

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK ss.

Office of Consumer Affairs  
and Business Regulation  
Docket No. 2013-032

\_\_\_\_\_)  
IN THE MATTER OF )  
 )  
**Ambrosi Construction, LLC** )  
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\_\_\_\_\_)

**ORDER**

**Procedural History**

This matter came before the Office of Consumer Affairs and Business Regulation (“OCABR”) as a result of a complaint filed by **REDACTED** (“complainant”). The complaint alleged that **Ambrosi Construction, LLC** (“respondent”) violated M.G.L. c. 142A (“the Home Improvement Contractor Act”).

On June 3, 2013, OCABR mailed notices of the hearing scheduled for June 25, 2013 to the addresses of record of the complainant and the respondent. The hearing proceeded as scheduled. However, the hearing record was allowed to remain open until the close of business on July 1, 2013, to afford the respondent an opportunity to provide additional evidence deemed relevant at the hearing. This hearing officer received the pertinent document on June 27, 2013, and the record closed accordingly.

As of July 1, 2009, OCABR has jurisdiction and authority to conduct hearings relating to complaints of alleged violations of the Home Improvement Contractor Act, making OCABR the proper venue for the hearing at issue.

**Exhibits**

Exhibit 1: Home Improvement Contractor (“HIC”) Complaint Form

Exhibit 2: Contract/Proposal

Exhibit 3: Boston Inspectional Services Department Violation Notice

Exhibit 4: Affidavit from V.O. Design-Build, Inc. – Project Architect

Exhibit 5: Architectural Report

Exhibit 6: Building Permit and Inspection History for Subject Residence

Exhibit 7: Brochure and Business Card of Respondent

Exhibit 8: Email Correspondence dated May 7, 2012

Exhibit 9: Report by Pella Windows & Doors, Inc., dated May 4, 2012

Exhibit 10: Respondent's Complaint Response

Exhibit 11: Notices of Hearing

Exhibit 12: Project Plans/Drawings

Exhibit 13: Email Correspondence from Respondent to Complainant dated June 19, 2012

#### **Findings of Fact**

1. HIC registration number 160416 was assigned to the respondent on July 18, 2008. This registration expires on July 18, 2014.
2. The respondent has been registered as an HIC since July 15, 1992. HIC registration number 104907 was assigned to the respondent in his individual capacity with a trade style ("doing-business-as") name on July 15, 1992. That registration number expired on July 15, 2008.
3. On September 18, 2011, the complainant contracted with the respondent for residential contracting services.
4. The complainant had received the respondent's information as a possible match through Service Magic, an online contractor search portal.
5. According to the contract, the respondent was to construct a two story addition with a deck structure.
6. The respondent and the complainant's architect discussed the project drawings ahead of the project start date.
7. At the time the contract was signed, the property at issue was an owner-occupied home with four or fewer dwelling units.
8. The total contract price was \$49,000.00.
9. Work began timely in November 2011, after necessary permits were secured.
10. Although no formal date for completion had been established by contract, the respondent was to substantially complete the project in the following spring.

11. Aside from a mutually agreed upon change to the foundation prior to the start of work, there were no other significant project modifications.
12. At an unknown date, the respondent asked the architect for clarification of the project drawings.
13. The original drawings did not appear to make reference to any specific number of roof support beams. A subsequent notation by the respondent indicated that three ply beams should be used. At no time did the drawings indicate that two ply beams were to be installed.
14. The architect told the respondent that he planned to consult with the structural engineer regarding the support beams.
15. Because he did not hear from the architect again, the respondent believed that the installation of two ply beams would suffice.
16. At an unknown date, the respondent installed two ply beams to support the roof. The respondent did not directly notify the complainant of his intent to install the two ply beams.
17. The respondent physically worked on the project through April 2012.
18. The respondent sent the complainant an email on June 19, 2012, asking for an opportunity to resolve certain issues with the project.
19. On June 25, 2012, the complainant and respondent met at the job site to discuss the complainant's concerns with the project.
20. In particular, the complainant was concerned with the respondent's workmanship respecting various aspects of the project, such as the window and vinyl siding installation and deck support.
21. The complainant also questioned whether the work performed to that point would pass final inspection, as the project had not passed an earlier inspection that took place on April 17.
22. The complainant believed that the respondent attempted to correct certain work at two or three different occasions without success.
23. The complainant and respondent mutually agreed not to continue with the contract after June 25, 2012.

