


**American Arbitration Association**

**Case No. 01-16-0000-3087**

  
20170119000023410 1/6 \$30.00  
Shelby Cnty Judge of Probate, AL  
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**Brett and Tonya Rodgers**

**Claimants**

**v.**

**DeMeis-Homesouth Custom Homes, LLC**

**Respondent**

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**Arbitrator: A.H. Gaede, Jr.**

**Final Award of Sole Arbitrator**

**I. Parties and Counsel**

A. Claimant:

**Brett and Tonya Rogers**  
318 Normandy Lane  
Chelsea, Alabama

Represented by:

Arthur Edge, III  
The Lackey Building  
2021 Morris Avenue  
Birmingham, Alabama 35203

B. Respondent:

**DeMeis-Homesouth Custom Homes, LLC**  
3104 Woodbridge Drive  
Birmingham, Alabama 35242

Represented by:

W. Eugene Rutledge  
Two Chase Corporate Drive, Suite 460  
Birmingham, Alabama 35242

**II. Arbitrator**

1. The sole arbitrator was A. H. "Nick" Gaede, Jr.

A.H. "Nick" Gaede, Jr.  
Bainbridge, Mims, Rogers & Smith, LLP  
600 Luckie Drive, Suite 415  
Birmingham, AL 35223  
Phone: (205) 868-4108  
Fax: (205) 879-4300  
Email: [ngaede@bainbridgemims.com](mailto:ngaede@bainbridgemims.com)

2. The arbitrator was appointed by the American Arbitration Association on

March 29, 2016.



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### **III. Proceedings**

3. Claimant filed their demand for arbitration on January 20, 2016. The demand sought damages for the cost to correct alleged defects in a house in the Courtyard Manor development constructed by Respondent.

4. Respondent filed its answer on February 16, 2016 and denied it was liable for any damages.

5. On May 12, 2016, the Arbitrator conducted a telephone hearing with counsel for the parties. Based on this conference call, the Arbitrator issued a Procedural Order on May 17, 2016. The Procedural Order established a schedule for discovery, further filings and set hearings for August 23 and 24, 2016. The parties requested a standard award.

6. On or about June 10, 2016, Claimants' filed their detailed statement of the bases for their claims and the damages sought. The claims were for negligence, breach of contract, breach of warranty, and emotional distress and mental anguish. The damages alleged were for the costs to correct defective work of \$82,155.42, alternate living expenses of \$8,000.00, and an unspecified amount for emotional distress and mental anguish.

7. On or about June 21, 2016, Respondent filed its more detailed denial and also asserted a claim for attorney's fees.

8. The hearings were held on August 23 and 24, 2016 in a conference room at Chase Corporate Center, Birmingham, Alabama. Claimants called four witnesses, including (a) Marc Demeis the owner of Respondent as an adverse witness and who acknowledge some defects, although minor; (b) two experts Richard LaFramboise and James Boohaker who testified with respect to the alleged defects and the cost to repair, and (c) Brett Rogers, one of the Claimants, who testified with regard to the defects, alternative living expenses, and alleged

emotional distress and mental anguish. Respondent called four witnesses, including: (a) representatives of two subcontractors; (b) Isaac David who was the developer of Courtyard Manor who testified as both as a fact and expert witness and (c) Tom Cooper as an expert witness on the alleged defects and testified there were some problems that needed correction but provided no cost estimate.

9. The hearings were transcribed and the transcript was provided to the arbitrator and counsel.

10. The parties filed post-hearing briefs on September 21, 2016, which addressed the merits of the case and Respondent's previously filed request for an award of attorney's fees and costs. Respondent also filed a separate motion to dismiss.


11. The record was closed on September 26, 2016.

#### **IV. Summary of Facts**

12. On December 10, 2012 , Claimants entered into a sales contract to purchase for \$400,000 a home being constructed by Respondent located at 317 Normandy Lane, Chelsea, Alabama.

13. On February 15, 2013, the sale of the house was consummated. The sales agreement included a one year limited warranty. There were some construction issues remaining to be resolved and \$1,500 of the purchase price was placed in escrow.

14. Issues related to the construction continued, particularly related to alleged defects of the hardwood flooring. By an agreement dated May 24, 2013, Claimants agreed to release the \$1,500 in escrow and Respondent agreed to make certain repairs including the floors.

  
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15. The parties continued to have disputes with regard to the construction of the house. Respondent reworked the hardwood flooring but Claimants continued to maintain the hardwood floors were defective.

16. In May-June 2014, Claimants engaged Mr. LaFramboise to perform an inspection of the house and issue a report. That report outlined a number of defects with the house, but did not provide a price to repair.

