

Florida Court Rules That Panel's Liability Award Was Not Final Because Of Bifurcation Of Liability And Damages

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A Florida federal district court ruled that a panel's arbitration award as to liability was not final, even though the parties agreed to bifurcate arbitration between liability and damages. *Lowell at Camelot, Inc. v. New Home Warranty Ins. Co.*, No. 18-cv-21155 (S.D. Fla. Nov. 28, 2018).

New Home Warranty provided structural defect warranty coverage for a home built by Lowell. When the home began to fall apart, the parties disputed whether New Home Warranty was obligated to cover the loss. The contract contained a clause that required arbitration by Construction Dispute Resolution Services ("CDRS"). CDRS procedures bifurcate arbitration into two phases: a first phase addressing whether damage is covered and a second phase establishing how damages are to be allocated. After phase 1 is complete, the parties can either settle the damages issue on their own or return to arbitration for phase 2.

With respect to the structural defect warranty claim, the panel issued an award in favor of Lowell at the conclusion of phase 1. Lowell petitioned the court to confirm the award, and New Home Warranty moved to dismiss based on lack of subject matter jurisdiction, arguing that it was interim, not final. The court agreed and dismissed the suit. The court acknowledged that "the text of the arbitration award may suggest finality," but reasoned that the award was not final because the unresolved damages issue was related directly to the phase 1 "merits questions." The court further explained that because the arbitration agreement encompassed both liability and damages, it was reasonable to infer that the parties meant to resolve both issues in a single proceeding. Finally, as to the bifurcated nature of the arbitration, rather than finding it indicative of finality, the court stated "that the parties arbitrated under a bifurcated proceeding in and of itself demonstrates the lack of finality in this process because it assumes a second arbitration."

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