AMERICAN ARBITRATION ASSOCIATION | INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

AMERICAN ARBITRATION ASSOCIATION

Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Case Number: 01-20-0015-2300

Ugochukwu Elumeze,

Claimant

-vs-

Harry Brunson,

Respondent

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the Arbitration agreement dated June 19, 2019 and having been duly sworn, and oral hearing held via videoconference on April 19, 2021 having been held in accordance with the Commercial Rules, and having fully reviewed and considered the written documents submitted to me by *pro se* Plaintiff Ugochukwu Elumeze and *pro se* Defendant Harry Brunson, do hereby Award as follows:

This case was conducted under the Commercial Expedited track procedures of the AAA Commercial Arbitration Rules as amended and in effect July 1, 2015.

Respondent Brunson did not submit a response to the initial arbitration demand. His appearance at and participation in the preliminary hearing and evidentiary hearing are considered an agreement to arbitration, thereby obligating the Respondent to following the AAA Commercial Arbitration Rules.

[illegible]

Introduction

On or about October 12, 2020, the Claimant filed a Demand for Arbitration with the American Arbitration Association (AAA). The claim stated that the Respondent was in breach of a contract dated June 1, 2019. Prior to arbitration, the contract required that prior to seeking arbitration, the parties must participate in an informal mediation process, that if unsuccessful, be followed by a formal process specified in the contract. At the preliminary hearing, the parties advised that the informal mediation process was unsuccessful. Both parties agreed to waive the formal mediation process and to proceed with arbitration. The contract required that any disputes resolved by arbitration, must be conducted using the rules of the American Arbitration Association.

On March 17, 2021, the Arbitrator conducted a Zoom-based Preliminary Hearing. Both parties participated in the hearing. On or about March 22, 2021, the AAA published the Arbitrator's Report of Preliminary Telephone Management Hearing for Fast Track Arbitration Report. The report documented the Arbitrator's order that by joint agreement the 30-day rule for conclusion of this case was waived to allow the Respondent to secure funds to pay the arbitrator's fee.

Both parties agreed that there would be no motions filed, no witness lists, no further claims/counterclaims, or discovery.

Hearing

On April 19, 2021 at 9:00 AM the hearing on the above action was opened. The hearing was conducted via Zoom videoconferencing. Prior to hearing from the parties, a technical session was held to ensure that each party and the arbitrator could hear and see each other.

The following parties were in attendance.

For the Claimant- Mr. Ugochukwu Elumeze

For the Respondent- Mr. Harry Brunson

All parties appeared pro se. During the preliminary hearing, they were reminded of their right to counsel.

All parties took a standard oath.

No witnesses were called by either party.

Claimant's Claim

The Claimant claimed the following damages concerning repair of the house at 764 Linnard Street, Baltimore, MD 21229.

Claimant's Case

The Claimant claimed that the Respondent violated Article 2, Article 5, and Article 15 of the contract. Article 2 stated:

Article 2. Time of Completion
Compensation. COMPANY will compensate Contractor in consideration for the Services by paying the fees described in the applicable SOW and CD.

Article 4. General Provisions
Representations and Warranties. Contractor represents and warrants that:

(a) it is a corporation or limited liability company, duly incorporated or organized, validly;
(b) its Federal Employer Identification Number is 47566-0566;

(c) it has and will maintain all insurance required by law and Section 10 of this Agreement;

(d) its personnel are legally authorized to work in the United States in accordance with all applicable immigration laws;

(e) it currently has multiple clients/customers, has had multiple clients/customers in the past. and intends to have multiple clients/customers in the future;

(f) it makes its services available to the general public and does not make its services exclusively available to COMPANY;

(g) it will maintain accurate financial records in connection with the performance of this Agreement and any SOW and the conduct of its business;

(h) it will comply with all applicable laws and is not prohibited from performing its obligations under this Agreement or any SOW by any other agreement; and

(i) it will provide the Services in a workmanlike manner consistent with industry standards.

