

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AMERICAN ARBITRATION ASSOCIATION

KENTON SCHUMACHER, et al.,

Claimants,

v.

LGI HOMES – WASHINGTON LLC, et al.,

Respondents and Third-Party
Claimants,

v.

Laer Enterprises, Inc.

Third-Party Respondent.

AAA Case No. 01-23-0000-1748

INTERIM PARTIAL AWARD

PROCEDURAL BACKGROUND.

From approximately 2018 to 2021, LGI Homes – Washington, LLC (“LGI”) constructed and sold 289 Homes in Suntop Farms, a single-family home community in Enumclaw, Washington. In August 2021, a group of Suntop Farms homeowners sued LGI and several other LGI entities alleging defective installation of siding and roofing, some of which failed during a windstorm in February 2021. LGI brought its siding and roofing subcontractors into the case.

On May 24, 2022, Judge Melinda Young of the King County Superior Court granted LGI’s motion to compel arbitration. The parties agreed the arbitration would be conducted by the American Arbitration Association (the “AAA”) pursuant to its “Streamlined Three-

1 Arbitrator Panel Option for Complex Large Cases.” Charles S. Burdell was assigned as the
2 chairperson of the Panel. David R. Koopmans and John F. Purcell were assigned as “wing”
3 arbitrators. This option provides that the chairperson of the panel would decide summary
4 judgment motions. Prior to the commencement of the hearing, the chairperson heard and
5 denied the parties’ motions for summary judgment. All claims involving the roofing work at
6 Suntop Farms were settled prior to the hearing; the siding claims remained and were the subject
7 of the evidentiary hearing. LGI’s siding subcontractor, Laer Enterprises, Inc. (“Laer”),
8 remained in the arbitration as a Third-Party Respondent.
9

10 The hearing was conducted via Zoom and commenced on January 22, 2024.
11
12 Testimony was taken for 13 days. Post-hearing briefs were submitted by the parties on
13 February 12, 2024 and closing arguments were held on February 14, 2024.

14 **COUNSEL.**

15 Each Claimant was represented by Christopher Casey of Casey Law PLLC.
16
17 Respondents LGI, LGI Homes Corporate, LLC and LGI Homes Group, LLC were represented
18 by Hans Juhl and Brian Ernst of Ryan, Swanson & Cleveland, PLLC. Third Party Respondent
19 Laer was represented by Brandon Smith and Jeremy Oddo of Holt Woods & Scisciani LLP.
20 The hearing was conducted pursuant to the AAA Construction Industry Rules for Complex
21 Cases and Washington law.
22

23 **WITNESSES AND EXHIBITS.**

24 Testimony was presented at the arbitration hearing via Zoom by: Will Martin, Ray
25 Wetherholt, Chris Pressey, Alyssa Mercer, Annie Nahon, Stacey McGrath, Katie Mikesell,
26 Kristen Hall, Ivan Ngauamo, Noel Teves, Ryan Hildebrand, Seth Pohlman, Ronald Bocca,
27 Stephen Hannan, Arden Barden, Rebekah Engebo, Richard Eagle, Tiffanie Hopkins, Cynthia
28

1 Bauer, Andrew Mortagne, Bryan Hellesto, Ethan Schierenbeck, Kimberly Bushaw, Troy
2 Runner, Ricky Hall, Temaswati Johnston, Sean Bickford, Kieran Hunt, Ryan Stokes, Jason
3 Skaug, Kevin Bremmeyer, Joe Baze, Amir Mousavi, Caleb Harris, Mickey Bergsma, Daniel
4 Diaz, Shelly Veazey, Bailey Silver, Gary Magreehan, Nate Mowry, Travis Reano, Rhonda
5 Sawyer, Kenton Schumacher, Kelsie Trotignon, David Baldwin, Roman Odemchuk, Michelle
6 Connor, Derek Tulluck, Joshua Doering, Vernon Branco, Tyler Gold, Trevor Anderson, Eric
7 Kauffman, Kimbol Rodman, Cathy Kombol, Judy Prenovost, Brian Rego, Jennifer Broadbent,
8 Larry Pague, Ronda Boyd, Jessica Nettekovan, Kenneth Cunningham, Julie Acheson, Jennifer
9 Lally, Debra Silver, Tanya Evans, Johanna Summers, Iris Paller-Milne, Adam Pohlman, Todd
10 Griffin, Amanda Mann, John Kennedy, Troy Salisbury, Vivian Genson, Tatyana Kalchenya,
11 Martin Figliulo, Patrick Brooke, Ross Norton, Jens Johanson, Anatoly Laer, Rudolf Luzhnykh,
12 and Colin Murphy.

