. Smith offered no rebuttal testimony. Accordingly, the charge shall be sustained against Patriot. The

charge against Smith is dismissed, as he was not the licensed salesperson who negotiated the contract.

### **Brockett**

With respect to Charge 1, the Department has failed to establish the charge by a preponderance of the credible evidence. The only account of an incorrect business name is that of documentation from GE Capital. The check dated July 30, 2013 is from Patriot Home Remodeling Inc., and other documentation indicates “Patriot Home” or “Patriot”. Accordingly, the charge is dismissed.

With respect to Charge 2, the Department failed to establish that the respondents perpetrated a fraud in the documents incident to the contract. There is insufficient evidence in Department’s Exhibit B to establish a violation. Accordingly, the charge shall be dismissed.

With respect to Charge 4, the Department has failed to establish the charge by a preponderance of the credible evidence. There is insufficient evidence contained to Department’s Exhibit B to establish this charge. Accordingly, the charge is dismissed.

With respect to Charge 8, the Department has failed to establish the charge by a preponderance of the credible evidence. The alleged contract is not contained in Department’s Exhibit B. Accordingly, the charge shall be dismissed.

### **Moore**

With respect to Charge 1, the Department has established the charge by a preponderance of the credible evidence. The contract dated December 19, 2012 indicates the business name as Patriot Home Improvement, Inc. whereas the licensee’s name is Patriot Home Remodeling, Inc. Accordingly, the charge against Patriot shall be sustained. As Smith did not act as the salesperson, the charge against him is dismissed.

With respect to Charge 4, Smith admitted that the contracts were printed with an incorrect name. Accordingly, the charge that the respondents violated Administrative Code Section 20-393(8) shall be sustained against Patriot. Taken into consideration when assessing the penalty, was Smith’s credible testimony, and supporting documentation, that the respondents corrected the contracts and other printed material to reflect its correct business name. The charge against Smith is dismissed, as he was not the licensed salesperson who negotiated the contract.

With respect to Charge 8, the credible evidence establishes that Patriot's contract was missing required terms and used an incorrect business name. Smith offered no rebuttal testimony. Accordingly, the charge shall be sustained. The charge against Smith is dismissed, as he was not the licensed salesperson who negotiated the contract.

### **Harris**

With respect to Charge 1, the Department has established the charge by a preponderance of the credible evidence. Department's Exhibit F, the contract between Patriot and Claudine Harris, indicate the incorrect name of the business and the BBB (Better Business Bureau) logo. Smith acknowledged that Patriot is no longer accredited by the BBB. Furthermore, the Department has established that Patriot is licensed under Patriot Home Remodeling Inc. and not Patriot Home Improvement, Inc. Accordingly, the charge shall be sustained against the respondents.

With respect to Charge 4, Smith admitted that the contracts were printed with an incorrect name. Accordingly, the charge that the respondents violated Administrative Code Section 20-393(8) shall be sustained against Patriot. Taken into consideration when assessing the penalty, was Smith's credible testimony, and supporting documentation, that the respondents corrected the contracts and other printed material to reflect its correct business name.

With respect to Charge 8, the Department has established by a preponderance of the credible evidence that the respondents violated 6 RCNY Section 2-221(a)(1) by failing to include the contractor's correct name. Accordingly, the charge will be sustained.

### **Newsome**

With respect to Charge 2, the credible evidence establishes that the respondent Patriot perpetrated a fraud in the documents incident to the contract, specifically the loan financing. Department's Exhibit B includes complaints to GE Capital Retail Bank referencing a loan that Feldman submitted on behalf of Patriot. Newsome denies applying for the loan and authorizing anyone else to apply. Furthermore, the work was not completed and she was charged for the entire job. Smith offered no defense, although given the opportunity to do so. Accordingly, the charge that Patriot violated Administrative Code Section 20-393(3) shall be sustained. However, as respondent Smith was not the salesperson, the charge against him is dismissed.

With respect to Charge 3, the credible evidence establishes that the respondent Patriot violated Administrative Code Section 20-393(4) in that it did not fully disclose the loan financing, nor did it obtain an agreement in writing from the consumer pursuant to New York General Business Law Section 771-a. The only evidence on record is the home improvement consumer credit application and home improvement sales slip. There is nothing in the record indicating a written agreement between the parties regarding loan financing. Accordingly, the charge shall be sustained against respondent Patriot. As respondent Smith was not the salesperson, the charge against him is dismissed.

With respect to Charge 6, the Department established by a preponderance of the credible evidence that Patriot procured a certificate of completion prior to the work being completed. The Completion Certificate was dated May 27, 2013, and in Department's Exhibit B is documentation from the consumer to GE Capital dated August 13, 2013 and September 23, 2013 that the work had not been fully completed. Smith offered no defense. Accordingly, the charge shall be sustained against Patriot. As Smith did not act as the salesperson, the charge against him is dismissed.

