NEW JERSEY DEPARTMENT OF COMMUNITY
AFFAIRS, DIVISION OF HOUSING, BUREAU OF
HOMEOWNER PROTECTION,
Petitioner,

v.

KEENAN CORPORATION,
Respondent.

Initial Decision: July 17, 1990
Final Agency Decision: August 10, 1990
Approved for Publication: August 15, 1990

SYNOPSIS

The Department of Community Affairs sought to revoke respondent's builder's registration for failure to comply with two arbitration awards entered as a result of warranty claims by purchasers of new homes built by respondent. The matter was transmitted to the Office of Administrative Law for a hearing.

The administrative law judge assigned to the case found that when respondent failed to make repairs on the two homes, as required by arbitration awards under the New Home Warranty Program, the repair work was contracted out and paid for through the New Home Warranty Security Fund. Respondent argued that the bids for repairs were excessive and unreasonable. The judge concluded, however, that this was not a defense. Under N.J.A.C. 5:25-2.5(a), the Department may deny, suspend or revoke a builder's registration if a builder fails to honor a dispute settlement award or is responsible for an award against the security fund. Respondent was bound by the arbitration awards. The judge ordered respondent's registration revoked.

Upon review, this initial decision was adopted by the Commissioner of Community Affairs.

Ellen Casey, Deputy Attorney General, for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)
Frank Keenan, President of the Keenan Corporation, for respondent, appearing pursuant to N.J.A.C. 1:1-5.4
MILLER, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The New Jersey Department of Community Affairs, Division of Housing, Bureau of Homeowner Protection ("petitioner" or "the Bureau") here seeks to revoke the builder's registration (#01067) issued to The Keenan Corporation ("respondent," "the builder" or "Keenan") based upon its alleged failure to comply with two arbitration awards entered against it as a result of warranty claims filed by the purchasers of two homes built by respondent.

Petitioner's case is based upon the provisions of the New Home Warranty and Builder's Registration Act and the regulations promulgated thereunder, viz., N.J.A.C. 5:25-2.5(a). Respondent asserts the following by way of defenses: (1) the bids obtained by the homeowners to effect repairs were excessive; (2) the Bureau abused its discretion in accepting the bids and authorizing the work to be done; (3) the defective siding was not reported timely; and (4) one of the items for which repairs were authorized, viz., repair of flooring, was installed after the original closing of title to the house.

On April 21, 1989, the instant matter was filed in the Office of Administrative Law, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on November 20, 1989. The hearing was held on June 1, 1990, and post-hearing memoranda were submitted thereafter, at which time the record was closed.

The essential facts in this case are not in dispute, having been established by stipulations made before hearing, by the testimony of the two witnesses called by petitioner and the witness called by respondent, and by the documents that were admitted into evidence. Accordingly, I make the following:

FINDINGS OF FACT

The Keenan Corporation is a registered new home builder of the state of New Jersey, holding new home builder's registration #01067. There are two arbitration awards that form the basis for the instant action. The first award deals with a home built by Keenan at 713 Hamilton Avenue in Roebling, New Jersey in or about 1986. The award resulted from warranty number 40741 and claim number CL-87-0013 filed by William and Robin Kay. This award involved several items which were arbitrated, and it determined that Keenan was to repair the vinyl siding, the seam and nail pops in the kitchen floor, and the back door knob.
The arbitration award was entered on March 5, 1987 and mailed to the parties by letter dated March 10, 1987. On June 22, 1987, an inspection was undertaken by the New Home Warranty Program (NHWP). The inspection revealed that some items in the March 5, 1987 arbitration award had not been corrected.

Because of Keenan's failure to correct the aforementioned problems, the Department of Community Affairs sent a work list to the homeowner (with a copy to Keenan) on June 30, 1987. Frank Keenan, president of the Keenan Corporation, was notified that he was in default and was directed to contact the NHWP within 10 days to discuss a settlement of the claim. More than six weeks later Mr. Keenan wrote to the NHWP and complained about the homeowner's claim. The builder's complaints were rejected on August 20, 1987 by the NHWP as untimely and unjustified based upon the arbitration award. Subsequently, the homeowner obtained two bids pursuant to N.J.A.C. 5:25-5.5(e) for the work intended to be covered, and the Department issued a check for $1,997 when the work was satisfactorily completed by the low bidder.

The second award concerns a home at 719 Hamilton Avenue, Roebling, built by Keenan in or about 1986 for Dorothy Jacobsen; this resulted from warranty number 43710 and claim number CL-87-0019. This claim involved twenty-eight items which were arbitrated; it was determined that Keenan should repair the siding, several doors, the kitchen floor, several cracks in walls and floors, and electrical work, along with replacing the master bedroom carpeting.

