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

[redacted],

**and**

**THE DEPARTMENT OF CONSUMER AFFAIRS,**

**Complainants,**

**-against-**

[redacted]

**and**

[redacted]

**Respondents.**

**CONSENT ORDER**

**Complaint Nos.**
**CD** [redacted]
**DD** [redacted]

**License Nos.**
**HIC #** [redacted]
**HIS #** [redacted]

[redacted], Respondent Home Improvement Contractor ("HIC") and [redacted], Respondent Home Improvement Salesperson ("HIS") (collectively, "Respondent(s)") acknowledge receipt of the above captioned Notice of Hearing which charges violations of the New York City Administrative Code, Title 20, Chapter 1 ("License Enforcement Law") and Chapter 2, Subchapter 22 ("Home Improvement Business Licensing Laws") and rules promulgated thereunder. The Department of Consumer Affairs ("DCA" or "Department"), Taradat Madho ("Consumer(s)"), and Respondent(s) enter into, and agree to the terms of, this Consent Order to settle the above-captioned Complaints as follows:

1. Respondent HIC shall pay to Consumer the total sum of $[redacted] in full and final settlement of all claims asserted in the above-referenced complaints. Respondent shall make payment in two installments as set forth in this paragraph. Every payment shall be made by certified check, money order or attorney trust account check made payable to [redacted] and mailed to the Consumer(s) by certified mail, return receipt requested, or by any other mail system with has a tracking system, to the Consumer's address listed below; to be received by the Consumer according to the following schedule:

   a. $[redacted] on or before February 15, 2014 and
   b. $[redacted] on or before March 15, 2014 and
   c. $ [redacted] on or before April 15, 2014.

2. Within thirty (30) days after making any payment to the Consumer(s) required by this Order, Respondent(s) shall send proof of such payment (copy of the certified check, money order or attorney trust account check), to the Department's Collections Division. This proof may be mailed by first class mail or by email to either of the following addresses:

| | |
|---|---|
| By email: | ConsumerRestitution@dca.nyc.gov |
| By regular mail: | Department of Consumer Affairs<br>Collections Division<br>42 Broadway<br>New York, NY 10004 |

3. Upon Respondent(s)' full compliance with the terms set forth above, the Consumer(s) and Respondent(s) shall be deemed to have released each other from any and all claims arising out of the above-captioned matter, in this or in any other jurisdiction.

**Model Home Improvement Contract/Estimate and List of Clients**

4. For all future contracts and estimates involving the provision of home improvement contracting services to any consumer in New York City, Respondent(s) shall use only the Model Contract and Model Estimate in effect at the time Respondent(s) enter into the contract or provide the estimate. Respondent(s) can access the most current model contract and estimate on the Department's website: http://www.nyc.gov/html/dca/downloads/pdf/hiccontractshort.pdf Respondent(s) shall also use the Model Contract and Model Estimate for any change orders for home improvement services with any consumer in New York City.

5. Respondent(s) shall maintain a list, using the form available on the Department's website at http://www.nyc.gov/html/dca/downloads/excel/Template_ListofHICClients.xls , of each and every consumer in NYC with whom Respondent(s) contracts for home improvement services, and Respondent(s) shall produce a copy of the list, including complete information on the form, upon the Department's demand.

6. At any time, the Department may require that Respondent(s) provide the Department with copies of written estimates and/or contracts that Respondent(s) enters into or uses involving home improvement services in New York City, and Respondent(s) shall comply with the Department's demand. The Department may suspend and/or revoke Respondent(s)' licenses upon Respondent(s)' failure to respond to the Department's request for estimates or contracts and/or if Respondent(s)' fail to provide contracts and/or estimates that comply fully and completely with this Consent Order and with applicable laws, rules and regulations.

7. Respondent(s) shall make any changes to the contract as directed by the Department, within thirty (30) days of being instructed to do so. Respondent(s) are solely responsible for ensuring that the contracts it uses conforms to applicable laws, rules and regulations, whether or not it is advised of deficiencies by the Department.

