



the Contract was \$19,650 plus 25% profit, less the \$10,000.00 remaining unpaid, and should be applied as a recoupment.

The hand-written scope of the work included demolition of the existing addition, construction of a new addition approximately 30' by 30', a bathroom with certain fixtures, insulation, light fixtures receptacles, and related items of work. Central to the dispute was the cost incurred by the Claimant to complete framing, drywall, painting, electrical and related work to construct an interior "mud room" with closet, and an enclosed "pantry".

The Arbitrator heard the sworn testimony of Richard Miller and Micah Rehn (Claimant's completing contractor) on behalf of the Claimant, and Richard Garhart on behalf of Respondent. The Arbitrator also admitted into evidence Claimant's Exhibits C-1 through C-33, and Respondent's Exhibits R-1 through R-19<sup>2</sup>. The Arbitrator has had an opportunity to review the exhibits and testimony, to assess the credibility of the witnesses during their testimony, to give the testimony and the documentary evidence the weight that each are due, and to hear and consider the arguments on behalf of the parties.

The applicable standard of proof in civil cases is preponderance of the evidence, and the party asserting a particular claim bears the burden of meeting that standard. Mathis v. Hargrove, 166 Md.App. 286, 888 A.2d 377 (2005). The burden is sometimes referred to as the burden of persuasion, or the risk of non-persuasion. Further, the burden of first producing evidence on a particular issue is borne by the party who has the burden of persuasion on that issue.

Both the "Approximate Starting Date" and the "Approximate Completion Date" were "TBD". Nonetheless, Maryland law provides that if the time of performance of a contract is not specified, the parties have a reasonable time to perform. *See, e.g., Evergreen Amusement Corp. v. Milstead*, 206 Md. 610, 112 A.2d 901 (1955); Prison Health Servs., Inc. v. Baltimore City, 172 Md. App. 1, 912 A.2d 56 (2006). What is a reasonable time depends of the facts of each case. Hagan v. Dundore, 185 Md. 86, 43 A.2d 181 (1945); *see, also, I.O.A. Leasing Corp. v. Merle Thomas Corp.*, 260 Md. 243, 272 A.2d. 1 (1971); Berens v. Wortman, 250 Md. 343, 243 A.2d 507 (1976).

The work was initially delayed by the inability to obtain a building permit due to a "ransomware" attack on the Baltimore City computer system in Summer 2019. Work finally commenced in September 2019 and by January 2020 the foundation and basic framing was completed. However, between January 2020 and March 2021, the only substantive work that was completed was the installation of the shed roof, "Tyvek" wrap on the exterior, and installation of windows and a door. When the work was still not complete the Claimant terminated the Contract by letter of March 20, 2021, and by contract dated April 2,

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<sup>2</sup> Included in the Exhibits were copies of "Maryland Code and Court Rules", "COMAR" regulations, "Case Law" and "Respondent's Disclosure of Witnesses". *See*, Exhibits 13, 14, 18 and 19. These documents were not considered as part of the factual evidence submitted by the Respondent.

2021, hired RehnOvations LLC to complete the work. RehnOvations completed its work and received its final payment on July 17, 2021.

Much of the testimony focused on the time of performance, and the reasons for delay – the ransomware attack, the disruption caused by the COVID-19 pandemic and ensuing supply-chain issues, and the bypass surgery that Garhart underwent with the attendant recovery. Having reviewed the facts of this particular case, the Arbitrator concludes that the Respondent did not substantially complete work within a reasonable time, despite the ransomware, COVID 19 and health issues. However, the Claimant did not seek damages for the delay; rather Claimant focused on the Claimant's cost to complete the Contract.

The Claimant entered into a completion contract with the heading "RehnOvations LLC, a division of JRehn Remodeling". The contract was signed by Micah Rehn, without any notation as to his relationship to RehnOvations LLC or to JRehn Remodeling". Although JRehn Remodeling is a licensed Maryland home improvement contractor, the law is clear that reference in the heading to RehnOvations as "a division of" JRehn Remodeling does not bring RehnOvations into compliance as a licensed home improvement contractor. Further, the RehnOvations contract is clearly devoid of the mandatory provisions required in a home improvement contract, including an MHIC license number.