The arbitration award was entered on February 17, 1987 and mailed to the parties by letter dated March 6, 1987.

On June 22, 1987, an inspection was undertaken by the New Home Warranty Program. The inspection revealed that some items in the February 17, 1987 arbitration award had not been corrected. After an extension was given to the builder to complete the repairs, on July 24, 1987 a reinspection was made (subsequent to the expiration of the extension). That reinspection revealed two items that had not been corrected. However, the builder contests this report.

Because of Keenan's failure to correct the aforementioned problems, the Department sent a work list to the homeowner with a copy to the builder on August 6, 1987. Subsequently, the homeowner obtained two bids pursuant to N.J.A.C. 5:25-5.5(e) for the work intended to be covered, and the Department issued two checks for a total of $500 when the work was satisfactorily completed by the low bidders.

Prior to the rendering of the aforesaid two awards by the arbi-
ISSUE AND ANALYSIS

The controlling regulation in this matter is N.J.A.C. 5:25-2.5(a), which provides as follows:

A certificate of registration may be denied, suspended, or revoked if the registrant or applicant or an officer, partner, director or stockholder of the registrant or applicant . . . at any time:

7. Fails to correct or settle any claim arising out of any defect after his responsibility has been established through the dispute settlement procedure of the State Plan . . .

10. Has incurred or been responsible for incurring an award against the New Home Warranty Security Fund . . .

Under the facts set forth above, it is clear that the Bureau has the authority to revoke Keenan's registration, since: (a) Keenan failed to fully correct or settle the two claims after his responsibility had been established, and (b) Keenan has been responsible for incurring an award against the New Home Warranty Security Fund.

The only question presented in this case is whether the allegations made by respondent—excessiveness of bids, abuse of agency discretion, untimely reporting of defect, and no warranty coverage of one of the items of the award—constitute a valid defense to the instant action. For the reasons that follow, I believe that they do not.

First, I can find no legal authority—either in the statute, the regulations, or by case law—and none has been cited to me, to support Keenan's position. That there may have been an irregularity in procedure or that the bids obtained by the homeowners may have been excessive, is not specifically a defense under the statute or the regulations.

Second, the only evidence offered by Keenan respecting "excessiveness" of bids was by Frank John Keenan IV, the son of the principal stockholder of the respondent. Although Mr. Keenan was not qualified as an expert witness, he was allowed to express his
opinion that the fair and reasonable cost of repairing or replacing the defective siding on the Kay home was much less (only $150) than the cost allowed by petitioner ($900). In my judgment, this testimony is not enough to prove excessiveness of bids, much less abuse of agency discretion. To show excessiveness, there should have been testimony and supporting documentation from an independent, duly qualified expert in the field of home construction and/or aluminum siding installation.

Third, respondent had more than adequate opportunity before the corrected work was put out to bid, not only to point out irregularities in procedure, but also to make the necessary repairs. To allow a builder at this point in the proceedings—after the monies have been paid out of the Fund—to successfully defend the action on the grounds he raises here would be to undermine the fiscal integrity of the New Home Warranty Security Fund and to seriously impair the structure of the New Home Warranty and Builder’s Registration Act itself.

Finally, respondent’s defenses in essence constitute a challenge to the arbitration award by which he agreed to abide and be bound. This he is not permitted to do. See, N.J.A.C. 5:25-5.5(c)3i(2), which declares that arbitration is binding upon both parties except as provided by the New Jersey Arbitration Act. Under N.J.S.A. 2A:24-7, any action to vacate an arbitration award must be brought in the Superior Court within 90 days after the award has been rendered. Clearly, respondent failed to comply with this Act. The award must therefore be considered fully binding on respondent.

CONCLUSION AND ORDER

For the reasons expressed above, I CONCLUDE that petitioner’s action to revoke respondent’s builder’s registration is well grounded both in fact and law and should be sustained. It is so ORDERED.

This recommended decision may be adopted, modified or rejected by the COMMISSIONER OF THE DEPARTMENT OF COMMUNITY AFFAIRS, MELVIN PRIMAS, who by law is empowered to make a final decision in this matter.
FINAL DECISION BY THE COMMISSIONER
OF COMMUNITY AFFAIRS, MELVIN R. PRIMAS, JR.:

Having reviewed the Initial Decision of the Administrative Law Judge in the above case, together with any exceptions or replies submitted, I hereby adopt the Initial Decision as the Commissioner's Final Decision.

You must check the New Jersey Citation Tracker in the companion looseleaf volume to determine the history of this case in the New Jersey courts.