

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
International Arbitration Tribunal

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CTW Electrical Corp. and Sirina Protection Systems Corp.,

Claimants,

ICDR Case No.
50 110 T 01033 13

-against-

Primary Colors Painting Corp. and Arch Insurance Company,

Respondents.

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AWARD

The Undersigned Arbitrator, having been designated in accordance with arbitration agreements entered into on or about January 22, 2010 and having duly executed his oath and having duly qualified, and having heard the proofs and allegations of the parties, and Claimants appearing by Donald J. Carbone and Timothy B. Cumiskey, Esqs. and Respondents appearing by Daniel E. Katz and Steven Cramer, Esqs., and the Arbitrator having assessed the credibility of the witnesses and having analyzed the documentary exhibits, and the parties having stipulated that they did not wish any opinion, as memorialized in Procedural Order No. 10 dated February 25, 2015, but sought only a non-reasoned award pursuant to Rule 44(b) of the American Arbitration Association's Construction Arbitration Rules effective October 1, 2009 ("AAA Rules"), upon due deliberation, the Arbitrator finds and awards as follows:

Respondents are jointly and severally liable to Claimants for the following amounts:

- (a) CTW July 2012 Payment Requisition - \$85,294.00.

- (b) CTW August 2012 Payment Requisition - \$122,667.00.
- (c) CTW September 2012 Payment Requisition - \$77,400.00.
- (d) CTW October 2012 Payment Requisition - \$56,967.00.
- (e) CTW Lost Profits as a result of Wrongful Termination - \$119,452.00.
- (f) CTW Fire Stopping Work Invoice - \$10,000.00.
- (g) CTW Out of Sequence Work Claim - \$70,315.00.
- (h) CTW Work Stoppage Claim for February 6 and 7, 2012 - \$17,932.00
- (i) CTW Misappropriated Materials and/or Equipment - \$110,761.00
- (j) Agreed Balance Due for Sirina's Hurricane Sandy Emergency Work - \$83,345.00.
- (k) Sirina's Lost Profits Regarding Hurricane Sandy Emergency Work - \$29,382.00.
- (l) Sirina's Requisition for Maintenance - \$102,682.00.
- (m) Sirina's Lost Profits for Maintenance Subcontract - \$14,097.00.
- (n) Sirina's Overtime Service Call - \$2,280.00.

Total Damages: \$902,574.00

By letter dated February 17, 2015 Claimants advised that their claim of \$70,625.00 regarding the Castle Point Project was withdrawn.

Respondent Primary Colors' conduct was troubling especially including (a) its failure to pay CTW for the July, 2012 CTW payment requisition, even though Primary Colors had been paid by the Veterans' Administration on the same requisition, and (b) the failure of Primary Colors to produce payment requisitions from Primary Colors to the Veterans' Administration, which Primary Colors claimed were lost but should have been electronically preserved. However, such conduct did not rise to the level of bad faith

such that Claimants should be entitled to attorneys' fees. Claimants also did not establish a sufficient basis to support an award for attorneys' fees against Respondent Arch Insurance Company. Nevertheless, Claimants are clearly the prevailing parties and therefore, pursuant to American Arbitration Association Construction Arbitration Rule 45, Claimants are entitled to recovery of the costs and expenses of this arbitration and transcript expense in addition to the items set forth above.

As such, the Undersigned Arbitrator AWARDS as follows:

1. Within 30 days of the date of this Award, Respondents shall pay to Claimants the principal sum of \$902,574.00 plus interest at 9% per annum from December 20, 2012 to date of payment.

2. Within 30 days of the date of the Award, Respondents shall pay to Claimants an amount equal to Claimants' share of the expense for court reporter fees for this arbitration.

3. Claimants' application for attorneys' fees is denied.

4. Respondents' counterclaims are denied.


5. The administrative fees and expenses of the International Centre for Dispute Resolution, a division of the AAA, totaling US \$23,900.00 and the compensation and expenses of the Arbitrator totaling \$121,962.50 shall be borne by Respondents.

Therefore, Respondents shall pay to Claimants the amount of US\$72,431.25 representing that portion of said fees and expenses in excess of the apportioned cost previously incurred by Claimants.

6. This Award is in full settlement of all claims and counterclaims submitted to this arbitration.

I hereby certify that, for the purposes of Article I of the New York Convention of 1958, on the Recognition and Enforcement of Foreign Arbitral Awards, this Final Award was made in New York, New York, U.S.A.

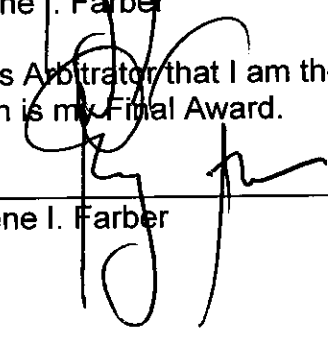
April 2, 2015



Eugene I. Farber

I, Eugene I. Farber, 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.

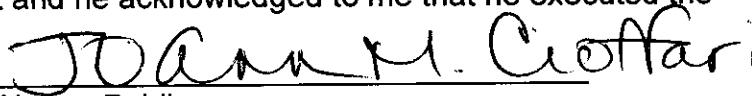
April 2, 2015



Eugene I. Farber

STATE OF NEW YORK)
 ss:
COUNTY OF WESTCHESTER)

On this 2nd day of April, 2015, before me personally came and appeared Eugene I. Farber, to me known and know to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



Notary Public

JOANN M. CIOFFARI
Notary Public, State of New York
No. 01CI6138236
Qualified in Westchester County
Commission Expires 12/19/2017