

FAIRCLAIMS ARBITRATION AWARD

Benjamin Wiseman,

Claimant.

v.

Crysta Font,

DJK Environmental, LLC,

Respondents.

Fairclaims Case No.

94981 Final Award

Arbitrator:

Nohayia Javed Esq.

Place of Arbitration:

Virtual, Contractually Designated as Los Angeles, CA

The undersigned is the duly appointed arbitrator in the above-captioned matter. On June 06, 2023, the undersigned conducted a hearing via teleconference pursuant to the parties' FairClaims Arbitration Agreement, the FairClaims Rules & Procedures, and the Federal Arbitration Act, 9 U.S.C. §§1-16. Claimant and Respondent appeared at the hearing. Pursuant to Rule 1 of the FairClaims Rules & Procedures, the place of arbitration is agreed by the parties to be Los Angeles, California. The undersigned arbitrator hereby issues the following award pursuant to the Federal Arbitration Act, 9 U.S.C. §9. Pursuant to Rule 24 of the FairClaims Rules & Procedures, if "the owing party fails to pay the amount owed within the longer of 14 days or the deadline noted in the award or Arbitration Agreement, then the prevailing party may file a petition to confirm the award in any court having jurisdiction." Rule 24 further states that "[i]n the event of confirmation and enforcement of an award, the delinquent party will be responsible for any attorney, court or other fees associated with such action." Pursuant to Rule 23 of the FairClaims Rules & Procedures and unless otherwise agreed, Respondent must pay the amount awarded to the Claimant on or before the 14th day after the award is served on the parties.

FINAL AWARD

This dispute arises from an alleged breach of contract. A contract is comprised of three factors – an offer, acceptance and consideration. An offer was made by the Respondent, a company engaged in the business of home improvements, to do specific work at the Claimant's property. An acceptance was made by the Claimant for such work to be completed at his property by the Respondent. The consideration for this is the monies agreed upon for this transaction. Both parties submitted evidence and statements and attended the hearing to provide testimony.

The Claimant contends that the Respondent did not properly conduct the scope of work contracted between the parties and as such, owe him \$2700 in damages. Specifically, the Claimant stated that did not remove all debris as agreed; installed OSB board that is an insufficient thickness to make the attic a usable space; didn't fully cover all floor space in the attic with OSB; did not lay the OSB down properly; did not fully reinsulate the attic; did not abate all the asbestos. The Claimant alleges that the Respondent did not fulfill their end of the contract and as such, owes damages to finish insulating the attic, laying down the OSB fully and properly and removing all debris.

The Respondent contends that the contract clearly stated 700 square feet of the attic would be reinstated and flooring would be laid to make the attic usable. The Respondent alleges that their work was done fully and properly and the Claimant asked for the floorboards to be left so those were not hauled away as debris. The Respondent stated that they tried to resolve the issue with the Claimant but were unable to come to a resolution. The Respondent further stated that the Claimant still owes \$4,934.72 in the event that the ZAI Trust does not pay for the claim. The Respondent explained that asbestos abatement can be covered by this Trust but the Claimant must cooperate in the claims process. If the Claimant does not cooperate or the Trust denies the claim, then the amount is owed by the Claimant personally. The Respondent further testified that the Claimant opened a second claim, identical to the first claim that was already initiated for this project, and both claims are now under review. The Respondent contends that there is no way to know if the claim(s) will be approved but if they are not, the Respondent company is owed the balance that is due of the work completed.

Based on the information provided, evidence submitted and testimony given at the hearing, I find in favor of the Claimant.

First, the contract states removal and disposal of approximately 700 square feet of assumed asbestos containing vermiculite insulation in attic. The provision states that the Respondent removes accessible and visible vermiculite. The Respondent did so and the pictures submitted into evidence show that this provision of the contract was fulfilled. Although the Claimant contends that the attic is approximately 1100 square feet and the entire space should have been addressed, the contract states otherwise. If the Claimant wished for a different square footage to be worked on by the Respondent, then this is a crucial provision in the contract that should have been changed. Regardless, the contract states 700 sq feet and that is what both parties agree that was worked on. Therefore, I find in favor of the Respondent on this issue of the removal of the vermiculite in the attic. The Claimant's request for \$1000 is denied.

Second, the contract starts removal and disposal of attic floorboards. The Claimant contends that the

Respondent did not remove the 'junk' from his attic. It is clear that the contract stated that the floorboards were to be removed. The Respondent's position that the Claimant asked for those floorboards to be left is contrary to the contractual language. If the Respondent agreed to leave the floorboards in the attic, this provision in the contract should have been modified. It was not. Therefore, I find in favor of the Claimant on this issue and award \$400.

Third, the contract states reinstating between the floor joists. The pictures submitted show that this was completed. As such, I find in favor of the Respondent on this issue.

Fourth, the contract states installation of OSB/plywood over the joists and insulation for a useable attic. There is ambiguity in the concept of a useable attic - the Claimant contends this means he should be able to walk on the attic floor and use the attic for storage. The Respondent contends that the attic was not usable prior to the work and the only agreement was for the insulation to be removed and some type of flooring to be placed on top. There was no agreement that the OSB/plywood would be nailed down or that the floor would be finished. However, the Respondent did testify that the initial conversations between the parties ruled out blown in insulation that would not allow for anyone to walk in the attic. The Claimant specifically rejected this option and opted for insulation that would go between the joists and the parties agreed to this. The Respondent's version of this conversation shows that the Claimant was quite clear that he wanted his attic to be walkable without insulation everywhere. As such, I find in favor of the Claimant on this issue and award \$1300.

The parties both addressed the issue of the remaining balance that is subject to the claims process with VAI Trust. On this issue, I find the following: the Claimant shall cooperate fully with the Respondent and provide all necessary documentation to finalize the claims process to obtain coverage and payment for his claim. In the event that the claim is denied, the parties have the opportunity to resolve the matter privately between themselves or either side may bring a future action for any monies owed or disputed. As that issue of payment or lack of payment has not arisen yet, the issue is not ripe for judicial review at this time.

Based on the foregoing, I find in partial favor of the Claimant and award $\$1300 + \$400 = \$1700$ in damages as explained above. The Respondent shall reimburse \$1700 to the Claimant. It is hereby ordered.

June 12, 2023



Nohayia Javed Esq.



FairClaims, Inc.
777 S. Alameda St. 2nd Floor
Los Angeles, CA 90021

Re: FairClaims Arbitration Dispute 94981
Date: June 27, 2023

To whom it may concern,

This letter is to affirm that the attached copy of the FairClaims Arbitration Award dated June 12, 2023 for FairClaims dispute 94981 is certified to be a valid FairClaims Arbitration Award rendered and signed by a duly appointed neutral and independent arbitrator pursuant to the parties' Post-Dispute Arbitration Agreement which was fully executed by the Claimant on May 15, 2023 14:59 and by the Respondent on May 16, 2023 20:07 and pursuant to the FairClaims Rules and Procedures to which both parties agreed.

For any further inquiries please contact help@fairclaims.com.

A handwritten signature in black ink that reads "Stephen Kane". The signature is written in a cursive, slightly slanted style.

Stephen Kane
Founder and CEO, FairClaims