



Nathan Flanagan & Renaye Alesi  
C/-Hancock Alldis & Roskov Lawyers  
PO BOX 204  
HURSTVILLE BC NSW 1481

File No: HB 14/40057  
Quote in all enquiries  
eNumber: 72796AG32

**Application to the Tribunal concerning NATHAN FLANAGAN & RENAYE ALESI -  
SIAVASH KHOSH KHO**

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Applicant: Nathan Flanagan and Renaye Alesi  
Respondent: Siavash Khoshkho

On 07-Aug-2015 the following orders were made by consent:

1. Siavash Khoshkho UNIT 2703 10 Sturdee Parade DEE WHY NSW 2099 Australia is to pay Nathan Flanagan C/- Hancock Alldis & Roskov Lawyers PO BOX 204 HURSTVILLE BC NSW 1481 Australia and Renaye Alesi the sum of \$334,963.34 immediately.

- \$334,963.34 Damages pursuant to s. 48O(1)(a) of the Home Building Act, 1989.

2. The Tribunal orders that the respondent pays the applicant's costs of and incidental to the proceedings, such costs to be agreed or assessed.

Reasons for decision:

1. In this proceeding each of the Applicants and the Respondents appeared by their solicitors.

2. The Applicants, by the facts alleged in their application, disclose a claim in respect residential building work which is in part incomplete; and also the subject of a claim for defective work.

3. It follows that a building claim within the meaning of s. 48A of the Home Building Act, 1989 (the "Act"), has arisen; and by reason of which the jurisdiction conferred upon the Tribunal by s. 48K of the Act is attracted and the Tribunal may proceed to hear and determine the application.

4. The Applicants advanced a bundle of documentary materials which included all of the materials upon which they relied at the hearing, and these were received as Exhibit A in the proceeding.

Section 62 (2) of the Civil & Administrative Tribunal Act 2013 provides the following:

Any party may, within 28 days of receiving notice of the decision, request the Tribunal to provide a statement of reasons for its decision. The request should be, in writing, addressed to the Divisional Registrar of the Tribunal.

5. The Applicants also tendered a number of further documents which were advanced for the purpose of supplementing particulars of the claim enunciated by their Points of Claim and the evidence served earlier in time. These materials were received as Exhibits B - G inclusive.
6. The Respondent advanced no evidence at the hearing.
7. The background facts and circumstances were as follows:
  - a. On 4 January 2013 the parties executed a building contract in respect of residential building work for the construction of a residence on land at Goulburn (the "Contract")
  - b. On 4 October 2013 the Applicants served a notice of breach under the Contract upon the Respondent
  - c. At the time at which the period for compliance with the notice of breach expired the Respondent remained in breach
  - d. On 20 January 2014 the Department of Fair Trading served a Rectification Order upon the Respondent with respect to the works
  - e. At the time at which the period for compliance with the Rectification Order expired the Respondent remained in breach
  - f. The Respondent was in breach of the licence conditions imposed upon his licence by the Department of Fair Trading, and thereby was in breach of the Contract and the Act
  - g. On 18 March 2014 the Applicants terminated the Contract
8. The Applicants alleged that the Respondent has breached the warranties implied into the Contract by s. 18B of the Act, requiring rectification works; and that further work remains outstanding and incomplete.
9. The Applicants proved the residential building work undertaken by the Respondent was conducted partly defectively - see the Peak Consulting reports as to defective work dated 23 September 2013 and 8 August 2014 - see Ex. A, pp. 43-63 & 183-216.
10. The cost to rectify such defective work was agreed in the amount of \$71,459.71, and the Tribunal made orders by consent that the agreed cost of rectification be paid to the Applicants by the Respondent.
11. The remaining dispute during the course of the hearing was in respect of the costs to complete the building work left uncompleted by the Respondent at the time of his breach of the Contract, and thereafter left unremedied at the time of termination of the Contract for breach by the Respondent.
12. The evidentiary basis of the Applicant's claim was established by the materials contained within Ex. A, particularly the Peak Consulting reports referred to above; and the further engineering report by Ansary Consulting Engineers - see Ex. A, pp. 64-95.

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13. By reason that the Respondent led no evidence, the Tribunal called upon the Respondent first to address the Tribunal and advance his submissions in opposition to any further order of the type sought by the Applicants.

14. A short adjournment was permitted to the solicitor for the Respondent to have the necessary time to prepare for that purpose.

15. On the resumption, the solicitor for the Respondent indicated to the Tribunal that the Respondent had given instructions that the whole of the Applicants' claim now was conceded, and that orders could be made in accordance with the particulars of claim enumerated by Ex. F.

16. The consequence of that concession was that the Respondent consented to orders for the payment of damages to the Applicants, pursuant to s. 48O(1)(a) of the Home Building Act, 1989, with respect to the following amounts:

- a. Defect rectification costs in the amount of \$71,459.71
- b. Costs to complete the works in the amount of \$194,646.82
- c. Interest on borrowings incurred by reason of failure by the Respondent to complete the contract in the amount of \$22,833.49
- d. Rent paid to the date of the hearing in the amount of \$46,023.32
- e. Being the total sum of damages of \$334,963.34

17. The parties also consented to an order, in accordance with the provisions of r. 38(2)(b) of the Civil and Administrative Tribunal Rules, 2014, that the Respondent pay the costs of the Applicants of and incidental to the proceeding as they may be agreed or assessed.

18. For the foregoing reasons, the Tribunal pronounced the orders that were made by consent.

NOTE: If the other party does not comply with the order to pay money, a certified copy of the above money order may be obtained from the Tribunal for the purpose of enforcement action through the Local Court.

**M Cohen**  
**Tribunal Member**  
**07/08/15**

#### **WARNING FOR HOME BUILDING LICENCE HOLDERS**

You must notify the NSW Fair Trading's Home Building Service in writing when you have complied with this order (for example, when you have done the work or paid the money). If you do not notify the Home Building Service, your public record will show that you have failed to comply with the order.

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Level 3, 43 Burelli Street, WOLLONGONG NSW 2500  
PO Box 319, WOLLONGONG NSW 2520  
ccdwoollongong@ncat.nsw.gov.au  
Ph: 1300 00 6228 Fax: 4239 6501  
www.ncat.nsw.gov.au

If you have an outstanding work order you may be unable to renew your licence when it expires. From 1 April 2009 if you have an unpaid money order, your licence can be suspended 28 days after the due date for payment. You can be fined up to \$22,000 if you falsely claim you have complied with this order.

Correspondence should be addressed to: Home Building Licensing, NSW Fair Trading, PO Box 972, Parramatta NSW 2124, you may also send a facsimile to (02) 9895 0843 or an email to [HBS\\_NCAT@finance.nsw.gov.au](mailto:HBS_NCAT@finance.nsw.gov.au)

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