

**IN THE MATTER OF  
THE CLAIM OF ELAINE WILLIAMS  
AGAINST THE  
MARYLAND HOME IMPROVEMENT  
GUARANTY FUND ON ACCOUNT OF  
ALLEGED VIOLATIONS OF  
NEBIYOU SEYOUM AND LANAS  
CONSTRUCTION, LLC**

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**MARYLAND HOME  
IMPROVEMENT COMMISSION**

**Case No. 21(75)329**

\* \* \* \* \*

**FINAL ORDER**

On this 25<sup>th</sup> day of July 2023, 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 January 6, 2022,<sup>1</sup> 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 \$35,020.00.
2. The Commission advised Respondent in a letter dated April 12, 2023, that the Commission intended to award the Claimant \$30,000.00 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 did not timely reply to the Commission's letter.
4. The Commission directs payment from the Home Improvement Guaranty Fund of \$30,000.00, the maximum award payable to a claimant for the acts or omissions of a single contractor, to the Claimant, Elaine Williams.

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<sup>1</sup> The arbitrator's decision appears to have been misdated as January 6, 2022, instead of January 6, 2023, as it references photographs and testimony about the condition of the Claimant's home in August 2022.

5. Pursuant to Business Regulation Article, §8-411(a), Annotated Code of Maryland, any home improvement licenses held by the Respondent, Nebiyou Seyoum and LANAS Construction, LLC, 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.
7. This Final Order replaces and supersedes the Commission's prior Final Order in this proceeding, which the Commission issued in error before the Respondent had an opportunity to respond to the Commission's notice of its intent to grant an award to the Claimant.

**Joseph Tunney**  
Chair

**AMERICAN ARBITRATION ASSOCIATION**  
**Commercial Arbitration Tribunal**

In the Matter of the Arbitration between:

<b>Timothy Williams and Elaine Williams</b>	:	
	:	
<b>Claimants</b>	:	
	:	
<b>v.</b>	:	<b>Case No. 01-22-0000-3273</b>
	:	
<b>Nebiyou Dawit Seyoum<sup>1</sup> and LANAS</b>	:	
<b>Construction, LLC</b>	:	
	:	
<b>Respondents</b>	:	

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**FINAL AWARD OF ARBITRATOR**

I, , **THE UNDERSIGNED ARBITRATOR**, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated July 22, 2019, and having been duly sworn, and having duly heard the allegations and proofs of the parties as to the competing claims herein, Claimants being represented by Frank T. Totten, Esq., and Respondent being represented by G. Harrison Bliss, Esq., do hereby, **FIND and Award**, as follows.

This matter arises out of a "Construction Contract" between Timothy and Elaine Williams (the "Claimants") and LANAS Construction, LLC (the "Respondent") for the performance of certain renovation work at 1426 N. Broadway, Baltimore, MD 21223 (the "Contract").

The Claimants seeks the sum of \$67,000.00 as the value of the work not completed by Respondent, together with "Attorney's Fees", "Interest" and "Arbitration Costs". Respondent in turn seeks the sum of \$10,750.00, being the amount remaining unpaid on the Contract.

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<sup>1</sup> The original Demand named Nebiyou Dawit Seyoum, a member of LANAS Construction, LLC. (LANAS). The Claimants subsequently amended their Demand to name LANAS, the party to the Construction Contract, as the Respondent, and the matter proceeded as to LANAS only.

The Arbitrator heard the sworn testimony of Timothy Williams, Elaine Williams, and Raymond H. Zink (expert) for the Claimants, and Nebiyou Dawit Seyoum on behalf of the Respondent. The Arbitrator also admitted into evidence Claimants' Exhibits 1 through 9 and Respondent's Exhibits R-2, R-4, R-5 and R-8. 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.

As set forth on Claimants' Exhibit 2, the revised Contract price, including Change Orders, is \$127,580.00; the Claimants have paid \$116,830.00, leaving an unpaid Contract balance of \$10,750.00.

Although the initial completion date was September 30, 2019, the work was interrupted and extended by an initial delay in obtaining historically compliant materials, by the April 2020 re-approval by Baltimore City under its "CHAP" program, by the ongoing and disruptive impact of the COVID-19 pandemic throughout 2020, and by the subsequent labor and supply chain shortages. As late as March 2021, the parties continued to pursue completion of the project, albeit in "fits and starts".

Although the Contract contained a Force Majeure clause, Respondent did not give the Claimants written notice invoking that clause. On the other hand, the Contract contained a Default clause and a Remedies clause, which the Claimants failed to invoke until March 8, 2021. Instead, the Claimants tolerated the delays while the Respondent made sporadic attempts at the work.

Claimants submit that a March 8, 2021, email constituted their notice of default under the Contract. However, that email simply reminds the Respondent that the Claimants "need[ed] to know the date when . . . the project will be completed." The notice does not make reference to a default and does not advise the Respondent of the 14-day cure period.

