

THE CITY OF NEW YORK
DEPARTMENT OF CONSUMER AND WORKER PROTECTION

NYC DEPARTMENT OF CONSUMER AND
WORKER PROTECTION,

Petitioner,

-against-

DIPLOMAT HOME REMODELING, LLC., and
DONAVAN MARROW, individually, as
member, owner, and President of Diplomat Home
Remodeling LLC,

Respondents.

OATH Index No. 1467/24

Final Agency Decision

On October 1, 2024, Administrative Law Judge Julia H. Lee of the Office of Administrative Trials and Hearings (“OATH”) issued a Report and Recommendation in the above-captioned matter. OATH recommended that Respondent’s license be revoked and directed Respondents to pay \$1,850 in civil penalties. On November 21, 2024, the Department of Consumer and Worker Protection (“Department”) received written arguments from Petitioner disputing the amount in total civil penalties recommended by OATH. On November 27, 2024, the Department also received written arguments from Respondents asserting that the evidence before OATH did not support its findings and conclusions.

The Department now issues this Final Agency Decision pursuant to section 2203(h)(l) of the New York City Charter and section 6-02 of title 6 of the Rules of the City of New York. Following review of the record, the Department adopts OATH’s Report and Recommendation subject to the modifications explained below.

DISCUSSION

The Department modifies the amount OATH’s Report and Recommendation imposes in total civil penalties. Respondents are liable for an additional \$350 in civil penalties for count 2, bringing the aggregate total to \$2,200 in civil penalties owed by Respondents.

OATH erred in finding that the three separate false representations made under oath by Respondent Marrow at his deposition should be considered one violation for the purposes of calculating civil penalties. For count 2, OATH appropriately found beyond a preponderance of evidence that Respondent Marrow made false representations (i) regarding his father, Christopher Marrow, and his involvement with Respondent Diplomat; (ii) the creation of Respondent Diplomat’s consumer contract; and (iii) the use of a predecessor company’s advertisements. However, OATH improperly treated these distinct false representations as one

violation, rather than three, for the purpose of calculating penalties, and imposed a sum of \$175 in civil penalties.

In determining whether charges are duplicative for the purposes of prescribing civil penalties, the conduct that forms the basis of each charge must be assessed, including if each cause of action is based on the same facts or a different set of facts. *Dep't of Consumer and Worker Protection v. Champion Security Service, Inc. et al.*, OATH Index No. 2293/21 (October 23, 2023). When the conduct underlying each charge is separate and distinct, charges are not duplicative, and penalties for each charge should be awarded. *Dep't of Consumer Affairs v. Battaglia*, OATH Index No. 1382/17 (May 3, 2017) (failure to respond to two document demands warranted separate civil penalties for each demand). By contrast, if the act giving rise to each cause of action stems from the same instance of the same conduct, separate and distinct charges would be duplicative. *Dep't of Consumer Affairs v. Citi Health Home Care Services, Inc.*, OATH Index No. 0144/18 (July 31, 2018) (separate civil penalties considered duplicative where conduct stemmed from failure to maintain proper written sick leave policies).

Here, each of Respondent's false statements during the deposition must be treated as a separate violation, as each false statement was entirely distinct, and made regarding different topics during the deposition. *See, e.g., People v. Weiss*, 99 A.D 3d 1035, 1037, 952 N.Y.S 2d 637, 639 (2012) (affirming two convictions for perjury arising from separate false statements during the same deposition); *Dep't of Buildings v. Schnall*, OATH Index No. 2750/15 at 2 (February 10, 2017) (material misrepresentations in a single application resulted in two separate violations warranting individual penalties).

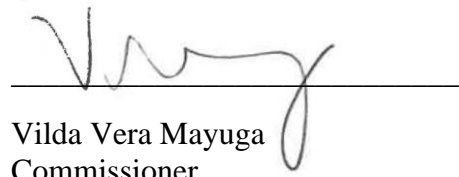
In incorrectly finding the penalties duplicative, OATH relied on *Dep't of Consumer and Worker Protection v. Champion Security Service, Inc. et al.*, OATH Index No. 2293/21 (October 23, 2023). There, the final decision rejected petitioner's request for separate penalties because both charges in that case involved the same conduct. Here, however, Respondent Marrow uttered three separate and distinct false statements during his deposition, and therefore the three charges involved separate and distinct conduct.

Accordingly, Respondents are liable for an additional \$350 in penalties, totaling a sum of \$525 in civil penalties for count 2.¹

¹ Finally, Respondents' written argument merits no modifications to OATH's Report and Recommendation. Respondents merely provided a conclusory recitation of the facts, failed to cite to any legal authority, and failed to refute any of the charges substantiated by OATH.

CONCLUSION

OATH's Report and Recommendation is adopted subject to the modifications explained above. Respondents are ordered to pay \$2,200 in civil penalties.

A handwritten signature in dark ink, appearing to read 'Vilda Vera Mayuga', is written over a horizontal line.

Vilda Vera Mayuga
Commissioner
Department of Consumer and Worker Protection

Date: 12/24/2024