

DEPARTMENT OF CONSUMER AFFAIRS
CITY OF NEW YORK

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NYC Department of Consumer Affairs,

Complainant,

-against-

AJA Consulting Group, LLC d/b/a New York
Construction Company; **Madison Construction and
Development, Inc.** d/b/a New York Construction
Company, Inc.; **Housing Rehabilitation Assistance,
LLC; et al.**

Respondents.

**SETTLEMENT AGREEMENT
AND CONSENT ORDER**

Lic. No. 1302709 (HIC)

Lic. No. 1322934 (HIC)

Lic. No. 1302700 (HIS)

Lic. No. 1262183 (HIS)

Lic. No. 1302704 (HIS)

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The New York City Department of Consumer Affairs (“DCA” or “the Department”) has conducted an investigation of certain acts and practices of AJA Consulting Group, LLC, Madison Construction and Development, Inc., Housing Rehabilitation Assistance, LLC, Avi Zikry, Jesse M. Friedman, and Alexander Ushyarov (collectively, “Respondents”), and:

WHEREAS, Madison Construction and Development, Inc. d/b/a New York Construction Company, Inc. (“Madison”) was licensed as a home improvement contractor under License Number 1322934 from June 18, 2009 until June 30, 2013, owned by principals Avi Zikry (“Zikry”) and Alexander Ushyarov (“Ushyarov”);

WHEREAS, Zikry and Ushyarov were licensed as home improvement salespersons from October 21, 2008 until October 31, 2013, under DCA License Numbers 1302700 and 1302704, respectively; and

WHEREAS, AJA Consulting Group, LLC d/b/a New York Construction Company (“AJA”) was licensed as a home improvement contractor under License Number 1302709 from October 21, 2008 to June 30, 2013; and

WHEREAS, Zikry and Ushyarov are also principals of AJA, along with Jesse Friedman, who was licensed as a home improvement salesperson under DCA License Number 1262183 from July 24, 2007 until October 31, 2009; and

WHEREAS, “Housing Rehabilitation Assistance” (“HRA”) is a limited liability company, which although active since at least 2008, filed articles of organization with the New York Department of State on August 3, 2011; and

WHEREAS, HRA is owned by AJA and controlled by Zikry, Ushyarov and Friedman; and

WHEREAS, at all relevant times, Zikry and Ushyarov controlled Madison's day to day operations, and Zikry, Ushyarov and Friedman controlled AJA and HRA's day to day operations, including overseeing and directing their advertising campaigns, marketing strategy, contracting work, consumer relations, and employees; and

WHEREAS, on May 8, 2013, Madison submitted to the Department an application for renewal of its Home Improvement Contractor License Number 1460466;

WHEREAS, pursuant to its authority under Administrative Code Section 20-392, the Department denied the renewal of Madison's license in a letter dated June 27, 2013 (the "Denial Letter");

WHEREAS, Respondent Madison initiated a proceeding challenging the Department's denial pursuant to Article 78 of the New York Civil Practice Laws and Rules (CPLR § 7803(1)) on June 28, 2013, but withdrew its petition on September 9, 2013.

WHEREAS, Respondents do not admit to the Department's findings contained in the Denial Letter, except to the extent identified in this Settlement Agreement and Consent Order ("Order" or "CO"). Respondents consent to this CO to settle this matter with regard to the acts and practices described in the Denial Letter, as well as any other potentially illegal activities of which the Department is aware through the Date of the CO; and

WHEREAS, Respondents Zikry, Ushyarov and Friedman agree to be held jointly and severally liable for: (1) all acts, practices and conduct relevant to this CO; (2) all amounts due and owing under this CO, and (3) all amounts which may later be adjudged due and owing by any administrative tribunal or court of competent jurisdiction as a result of any breach of this CO;

The Department and Respondents, being represented by counsel, enter into this Consent Order and stipulate that:

A. GENERAL TERMS

1. "Date of the CO" shall mean the date the CO is signed and executed by the Department and Respondents.
2. This CO shall bind Respondents, their representatives, assignees and successors.

B. INJUNCTIVE RELIEF

Licensing

1. Neither Respondents, nor any entity for which any Respondent is or becomes an owner, principal, officer, shareholder or member, may apply for a license issued by the Department, or engage in any activity for which a Department-issued license is required, within New York City for a period of three years from the Date of the CO.

2. Respondents shall not participate in the management or operation of any home improvement contractor, or engage in any home improvement contracting activity, in New York City for a period of three years from the Date of the CO.
3. After three years from the Date of the CO, if any Respondent applies for a DCA license, this CO shall not be used as a basis to deny the application, provided that the Respondent seeking licensure has fully complied with this CO and meets all other requirements.

C. MONETARY RELIEF

Amount and Payment Schedule

1. Respondents shall be jointly and severally liable for payment of five hundred twenty thousand dollars (\$520,000), as monetary relief payable pursuant to this CO, to be allocated as follows:
 - a. \$399,285 shall be for restitution to consumers;
 - b. \$120,715 shall be paid to the Department and designated as civil penalties.
2. Respondents shall pay the monetary relief pursuant to the payment schedule identified in paragraph C(3), below.
3. Respondents shall remit all payments by check made payable to “New York City Department of Consumer Affairs,” and sent to the New York City Department of Consumer Affairs, Legal Division, Attn: Christine Santos, 42 Broadway, 9th Floor, New York, NY 10004, according to the following schedule:
 - a. Respondents shall pay to the Department one hundred fifty thousand dollars (\$120,000) by April 15, 2015;
 - b. Respondents shall pay to the Department one hundred fifty thousand dollars (\$150,000) on or before July 15, 2015;
 - c. Respondents shall pay to the Department one hundred thousand dollars (\$130,000) on or before October 15, 2015; and
 - d. Respondents shall pay to the Department one hundred twenty thousand dollars (\$120,000) on or before April 15, 2016.
4. The Department will hold all payments designated for consumers in a Consumer Restitution Fund (the “Fund”). All monies paid by Respondents and remaining in the Fund for one year after the date of the CO shall revert to the Department as civil penalties.