8. Respondent(s) agree and understand that the Department's receipt of any of Respondent(s)' contracts does not constitute approval of the contract, nor does it preclude the Department from taking action against Respondent(s) with regard to any non-compliant contract.

9. Respondent(s) shall revise its contracts as necessitated by any changes in or to applicable laws, rules and regulations.

10. If Respondent(s) negotiate a contract with any consumer in a language other than English, the contract must be in English as well as in the other language. For example, contracts negotiated in Spanish must be in both Spanish and English.

11. Respondent(s) agree and understand that, within thirty (30) days of the Department posting on its website at http://www.nyc.gov/html/dca/downloads/pdf/hiccontractshort.pdf of a revised Model Estimate and/or Model Contract, Respondent(s) shall use the most recent Model Estimate and/or Model Estimate to provide to consumers in New York City estimates and/or to enter into contract(s) with consumers in New York City for home improvement work.

**Distribution of "Consumer Bill of Rights on Contracting for Home Improvements"**

12. Respondent(s) shall distribute an up-to-date copy of the "Consumer Bill of Rights on Contracting for Home Improvements" to all consumers: a) prior to preparing an estimate and b) prior to entering into a contract with consumers in New York City for home improvement work. A copy is located at: http://www.nyc.gov/html/dca/downloads/pdf/hiccontractshort.pdf

13. Respondent(s) shall provide the document in English and in the language principally used in the oral sales presentation to the consumer.

14. Respondent(s) acknowledges that the English version of the "Consumer Bill of Rights on Contracting for Home Improvements" is located at .http://www.nyc.gov/html/dca/downloads/pdf/hiccontractshort.pdf and that additional information for home improvement contractors and salespeople is available at http://www.nyc.gov/html/dca/html/initiatives/contractors.shtml.

**Consequences of Breach of CO**

15. In the event Respondent HIC fails to comply with the payment and proof of payment terms in paragraphs 1 and 2 of this Consent Order, the Department may, without any further hearing, issue Orders as follows:

a. On CD[redacted], finding Respondent HIC guilty of the charges set forth in the Notice of Hearing, ordering payment of a total fine of $[redacted] to the Department; and, revoking the Home Improvement Contractor's License.

b. On DD[redacted], finding Respondent HIS guilty of the charges set forth in the Notice of Hearing, ordering payment to the Department a total fine of $[redacted]; and, revoking the Home Improvement Salesperson's License.

c. On CD[redacted] Ordering Respondent to pay the restitution agreed to hereunder to the Consumer(s), less any payments already made.

16. Respondent(s)' breach of any provision of this Consent Order shall be sufficient ground for the Department to impose maximum fines and to revoke any license(s) issued to the Respondent(s) by the Department.

17. Any breach of any provision of this Consent Order shall be deemed to be proof that no person who has an equity interest of 10% or more in Respondent's business and/or significant managerial responsibility for the operation of Respondent's business, is possessed of the characteristics, including integrity, honesty, and fair dealing, required of persons who or which hold any license issued by the Department. Each of the Respondent(s) hereby waives its right to a hearing on the foregoing and understands and agrees each of Respondent(s)' licenses issued by the Department shall be revoked.

18. Any of the following shall be the basis for automatic revocation of license(s) issued to Respondent(s) by the Department, and Respondent(s) shall promptly return any and all license(s) issued by the Department:

a. Respondent(s)' failure to pay any restitution or fine provided for herein, or within thirty (30) days for any fine or restitution that may otherwise be ordered by the Department's administrative tribunal in the future; or

b. Respondent(s)' failure to present proof of payment (via certified mail, money order or trust account check only) to the Department of any restitution agreed under this Consent Order within thirty (30) days of the due date for said payment as required herein; or

c. Respondent(s)' failure to use model estimates and/or contract documents or to create and maintain a list of the contracts into which Respondent(s) enters for the provision of home improvement contracting services in NYC.