24. On September 24, 2012, the complainant received a violation notice from the City of Boston Inspectional Services Department. The notice stated that an engineered beam installed by the respondent was not code compliant.

25. In all, the complainant had paid \$42,000.00 toward project completion.

### Discussion

The respondent attended the hearing. The complainant attended the hearing as a witness only. *See* 201 CMR 18.03 (11).

OCABR has subject matter jurisdiction over this complaint because OCABR has the authority to regulate any person that performs residential contracting services. M.G.L. c. 142A, §§ 1, 17. Residential contracting is defined in part as, “the reconstruction, alteration, renovation, repair, modernization, conversion, improvement, removal, demolition, or the construction of an addition to any pre-existing owner occupied building containing at least one but not more than four dwelling units.” *Id.* at § 1. In this case, the transaction was to construct an addition to the complainant’s primary residence, which was a preexisting building containing two dwelling units. Therefore, this hearing officer concludes that OCABR does have subject matter jurisdiction over the complaint.

The complainant alleged that the respondent committed **five** violations of the Home Improvement Contractor Act.

OCABR has the burden of proof to show by substantial evidence that the respondent violated specific provisions of the Home Improvement Contractor Act. *See* M.G.L. c. 30A, §14(7)(e).

In this case, OCABR met the burden of proof with respect to **two** of the five violations.

**First**, the complainant alleged that the respondent abandoned the project without justification, in violation of M.G.L. c. 142A, § 17(2). The complete description of this allegation is “abandoning, or failing to perform, without justification, any contract or project engaged in or undertaken by a registered contractor or subcontractor, or deviating from or disregarding plans or specifications in any materials respect without the consent of the owner.”

A project is considered abandoned when a contractor wholly deserts a project, leaving it unfinished. Abandonment is justified only when the contractor has a good cause reason for halting the construction. A failure to perform a project is found when a contractor fails to start the project or starts working on the project, but fails to take meaningful steps to complete the project. A contractor’s failure to perform is justified only when the contractor has a good cause reason for halting the construction.

The **complainant** testified that she believed the respondent abandoned the project because at no time did he return to complete the project after April 2012. The complainant testified that a meeting with the respondent took place at the job site on June 25, 2012 to discuss complaints she had with how the project progressed to date, and that, after that meeting, the

respondent shrugged his shoulders and walked off the premises for the last time. The complainant testified that the project had previously been marred by numerous code violations and workmanship issues. The complainant testified that the most significant code violation occurred when the respondent installed two ply beams in contravention to the established project drawings. The complainant testified that this work was done without her permission and without consultation with the project architect, which resulted in her receipt of a violation notice from the City of Boston Inspectional Services Department on September 24, 2012 (Exhibit 3).

The **respondent** testified that he did not abandon the job on June 25, 2012 or at any time, because it was the complainant that did not want him to continue working on the project. The respondent stated that it was the complainant who walked away from the meeting that day, which the respondent understood to mean that the contract was to be terminated. With respect to the issue with the beams, the respondent testified that there had been ambiguity in the architect's project drawings which caused him to install the two ply beams. The respondent testified that he had initially reached out to the designing architect to inquire about the meaning of the drawing, as it appeared from it that no specific number of beams had been designated. The respondent testified that the architect told him that he would consult with the structural engineer, and when the architect did not follow up with him, the respondent presumed that installation of the two ply beams would be acceptable. The respondent admitted that he did not speak with the complainant directly about his decision to install the two ply beams, because the complainant was often hesitant to reach out to the architect due to financial considerations. The respondent added that remedying the beams would be fairly easy to do, but that the complainant did not give him the opportunity to correct the work, as the relationship between them slowly deteriorated. In support of his position, the respondent provided a copy of an email he sent to the complainant on June 19, 2012 (Exhibit 13).

By the respondent's own sworn testimony respecting the two ply beam installation, and, having taken into account the totality of the circumstances, including the documentary evidence, this hearing officer must conclude that substantial evidence exists with respect to show that the respondent materially deviated from the project plans without the complainant's consent. This is because there was no prior indication on the plans of the specific number of beams to be used (Exhibit 12). Any reference to three ply beams on the drawings came from the respondent's own notation, which was a conclusion he appeared to have reached on his own (Id.). Despite his reference to three ply beams, the respondent nonetheless proceeded to install only two ply beams, which is a deviation from any version of the approved plans. This hearing officer finds that this deviation from the architectural plans is material because it caused the complainant to be cited for a building code violation and placed her in a worse position than she was in prior to her engagement with the respondent (Exhibit 3). As the respondent acknowledged that he did not discuss the matter of the beam with the complainant directly, this hearing officer also finds that the respondent proceeded without the complainant's consent. However, this hearing officer declines to conclude that the respondent abandoned the project, because there remains a sufficient question from the documentary and testimonial evidence as to whether the termination of the contract resulted from mutual behavior of the complainant and respondent on June 25, 2012.

