

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

MARJORIE CARTER and LENNOX CARTER,

-and-

DEPARTMENT OF CONSUMER AFFAIRS,

Complainants,

-against-

SHERMAN INDUSTRY INC.,

-and-

THOMAS J. HANCOCK,

Respondents.

DECISION AND ORDER

**NOH No.:
C1250314**

**Record Nos.:
12661-2014-ADJC
12662-2014-ADJC**

**License Nos.:
1296093-DCA (HIC)
1296091-DCA (HIS)**

An inquest was held on September 28, 2015.

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

The Notice of Hearing (“NOH”) charges respondent Sherman Industry Inc. with violating the following:

1. Title 20 of New York City Administrative Code (“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, in that Sherman Industry Inc. received payment for services not performed and promised to complete contracted work but failed to do so.

2. Administrative Code § 20-700 and 6 RCNY § 1-12 by engaging in a deceptive trade practice in the negotiation and performance of a home improvement contract, in that Sherman Industry Inc. promised to obtain the necessary Certificate of Occupancy but failed to do so.
3. Administrative Code § 20-393(1), by deviating from or disregarding the plans or specifications or terms and conditions agreed to under the home improvement contract by abandoning the work without the written consent of the consumer.
4. 6 RCNY § 2-223(a) by failing to secure or see to the securing of sign-offs needed to obtain a Certificate of Occupancy in accordance with applicable state or local building laws.

The Notice of Hearing charges respondents Sherman Industry Inc. and Thomas J. Hancock with violating the following:

5. 6 RCNY § 2-221(a) by failing to include in the contract the signatures of all the parties.
6. 6 RCNY § 2-221(a)(1) by failing to include in the contract the contractor's and salesperson's license number.
7. 6 RCNY § 2-221(a)(2) by failing to include in the contract the approximate or estimated dates on which the contract work would begin and be substantially completed and a statement of any contingencies that would materially change the approximate or estimated completion date, and a statement of whether or not the parties determined a definite completion date to be of the essence.
8. 6 RCNY § 2-221(a)(4) by failing to include in the contract a notice to the owner that the contractor or subcontractor who performs on the contract and is not paid may have a claim against the owner which may be enforced against the property in accordance with applicable lien laws.
9. 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 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.

10. 6 RCNY § 2-221(a)(8) by failing to include in the contract a clause wherein the contractor agrees to furnish the buyer with Certificate of Workers' Compensation Insurance prior to commencement of work pursuant to the contract.
11. 6 RCNY § 2-221(a)(9) by failing to include in the contract a clause wherein the contractor agrees to procure all permits required by law.
12. 6 RCNY § 2-221(a)(10) by failing to include in the contract, in immediate proximity to the space reserved for the signature of the buyer and in bold face type of a minimum size of 10 points, a statement that the buyer has the right to cancel the transaction at any time prior to midnight of the third business day after the date of the transaction.
13. 6 RCNY § 2-221(b) by failing to provide a separate Notice of Cancellation.
14. Administrative Code § 20-101 for failing to maintain the standards of integrity, honesty, and fair dealing required of licensees.

Findings of Fact

On May 4, 2009, the consumers Marjorie Carter and Lennox Carter entered into a contract ("Contract") with Sherman Industry Inc. and Thomas J. Hancock for home improvement work. The respondents agreed to perform home improvement work for the consumers for a total price of \$125,171. The consumers paid the respondents a total of \$125,171. The work was not performed or was not performed properly. The total cost to correct and complete the work and/or to repair any damaged property and/or to compensate the consumers for additional losses is \$6,778.¹

At all relevant times, Sherman Industry Inc. maintained an active Home Improvement Contractor's license (1296093-DCA). Sherman Industry Inc. is not a recidivist.

¹ The consumer submitted one receipt evidencing payment for corrected plumbing work in the amount of \$1,500, and a receipt from the firm that obtained the Certificate of Occupancy for the consumer in the amount of \$5,278, for a total of \$6,778. (Exhibits 6 & 7).

At all relevant times, Thomas J. Hancock maintained an active Home Improvement Salesperson’s license (1296091-DCA). Thomas J. Hancock is a not a recidivist.

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

Opinion

The credible evidence establishes that the consumers are entitled to restitution from the respondents in the amount of \$6,778, as follows:

Cost of correction and completion and cost to compensate for additional losses:	\$6,778
Less Amount unpaid on contract:	- \$0
Restitution Due:	\$6,778

Respondent Sherman Industry Inc.

Administrative Code § 20-700 & 6 RCNY 1-12 (2 counts)

Consumer Marjorie Carter established through credible and consistent testimony and receipts,² that the respondent Sherman Industry Inc. violated two counts of 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, in that Sherman Industry Inc. received payment for services not performed and promised to complete contracted work but failed to do so. Specifically, Sherman Industry Inc. failed to perform plumbing work in a competent manner, and failed to obtain the required Certificate of Occupancy. Accordingly, the charges are sustained.