13 Numerous exhibits were admitted and considered by the Arbitrators. Counsel submitted
14 briefs in support of their respective positions. The Record, excluding any award of attorney's
15 fees and costs, arbitrator compensation and AAA fees, closed on February 14, 2024.

16 **CLAIMS OF THE PARTIES.**

17 At the arbitration hearing, Claimants sought: (i) damages for breach of contract and
18 breach of Washington's implied warranty of habitability, (ii) a ruling that LGI violated the
19 Washington Consumer Protection Act, RCW 19.86 (the "CPA") and (iii) damages for LGI's
20 violation of the CPA including attorney's fees and costs. LGI defended against Claimants'
21 claims on grounds, among others, that (i) the breach of contract and warranty of habitability
22 claims were barred by provisions in each Claimant's purchase and sale agreement ("PSA") with
23
24
25
26
27
28

1 LGI, (ii) there was a lack of evidentiary support for Claimants' CPA claims and (iii) Claimants
2 who were not original purchasers of homes from LGI could not assert claims against LGI.

3 LGI asserted third-party claims for breach of contract and indemnity against Laer. It
4 sought a ruling that to the extent that the work performed by Laer and its subcontractors was
5 installed improperly and resulted in a damage award in favor of Claimants, LGI should receive
6 an award against Laer for those damages.

7
8 Laer defended against the claims of LGI on various grounds including, but not limited
9 to, (i) LGI's failure to mitigate damages, (ii) Claimants who were not original purchasers of
10 homes from LGI could not assert claims for damages against LGI; (iii) Claimants' damages
11 were limited to portions of siding that actually sustained damage, i.e. Claimants were not
12 entitled to a repair to cure code violations. Laer also sought a ruling that damages awarded to
13 Claimants against LGI should not all be awarded in favor of LGI against Laer.

14 **DISCUSSION.**

15
16 Having considered all of the above and having deliberated, the Arbitrators make this
17 Interim Partial Award as follows:

18
19 Claimants are seventy (70) homeowners in Suntop Farms. Sixty-three (63) Claimants
20 signed an identical twelve-page Purchase and Sale Agreement ("PSA") with LGI for the
21 purchase of their Suntop Farms home. Seven (7) Claimants (the "Secondary Homeowners")
22 purchased their Suntop Farms homes from a prior owner who purchased from LGI and were
23 assigned the prior owners' claims "relating to the construction or sale" of the home.

24
25 The Secondary Homeowners (namely, Bickford, Bergsma, Bushaw, Diaz, Kalchenya,
26 Kauffman and Odemchuk) each received a written assignment of all claims their predecessor
27 may have relating to the construction or sale of their home. The Arbitrators find that the
28

1 original homeowners' claims for breach of the implied warranty of habitability are not
2 assignable to a subsequent owner under Washington case law. Also, each Secondary
3 Homeowner failed to sustain its burden of proof to establish a CPA claim. Therefore, the
4 Secondary Homeowners' claims for (i) breach of the implied warranty of habitability and (ii)
5 violation of the CPA are denied.
6

7 Contrary to the assertions of LGI and Laer, the original homeowners' assignments were
8 effective as to claims for damages for breach of contract. While claims for breach of the
9 one-year repair warranty may, or may not, be assignable under the terms of the original owners'
10 purchase agreements with LGI, claims for breach of contract (as distinguished from breach of
11 the one year repair warranty) are assignable.
12

13 The Arbitrators find that the Secondary Homeowners have claims for damages for
14 LGI's breach of contract. The waiver language in Section 23.B. of each original owner's PSA
15 was not negotiable and the waiver is therefore not effective. LGI's failure to construct the
16 original owners' homes in conformity with the plans and specifications and the building code
17 requirements (which are the absolute minimum standard under the law) is a material breach and
18 claims for damages for that breach are assignable to Secondary Homeowners.
19

20 Each of the sixty-three (63) Claimants who executed a PSA testified that the sales
21 process took place with an LGI sales representative in a sales office located at Suntop Farms.
22 During that process, no Claimant was allowed to vary the terms of the PSA, the terms of the
23 PSA and the price of the home were presented by the sales representative on a "take it or leave
24 it" basis and the sales representatives pressured and rushed them to agree to purchase. There
25 was no discussion or explanation that the Claimant was waiving the protection of the
26 Enumclaw building codes or the implied warranty of habitability. Claimants who inquired
27
28

