

DOCKETED

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Investigation Report Number 1-02

Standards Compliance Branch Investigation Report

Complaint Information

Investigator: Charlie Opferman

Date Complaint Received: 03/03/2021

Name of Complainant(s): Builder/Project Manager

Subject(s) of Complaint (Rater, Provider, Other): Rater

Type of Service Offered by Subject of Complaint: Heating, Ventilation, and Air Conditioning (HVAC) Installation

Factual Allegations Submitted by Complainant

In December 2020, Contractor A was hired by the complainant to replace a home's HVAC system. The replacement is alleged to have resulted in numerous failures and trials, including the heat not operating during the coldest time of year, and the home's new stucco surface being ruined by staining.

The complainant overheard a conversation between two of Contractor A's technicians. One technician expressed belief that the HVAC system would not pass, the other responded that Contractor A pays raters under the table to pass systems. Due to overhearing this, the complainant embarked on researching the Home Energy Rating System (HERS) program and decided to hire their own rater.

The complainant hired a separate contractor who told them that the system would not pass. Subsequently, the complainant hired a rater who verified the system did not meet compliance on duct leakage, airflow, and fan efficiency.

The rater hired by Contractor A passed the system, but did not appear to be present for the field verification.

The complainant asked CalCERTS and CHEERS if the results of the tests had been entered into their registries. CHEERS affirmed that a passing test had been entered. The results entered into CHEERS' registry stated that the duct leakage, airflow, and fan efficacy were all passing.

The complainant then contacted the Building Standards hotline.

The complainant filed a complaint with the Contractors State License Board (CSLB).

Contractor A threatened a mechanic's lien to which the complainant responded that it was intimidation.

In total, according to the complainant, the system failed five separate ratings.

Documents submitted by Complainant:

Appendix A: Complainant's chronology of complaint events submitted May 27, 2021, to CSLB.

Appendix B: Complainant's April 11, 2021, complaint letter and documentation sent to CSLB.

Appendix C: June 2, 2021, email exchange between complainant and Charles Opferman, Supervisor, California Energy Commission (CEC), with photos.

Additional Documents Reviewed by Staff:

Appendix D: CHEERS March 23, 2021, email to Charles Opferman regarding complaint investigation.

Appendix E: March 19-22, 2021, email exchange between rater and CHEERS quality assurance (QA) investigator.

Appendix F: March 25, 2021, letter to Charles Opferman regarding complaint investigation.

Appendix G: CSLB June 2021 Items of Complaint and Findings by Expert report excerpt.

Appendix H: Tetra Mechanical Manual J Calculation.

Provider Registry.

Summary of CEC's Investigation steps taken:

Date	Staff	Investigatory action taken
03/05/2021	C. Opferman	Initial phone conversation with complainant about the complaint.
03/08/2021	C. Opferman	CHEERS was contacted as the provider responsible for the rater against whom the complaint was lodged. CHEERS conducted quality assurance investigation (QAI) on March 26, 2021, and found that the system failed. CHEERS responded that they could not verify any wrongdoing by the rater as 13 days had elapsed between tests, and this interval may have allowed for some change in the system being tested. CHEERS stated that the rater would be accompanied on future projects in order to verify work quality, and that any additional action would result from those projects.
04/12/2021	C. Opferman	Staff sent an email to the CSLB investigator assigned to the complaint. The investigator was on leave and did not respond.
06/02/2021	C. Opferman	Staff were sent evidence supporting the claims of the complainant. See Appendix C.

Date	Staff	Investigatory action taken
04/13/2021	L. White	Staff sent a letter to the director of the Building Department of Hawthorne, California.

Persons interviewed:

Date	Person interviewed	Summary of Interview
03/05/2021	Complainant	The background information, including address, scope of project, and interest of the interviewee, was expressed. The complaint was summarized by the complainant.
03/24/2021	Complainant	<p>The complainant discussed the visit of a rater. It is noted that the project home has a Ring doorbell, so that video evidence could provide support to identify the rater and measure how long he is there. The rater's test procedure is described.</p> <p>The complainant discussed their correspondence with CHEERS staff who stated they would not provide copies of the test.</p> <p>The complainant revealed a conversation between the contractors' technicians. One expressed that the contractor would pay the rater under the table to make sure the test passes.</p>
04/05/2021	CHEERS Staff	<p>The complaint was explained to the provider staff. Provider staff explained that the state of the system, at the time of the initial rating, could not be verified, but that if a laborer were hired by the rater as a proxy, it was a "no-no."</p> <p>The provider's staff then described a brief interaction with the complainant during which the complainant asked various questions and requested copies of the rating documents. The provider's staff stated that the contractor was responsible for providing those documents.</p>

Date	Person interviewed	Summary of Interview
09/24/2021	Complainant	<p>Complainant described further actions he had taken and planned to take. This includes alerting institutions of accreditation that the contractor advertised being credentialed by them.</p> <p>The complainant noted that the CSLB closed his complaint without notifying him. He intends to reopen it. The complainant also stated he will initiate action against the rater.</p>

CEC staff findings of fact:

The complainant hired Contractor A to replace the home’s HVAC system.

Contractor A hired rater A to test the system.

Rater A passed the system.

The complainant hired a separate contractor to assess the system. This contractor reported the installation as deficient and oversized (See Appendix H).

The complainant then hired rater B to test the system prior to rater A. Rater B failed the system (see Appendix A).

The project was registered with CHEERS who were contacted to perform a QAI. They did and the system failed (see Appendix D and E) but CHEERS did not provide the test results or the fact that the system failed to the complainant.

CHEERS stated there was no way to prove wrongdoing by rater A since “13 days” had elapsed between the rating and QAI, but that they would conduct one additional QA on the rater (see Appendix D and E).

Rater A claimed they had conducted the test with the assistance of a helper, however, video and anecdotal evidence both suggest rater A was not present during the rating.

Tetra Mechanical Manual J load calculation suggested system should be around 2.5 Tons (not 5 tons as installed by contractor A) (see Appendix H).

A complaint was filed by the complainant with the CSLB (see Appendix G).

The complainant appears to have paid contractor A half the sum before the project was complete.

Contractor A appears to have filed a mechanics lien for the full sum despite having been paid half already.

The complainant received notification dated May 18, 2021, that the case had been reassigned to another investigator who would contact the complainant within the next 60 days.

The CSLB findings report showed the system as oversized and that “contractor failed to perform industry approved method for residential load calculations” (see Appendix G).

CSLB findings report shows that system does not pass FV&DT (see Appendix G).

Steps taken by CEC as a result of findings:

CEC staff sent an email to the CSLB investigator assigned to the complaint on April 12, 2021, supporting the complaint.

CEC followed up on May 4, 2021, with the CSLB investigator to find them on leave.

CEC contacted the investigator’s supervisor and were told the case could not be discussed with CEC staff.

CEC staff sent an email to the director of the Hawthorne, California building department letting them know that the CEC was investigating the allegations in the complaint.

Was this report provided to complainant (Yes/No)?:

No.

Report prepared by:

Name: Maxwell Crosby

Title: Associate Energy Specialist (TED)

Date: 10/07/2022