

BETTER BUSINESS BUREAU COMPLAINT

Case #: 118198

Customer Complaint Type: Consumer to Business

Date purchased: 08/01/2005

Zip Code of purchase location:

Store/Establishment #:

Date of problem first occurred: 08/01/2005

Have you complained to the business: Yes

If yes whom did you complain to (last name):

Purchase price: \$660,000.00

Amount in dispute: \$26,000.00

Product or service involved: Custom Built Home

Brand name or manufacturer:

Model name or number:

Order, contract or account number:

Salesperson's name:

Nature of Complaint: Guarantee/Warranty Issues

This complaint went to the BBB and it was forwarded via email to the builder on 12/04/2005

Brief description of problem: Builder built a home for us that was estimated to cost \$459,000.00. The final cost was \$660,000.00. The difference between the estimate and final cost is 44%. Therefore the estimate was either a "bait and switch" or Builder is incompetent with estimating cost. The house was improperly graded. Rainfall caused the north side of the foundation to be completely washed out, exposing the foundation footings. There was other erosion about the entire house and rainwater runoff flowed directly at the house. The cost to properly grade the soil to divert rainwater from the house and to protect the washed out foundation footings from frost was \$21,000.00. Two excavation companies and two civil engineer consulting firms indicated that the drainage problem was severe and the grading unacceptable. There is also warranty work that must be completed, which Builder refuses to perform. This is fine with me, as I don't want Builder on the property. I estimate that in order for me to personally do the repairs, which should be covered by the warranty, will cost \$5,000.00.

Settlement sought: \$26,000.00 to reimburse me for the grading and the warranty work.

Settlement Type: Refund-Cash

The BBB forwarded this response from the builder to the owner.

Response Date: 12/06/2005

Problem Adjusted: No

Adjustment Type: No Adjustment

Response Details:

Project cost: Builder has not engaged in a “bait and switch” scheme. Its employees are not incompetent in estimating project costs. Mr. Owner’s project cost was greater than the initial estimated costs due to numerous changes that he requested and contracted for in change orders. Upon each change request, Mr. Owner was clearly informed of the resulting change in the estimated project cost. Mr. Lambert overspent and is taking it out on his contractor/builder. Ground work: The area surrounding Mr. Owner’s vacation house was properly graded by builder. Mr. Owner and builder entered into a home construction contract that complied with Maine’s Home Construction Contracts Act. Builder fully performed all its obligations under the contract (including the contracted ground work), and it performed those obligations in a skillful manner using the proper materials. Mr. Owner was obligated to lay loom and seed on the property, but he failed to do so. This failure on Mr. Owner’s part and excessive rains caused the erosion. It is unfortunate that the unusual and excessive rains that washed-out dams and roads throughout Maine and New Hampshire this Autumn also washed-out Mr. Owner’s property but builder is not responsible for natural disasters especially when it provided the materials and labor that it was contracted to provide and when the homeowner fails to complete the protective landscaping. Warranties: Builder warranted that its work would be performed in a skillful manner and that proper materials would be used to complete the project as laid out in its contract with Mr. Owner. Builder has fully honored its commitments under its contract with Mr. Owner. Builder did not warranty its work against “Acts of God.” Conclusion: Given that builder has fully performed its commitments under its contract with Mr. Owner; given that it preformed its commitments in a skillful manner using proper materials, given Mr. Owner’s overspending; and given Mr. Owner’s failure to complete the landscaping around his vacation home, it appears that Mr. Owner is simply trying to hurt builder’s excellent reputation and that he is trying to harass builder’s employees.