19. Any of the following shall be the basis for automatic suspension of license(s) issued to Respondent(s) by the Department, as well as the issuance of a Notice of Hearing within ten (10) days seeking revocation of license(s) issued to Respondent(s) by the Department:

a. Respondent(s)' failure to respond to, or to provide estimates, contract documents and/or a list of the contracts into which Respondent(s) enters for the provision of home improvement contracting services in NYC in response to the Department's demand; or,

b. Respondent(s)' failure to provide estimates, contract documents and/or a list of the contracts into which Respondent(s) enters for the provision of home improvement contracting services in NYC that comply fully and completely with this Consent Order and with applicable laws, rules and regulations.

**Resolution of Outstanding and Future Consumer Complaints**

20. Respondent(s) shall make all possible efforts in good faith to resolve all consumer complaints filed with the Department within ten (10) business days of Respondent's receipt of copies of said complaints, regardless of whether Respondent(s) were licensed by the Department at the time of the activity about which the consumer complained. Respondent(s) shall respond to subsequent communications from the Department concerning the complaints within five (5) business days of receipt.

21. Respondent(s) shall submit to the Department's jurisdiction to adjudicate the merits of every complaint which may be filed against Respondent(s) concerning contracts entered into at any time including during any period of unlicensed activity.

22. The name, address, telephone number, email address, if any, and title of the individual responsible for addressing complaints received by DCA concerning Respondent(s) is as noted below and Respondent(s) agrees to update the name, email address and title of the individual responsible for addressing complaints received by DCA within 10 days of any change to the information provided below.

**Compliance**

23. Respondent(s) agree to comply with all relevant laws and rules.

24. Respondent(s) must produce documents in response to any Department demand made within ten (10) days of the demand.

**Waiver of Appeals**

25. Respondent(s) hereby agrees to waive any further right to a hearing and appeal of any of the matters herein, under Title 20, Chapters 1 and 2, of the Administrative Code or the rules promulgated thereunder and before the Department's administrative tribunal or before any court of law or equity.

**Miscellaneous**

26. Nothing in this Consent Order shall be construed to limit in any way the authority of the Department to exercise its enforcement powers under Chapter 1, Title 20 or Chapter 2, Title 20 of the Code.

27. The Consumer(s) and Respondent(s) shall mail or email all notices, other than those required by paragraph 2, above, to DCA's Collection Division at

ConsumerRestitution@dca.nyc.gov and email copies of all notices to each other's email address and to the Department as follows:

Department of Consumer Affairs
[redacted]
66 John Street, 11th Floor
New York, NY 10038
Email: [redacted]

Consumer(s):
Name:
Street Address:
City, State & Zip:
Email:
[redacted]

Respondent HIC:
Name:
Street Address:
City, State & Zip:
E-mail:
[redacted]

Respondent HIS
Name:
Street Address:
City, State & Zip:
Email:
[redacted]

28. Nothing in this Order shall be construed as waiving or abrogating the Respondent(s)' responsibilities under federal, state or local law concerning record-keeping or record maintenance.

29. This Consent Order may be executed in one or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signed signature pages may be transmitted by facsimile, and any such signature shall have the same legal effect as an original.

30. The Consumer(s) and Respondent(s) agree and affirm that: they have read and understand this Consent Order, that it accurately states the agreement between themselves and with the Department, and enter into and are bound by the terms and conditions stated herein.

**THIS CONSTITUTES AN ORDER OF THE DEPARTMENT.**

**Date: February 4, 2014**

Accepted & Agreed for Respondent HIC by:

[redacted]

[redacted] 1-24-14

Signature Date

Accepted & Agreed for Respondent HIS by:

[redacted]

see next page

Signature Date

Accepted & Agreed for Consumer(s) by:

— see pages after next —

Signature Date

Accepted and Agreed for the Department by:

[redacted] Date

Senior Counsel

**Businesses licensed by the Department of Consumer Affairs (DCA) must comply with all relevant local, state and federal laws. Copies of New York City licensing and consumer protection laws are available in person at DCA's Licensing Center, located at 42 Broadway, 5th Floor, New York, NY, by calling 311, New York City's 24 hour Citizen Service Hotline, or by going online at www.nyc.gov/consumers.**