Failure to Make Payments

5. If any of Respondents' payments, as identified in section C(3) above, is more than ten (10) days late, and if such delinquency is not cured within ten (10) days after written notice, all payments due and owing under this CO shall be due immediately.
6. Failure of Respondents to remit immediate payment pursuant to Section C(5) will be considered a material breach of this CO and will result in forfeiture of amounts already paid and the Department's pursuit of all restitution and penalties available under New York City laws and rules. Respondents may submit a request to extend the payment schedule due to financial hardship prior to the next scheduled payment deadline. The Department shall be the sole arbiter of any such request.

Distribution of Payments

7. The Department shall direct the administration of restitution and shall be the sole and final arbiter of the validity of any consumer claims for restitution under this CO.
8. Restitution shall be distributed to consumers as compensation for:
 - a. Respondents' advertising, promoting and/or arranging for financing in connection with consumer home improvement contracts, in violation of New York City's laws and rules (*see* Exhibit A);
 - b. Costs associated with consumers obtaining from the NYC Department of Buildings permits for work Respondents performed without a permit, whether or not the Department of Buildings has issued a violation and subject to the exceptions set forth in paragraph 10 (*see* Exhibit B);
 - c. Costs associated with the completion and/or correction of work done by Respondents.
9. Within thirty (30) days of execution of this CO, or as soon as practicable, the Department shall notify the consumers identified in Exhibit A in writing of the contents of this CO and their eligibility for restitution, as well as other information necessary for the Department's administration of the restitution under this CO. The notice will include the "Release" attached as Exhibit C.
10. To obtain restitution under this Order, consumers must execute a copy of the Release and the Department must receive the Release by the date contained in the notice. The Release releases Respondents from liability for damages arising from home improvement contracting work performed on the locations identified in Exhibit A, with the following exceptions:
 - a. The monetary relief for which Respondents are liable under this Order does not include restitution for consumers associated with electrical work. If a consumer receives a violation for: a) failing to have a permit on file with the Department of Buildings for electrical work; or b) for any electrical violations related to the home

improvement work performed by Respondents, Respondents understand that this CO does not release them from liability for claims asserted by the consumer, or on the consumer's behalf by the Department, for the amount of all related penalties, as well as the consumer's cost of correcting or removing work that does not meet the standards set forth by the New York City Department of Buildings Code, or the standards of any other New York City agency with which home improvement contractors are obligated to comply.

- b. This CO provides consumers with restitution for costs associated with Respondents' failure to obtain certain building permits required by New York City's laws and rules. Respondents understand that this CO does not release them from liability for claims asserted by the consumer, or on the consumer's behalf by the Department, for the cost of correcting or removing work performed without a permit that does not meet the standards set forth by the New York City Department of Buildings Code, or the standards of any other New York City agency with which home improvement contractors are obligated to comply.

D. BREACH

1. Subject to Section C(5), above, upon Respondents breach of this CO, all monies owed by Respondents shall immediately become due and payable.
2. Failure of Respondents to remit payment as required by Section C, above, will be considered a material breach of this CO and will result in forfeiture of all amounts already paid, as well as the Department's pursuit of all restitution and penalties available under New York City laws and rules.
3. A breach of this CO may be used as a basis for denial of any application for any license issued by the Department.

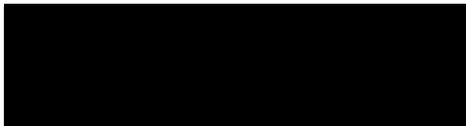
E. MISCELLANEOUS

1. Acceptance of this CO by the Department shall not be deemed approval by the Department of any of Respondents' business practices, and Respondents shall make no representation to the contrary.
2. Respondents waive all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this CO.
3. Provided Respondents fully comply with this CO:
 - a. The Department will not file a proceeding against Respondents for alleged violations of Title 20 of the New York City Administrative Code ("NYC Code") and Title Six of the Rules of the City of New York ("6 RCNY"), and will not seek additional restitution or fines related to the acts and practices described in the Denial Letter, or to other potentially illegal activities of which the Department is aware through the Date of the CO.

- b. The Department's agreement not to seek further restitution on behalf of consumers is limited to those consumers listed in Exhibits A and B, the acts and practices described in the Denial Letter, and any other potentially illegal activities of which the Department is aware, through the Date of the CO only.
4. Arthur Goldstein Esq., as Attorney for Respondents, is authorized to enter into the CO on Respondents' behalf.

Dated: 4/10/15

Agreed to for the Respondents:



Arthur Goldstein, Esq.
Davidoff, Hutcher & Citron, LLP
Attorneys for Respondents

Accepted for the Department of Consumer Affairs by:



Marla Tepper, Esq.
General Counsel

Businesses licensed by the Department of Consumer Affairs (DCA) are required to 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.