Article 14. Assignment
Contractor may not assign or subcontract its rights or obligations under this Agreement or any SOW or CD without the prior written consent of company. Any unauthorized assignment shall be null and void.[1]

Scope of Work (SOW)
The SOW included the following tasks and prices:

Demolition	$4,500
Roof	$5,300
Kitchen	$4,000
Electrical Rough-in	$1,500

[1] Independent Contract Agreement (pp. 23-5).

Electrical Composition	$2,500
Plumbing	$5,500
Drywall	$2,300
Exterior Work	$5,600
HVAC System	$6,400
Flooring	$2,900
Total	**$41,500**[2]

The Plaintiff also testified that throughout the project, he paid the Defendant an additional $6,500 for materials at the Defendant's request. These statements were corroborated by Plaintiff's Exhibit 3 and Exhibit 4.[3]

The Plaintiff entered without objection, Exhibits 5-25 that contained examples of the Defendant's work on each area of the SOW. These pictures were taken five months after the Defendant began work.

The Plaintiff testified that the Defendant stopped work because he needed more money to finish the job. This additional money was not part of the contract. On November 2, 15, and 30, 2019, attempts were made to communicate with the Defendant (phone and email) without success. In December, 2019, the Plaintiff notified the Defendant by email that his services were no longer needed.[4] A new contractor was hired.

The Plaintiff asks for $28,500, the cost incurred for the new contractor to finish the original job.

Defendant's Case

The Defendant claimed that it was unreasonable for the Plaintiff to expect the project to be completed for the original total. He asked for and received additional money to complete the job. $48,000 was received by the Defendant.

The Defendant further claimed that the Plaintiff was in violation Article 8 (a) of the contract.

8. Independent Contractor Status.

(b) COMPANY will have no right or responsibility hereunder to provide instructions or training, require any work other than what is agreed to by Contractor in this Agreement or any SOW, choose or supervise the personnel used to perform the Services, set Contractor's hours or location of work, other than the actual construction site when required, set the order for or

[2] Plaintiff's Exhibit 2, pp. 1-2.
[3] Plaintiff's Exhibits 3 and 4, Payment History, Bank Statement, and Cancelled Checks
[4] Plaintiff's Exhibit 25

sequence of performing the Services, require progress reports, or provide tools, facilities or equipment.

The Defendant further claimed that the lockout of December, 2019, made the contract impossible to perform.

The Defendant asked that the Plaintiff should not be awarded any damages.

Discussion

The case comes down to some basic rules of contract. To succeed on his claim the Plaintiff must show that a signed legal contract exists, the Defendant has breached the contract, the Plaintiff properly terminated the contractual relationship, and the Plaintiff suffered damage as a result of the Defendant's action or inaction.

1. Plaintiff's Exhibit 2 shows there was a contract that described a proposal by the Defendant and acceptance by the Plaintiff.[5]
2. The subject of breach of contract is not as clear. A review of Plaintiff's Exhibit 2 showed a contract, scope of work, and work plan. The period of performance was listed in Plaintiff's Exhibit 2, Section 3.

> **Term and Termination.** This Agreement shall be effective for a period of one (I) year starting on the date hereof and will renew automatically for successive one (I) year terms unless terminated as prescribed herein. COMPANY may terminate this Agreement or any SOW for any reason, on at least seven (7) days' prior written notice, which notice shall specify the exact date of termination. Either party may terminate this Agreement or any SOW for cause immediately upon written notice.[6]

By the contract, the dates of performance were July 1, 2019 until July 1, 2020. It was for the Plaintiff to prove that when he terminated the contract in December of 2019, he could show that there was a reasonable cause for termination. The Plaintiff draws on two issues to prove his case.

- The Defendant's multiple requests for additional money not warranted by contract.
- The Defendant's stopping of work claiming that he needed more money.

The Plaintiff presented a compelling argument for his points. It appears that the Defendant underbid the contract to achieve the award, only to request additional money later. Also, when the Defendant did not receive extra money, the work stopped. Between November 7 and December 30, no work was performed. The conclusion that the Defendant breached the contract is reasonable.