Accepted & Agreed for Respondent HIC by: [redacted]

see earlier page

Signature Date

Accepted & Agreed for Respondent HIS by: [redacted]

[redacted]

Signature Date

Accepted & Agreed for Consumer(s) by:

— see next page —

Signature Date

Accepted and Agreed for the Department by:

[redacted] Date

Senior Counsel

**Businesses licensed by the Department of Consumer Affairs (DCA) must comply with all relevant local, state and federal laws. Copies of New York City licensing and consumer protection laws are available in person at DCA's Licensing Center, located at 42 Broadway, 5th Floor, New York, NY, by calling 311, New York City's 24 hour Citizen Service Hotline, or by going online at www.nyc.gov/consumers.**

Accepted & Agreed for Respondent HIC by: [redacted]

Accepted & Agreed for Respondent HIS by: [redacted]

— see earlier pages —

Signature Date

Signature Date

Accepted & Agreed for Consumer(s) by: [redacted]

[redacted]

Signature Date

Accepted and Agreed for the Department by: [redacted]

[redacted]

Date

Senior Counsel

**Businesses licensed by the Department of Consumer Affairs (DCA) must comply with all relevant local, state and federal laws. Copies of New York City licensing and consumer protection laws are available in person at DCA's Licensing Center, located at 42 Broadway, 5th Floor, New York, NY, by calling 311, New York City's 24 hour Citizen Service Hotline, or by going online at www.nyc.gov/consumers.**

NYC DEPARTMENT OF CONSUMER AFFAIRS

----------X

: NOTICE OF HEARING

[redacted] : CD[redacted]
DD

-and- :

:

NYC DEPARTMENT OF CONSUMER AFFAIRS, :

Complainants, :

-against- :

[redacted] : License # [redacted](HIC)

Also mail to:

[redacted] :

Also email: [redacted]

:

-and

[redacted] : License # [redacted]

:

Respondents-Licensees. :

----------X

TO THE ABOVE-NAMED LICENSEES:

In accordance with the powers of the Commissioner of the New York City Department of Consumer Affairs ("the Department") set forth in Section 2203(e) of Chapter 64 of the Charter of the City of New York and Section 20-104 of the Administrative Code of the City of New York ("the Code"), **you are hereby ordered to appear for a hearing** at the

Adjudication Division of the Department of Consumer Affairs, 11th floor, 66 John Street, New York, New York on **January 7, 2014 at 1:30 PM** to have charges against you heard concerning violations of the Code, found in: Chapter 1 of the Code, beginning at Section 20-101 (known as the License Enforcement Law); Chapter 2 of the Code, Subchapter 22, beginning at Section 20-385 (known as the Home Improvement Business Law); Chapter 5 of the Code, Subchapter 1, beginning at Section 20-700 (known as the Consumer Protection Law); and Title 6 of the Rules of the City of New York ("6 RCNY"), beginning at Section 1-01 (known as the License Enforcement Law rules); 6 RCNY beginning at Section 2-220 (known as the Home Improvement Business law rules); and 6 RCNY beginning at Section 5-01(known as the Consumer Protection Law rules);

**AND SHOW CAUSE** why your licenses to operate as a HOME IMPROVEMENT CONTRACTOR and a HOME IMPROVEMENT SALESPERSON should not be suspended and /or revoked; why monetary penalties should not be imposed on you; why you should not be prohibited, based on your lack of fitness, from holding any license issued by the Department; and why consumer restitution should not be awarded to the Consumer in this case;

In the CHARGES section of this Notice of Hearing, there are Consumer-based Charges and Departmental charges. The Consumer-based Charges are set forth under the heading "CHARGES PART A." The Departmental charges are set forth as "CHARGES PART B."