For its part, Respondent provided a schedule printed on March 23, 2021, and testified that it had been available several days earlier through a portal. However, the Respondent did not meet the first week of the schedule and instead complained about non-payment of \$2,750.00 for a change order. Although that non-payment may have constituted a default,

Respondent did not follow the Contract requirement for notice and opportunity to cure. Consequently, the project again languished while the parties exchanged emails.

By mid-April 2021, the Claimants had changed the locks to the property, and the Respondent simply asked the Claimants if they wanted LANAS to complete the work. Respondent received no response to that inquiry, and the parties simply went their separate ways.

The monetary aspect of this matter centers on the status of the construction and the value of the work completed as of mid-April 2021. Claimants submit in Exhibit C-2 that the value of the work was \$49,830.00, leaving an overpayment to Respondent of \$67,000.00. Although Exhibit 2 requires the Claimants to "PROVIDE PROOF" of their "estimated value of the work done by the [Respondent]" to the Maryland Home Improvement Commission, that Exhibit does not include any supporting documents providing such "proof". Nor did the Claimants introduce an estimate from a qualified contractor as to the fair and reasonable value of the cost to complete the work. While the Respondent concedes that the work was not complete, it nonetheless seeks payment of its Contract balance and did not proffer a credit for the value of the incomplete work. As a result of the dearth of cost evidence adduced by either party, only the testimony of Raymond H. Zink, and the report from Zink Home Consultants, provide a basis for a credit.

The Claimants introduced a number of photographs taken in 2022 depicting the status of construction after the last work performed by Respondent in 2021. The Claimants' expert provided similar photographs and further testified as to the status of the work as of August 15, 2022. The Arbitrator credits the expert's testimony regarding percentages complete as to certain categories of work (*e.g.*, interior trim, plumbing and electrical at 30%) as consistent with photographs.

The payment schedule in Paragraph 6 of the Contract and described in Exhibit A was not broken down into defined components of the work with values assigned to each component, leaving it to the Arbitrator to divine the amount proportionate to the sum payable under Payments 1 through 5. The Arbitrator finds that the evidence adduced by the expert provides a credible and sufficient basis for making that determination. Using the Scope of Work in

Exhibit B and applying the evidence adduced during the hearing to the five payments in Schedule A, the Arbitrator ascribes the work completed as follows:

Payment 1	98%	\$26,460.00
Payment 2	95%	\$25,650.00
Payment 3	80%	\$21,600.00
Payment 4	30%	\$8,100.00
Payment 5	0%	\$0.00
		\$81,810.00

Based upon those completion percentages the Arbitrator concludes that the fair and reasonable value of the work completed was \$81,810.00, and that the Claimants have overpaid the Respondent in the amount of **\$35,020.00**.

There is no contractual basis for Claimants' claim for attorneys' fees. Rather, the Claimants seek an award pursuant to Commercial Law Article Section 13-408 (Consumer Protection Act) and/or under Title 8 of the Business Regulation Article (Home Improvements).

The Arbitrator does not find that the Respondent engaged in an "unfair, abusive or deceptive trade practice". Nor does the Arbitrator find that Respondent's counterclaim was brought in "bad faith or is of a frivolous nature". Accordingly, the Arbitrator does not award damages under the Consumer Protection Act.

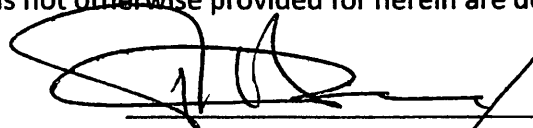
Title 8 of the Business Regulation Article regulates home improvements. It provides for licensing as well as certain contract provisions. Failure to comply with those provisions may result in a civil and/or criminal penalties but does not independently provide for an award of attorney's fees in this action. As to the Claimants' claim that the Respondent abandoned the Contract as that term is used in Title 8, the Arbitrator finds that the Respondent's email of April 21, 2021, manifests the Respondent's intent to continue, not abandon, the Contract. Accordingly, any claim for attorney's fee pursuant to the Business Regulation Article is denied.

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 and on the attached Award Summary, the Arbitrator **DETERMINES AND AWARDS**, as follows:


1. The claim of the Claimants Timothy Williams and Elaine Williams is allowed in the amount of THIRTY-FIVE THOUSAND TWENTY AND 00/100 DOLLARS (**\$35,020.00**).
2. The claim of the Claimants Timothy Williams and Elaine Williams for an award of attorney's fees is denied.
3. The counterclaim of the Respondent LANAS Construction, LLC for breach of contract is denied.
4. The claim of the Claimants Timothy Williams and Elaine Williams for an award of pre-judgment interest is granted and interest on the principal amount of \$35,020.00 shall accrue from May 1, 2021, at the rate of 6% per annum until paid in full.
5. The administrative fees of the American Arbitration Association totaling \$3,450.00 , and the compensation of the Arbitrator totaling \$1,150.00 shall be borne as incurred.
6. The above sums are to be paid on or before thirty (30) days from the date of this Award.
7. All claims and counterclaims not otherwise provided for herein are denied.

Dated: January 6, 2022

  
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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: January 6, 2022

  
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Tarrant H. Lomax