

IN THE MATTER OF
THE CLAIM OF VICTORIA KELLER
AGAINST THE
MARYLAND HOME IMPROVEMENT
GUARANTY FUND ON ACCOUNT OF
ALLEGED VIOLATIONS OF
JASON TART
t/a SUNRISE CUSTOM HOMES, INC.

* MARYLAND HOME
IMPROVEMENT COMMISSION

* Case No. 11 (90) 561

* * * * *

FINAL ORDER

On this 28TH day of August, 2015, 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 award in arbitration, dated October 8, 2013, with all rights of appeal exhausted, 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 \$14,266.00.

2) The Commission directs payment of \$14,266.00 from the Home Improvement Guaranty Fund to the Claimant, Victoria Keller.

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

4) The payment to the Claimant from the Home Improvement Guaranty Fund shall be authorized thirty (30) days from the date of this Order. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.

Joseph Tunney
Chair - Panel B

In the Matter of Arbitration Between:

Victoria Keller,

Claimant,
and

Jason Tart, t/a Sunrise Building-Remodeling,
Inc.

Respondent.

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BEFORE THE
HON. J. Calvin Jenkins Jr.
Arbitrator

**Arbitration Award Containing
Specific Findings of Fact and Conclusions of Law**

Upon consideration of the testimony and evidence presented in the above arbitration proceeding, the same being duly noted to both Claimant and Respondent and conducted in accordance with Section 24 of Respondent's Contract, which occurred on or about October 3, 2013¹.

On this 8th day of October, 2013, I, J. Calvin Jenkins, Jr., the duly selected and validly appointed arbitrator, do hereby make the following specific findings:

1. On or about September 17, 2007, December 14, 2007 and March 25, 2008, Claimant entered into three (3) written contracts (hereinafter collectively "Contracts") with Respondent for the construction of an addition and related work at her primary residence located at 1701 Cape May Road, Essex, Maryland 21221 (hereinafter "Project"), such work being in the nature of a regulated home improvement. See Exhibit 1.
2. The agreed upon contract price for the work of the Project, as set forth in the Contracts, was One Hundred Forty Seven Thousand Five Hundred Eighty Dollars (\$147,580.00)(hereinafter "Contract Value"). See Exhibit 1.
3. At the time of contracting, and all relevant times thereafter, Jason Tart conducted business as Sunrise Building & Remodeling, Incorporated (hereinafter "Sunrise").

¹ Scheduling and Notice documents are attached hereto and incorporated herein, collectively, as Exhibit A, all other exhibits are numerical.

4. At the time of contracting and all relevant times thereafter, Respondent Jason Tart and/or Sunrise possessed a salesman/contractor's license from the Maryland Home Improvement Commission license number 121524. See Exhibit 1.
5. As of November 11, 2008, the work of the Contract had not been completed, in a proper and workmanlike manner, or to the reasonable satisfaction of the Claimant. See Exhibit 6 at ¶ 4 and Exhibit 2.
6. As of May 27, 2009, the Respondent ceased performing work on the Project, without justification, which actions are determined to be an abandonment of the contract and Project. See Exhibit 7.
7. As of the date the Respondent abandoned the Project, Claimant had paid them the sum of One Hundred Forty Six Thousand Three Hundred Eighty Dollars (\$146,380.00).
8. On or about March 31, 2008, Claimant engaged Sanders Design, P.A., a residential design and architecture firm to review the work of the Respondents on the Project to determine: (i) the existence of any workmanship defects; (ii) code compliance of the Project and (iii) suggested corrective actions to address certain, exterior grading issues, moisture and lack of ventilation problems in the crawlspace of the addition. Sanders Design prepared a written report and recommendations (hereinafter "Sanders Report"). See Exhibit 3.
9. After the Claimant shared the findings of the Sanders Report and made demand for remedial performance in accordance therewith, Claimant sought legal representation by Attorney William Hickey². Respondent Contractor, thereafter, directed Claimant to make all further demands and communications in regard to the Project to and through his attorney, Mr. Hickey.
10. On or about September 2, 2009 Claimant, transmitted an email to Attorney Hickey making demand for specific performance of certain remedial work (hereinafter "First Demand"). See Exhibit 4.
11. Respondent ignored Claimant's First Demand.
12. On or before to July 20, 2010, Claimant engaged legal counsel, Wayne S. Goddard, Esquire and Cuomo & Goddard, LLP to make demand upon Respondent for the performance of certain remedial work (hereinafter "Second Demand"). See Exhibit 5.