17. The report was provided to Respondent. Over the next several months, Respondent made some efforts to correct some of the alleged defects. However, Respondent rejected the validity of and declined to address other defects listed in Mr. LaFramboise's report.

18. Claimants then filed suit in state court. The suit was stayed pending arbitration.

19. On January 20, 2016, Claimants filed their arbitration demand and the case proceeded to hearings and now this Final Award.

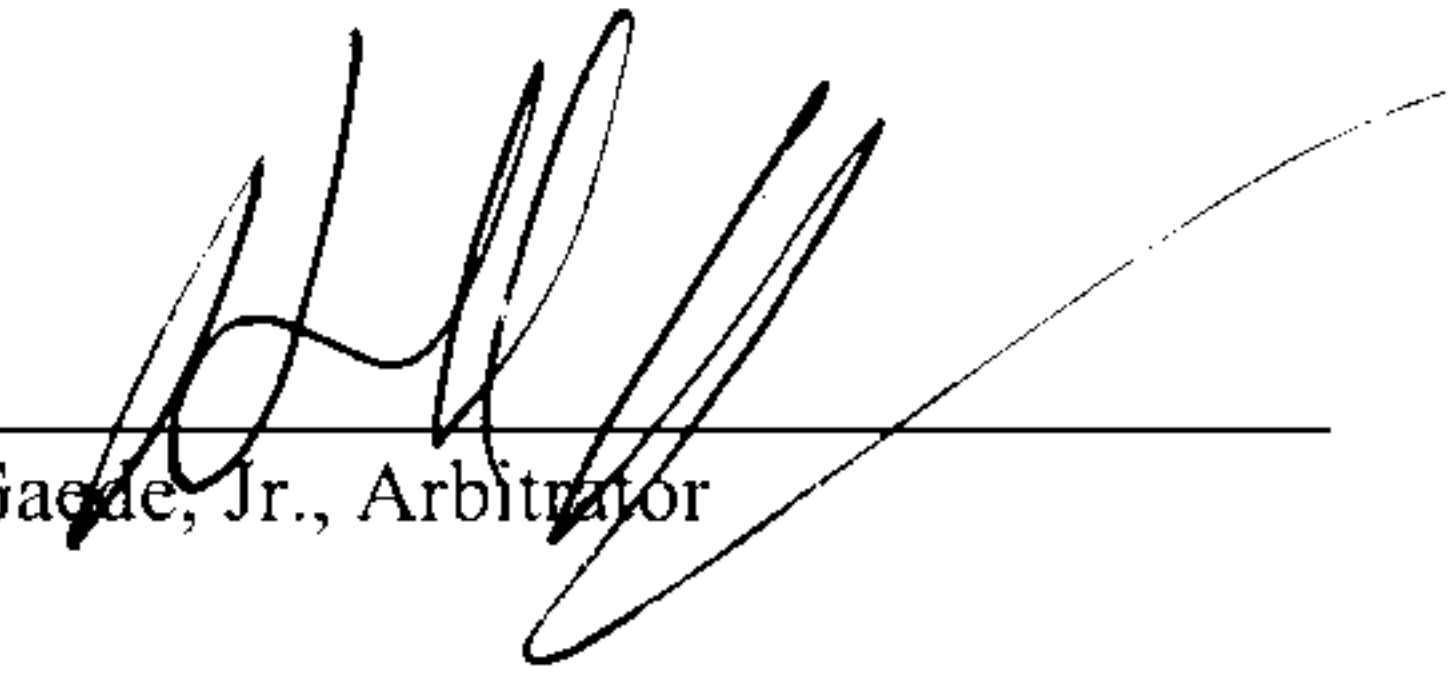
**V. Decisions**

20. (a) Respondent shall pay to Claimants \$36,775.00 as the reasonable cost to correct remaining defects to home.
- (b) Claimants request for alternate living expenses is denied.
- (c) Claimants request for damages for emotional distress and mental anguish is denied.
- (d) Respondent's Motion to Dismiss is denied.
- (e) Respondent's Motion for Attorney's Fees is denied.
- (f) The fees and the expenses of the AAA totaling \$4,650 and the compensation and expenses of the arbitrator totaling \$9,100 shall be borne one-third by Claimant and two-thirds by Respondent. Therefore, Respondent shall reimburse Claimant the sum of \$4,616.67 representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Claimant.

- (g) Payments in the amounts in (a) and (f) above shall be made within thirty (30) days of the date of this Order. Payments not so made shall bear interest at seven point five percent (7.5%) until paid.

21. This Final Award resolves all issues raised by Claimants and Respondent in this case whether specifically addressed in this Final Award.

Done this 17<sup>th</sup> day of October, 2016.

  
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A. H. Gage, Jr., Arbitrator



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