1 about the PSA's "as is/where is" provision were told it meant that they could not change the
2 colors of the walls, the type of carpet or countertops, etc. It was not explained that the clause
3 required them to accept a home not constructed pursuant to the applicable building codes,
4 manufacturer's installation instructions, LGI's building specifications or acknowledged industry
5 practice.
6

7 Fifty-five (55) of the Claimants testified that LGI's sales process included a
8 representation that an "outside inspection firm performs inspections during the construction
9 process." This representation was either made orally by LGI's sales representatives, was shown
10 in written form or was prominently displayed in the sales office. The representation that an
11 outside inspection firm performs inspections was also included on LGI's website beginning on
12 December 12, 2020 and currently remains on the website.
13

14 In early February 2021 a windstorm with gusts as high as 51.4 miles per hour occurred
15 in the Enumclaw area. The storm blew sections of siding off many of the Claimants' homes.
16 LGI and Laer initially did some repair work, but LGI quickly decided that the storm was an
17 "Act of God" and told Claimants they should file claims with their homeowner insurance
18 companies. LGI promptly instructed Laer to cease performing repairs.
19

20 Not all of the Claimants have experienced siding blown off their homes. However,
21 most testified that their siding is loose and that they can hear it rattling or flapping during even
22 modest winds. As time has gone by, Claimants' siding has loosened more and the rattling or
23 flapping has increased. Some Claimants testified that they were able to slip their hands
24 underneath the siding on their home and several provided photographs of their hands
25 underneath one of the siding boards on their home. Many Claimants reported flapping and
26 rattling so loud as to interrupt their sleep. One Claimant testified that her children were afraid
27
28

1 to sleep in their room when the wind blew. Others testified that they had to abandon areas of
2 their home at times due to siding noise.

3 The City of Enumclaw code required that siding be installed to withstand winds up to
4 120 miles per hour. LGI's siding specification for the homes required that siding on the homes
5 be "face nailed." The siding manufacturer's installation instructions clearly depicted how the
6 siding was to be "face nailed" to the homes, and recommended face nailing in areas of high
7 winds.
8

9 Claimants called three qualified construction defect expert witnesses to testify. Their
10 testimony clearly established that the installation of the siding on Claimants' homes in Suntop
11 Farms did not comply with the City of Enumclaw building codes, the siding manufacturer's
12 installation instructions, LGI's own building specifications or acknowledged industry
13 standards. "Face nailing" calls for the nails be driven at the bottom of each board through a
14 second board and then into a stud. Instead, Claimants' siding was "blind nailed" with the nails
15 driven at the top of each board, frequently at the incorrect spacing and not always driven into
16 the studs of the home. There were also numerous instances of over-driven nails. All of these
17 conditions weaken the attachment of the siding and make it likely to flap or rattle or blow off in
18 even modest winds. Laer's expert, Colin Murphy, concurred with Claimants' experts that
19 Claimants' siding conditions would only worsen over time.
20
21

22 **BREACH OF CONTRACT**

23
24 In order to properly repair the siding of Claimants' homes, damaged siding must be
25 replaced and, along with the remaining siding, be face nailed to the home. Claimants' homes
26 must be repainted to cover the new nails. This outside repair process will likely cause interior
27 nail pops and cracked sheet rock which will need to be repaired.
28

1 Claimants' contention that LGI breached each of the PSA's was established by a
2 significant preponderance of the evidence. LGI was obligated to build Claimants' homes to the
3 construction specifications and particularly to the standards of the building code (the minimum
4 requirements allowed by law). Claimants' experts' conclusions that the siding was not installed
5 pursuant to the City of Enumclaw building code, the siding manufacturer's instructions, LGI's
6 own construction specifications or accepted industry practices was not seriously disputed by
7 LGI's witnesses.

9 **BREACH OF IMPLIED WARRANTY OF HABITABILITY**

10 The PSA's contained a provision that LGI disclaimed and Claimants waived the implied
11 warranty of habitability. Disclaimers of this type of warranty are effective only if specifically
12 negotiated. Ryan Stokes, LGI's Division President testified that none of the provisions of the
13 PSA could be changed or were negotiable. Therefore, LGI's disclaimer defense fails. The
14 Arbitrators find that LGI breached the implied warranty of habitability ("IWOH") as to all
15 Claimants except those who are Secondary Homeowners, a total of sixty-three Claimants
16 identified on Exhibit A attached under the heading IWOH, marked "Yes." The Secondary
17 Homeowners are marked "No" under that heading.