² In Fiscal Year 2013, according to records from the Maryland Attorney Grievance Commission, William Hickey, III was disbarred by consent.

13. Respondent ignored Claimant's Second Demand made through counsel.
14. On October 2, 2010, Claimant filed her Complaint with the MHIC against Respondent seeking to compel him to perform certain remedial work. (hereinafter "MHIC Complaint"). See Exhibit 6.
15. Respondent ignored Claimant's demands set forth in the MHIC Complaint.
16. On or about November 10, 2012, Claimant filed her Guaranty Fund Claim against Respondent (hereinafter "Fund Claim"). See Exhibit 7.
17. Respondent ignored Claimant's demands attendant to the Fund Claim.
18. In conjunction with the Fund Claim, Claimant obtained the following:
 - (i) Estimate Proposal from Mike's Plumbing & Heating Service, Inc. to perform remedial plumbing work to correct: a malfunctioning master bath shower, malfunction toilet in the Project, as well as to supply and install a heavy duty sump pump and battery backup system (hereinafter "MPHS Proposal"). The total of the MPHS Proposal was \$3,358.00 [Exhibit 10]
 - (ii) Estimate from Nature's Image, Inc. to perform remedial foundation grading, installation of a large crawlspace access panel and entry area, redirecting downspouts away from foundation and restoring disturbed areas (hereinafter "NI Proposal"). The total of the NI Proposal was \$10,780.00 [Exhibit 8], and
 - (iii) Cost to supply and install (2) solar powered crawl space ventilators (hereinafter "Ventilator Proposal"). The Ventilator Proposal was \$1,328.00 [Exhibit 9]. See also Exhibit 7.
19. John J. Heyn, of JJ Heyn Consultants was offered and accepted as an Expert in the field of residential home improvement and cost estimation (hereinafter "Mr. Heyn").
20. Mr. Heyn rendered the following opinions. within a reasonable degree of certainty in his field of qualification:
 - i. Certain of the work of the Respondent was incomplete, deficient and unworkmanlike, particularly, the foundation crawlspace, exterior grading, master bathroom shower and toilet (hereinafter collectively "Defects");
 - ii. That the Respondent had an obligation to address the Defects but failed and refused to do so;

- iii. That the cost and scope of the MPHS Proposal to perform the work set forth therein was fair, reasonable and necessary to correct the Defects;
 - iv. That the cost and scope of the NI Proposal to perform the work set forth therein was fair, reasonable and necessary to correct the Defects;
 - v. That the cost and scope of the Ventilator Proposal to perform the work set forth therein was fair, reasonable and necessary to correct the Defects.
21. Claimant did not unreasonably reject any good faith efforts by the Respondent to correct, cure or remedy any of the Defects in the Project, and in point of fact, Respondent ignored numerous demands for performance by the Claimant and made absolutely no efforts in that regard.
 22. Claimant is not, nor was she ever, related to the Respondent.
 23. Claimant is not, nor was she ever, an officer, partner or employee of Contractor.
 24. The work of the Respondent was on Claimant's personal residence.
 25. The Claimant has sustained an "actual loss" resulting from the incomplete, unworkmanlike, and defective work of a licensed home improvement contractor, as defined by Md. Code Ann. Bus. Reg. § 8-401. The actual loss is calculated as follows:

I. Original Contract Price (all three contracts for the Project)	\$147,580.00
II. Amount Paid by Homeowner to Respondent	<u>\$146,380.00</u>
Unpaid Balance	\$ 1,200.00

Calculation of Damages Award per COMAR 09.08.03.03B(3)(c):

Amount Paid to Original Contractor (Respondent)	\$146,380.00
Amount Payable/Paid to correct, cure and complete	<u>\$ 15,466.00</u>
Total:	\$161,846.00
Less	
Amount of Original Contracts	<u>-\$147,580.00</u>
Actual Loss:	\$ 14,266.00

Conclusion of Law:

Based upon the above findings of fact, the following award is made and entered:

- i. That to compensate Claimant for the Actual Loss she sustained as a result of the Defects in the Project caused by the acts and omissions of a licensed home improvement contractor, Respondent herein, an award in the amount of **Fourteen**

Thousand Two Hundred Sixty Six Dollars (\$14,266.00) is hereby entered
against Respondent Jason Tart, t/a Sunrise Building & Remodeling, Inc.

It is so awarded this 8th day of October, 2013.

Signature on File

J. Calvin Jenkins, Jr. Arbitrator