Lastly, Maryland law is explicit that "[e]xcept for a permit for a home improvement to be performed by a property owner, the building and permits department of a county or a municipal corporation may not issue a permit for a home improvement unless the permit includes the license number of a licensed contractor." Md. Code Ann., Bus. Reg., §8-504. RehnOvations did not apply for a permit and did not obtain a permit in either the name of RehnOvations or in the name of JRehn Remodeling. Instead, RehnOvations simply completed the work utilizing the permit of Garhart that previously had been issued in the name of "Richard M Garhart & Sons".

Included in the RehnOvations contract was the completion of the "mud room", the closet, the pantry, three baseboard "radiators", and an upgrade to the exterior siding. The Arbitrator finds that those items were not part of the Garhart Contract. The Arbitrator further finds that certain work within the original scope of work was not performed, including insulation, drywall, trim, painting, plumbing, electrical and exterior work.

The Arbitrator is faced in the alternative with crediting the testimony of an unlicensed home improvement contractor (Micah Rehn) as to the fair and reasonable cost of the uncompleted work or crediting the testimony of the licensed home improvement contractor (Garhart) in that same regard. The Arbitrator finds that the testimony of the licensed home improvement contractor (Garhart) is both credible and supported by the purpose and the intent of Maryland Home Improvement law.

Garhart testified that the reasonable value of the work that the Respondent did not complete was \$19,650 to which he added a profit of \$4,912.50 (25%) for a total credit of \$24,562.50, and the Arbitrator accepts that figure. However, that figure must be reduced by the balance of the Contract that the Claimant did not pay in the amount of \$10,000.00.

Based on the foregoing, the Arbitrator concludes that the Claimant has suffered an actual loss as that term is defined in Md. Code Ann., Bus. Reg. §8-401, and the amount of that actual loss is computed as follows:

Amount paid to Contractor	\$61,500.00
Reasonable amount to correct and complete the work	<u>\$24,562.50</u>
Subtotal	\$86,062.50
Less final Contract price	<u>(71,500.00)</u>
Balance due to the Claimant	\$14,562.50

The Claimant also seeks "Attorney's Fees," "Interest" and "Arbitration Costs". The Arbitrator finds that there is no contract, statutory or common-law basis for an award of attorney's fees to the Claimant. The Arbitrator further finds that the Claimant is entitled to pre-Award interest at the Maryland Constitutional rate of six percent (6%) per annum from May 28, 2021, through November 28, 2023, in the amount of \$2,184.40. Lastly, the Arbitrator finds that arbitration costs should be borne as incurred.

The Arbitrator has reviewed in detail the evidence submitted with respect to the issues of liability, as well as the damage claims. The Arbitrator has applied the legal principles applicable to this dispute, including the burdens of proof, has considered the contractual obligations of the parties and applicable law, and has considered the fairness and reasonableness of the damages submitted. Based upon that detailed review, and as set forth above, the Arbitrator **DETERMINES AND AWARDS**, as follows:

1. The claims of the Claimant Richard Miller are allowed in the amount of **FOURTEEN THOUSAND FIVE HUNDRED SIXTY-TWO AND 50/100 DOLLARS (\$14,562.50)**.
2. The claim of Claimant Richard Miller for interest **GRANTED** in the amount of **TWO THOUSAND ONE HUNDRED EIGHTY-FOUR AND 40/100 DOLLARS (\$2,184.40)** through November 28, 2023.
3. The claim of Claimant Richard Miller for attorney's fees is **DENIED**.
4. The administrative fees and expenses of the American Arbitration Association totaling \$1,915.00, as well as the arbitrator's compensation totaling \$3,751.00 shall be borne as incurred.
5. The above sums are to be paid on or before thirty (30) days from the date of this Award.
6. All claims and counterclaims not otherwise provided for herein are denied.

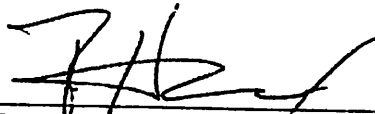
[signatures on following page]

Dated: December 7, 2023

Tarrant H. Lomax, Arbitrator

I, Tarrant H. Lomax, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Final Award.

Dated: December 7, 2023

  
Tarrant H. Lomax, Arbitrator