20 **CPA CLAIMS.**

21 Ryan Stokes, LGI's Division President, testified that the representation during LGI's
22 sales process that an "outside inspection firm performs inspections during the construction
23 process" was false for all LGI projects in the state of Washington.

24 To prevail on their claim under the Washington State Consumer Protection Act (the
25 "CPA"), Claimants must meet the five elements set forth in Hangman Ridge Training Stables,
26 Inc. v. Safeco Title Ins. Co. 105 Wn.2d 778 (1986). Fifty-five (55) Claimants established by a
27
28

1 preponderance of the evidence all five of these elements. These fifty-five (55) Claimants are
2 identified on Exhibit A attached under the heading CPA and marked "Yes." Those Claimants
3 who failed to prove a CPA violation are identified on Exhibit A attached under the heading CPA
4 and marked "No."

5
6 **DAMAGES AWARDED TO CLAIMANTS FOR LGI'S BREACH OF CPA,**
7 **BREACH OF CONTRACT AND BREACH OF THE IMPLIED WARRANTY OF**
8 **HABITABILITY**

9 **-Actual Damages.**

10 The homes purchased by Claimants include five models. The necessary repair of the
11 homes included replacing some and re-nailing all of Claimants' siding, plus repainting the
12 siding and making interior repairs. The reasonable cost of performing this repair work is as
13 follows: Fox \$32,638.00, Pearl \$38,531.00, Henry \$37,531.00, Mercer \$35,090.00 and
14 Columbia \$23,337.00. Each of the seventy (70) Claimants is awarded the actual damage
15 amount set forth next to their name on Exhibit A. The accumulated total of these repair costs
16 awarded to Claimants is \$2,350,005.

17
18
19 **-CPA Damages.**

20 The fifty-five (55) Claimants who established LGI's violation of the CPA are awarded
21 their share of the reasonable attorney's fees and costs expended to establish the violation.
22 Claimants' closing brief requested a \$25,000 increase in each award, alleging that the CPA
23 allows trebling of actual damages up to that amount.

24 The CPA provides that the Arbitrators may, in their discretion, treble the award of actual
25 damages up to an amount not to exceed \$25,000. Here, trebling the amount of even the
26 smallest award of actual damage awarded to a Claimant would far exceed the \$25,000 limit.
27
28

1 During closing argument, Claimants' counsel could not provide the Arbitrators with any
2 authority to support his assertion that a \$25,000 increase is appropriate and his assertion is
3 denied.

4 **LGI AND LAER ALLOCATION.**

5
6 The October 16, 2017 Master Trade Agreement, Addendum A – Trade Scope of Work
7 (the "MTA") and applicable law govern the relationship between LGI and Laer with respect to
8 the work at Suntop. Laer breached its contractual obligations in the performance of its work at
9 Suntop in several respects, principally failing to install the siding and trim for Claimants'
10 houses in compliance with the plans and specifications and applicable building codes. This
11 defective performance was responsible for the damages awarded to Claimants for LGI's breach
12 of contract and breach of the implied warranty of habitability (but not the CPA violations). The
13 MTA contains a promise by Laer to pay all damages incurred by LGI as a result of Laer's
14 defective work. It also contains an indemnification clause whereby Laer agreed to defend,
15 indemnify and hold LGI harmless from and against all damages suffered by LGI in connection
16 with Laer's breach of contract.
17
18

19 However, in this case, despite these contractual provisions, the Panel rules that LGI is
20 partially responsible for the damages awarded to Claimants for breach of contract and breach of
21 the implied warranty of habitability. As general contractor, LGI had overall responsibility for
22 supervision of the entire work including proper performance by its subcontractors. LGI's
23 construction managers walked and inspected the work at each home daily. At least one
24 construction manager, Joe Baze testified that he knew from working a prior job that Enumclaw
25 had a special 120 MPH wind requirement and he did not share this fact with Laer. There was
26 no testimony that LGI delivered the construction set of plans to Laer which contained the
27
28

1 special wind requirement. LGI had actual knowledge that its specifications required face
2 nailing, the absence of which was easily observable as siding was being installed. LGI directed
3 Laer not to perform repairs after the February storm even though the improper siding
4 performance by Laer, not an Act of God, was readily observable as the cause of blown off
5 siding. LGI did not take reasonable actions to mitigate the repair damages, contributing to
6 higher repair costs due to inflation.

