

AMERICAN ARBITRATION ASSOCIATION
Construction Industry Arbitration Tribunal

In the Matter of the Arbitration between: :
: MYRTLE CHRISTOPHER :
: Claimant :
: v. : Case No. 01-23-0001-9597 :
: THE OLIVE GROUP, LLC :
: Respondent :

FINAL AWARD OF ARBITRATOR

I, Tarrant Lomax, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated January 17, 2019, and having been duly sworn, and having duly heard the allegations and proofs of the parties at an evidentiary hearing held on November 9, 2023, as to the competing claims herein, Claimant appearing self-represented and Karla Moses Jean, Esq. appearing on behalf of the Respondent, do hereby, **FIND and AWARD**, as follows.

This matter arises out of a "Homeowner/Contractor Agreement" by and between Myrtle Christopher (the "Claimant") and "The Olive Group, LLC AKA The Olive Group, Matthew Tuttle, Olive Group, LLC", (the "Respondent") for the completion of certain renovation/rehabilitation of the property located at 1421 Mulberry Street, Baltimore, MD 21223 (the "Contract").

The Claimant originally sought the sum of \$30,958.20, together with "Interest" and "Arbitration Costs". Claimant amended the monetary portion of the claim to \$32,065.73. Respondent did not file a counterclaim but sought an award of attorney's fees. At the conclusion of the hearing the Respondent withdrew its request for attorney's fees.

The scope of the work was not specified in the Contract and neither party introduced a scope of the work. The only delineation of the work was set forth on the "Draw Request", which simply assigned a dollar amount to certain line items on that request. Based on periodic inspections, the "HUD-accepted consultant"/inspector assigned a percentage of completion for the line items in order to determine the amount to be paid to the Respondent on that Draw Request.

The Arbitrator heard the sworn testimony of Hannah Christopher (Claimant's sister) on behalf of the Claimant, and Matthew Tuttle on behalf of Respondent. The Arbitrator also admitted into evidence

Claimant's Exhibits C-1 through C-21, and Respondent's Exhibits R-1 through R-20. 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.

The applicable standard of proof in civil cases is preponderance of the evidence, and the party asserting a particular claim bears the burden of meeting that standard. Mathis v. Hargrove, 166 Md.App. 286, 888 A.2d 377 (2005). The burden is sometimes referred to as the burden of persuasion, or the risk of non-persuasion. Further, the burden of first producing evidence on a particular issue is borne by the party who has the burden of persuasion on that issue.

The original contract price was \$123,700.00. There was one change order in the amount of \$10,008.97 added to the Draw Request, and seven additional change orders for which the Arbitrator finds sufficient evidence to support in the amount of \$22,186.13. Accordingly, the revised contract sum is \$155,895.10.

The parties disagree as to the amount of payment to the Respondent. The Claimant submits that the sum of \$113,636.59 has been paid to the Respondent. The Respondent submits that it has been paid the sum of \$89,100.52. The Arbitrator finds that the Respondent failed to account for a payment in the amount of \$12,828.00 paid on December 20, 2019 (Check No. 1247), and two Zelle payments totaling \$2,700.00 received in February 2020. In addition, the Respondent was paid the sum of \$31,283.07 for Draw No. 3, not \$22,477.50 as claimed by the Respondent. Applying those adjustments, the Arbitrator finds that the Respondent has been paid the sum of \$113,636.59.¹

The Arbitrator has reviewed the status of the work at the time of Contract termination as well as the estimate of the cost to complete mandatory work. The Arbitrator finds that the sum of \$59,000.00 as set forth in the estimate from "203k Services", the HUD consultant is fair and reasonable.

The Arbitrator concludes that the Claimant has suffered an actual loss as that term is defined in Md. Code Ann., Bus. Reg. §8-401, and the amount of that actual loss is computed as follows:

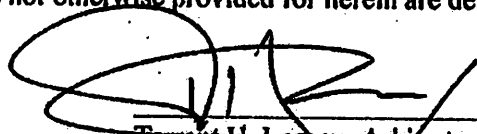
Amount paid to Contractor	\$113,636.59
Reasonable amount to correct and complete the work	<u>59,000.00</u>
Subtotal	\$172,636.59
Less final Contract price	<u>(155,895.10)</u>
Balance due to the Claimant	\$16,741.49

¹ In May 2020, Respondent terminated the contract and Draw No. 5 was prepared. Although the Draw was in the approved amount of \$22,275.00, the Respondent agreed to accept the sum of \$1,805.00 from that Draw, which payment was made. The balance of the Draw was retained by the Claimant.

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, the Arbitrator **DETERMINES AND AWARDS**, as follows:

1. The claims of the Claimant Myrtle Christopher are allowed in the amount of **SIXTEEN THOUSAND SEVEN HUNDRED FORTY-ONE AND 49/100 DOLLARS (\$16,741.49)**.
2. The claim of the Claimant Myrtle Christopher for interest **DENIED**.
3. The Counterclaim of the Respondent The Olive Group for attorney's fees is **DENIED**.
4. The administrative fees and expenses of the American Arbitration Association totaling **\$1,820.00** shall be borne as incurred, and the compensation and expenses of the arbitrator totaling **\$1,750.00** shall be borne as incurred.
5. The above sums are to be paid on or before thirty (30) days from the date of this Award.
6. All claims and counterclaims not otherwise provided for herein are denied.

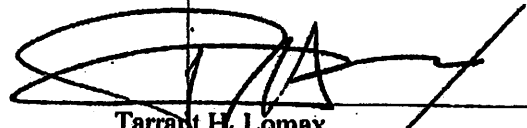
Dated: November 16, 2023



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: November 16, 2023



Tarrant H. Lomax

**IN THE MATTER OF
THE CLAIM OF
MYRTLE CHRISTOPHER
AGAINST THE
MARYLAND HOME IMPROVEMENT
GUARANTY FUND ON ACCOUNT OF
ALLEGED VIOLATIONS OF
MATTHEW TUTTLE
and THE OLIVE GROUP, LLC**

**MARYLAND HOME
IMPROVEMENT COMMISSION**

Case No. 1309-2023

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FINAL ORDER

On this 9th day of January 2024, 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 November 16, 2023, 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 \$16,741.49.
2. The Commission advised Respondent in writing that the Commission intended to award the Claimant \$16,741.49 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 reply to the Commission's letter.
4. The Commission directs payment from the Home Improvement Guaranty Fund of \$16,741.49 to the Claimant, Myrtle Christopher.
5. Pursuant to Business Regulation Article, §8-411(a), Annotated Code of Maryland, any home improvement licenses held by the Respondent, Matthew Tuttle and The Olive Group. 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.

Joseph Tunney
Chair