In the event that the Respondent(s) settle the consumer based charges prior to the hearing, the Department will proceed on the Departmental charges set forth unless a settlement can be reached with respect to those charges as well:

## FACTS

1. On or about February 10, 1997, the Department issued DCA License # [redacted] to [redacted] (hereinafter, "Respondent Company") to conduct business as a Home Improvement Contractor ("HIC") at

[redacted]. Respondent Company was so-licensed at all relevant times. Its license now is revoked as of July 9, 2013.

2. On or about October 27,2011, the Department issued DCA License # [redacted] to [redacted] to operate as a licensed Home Improvement Salesperson ("HIS"). Mr. [redacted] was so-licensed at all relevant times. [redacted] resides at [redacted] The Respondent Company and Mr. [redacted] will hereinafter be referred to as "Respondents."

## Contracted Work

3. In or about November 8, 2011 (hereinafter, "Consumer") entered into a written contract with the Respondent Company for home improvement work to be performed on Consumer's residential property located at [redacted] n exchange for $8,600.00 (the "Contract").

4. Respondent Company arranged for the financing of the Contract.

## Contract Deficiencies

5. The Contract did not include:
   a) signatures by all the parties;
   b) the date of the transaction;
   c) the telephone number of the home improvement contractor as on record with the Department;
   d) the name of the home improvement salesperson;
   e) the license number of the home improvement salesperson;
   f) a clear identification of the stated license numbers as New York City Department of Consumer Affairs license numbers;
   g) a statement of any contingencies that would materially change the approximate or estimated completion date;

h) a statement as to whether the parties had determined that a definite completion date to be of the essence;

i) 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;

j) a notice to the owner that the home improvement contractor is legally required to deposit all payments received prior to completion in accordance with subdivision four of § 71-a of the New York State Lien Law and that, in lieu of such deposit, the home improvement contractor may post a bond or contract of indemnity with the owner guaranteeing the return or proper application of such payments to the purposes of the Contract;

k) 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;

l) a clause wherein the contractor agrees to procure all permits required by law; and

m) a notice to the buyer, 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, that the buyer has a three day right to cancel the transaction at any time prior to midnight of the third business day after the date of the transaction.

6. Respondents did not provide Consumer with a separate Notice of Cancellation form regarding the Consumer's three-day right to cancel the contract.

**Payment for Work**

7. The Consumer paid Respondent Company a total of $8,600.00.

## Work Deficiencies

8. Respondent Company failed to properly perform under the Contract, including but not limited to, as follows:

   a. Respondent improperly installed siding without required insulation.

## Damages

9. As he has since sold the subject Property, Consumer seeks a full refund of monies paid to Respondent Company.

# CHARGES PART A

## CONSUMER BASED CHARGES

### Count One

### Deceptive Trade and Fraudulent Prohibited Practices

10. Respondent Company violated § 20-700 of the Code and 6 RCNY § 1-12 by engaging in a deceptive trade practice in the negotiation and performance of a Home Improvement Contract, in that Respondent Company received payment for services not performed and promised to complete the contracted work but failed to do so.

### Count Two

### Failing to Perform Work

11. Respondent Company violated § 20-393(11) of the Code by failing to perform work under a home improvement contract in a skillful and competent manner.

## CHARGES - PART B

### DEPARTMENTAL CHARGES

### Counts Three – Ten

### Contract Violations

12. Respondents violated 6 RCNY § 2-221(a)(1) by failing to include in the Contract the date of the transaction, signatures of all parties, and the **contractor's** telephone number of record with the Department.

13. Respondents violated 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; 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.

14. Respondents violated 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 the applicable lien laws.

15. Respondents violated 6 RCNY § 2-221(a)(5) by failing to include in the contract a notice to the owner that the home improvement contractor is legally required to deposit all payments received prior to completion in accordance with subdivision four of §71-a of the New York State Lien Law and that, in lieu of such deposit, the home improvement contractor may post a bond or contract of indemnity with the owner guaranteeing the return or proper application of such payments to the purposes of the Contract.

