

1 FAIRCLAIMS ARBITRATION

2
3 CLAIMANT,

Case No. ARBXXXX

4
5 Claimant,

Final Award

6
7 v.

Arbitrator: ARBITRATOR

8 RESPONDENT(s),

Place of Arbitration: Los Angeles,
CA

9
10 Respondent(s).

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12 The undersigned is the duly appointed arbitrator in the above-
13 captioned matter. On HEARING DATE, the undersigned conducted a
14 hearing via video/teleconference pursuant to the parties' post-dispute
15 FairClaims Arbitration Agreement and the FairClaims Arbitration Rules &
16 Procedures. Claimant and Respondent appeared at the hearing without
17 counsel. Respondent failed to appear, without notice, and was given the
18 opportunity to submit an audio, video or written statement. Pursuant to
19 Rule 1 of the FairClaims Arbitration Rules & Procedures, the place of
20 arbitration is deemed to be Los Angeles, California. The undersigned
21 hereby issues the following award pursuant to section 1283.4 of the
22 California Code of Civil Procedure. Pursuant to Rule 15 of the FairClaims
23 Arbitration Rules & Procedures, Claimant must pay the amount awarded
24 to the Respondent on or before the 14th day after the award is served on
25 the parties.
26

27 FINAL AWARD

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29 CLAIMANT ("Claimant") contracted with RESPONDENT ("Respondent")
30 to remove and install a new roof. Claimant and Respondent agreed upon
31 services to be rendered.

32 During the engagement, issues arose with adequate supply for installation
33 of a new roof. Other issues were also raised including damage to a tire
34 allegedly caused by debris left on the property during roof replacement. In
35 addition, a dispute arose regarding trimming and removing of tree
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1 branches that were touching or too close to the roof. Further, it appears
2 that there were "soft spots" on the roof that were not identified until after
3 claimant asked for a walk-through inspection of the property. Finally, it
4 appears that the Respondent did not reinstall a satellite dish at the
5 completion of roof replacement. To date Claimant has not paid Respondent
6 for services rendered, except for an initial deposit in the amount of
7 \$888.48. The parties came to arbitration to settle this disagreement.
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9 After reviewing the submitted evidence including photographs, invoices,
10 contract the parties respective statements, and reviewing all testimony, I
11 find that Respondent is entitled to \$5,888.56 for the reasons stated below.
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13 Claimant's primary argument in support of withholding payment is that
14 Respondent failed to render full services by failing to properly trim trees
15 and remove tree debris. Respondent, however, substantially performed the
16 contract as the primary purpose of the contracted services was to replace
17 the roof. The roof was indeed replaced, and as such, Respondent is
18 rightfully entitled for payment. At common law, substantial performance is
19 an alternative principle to the perfect tender rule. It allows a court to imply
20 a term that allows a partial or substantially similar performance to stand in
21 for the performance specified in the contract. Here, Respondent may have
22 failed to trim tree branches to the extent desired by Claimant and may have
23 further failed to remove tree debris in a timely manner, but these reasons
24 alone do not support withholding full payment for the time and cost
25 expended in replacing Claimant's roof.
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27 As for the amount owed to Respondent, I now address this in detail.
28 According to Respondent's invoice, Respondent is owed \$7,223.14. I
29 hereby remove late fees (\$138.85 and \$141.63) from the amount owed to
30 Respondent as a matter of good will. I further remove the line item for
31 plywood (\$200) based on statements made by the project manager to
32 Claimant regarding "soft spots," as statements made by individuals of
33 authority are sufficient to bind Respondent. I also remove the line item for
34 30 pieces of drip edge and rain diverters (\$219.10) as items left at a job site
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1 and abandoned are not Claimant's responsibility to protect. I further credit
2 Claimant half of the Single Upgrade as the insurance company paid for 25
3 year single (\$290.50). The remaining balance to Respondent is therefore
4 \$6,233.56, without consideration of any further adjustments.
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6 Claimant, however, is entitled to compensation for disturbance of television
7 service in the amount of \$120, a credit of \$75 for Respondent's failure in
8 installing a satellite dish, and for costs associated with removal of tree
9 debris of \$150. Regarding tree debris removal, I note that the full amount
10 requested by Claimant (\$300) has not been awarded because Claimant
11 himself refused to allow Respondent an opportunity to remedy this issue.
12 For this same reason, Claimant's request for costs associated with dead
13 grass (\$150-\$200) caused by the tree debris is denied, as Claimant
14 exacerbated the damage to the grass by failing to allow Respondent an
15 opportunity to remove the tree debris when requested. One cannot ask for
16 compensation for damage exacerbated by their own doing, or in this case,
17 by refusing Respondent access to the property to timely remove the tree
18 debris and then later complain about damage caused by the tree debris. To
19 be clear, Respondent should have removed the tree debris promptly at the
20 completion of the roof replacement and leaving the tree debris at the
21 property exhibits poor judgment and service, but nonetheless for the
22 reasons articulated above, Claimant is only entitled to limited
23 compensation for tree debris removal in the amount of \$150. Finally,
24 Claimant's request for compensation related to a flat tire (\$70) is also
25 denied based on Paragraph 4 of the Construction Agreement, which states
26 in relevant part, "Due to inherent risks in the construction process,
27 [CLAIMANT] will not be responsible for flat tires due to nails"
28 Accordingly, the remaining balance owed to Respondent is \$5,888.56.
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30 IT IS HEREBY ORDERED.
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Date: DECISION DATE ARBITRATOR

SIGNATURE