Administrative Code § 20-393(1)

The Department established that respondent Sherman Industry Inc. violated Administrative Code § 20-393(1) by a preponderance of the credible evidence. I find, based on the credible testimony of Ms. Carter, and supporting documents,³ that Sherman Industry Inc. deviated from or disregarded the plans or specifications or terms agreed to under the home improvement contract by failing to obtain the required Certificate of Occupancy.

² Exhibits 6 & 7.

³ Exhibits 4 & 7.

Accordingly, the charge is sustained.

6 RCNY § 2-223(a)

The Department established that respondent Sherman Industry Inc. violated 6 RCNY § 2-223(a) by a preponderance of the credible evidence. I find, based on the credible testimony of Ms. Carter, and supporting documents, that Sherman Industry Inc. failed to secure the sign-offs needed to obtain a Certificate of Occupancy in accordance with applicable state and local buildings law.

Accordingly, the charge is sustained.

Respondents Sherman Industry Inc. & Thomas J. Hancock

6 RCNY § 2-221(a)

The Department did not establish that respondents Sherman Industry Inc. and Thomas J. Hancock violated 6 RCNY § 2-221(a) by a preponderance of the credible evidence. The Contract submitted into evidence by Ms. Carter did contain the signatures of all relevant parties.

Accordingly, the charge is dismissed.

6 RCNY § 2-221(a)(1)

The Department established that respondents Sherman Industry Inc. and Thomas J. Hancock violated 6 RCNY § 2-221(a)(1) by a preponderance of the credible evidence. The Contract does not contain the home improvement salesperson's license number.

Accordingly, the charge is sustained.

6 RCNY § 2-221(a)(2)

The Department established that respondents Sherman Industry Inc. and Thomas J. Hancock violated 6 RCNY § 2-221(a)(2) by a preponderance of the credible evidence. The Contract does not contain a statement of any contingencies that would materially change the approximate or estimated completion date, or whether a definite completion date was of the essence.

Accordingly, the charge is sustained.

6 RCNY § 2-221(a)(4)

The Department established that respondents Sherman Industry Inc. and Thomas J. Hancock violated 6 RCNY § 2-221(a)(4) by a preponderance of the credible evidence. The Contract does not contain 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 to applicable lien laws.

Accordingly, the charge is sustained.

6 RCNY § 2-221(a)(5)

The Department established that respondents Sherman Industry Inc. and Thomas J. Hancock violated 6 RCNY § 2-221(a)(5) by a preponderance of the credible evidence. The Contract does not contain 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.

Accordingly, the charge is sustained.

6 RCNY § 2-221(a)(8)

The Department established that respondents Sherman Industry Inc. and Thomas J. Hancock violated 6 RCNY § 2-221(a)(8) by a preponderance of the credible evidence. The Contract does not contain 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.

Accordingly, the charge is sustained.

6 RCNY § 2-221(a)(9)

The Department established that respondents Sherman Industry Inc. and Thomas J. Hancock violated 6 RCNY § 2-221(a)(9) by a preponderance of the credible evidence. The Contract does not contain a clause wherein the contractor agrees to procure all permits required by law.

Accordingly, the charge is sustained.

6 RCNY § 2-221(a)(10)

The Department did not establish that respondents Sherman Industry Inc. and Thomas J. Hancock violated 6 RCNY § 2-221(a)(10) by a preponderance of the credible evidence. The Contract does contain 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.

Accordingly, the charge is dismissed.

6 RCNY § 2-221(b)

The Department established that respondents Sherman Industry Inc. and Thomas J. Hancock violated 6 RCNY § 2-221(b) by a preponderance of the credible evidence. The respondent's did not provide consumers with a separate Notice of Cancellation.

Accordingly, the charge is sustained.

Administrative Code § 20-101

The Department established that respondents Sherman Industry Inc. and Thomas J. Hancock violated Administrative Code § 20-101 by a preponderance of the credible evidence. Consumer Marjorie Carter established through credible and consistent testimony, and receipts,⁴ that Sherman Industry Inc. received payment for services not performed and promised to complete contracted work but failed to do so. Specifically, Sherman Industry Inc. failed to perform plumbing work in a competent manner, and failed to obtain the required Certificate of Occupancy.

Accordingly, the charge is sustained.