### **Satchell**

With respect to Charge 1, the Department has established the charge by a preponderance of the credible evidence. The contract dated January 8, 2014 indicates the business name as Patriot Home Improvement, Inc. whereas the licensee's name is Patriot Home Remodeling, Inc. Accordingly, the charge against Patriot shall be sustained. As Smith did not act as the salesperson, the charge against him is dismissed.

With respect to Charge 2, the Department failed to establish the charge by a preponderance of the credible evidence. There was insufficient evidence and no testimony to establish that the respondents perpetrated any fraud. Accordingly, the charge shall be dismissed.

With respect to Charge 4, Smith admitted that the contracts were printed with an incorrect name. Accordingly, the charge that the respondents violated Administrative Code Section 20-393(8) shall be sustained against Patriot. The penalty takes into consideration Smith's credible testimony, and supporting documentation, that the respondents corrected the contracts and other printed material to reflect its correct business name. The charge against Smith is dismissed, as he was not the licensed salesperson who negotiated the contract.

With respect to Charge 6, the Department established by a preponderance of the credible evidence that Patriot procured a certificate of completion prior to the work being completed. The Completion Certificate was dated January 9, 2014, and in Department's Exhibit B is documentation from the consumer to Synchrony dated April 2, 2014 that the work had not been fully completed. Smith offered no defense. Accordingly, the charge shall be sustained against Patriot. As Smith did not act as the salesperson, the charge against him is dismissed.

With respect to Charge 8, the Department has established by a preponderance of the credible evidence that Patriot violated 6 RCNY Section 2-221(a)(1) by failing to include the contractor's correct name. Accordingly, the charge will be sustained. As Smith did not act as the salesperson, the charge against him is dismissed.

### **Berwick**

With respect to Charge 2, the Department failed to establish that the respondents perpetrated a fraud in the documents incident to the contract. There is insufficient evidence in Department's Exhibit B to establish a violation. Accordingly, the charge shall be dismissed.

With respect to Charge 6, the Department established by a preponderance of the credible evidence that the respondents procured a certificate of completion prior to the work being completed. The Completion Certificate was dated February 5, 2014, and in Department's Exhibit B is documentation from the consumer to GE Capital Retail Bank on June 12, 2014 that the work had not been fully completed, in that the storm door and one window were not installed. Smith corroborated the consumer's complaint and paid \$1,500 as reimbursement. However, the respondents are still in violation of the charge. Accordingly, the charge shall be sustained.

### **Garcia**

With respect to Charge 2, the Department failed to establish that the respondents perpetrated a fraud in the documents incident to the contract. Although some of the signatures do not appear to be the same, there was no testimony, either from the consumer, or a handwriting expert, to support a finding of fraud. Accordingly, the charge that the respondents violated Administrative Code Section 20-393(3) shall be dismissed.

**Andrews**

With respect to Charge 2, the Department failed to establish that the respondents perpetrated a fraud in the documents incident to the contract. As there was neither testimony nor documents to support a finding of fraud, the charge that the respondents violated Administrative Code Section 20-393(3) shall be dismissed.

With respect to Charge 6, the Department has established the charge by a preponderance of the credible evidence. The Certificate of Completion is dated January 25, 2013 and signed by both the respondent and consumer. However, the consumer filed a complaint on January 28, 2013 to Synchrony Bank. The complaint alleged that the garage door was not replaced. The respondent acknowledged the complaint and refunded the consumer \$1,500 on June 25, 2013. Accordingly, the charge shall be sustained against Patriot. The charge is dismissed against Smith as the record fails to indicate if he was the salesman for this transaction.

**ORDER**

**Respondent Patriot** is found **guilty** of the following, and is **Ordered to pay to the Department a TOTAL FINE of \$ 19,900<sup>18</sup>, which is immediately due and owing, as follows:**

Administrative Code Section 20-700 (\$ 350 per count, for 10 counts) <sup>19</sup>	\$3,500
Administrative Code Section 20-393(3) (\$ 500 per count, for 1 count) <sup>20</sup>	\$ 500
Administrative Code Section 20-393(4) (\$ 500 per count, for 5 counts) <sup>21</sup>	\$ 2,500
Administrative Code Section 20-393(8) (\$ 200 per count, for 10 counts) <sup>22</sup>	\$2,000

<sup>18</sup> All penalties are within the statutory range.

<sup>19</sup> Consumers: Hutchinson, Al-Uqdah, White, Louden, Bannister, Charles, Beaumont, Moore, Harris and Satchell

<sup>20</sup> Consumer Newsome

<sup>21</sup> Consumers: Hutchinson, Al-Uqdah, White, Bannister and Charles

Administrative Code Section 20-393(11) (\$ 500 per count, for 5 counts) <sup>23</sup>	\$ 2,500
Administrative Code Section 20-393(12) <sup>24</sup> (\$ 500 per count, for 8 counts)	\$ 4,000
6 RCNY Section 2-221(a) <sup>25</sup> (\$200 per count, for 10 counts)	\$ 2,000
6 RCNY Section 2-221(b) <sup>26</sup> (\$ 500 per count, for 2 counts)	\$ 1,000
6 RCNY Section 2-221(d) <sup>27</sup> (\$ 200 per count, for 2 counts)	\$ 400
6 RCNY Section 2-223(d) <sup>28</sup> (\$ 500 per count, for 3 counts)	\$ 1,500

All other counts are **dismissed**.