16. Respondents violated 6 RCNY § 2-221(a)(8) by failing to include in the contract a clause wherein the contractor agrees to furnish the buyer with a Certificate of Workers' Compensation Insurance prior to commencement of work pursuant to the Contract.

17. Respondents violated 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.

18. Respondents violated 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.

19. Respondents violated 6 RCNY § 2-221(b) by failing to provide a separate Notice of Cancellation to the owner.

**Count Eleven**

**Failing to Clearly Identify License Number**

20. Respondents violated 6 RCNY § 1-05 by failing to clearly identify the license numbers as a New York City Department of Consumer Affairs license number on all contracts, advertising, letterhead, receipts or other printed matter of the licensee, AND/OR by failing to disclose or disseminate the license number in a lawful manner.

**Count Twelve**

**Arranging a Home Improvement Loan**

21. Respondent Company violated § 20-393(4) of the Code by arranging for or obtaining an extension of credit or financing which was to be used to pay for the Consumer's obligations under a home improvement contract.

**LACK OF FITNESS**

22. Respondents violated § 20-101 of the Code by failing to maintain the standards of integrity, honesty and fair dealing required of licensees.

**WHEREFORE,** the Department demands that an order issue:

(1) revoking Respondent(s)' licenses and requiring each Respondent to surrender and return all revoked license documents to the Department;

(2) finding Respondent(s) and their principal unfit to hold Department licenses in the future;

(3) imposing maximum fines on Respondent(s) for each and every charge set forth herein, including $[redacted] per count pursuant to § 20-401(1)(b) of the Code;

(4) awarding restitution to Consumer(s), and requiring the Respondent(s) to pay such award by certified check, money order or attorney trust account check;

(5) requiring Respondent(s) to provide to the Department proof of payment of restitution to the Consumer(s) (copies of certified check, money order or attorney trust account check) 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;

(6) deeming revoked, without further notice to Respondent(s), the license of any Respondent who is ordered to pay restitution and who fails to provide to the Department proof of payment of the restitution amount within thirty (30) days of the date of the decision; and,

(7) granting such other relief as is deemed just and proper.

# IMPORTANT INFORMATION FOR RESPONDENTS

**You are charged with violating the Laws and Rules of the New York City Department of Consumer Affairs.**

***FAILURE TO APPEAR AT THE HEARING:*** If you do not appear at the DCA Administrative Tribunal on the scheduled hearing date, you will be found guilty of the charges, you will be ordered to pay a fine, and your DCA license(s) may be revoked. In addition, you may be ordered to pay money to the consumer.

***ADJOURNMENTS:*** Requests for adjournments must be received at least three (3) business days prior to the hearing date. **You may submit your request by e-mail to adjournmentrequests@dca.nyc.gov (preferred method)**; by fax to 212-361-7766; or by mail to:

DCA Administrative Tribunal
66 John Street, 11th Floor
New York, NY 10038.

Make sure to include the violation (CD) number in your request. **Either party making a request must send notice to the other side.** Your failure to do so may result in the automatic denial of your adjournment request.

***REPRESENTATION:*** Although it is not required, you may choose to bring a lawyer or authorized representative to the hearing.

***TRANSLATION SERVICES:*** DCA will provide translation services at the hearing for you and your witnesses. **You may not use your own interpreter at the hearing.**

***REASONABLE ACCOMMODATION:*** If you have a disability and require a reasonable accommodation on the day of the hearing, you must send a request, with proof, before the hearing date to the Adjudication Tribunal at mycase@dca.nyc.gov or call 311 (212-NEW-YORK outside NYC) and ask for "Consumer Affairs Hearing - Reasonable Accommodation."

***SETTLEMENT:*** If you wish to discuss a settlement in this matter in advance of the hearing date, you can contact [redacted], Senior Counsel, at [redacted] or by email at [redacted]

For additional information, visit DCA's website at www.nyc.gov/consumers or call 311.

Dated: October 25, 2013
New York, New York

Submitted by:

[redacted]
Senior Counsel
[redacted]

Email: [redacted]