ORDER

The respondent **Sherman Industry Inc.** is found **not guilty** of violating one count of 6 RCNY § 2-221(a) and one count of 6 RCNY § 2-221(a)(10). Respondent **Sherman Industry Inc.** is found **guilty** of violating the following

⁴ Exhibits 4, 6 & 7.

charges, and of violating 6 RCNY Section 1-14,⁵ and is hereby **Ordered to pay to the Department of Consumer Affairs (DCA) a TOTAL FINE of \$10,200** which is immediately due and owing, as follows:

- Administrative Code § 20-700 & 6 RCNY § 1-12 (\$350 per count, for 2 counts) \$700
- Administrative Code § 20-393(1) (\$1000 per count, for 1 count) \$1000
- 6 RCNY § 2-223(a) (\$1000 per count, for 1 count) \$1000
- 6 RCNY § 2-221(a)(1) (\$1000 per count, for 1 count) \$1000
- 6 RCNY § 2-221(a)(2) (\$1000 per count, for 1 count) \$1000
- 6 RCNY § 2-221(a)(4) (\$1000 per count, for 1 count) \$1000
- 6 RCNY § 2-221(a)(5) (\$1000 per count, for 1 count) \$1000
- 6 RCNY § 2-221(a)(8) (\$1000 per count, for 1 count) \$1000
- 6 RCNY § 2-221(a)(9) (\$1000 per count, for 1 count) \$1000
- 6 RCNY § 2-221(b) (\$1000 per count, for 1 count) \$1000
- 6 RCNY § 1-14 (\$500 per count, for 1 count) \$500

In addition, respondent **Sherman Industry Inc.** is also found guilty of violating Administrative Code § 20-101.

⁵ Departmental records establish that the respondent possessed a home improvement contractor's license at the time the NOH was served.

Respondent **Sherman Industry Inc.’s Home Improvement Contractor License (“HIC”) (1296093-DCA)** is **not revoked** and **Sherman Industry Inc.** is **not deemed permanently unfit** to hold any licenses issued by the Department of Consumer Affairs. This is the respondent’s first violation.

The respondent **Thomas J. Hancock** is found **not guilty** of violating one count of 6 RCNY § 2-221(a) and one count of 6 RCNY § 2-221(a)(10). Respondent **Thomas J. Hancock** is found **guilty** of violating the following charges, and of violating 6 RCNY Section 1-14,⁶ and is hereby **Ordered to pay to the Department of Consumer Affairs (DCA) a TOTAL FINE of \$7,500** which is immediately due and owing, as follows:

- 6 RCNY § 2-221(a)(1) \$1000
(\$1000 per count, for 1 count)
- 6 RCNY § 2-221(a)(2) \$1000
(\$1000 per count, for 1 count)
- 6 RCNY § 2-221(a)(4) \$1000
(\$1000 per count, for 1 count)
- 6 RCNY § 2-221(a)(5) \$1000
(\$1000 per count, for 1 count)
- 6 RCNY § 2-221(a)(8) \$1000
(\$1000 per count, for 1 count)
- 6 RCNY § 2-221(a)(9) \$1000
(\$1000 per count, for 1 count)
- 6 RCNY § 2-221(b) \$1000
(\$1000 per count, for 1 count)
- 6 RCNY § 1-14 \$500
(\$500 per count, for 1 count)

In addition, respondent **Thomas J. Hancock** is also found guilty of violating Administrative Code § 20-101.

Respondent **Thomas J. Hancock’s Home Improvement Salesperson Contractor License (“HIS”) (1296091-DCA)** is **not revoked** and **Thomas J.**

⁶ Departmental records establish that the respondent possessed a home improvement salesperson’s license at the time the NOH was served.

Hancock is not deemed permanently unfit to hold any licenses issued by the Department of Consumer Affairs. This is the respondent's first violation.

The Respondents are ORDERED to pay RESTITUTION to the Consumers in the amount of \$6,778 which is immediately due and owing, for which they are jointly and severally liable.

The respondents are further **Ordered** to provide to the Department proof of payment of restitution to the consumers within thirty (30) days of the date of this decision to the following address: "NYC Department of Consumer Affairs, Collections Division-Accounts Receivable, 42 Broadway, 9th floor, New York, New York 10004" or by emailing such proof to: collections@dca.nyc.gov

This constitutes the recommendation of the Administrative Law Judge.

**Noel R. Garcia
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.

This constitutes the Decision and Order of the Department.

Date: November 2, 2015

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

cc: Jordan Cohen, Esq.
JCohen@dca.nyc.gov

Marjorie & Lennox Carter
117-23 165 Street
Jamaica, NY 11434
carterlennox@hotmail.com

Sherman Industry Inc.
448 Rockaway Avenue
Valley Stream, NY 11581
theshermangroup@yahoo.com

Sherman Industry Inc.
98B Bond Street
Westbury, NY 11581

Thomas J. Hancock
25 Sandpiper Lane
Levittown, NY 11756

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.