AMERICAN ARBITRATION ASSOCIATION
Construction Arbitration Tribunal

In the Matter of the Arbitration between:

Re: 13 110 02146 11
Jackson Builders LLC ("Claimant")
and
Endeavour Construction Corp. ("Respondent")

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated October 22, 2008, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, do hereby, AWARD, as follows:

The Arbitrator Rules that the agreement between Jackson Builders LLC, ("Claimant") and Endeavour Construction Corp. ("Respondent") is valid and the issues in dispute are properly governed under its arbitration provision.

Claimant, as general contractor, contracted for the furnishing of certain concrete labor and materials to be furnished by Respondent, concrete sub-contractor, on the construction of a condominium building in New York City. Prior to completion of its work, however, Respondent was terminated by Claimant.

Claimant commenced this arbitration action by the filing of its Demand for Arbitration on or about August 22, 2011 seeking recovery from Respondent, concrete sub-contractor, for its expenses incurred in remedying defective work performed by Respondent, as well as its interest, arbitration fees, and attorney's fees.

On or about January 3, 2012, Respondent filed and served its Answering Statement and Counterclaim seeking recovery from Claimant for its work completed prior to termination. Costs incurred by reason of such termination, along with reasonable overhead and profit on the work not executed. Respondent alleges its termination was one for the convenience of Claimant.

For Claimant to be able to recover claims for corrective work under its contract it must be shown that its termination of Respondent under the Agreement was one for cause. For a termination to be properly considered as one for cause, proper notice and an opportunity to cure any alleged defects must be presented to the non-performing party prior to their termination.

On or about October 14, 2009, Claimant issued its Notice of Termination to Respondent, citing article 7, section 7.2 of the parties' Agreement. This section relates to terminations *for cause*, as compared to termination *for convenience* which is governed by article 7, section 7.2.4.

It is established in the record evidence that numerous issues with the progression and correctness of Respondent's work existed, and Claimant had more than once placed Respondent on notice as to defect(s) in its work. It is these prior notice(s) of defective work that Claimant asserts satisfies the terms of article 7, section 7.2 of the Agreement. These notices failed, however, to make any reference to Claimant's intent to terminate its contract, or hold Respondent liable for the costs incurred in remedying any corrective work required. Likewise without notice of an impending or imminent termination of the contract, Respondent is prevented from curing such default(s) in the work and complete its remaining contract work.

The parties Agreement, in section 3.4 'Contractor's Remedies' outlines the specific notification requirements Claimant was required to comply with to hold Respondent responsible for correction costs. No evidence presented establishes that Claimant complied with this contract requirement.

It was presented by Claimant, that as it provided notice to Respondent on or about March 30, 2009, this more than satisfies the contract requirement of ten days before termination. As stated above, however, this notice did not put Respondent on notice of its potential imminent contract termination.

I find the documentation presented fails to establish this termination was made pursuant to the provisions of article 7, section 7.2. As such this termination, by operation of New York contract law, is deemed one for convenience, and is properly administered under the terms of article 7, section 7.2.4 of the parties Agreement.

Section 7.2.4 provides "In case of such termination for the Owner's convenience, the subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the work not executed."

Accordingly, I Award as follows:

1. The claim of Claimant is hereby denied in its entirety.

2. Within thirty (30) days from the date of transmittal of this Award, Claimant shall pay to Respondent the sum of Seventy Two Thousand Six Hundred Ninety Two Dollars and Ninety Two Cents ($72,692.92) pursuant to the Parties' Agreement;

3. Within thirty (30) days from the date of transmittal of this Award, Claimant shall pay to Respondent, its interest pursuant to the Parties' Agreement, Demand for Arbitration, and CPLR §5004, in the amount of Eighteen Thousand One Hundred Two Dollars and Thirty Two Cents ($18,102.32) which is the statutory interest in the amount of Nine Percent (9%) from date of termination to the date of this Award.

4. Within thirty (30) days from the date of transmittal of this Award, Claimant shall pay to Respondent, its legal fees (as related to this arbitration only) in the sum of Ten Thousand Seven Hundred Ninety Two Dollars and Fifty Cents ($10,792.50) pursuant to the Parties Agreement and as evidenced by Respondent;

The administrative fees of the American Arbitration Association totaling $2,875.00 and the compensation and expenses of the arbitrator totaling $3,665.50 shall be borne entirely by Claimant. Therefore, Claimant shall reimburse Respondent the sum of $3,107.75, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Respondent.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.

JUNE 27, 2012
Date

John J. Caravella

I, John J. Caravella, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

JUNE 27, 2012
Date

John J. Caravella