**Second**, the complainant alleged that the respondent made a material misrepresentation in the procurement of the contract or made a false promise of a character likely to induce the complainant to contract with the respondent, in violation of M.G.L. c. 142A, § 17(4). This provision prohibits contractors during the contract negotiation period from making a false, deceptive, or misleading assertion that is reasonably material to the complainant's understanding of the project or the contract.

In support of this allegation, the **complainant** testified that she believed the respondent violated this provision of the law by representing on its Service Magic information profile that it had been in business for 30 years and had experience in constructing many additions. The complainant testified that these representations initially lead the complainant to feel as though she had a good match in the respondent, especially after she had interviewed at least four other contractors. The complainant testified that she believed that information was false because of how her project turned out. However, these facts, without more, do not substantiate a violation of this provision. There is no evidence tending to show that the respondent's representations were false or misleading. No other testimony was offered on this issue. Therefore, this hearing officer cannot conclude that substantial evidence exists to show that the respondent violated this provision of the law.

**Third**, the complainant alleged that the respondent knowingly contracted beyond the scope of his registration, in violation of M.G.L. c. 142A, § 17(5). To establish a violation of this provision, it must be shown by substantial evidence that the respondent intentionally contracted for work that required additional licenses, certifications, or endorsements that he did not possess.

The **complainant** testified that she believed the respondent violated this provision of the law because the complainant researched the respondent's Construction Supervisor License (CSL) and learned that it does not possess an unrestricted license; rather, the respondent possesses a restricted/specialty license in roofing, siding and windows. The complainant also expressed concern that the respondent was able to obtain a building permit with a restricted license.

The **respondent** did not deny material aspects of the complainant's testimony on this matter; however, the respondent asserted that he was nonetheless qualified to perform the work. The respondent testified that he presented his license to employees of the City of Boston Inspectional Services Department and did not encounter difficulty in obtaining a building permit. The respondent added that, if there had been a problem, he would have found another legal way to obtain the building permit. The respondent also testified that he typically has two employees and frequently hires subcontractors.

Because the respondent is organized as a limited liability company, it is possible that an employee or a hired subcontractor possessed the requisite licensure during the course of the project, which would adequately cover the respondent's responsibility under the law. There is no documentary evidence to sufficiently corroborate the complainant's claim that the respondent intentionally operated without an unrestricted license. Although the question here is close, this hearing officer cannot conclude that substantial evidence exists to show that the respondent violated this provision of the law.

**Fourth**, the complainant alleged that the respondent published an advertisement relating to home improvement that did not contain the respondent's HIC registration number or that contained an assertion that was false, deceptive, or misleading, in violation of M.G.L. c. 142A, § 17(8). An advertisement is defined as "any commercial message . . . which is delivered or made available to an owner by a registrant in any manner whatsoever." *See* 201 CMR 18.01(2).

In support of this allegation, the **complainant** testified that the respondent's brochure and business card illustrated an ability to perform roofing, siding, and kitchen and bath renovations through a team of skilled craftsmen (Exhibit 7). The complainant believed this information supports the finding of a violation of this provision of the law because of code violations that surfaced from the respondent's work on her project. The complainant reasoned that, if there are violations, then it cannot be possible that the respondent has skilled craftsmen on its team. The **respondent** denied all aspects of the complainant's testimony, stating that all information presented is true.

This hearing officer finds that the documents contained within Exhibit 7 meet the statutory definition of advertising because these are commercial messages intended to offer an array of residential contracting services and made available to the homeowner complainant. However, this hearing officer cannot conclude that there is substantial evidence of a violation based solely on the complainant's testimony. This is because the complainant expressed what amounts to an opinion about the validity of the respondent's text from her own personal experiences. Furthermore, this hearing officer cannot find objective documentary evidence showing that this information is false, deceptive or misleading. Nonetheless, this hearing officer must conclude that a violation exists here because the respondent failed to print these messages without having its HIC registration number displayed on them (Exhibit 7). For this reason, this hearing officer must conclude that there is substantial evidence to show that the respondent violated this provision of the law.