The owner sent this rebuttal to the BBB

Rebuttal Date: 12/13/2005

Complaint Resolved: No

Details: Builder's lawyer responds to our complaint with baseless slogans and innuendo. Builder's lawyer simply ignores the facts: (1) Builder's lawyer claims that "EVERY EFFORT WAS MADE TO RESOLVE." (a) Fact: Builder has not contacted the owners and has made absolutely "NO EFFORT TO RESOLVE." (2) Builder's lawyer attempts to exonerate his client by BLAMING THE VICTIM and by FABRICATING A NATURAL DISASTER. (a) Fact: The contract is clear (owners have the contract). The owners were to complete NO items. Thus the owners were NOT responsible for loam and seed. (b) Fact: The erosion was not due to the lack of loam or seed. The erosion was well underway in August (owners have photos) and the erosion stopped after the owners PROPERLY DRAINED the property and WITHOUT loam and seed. (c) Fact: The erosion was NOT due to a natural disaster as none of the abutting PROPERLY GRADED properties suffered any erosion or damage as a result of builder's and builder's lawyer's so-called natural disaster. (3) Builder's lawyer claims that the cost overruns are due to Mr. Owner's-initiated change orders and the Mr. Owner's lavish spending. (a) Fact: The builder, NOT Mr. Owner, initiated 17 of 18 change-orders/invoices. These change orders were the builder's means of compensating for outrageous builder-generated cost UNDERESTIMATES (Mr. Owner has documents of all charges). (b) Fact: Once the final contract was signed, only one (1) small (\$500.00) change order for a hot water circulator was initiated by Mr. Owner. The builder inflated this to more than \$2,000.00. (c) Fact: Seven (7) lavish BUILDER-INITIATED change orders were REFUSED by Mr. Owner due to high cost and budget constraints. (d) Fact: These builder-driven change-orders/invoices resulted in a final cost that IS 43-45% higher than the estimate. (e) Fact: Mr. Owner tried to stop the project and pay the builder off because of BUILDER'S OVERSPENDING. Mr. Owner was threatened with a lawsuit for breach of contract. The above paragraphs contain the facts and they are indisputable. It is a FACT that the OWNERS HAD A BUDGET, but unfortunately for the owners, the BUILDER DID NOT. Baseless innuendo: Owners' alleged BESMIRCHING of THE BUILDER'S alleged EXCELLENT REPUTATION The owners have no intention of hurting builder's self-proclaimed and so-called "excellent reputation," as the owners believe there is nothing excellent about builder. Ours is not the first complaint to the BBB about builder. The

owners are intent on exercising their First Amendment right to free speech to provide truthful data to organizations (like the BBB) that influence business practices including the construction industry. Baseless innuendo: This property is a VACATION HOME. Builder's lawyer employs baseless innuendo by referring to the owners' property as their "vacation home." This statement is insinuation that the owners are extravagant and overspend. Builder knows very well that this property is the owners' final 'retirement home' for which the owners had saved and budgeted. However, because of the emotional trauma involved in constructing this property, it is unlikely that the owners will ever permanently retire there. WARRANTY WORK: Builder's lawyer did not address our complaint that there is an estimated \$5,000.00 of warranty items that builder refuses to fix. We have filed complaints describing these warranty items with Epoch Homes, the BBB of NH, and the Bonded Builders Home Warranty Association. Because we cannot include those files in this rebuttal, we will send them to the builder and to the builder's lawyer as attachments in separate emails. We expect builder to address this warranty issue. RESOLUTION OF COMPLAINT: Owners want a settlement of the \$21,000.00 paid to repair the erosion and foundation damage, and \$5,000.00 for warranty work that needs to be completed in the house itself. This comes to a total of \$26,000.00.

This is the builder's response to the owner's rebuttal

FollowUp Date: 12/14/2005

Details: Builder disagrees with Mr. Owner's alleged "facts" and his self-characterization of being the "victim." Builder honored the warranties that it gave in its contract with Mr. Owner. Builder is not responsible for warranties given to the Owner's by XXXXX Corporation and XXXXX Builders.

This is the BBB's "status summary"

Case #: 118198

Date Case Opened: 12/04/2005

Status: Closed

Days Closed: 9

Closing Summary: The BBB is pleased that it has been able to be of service to you in an effort to help you resolve your complaint. The BBB has determined that the company has addressed all disputed issues and exhibits a good faith effort to resolve the complaint; however, the customer remains dissatisfied despite the company's best efforts to satisfy the customer.

We recommend that you pursue this matter by contacting the following agency for assistance: Lawyer Referral & Information Service P.O. Box 788 Augusta, ME 04332 <http://www.mainebar.org> 207-622-1460 or 800-860-1460 Nationwide Toll Free Number Lawyers participating in this service of the Maine State Bar Association provide half an hour legal consultation for a referral fee of \$20, and establish fees for any additional time. 207-622-1470 -Tel- Law 207-622-1470 - Pre- recorded legal information listing different legal topics Attorney Referral- Attorney-Legal Referral -Lawyers Referral and Referral Service

Date Closed: 12/06/2005

Months Closed: 0.3

Days for Business to Respond: 2