**Respondent Smith** is found **guilty** of the following, and is **Ordered to pay to the Department a TOTAL FINE of \$2,650<sup>29</sup>, which is immediately due and owing, as follows:**

Administrative Code Section 20-700 (\$ 350 per count, for 1 count) <sup>30</sup>	\$ 350
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<sup>22</sup> Consumers: Hutchinson, Al-Uqdah, White, Loudon, Bannister, Charles, Beaumont, Moore, Harris and Satchell

<sup>23</sup> Consumers: Hutchinson, Al-Uqdah, White, Loudon and Bannister

<sup>24</sup> Consumers: Hutchinson, Al-Uqdah, White, Bannister, Newsome, Satchell, Berwick and Andrews

<sup>25</sup> Consumers: Hutchinson, Al-Uqdah, White, Loudon, Bannister, Charles, Beaumont, Moore, Harris and Satchell

<sup>26</sup> Consumers: Al-Uqdah and Charles

<sup>27</sup> Consumers: Al-Uqdah and Charles

<sup>28</sup> Consumers: Hutchinson, White and Loudon

<sup>29</sup> All penalties are within the statutory range.

<sup>30</sup> Consumer: Loudon

Administrative Code Section 20-393(8) (\$ 200 per count, for 2 counts) <sup>31</sup>	\$ 400
Administrative Code Section 20-393(11) <sup>32</sup> (\$ 500 per count, for 1 count)	\$ 500
Administrative Code Section 20-393(12) <sup>33</sup> (\$ 500 per count, for 1 count)	\$ 500
6 RCNY Section 2-221(a) <sup>34</sup> (\$ 200 per count, for 2 counts)	\$ 400
6 RCNY Section 2-223(d) <sup>35</sup> (\$ 500 per count, for 1 count)	\$ 500

All other counts are **dismissed**.

After a review of the record, I find that neither a suspension nor revocation of either Patriot or Smith is warranted. I base my finding on the following: the respondents offered to settle these cases on more than one occasion by offering restitution to the consumers and paying Departmental fines; there is testimony that the respondents, prior to commencing this hearing, paid restitution to several of the consumers; the respondents admitted to contract violations and have since corrected their contracts, which now include the required terms pursuant to 6 RCNY Section 2-221(a); Smith testified that he terminated Chris Marrow's employment and discontinued any business relationship with Gary Feldman<sup>36</sup>; the respondents have offered to implement a monitoring protocol by engaging a licensed engineer to monitor all of the respondents' contracts, etc.; and the respondents have ceased arranging financial loans for customers. Furthermore, with one exception, the Department did not establish that respondents intended to deceive or cause damage to any of the consumers. Accordingly, as the actions of both respondents do not rise to the level of failing to maintain the standards of

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<sup>31</sup> Consumers: Louden and Harris

<sup>32</sup> Consumer: Louden

<sup>33</sup> Consumer: Berwick

<sup>34</sup> Consumers: Louden and Harris

<sup>35</sup> Consumers: Louden

<sup>36</sup> Both Chris Marrow and Gary Feldman were primarily responsible for obtaining the contracts and documents associated with these consumers.

integrity, honesty and fair dealing, a charge of Administrative Code Section 20-101 as against both respondents is **dismissed**.

It is however, **ORDERED**, that any liens currently in effect be vacated as they are not warranted pursuant to this decision.

**In addition, respondent Patriot is ORDERED to pay RESTITUTION to the following Consumers, which amounts are immediately due and owing:**

Giles Hutchinson and Prunella Hutchinson	\$ 52,915.00
Umilta Al-Uqdah and Saleem Al-Uqdah	\$ 4,316.95
Julieta White	\$ 1,457.12
Vikki Louden	\$ 0
Latasha and Eva Bannister	\$ 7,984.50

**Respondent Patriot Home Remodeling Inc.** is 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, 9<sup>th</sup> floor, New York, New York 10004” or by emailing such proof to: [ConsumerRestitution@dca.nyc.gov](mailto:ConsumerRestitution@dca.nyc.gov). The award must be paid by certified check, money order or attorney trust account. 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.**

**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 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: November 25, 2015**

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**David L. Wolfe**  
**Acting Director of Adjudication**

**cc: [bmccormick@dca.nyc.gov](mailto:bmccormick@dca.nyc.gov)**

**[esu@fordharrison.com](mailto:esu@fordharrison.com)**

**Mail payment of fine 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 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](mailto:myappeal@dca.nyc.gov) and, at the same time, mail the \$25 appeal fee and the 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. **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, 11<sup>th</sup> 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, 9<sup>th</sup> 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](mailto: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, 11<sup>th</sup> 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.**