8 The panel rules that LGI and Laer are each responsible for the siding repair costs on a
9 sharing basis of Laer sixty per cent (60%) and LGI forty per cent (40%). Accordingly, LGI is
10 awarded \$1,410,003 in damages on its third-party claims against Laer.

12 **ATTORNEY'S FEES.**

13 The CPA allows the award of costs including reasonable attorney's fees. The
14 Arbitrators find that each of the fifty-five (55) Claimants who prevailed on their CPA claims is
15 entitled to an award of their reasonable attorney's fees and costs against LGI. The Arbitrators
16 expressly retain jurisdiction to determine the amount of (i) reasonable attorney's fees and costs
17 to be awarded to the fifty-five (55) Claimants, (ii) the Arbitrators' fees and expenses and the
18 fees and expenses of the American Arbitration Association to be awarded to Claimants, (iii) the
19 allocation between LGI and Laer for those fees and expenses itemized in section (ii)
20 immediately above and (iv) other attorney's fees, costs, and expenses that LGI may have the
21 right to recover against Laer under the terms of the MTA

24 Claimants and LGI shall submit their application for recovery of their reasonable
25 attorney's fees and costs within ten (10) calendar days of their receipt of this Interim Partial
26 Award. Claimants' application for attorney's fees shall be in the lodestar format (a reasonable
27 hourly rate multiplied by the number of hours spent to establish the CPA claim only) plus a
28

recommended factor if Claimants' counsel has been engaged on a contingent fee basis. LGI's application for attorney's fees, costs and expenses allowable under the MTA shall similarly be provided in the lodestar format and submitted within ten (10) days of its receipt of this Interim Partial Award. All applications shall be supported by affidavits. The parties are invited to submit briefs on any legal issues related to the determination of the amounts, and allocation between parties, of attorney's fees, costs and expenses. Any briefs are due no later than the date of any replies. LGI and Laer shall have seven (7) days to respond to an application after its receipt. Claimants and LGI shall then have three (3) days after receiving a response to submit their replies, if any. The Arbitrators will decide the award of reasonable attorney's fees and costs without oral arguments.

COMPENSATION, EXPENSES AND ADMINISTRATON FEES.

LGI shall reimburse Claimants for Claimants' share of the Arbitrators' compensation and expenses, the amount of which shall be stated in the Final Award. LGI shall also reimburse Claimants for their share of the administrative fees and expenses of the American Arbitration Association paid by Claimants. Laer shall reimburse LGI for such amounts of the Arbitrators' compensation and expenses and AAA administration fees as determined by the Arbitrators and as stated in the Final Award.

INTERIM PARTIAL AWARD

Based on the foregoing:

- A. An award is entered in favor of each Claimant and against LGI in the amount set forth next to their name on Exhibit A attached.

1 B. An award of attorney's fees and costs in favor of the fifty-five (55) Claimants
2 identified in Exhibit A attached in the amounts determined by the Arbitrators in the
3 Final Award.


4
5 C. An award of Arbitrators' fees and expenses and AAA fees and expenses in favor of
6 Claimants and against LGI in amount to be determined by the Arbitrators in the Final
7 Award.


8 D. An award is entered in favor of LGI and against Laer in the amount of \$1,410,003.

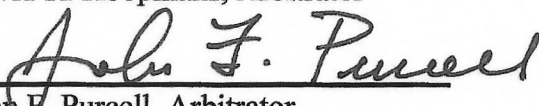
9 E. An award of attorney's fees, costs, expenses, Arbitrators' fees and expenses, and AAA
10 fees and expenses in favor of LGI and against Laer in an amount to be determined by
11 the Arbitrators in the Final Award.
12

13 This Interim Partial Award is in full and final resolution of all claims submitted by the
14 parties to this Arbitration except as indicated above with respect to attorney's fees and
15 costs and Arbitrators' compensation, expenses and AAA fees and expenses. All other
16 claims not specifically addressed herein are denied.
17

18
19 DATED THIS 23 day of February, 2024.

20
21 
22 Charles S. Burdell, Chairperson

23 
24 David R. Koopmans, Arbitrator

25 
26 John F. Purcell, Arbitrator
27
28