3. On December 30, 2019, the Plaintiff advised the Defendant that his services were no longer needed. Plaintiff's Exhibit 2, Term and Termination states that…"Either party

[5] Plaintiff's Exhibit 2, pp. 2-5.
[6] Plaintiff's Exhibit 2, p. 2.

may terminate this Agreement or any SOW for cause immediately upon written notice."[7] The Plaintiff showed that his cancellation of the contract met the contracted agreement.[8]

4. Both parties agreed that the Defendant completed some work on the contract. The completed work included:

Demolition	$4,500
Roof	$5,300
Kitchen (80%)	$3,200

The Arbitrator's examination of Plaintiff's Exhibit's 5 thru 23 revealed that additional work was completed as follows:

Plumbing (20%)	$1,100
Drywall (20%)	$460
HVAC System (50%)	$3,200

This leaves a contractual breach of $48,000 minus $17,760 equaling $30,240. The Plaintiff admitted that he was able to make the needed repairs for $28,500.

Award

Having reviewed all evidence submitted via the AAA portal and the video hearing, the Arbitrator rules as follows:

1. The Defendant shall pay the Plaintiff **$28,500** for compensatory damages.
2. The Respondent shall pay the AAA the outstanding **$475.00** for the arbitrator's fee.

The administrative fees of the American Arbitration Association totaling $1,725.00, as well as the arbitrator's compensation totaling $1,150.00, shall be borne as incurred by the parties.

Payment to the Claimant is due within 30 calendar days of this ruling.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.I, Harold Craig Cohen, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

April 24, 2021

_____ Harold Craig Cohen

Date Harold Craig Cohen

[7] Plaintiff's Exhibit 2, p. 2.
[8] Plaintiff's Exhibit 25, email, December 30, 2019.

IN THE MATTER OF	*	**MARYLAND HOME**
THE CLAIM OF		**IMPROVEMENT COMMISSION**
ELUMEZE UGOCHUKWU		
AGAINST THE	*	
MARYLAND HOME IMPROVEMENT		
GUARANTY FUND ON ACCOUNT OF	*	**Case No.** 21(75)14
ALLEGED VIOLATIONS OF		
HARRY BRUNSON t/a HB BUILDERS	*	
AND HOME IMPROVEMENT	*	

* * * * * * * * *

FINAL ORDER

On this 24th day of June 2021, Panel B of the Maryland Home Improvement Commission ORDERS that:

1. Pursuant to Business Regulation Article, §8-408(b)(3)(i), Annotated Code of Maryland, the Claimant has provided the Commission with a copy of a final arbitrator's decision dated April 24, 2021, in which the arbitrator found on the merits that the conditions precedent to recovery, as set forth in Business Regulation Article, §8-405(a), Annotated Code of Maryland, have been met, and found that the Claimant sustained an actual loss of $28,500.00.

2. The Commission, in a letter dated May 20, 2021, advised Respondent that the Commission intended to award the Claimant $20,000.00 and that the Respondent had 21 days to submit to the Commission any reasons why the Commission should not pay the award to the Claimant.

3. The Respondent replied to the Commission's May 20, 2021, letter in a letter dated June 11, 2021. The Respondent expressed disagreement with the arbitrator's decision but did not raise any valid legal objections to the decision, indicate that he has paid the arbitration award, or indicate that he timely challenged the arbitrator's decision in court.

4. The Commission directs payment from the Home Improvement Guaranty Fund of $20,000.00 to the Claimant, Elumeze Ogochukwu.

5. Pursuant to Business Regulation Article, §8-411(a), Annotated Code of Maryland, any home improvement licenses held by the Respondent, Harry Brunson t/a HB Builders and Home Improvement, shall be suspended, and the Respondent shall be ineligible for any home improvement licenses until the Respondent has repaid any money paid from the Home Improvement Guaranty Fund pursuant to this Order with 10 percent annual interest.

6. The records and publications of the Maryland Home Improvement Commission shall reflect this decision.

Joseph Tunney
Chair

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