**Fifth**, the complainant alleged that the respondent violated the building laws of the Commonwealth, contrary to M.G.L. c. 142A, § 17(10). As articulated in the hearing, OCABR does not have subject matter jurisdiction to make findings of fact or conclusions of law respecting this provision of the law. The Department of Public Safety's Board of Building Regulations and Standards ("BBRS") is the agency charged with enforcing the building laws of the Commonwealth. Allegations of violations of the building code are properly addressed by the BBRS.

Both the **complainant** and **respondent** testified that the BBRS had already addressed and adjudicated those claims stemming from alleged building code violations and workmanship issues. Therefore, for the reasons stated in the preceding paragraph, this hearing officer will not reach these issues here.

#### **Administrative Penalties**

For each violation of the Home Improvement Contractor Act that is established by substantial evidence, the hearing officer may impose an administrative penalty of up to two thousand dollars (\$2,000.00). M.G.L. c. 142A, § 18. *See also* 201 C.M.R. 18.03(4). In addition, the hearing officer may reprimand a registrant or suspend or revoke a registrant's HIC certificate of

registration. *Id.* The hearing officer has the authority and discretion to institute any of these measures. 201 C.M.R. 18.03(2). In determining whether to impose an administrative penalty, the hearing officer shall consider the seriousness of the violation, the deleterious effect of the violation on the complainant, any good faith on the part of the contractor or subcontractor, and the contractor's or subcontractor's history of previous violations. M.G.L. c. 142A, § 18.

With respect to deviating from project plans without the complainant's consent, this hearing officer assesses an administrative penalty of **\$300.00**. This hearing officer found the violation to be serious and the deleterious effect on the complainant to be significant because the complainant was left in a worse financial position after the deviation than she was prior to engaging with the respondent. In addition, the complainant was exposed to additional financial liability in having to bring certain completed work to code compliance. However, this hearing officer found some good faith on the respondent's part because there is at least one documented effort from him to work with the complainant in resolving the issues that had arisen during the course of the project. In mitigation, this hearing officer notes that the respondent has no previous disciplinary activity on file since he first became registered in 1992.

With respect to publishing advertising that did not contain the respondent's HIC registration number, this hearing officer concludes that this is a *de minimus* violation that warrants **no administrative penalty** in this instance. Although it can be debated whether these violations had some deleterious effect on the complainant, especially with respect to the complainant's consumer and contractual rights, it is not immediately clear to this hearing officer how this omission exacted any tangible harm to the complainant or whether the complainant will suffer any repercussions from it. Furthermore, this hearing officer acknowledges that this particular matter was not fully discussed at the hearing, and so believes it would be unfair to assess a penalty in this decision. However, this hearing officer urges the respondent to update all advertising material to be compliant with this, and all requirements, of the Home Improvement Contractor Act. This hearing officer notes that the respondent has no previous disciplinary activity on file since he first became registered in 1992, a fact which mitigated the assessment of this particular administrative penalty.

#### **Conclusion**

An administrative fine in the amount of **THREE HUNDRED DOLLARS** (\$300.00) is hereby assessed against the respondent. This fine shall be paid in the form of a certified check or money order made payable to the Commonwealth of Massachusetts. This payment must be made within thirty (30) days of the date of this decision. Failure to do so may result in the suspension or revocation of the respondent's certificate of registration and may result in the referral of this matter to the Attorney General's office for prosecution. Payment shall be mailed to:

**Office of Consumer Affairs and Business Regulation  
Home Improvement Contractor Program  
Ten Park Plaza, Room 5170  
Boston, MA 02116**



**SO ORDERED**

**Office of Consumer Affairs and Business Regulation  
by its designee,**

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**Jennifer Maldonado-Ong, Esq.  
Hearing Officer**

**Dated: July 2, 2013**

**Appellate Rights of the Contractor:** The respondent may file a motion for reconsideration within thirty (30) days of the receipt of this decision. Under the pertinent provisions of the Code of Massachusetts Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A, § 14(1), for the purpose of tolling the time for appeal. Notwithstanding the foregoing, in accordance with M.G.L. c. 30A, § 14, any person aggrieved by this decision may appeal the decision to a court of competent jurisdiction within thirty (30) days of the receipt of this decision.