

ARBITRATION

Mr & Mrs ????? – v – NHBC

Mr & Mrs ???? purchased a property with the benefit of a 10 year NHBC warranty. The first 2 year period is the responsibility of the developer thereafter liability falls upon the NHBC, subject to the terms and conditions of the warranty policy.

Shortly after the 2 year period had elapsed, Mr & Mrs ???? noted deflection occurring of up to 10mm at the top of the stairs where the winders (stairs turn) towards the landing.

A claim was submitted to the NHBC who arranged an inspection of the property, by their local representative, who carried out a non destructive visual only inspection. The staircase extended across a cupboard area and part of the ground floor cloakroom and therefore the underside of the staircase had been covered with plasterboard and plaster finishes. Therefore the inspection was limited and it was not possible to identify the cause of the deflection.

Notwithstanding the NHBC issued a report dismissing the claim on the basis that the deflection within the staircase was reasonable.

Mr & Mrs ???? were not happy with this investigation and appointed APA Property Services Ltd to carry out a non-destructive inspection, Mr Antino advised Mr & Mrs ??? that the deflection within the staircase was not acceptable, and that the movement was progressive causing distortion to the top string and kytes of the stairs. Mr Antino believed that the means of support was defective and the stair case will eventually fail.

APA Property Services Ltd, dismissed the NHBC findings and recommended that the plasterboard coverings to the underside of the stairs should be removed so that a full and proper investigation and assessment be undertaken.

The NHBC dismissed this request arguing that even if there was a problem, in their opinion the cost of rectifying the problem would not exceed the minimum £500 claim level as stated in the policy documents.

APA Property Services Ltd successfully argued that without a full access and a proper investigation being undertaken it was not possible (i) to identify the cause and (ii) it was not possible at this time to establish quantum (value).

The NHBC conceded and arranged for a joint inspection with the original NHBC inspector and Mr Antino of APA Property Services Ltd and one contractor to carry out the exposure works.

Following the exposure it became apparent that the staircase had been fitted into a structural opening, which was greater than the width of the staircase and as a consequence contractors had inserted roofing batons between the wall and timber staircase to increase the width. The whole staircase was then subsequently fixed to the wall with only 2 No. clout nails.

Furthermore, the sawn timber battens that were used were not fixed. It was submitted by APA Property Services Ltd argued that the staircase was not constructed in accordance with British standards or indeed the NHBC guidelines.

These arguments were dismissed by the NHBC, which left Mr & Mrs ???? with no option other than to apply the arbitration procedures of the NHBC warranty.

APA Property Services Ltd approached the RICS President who appointed an independent arbitrator.

A detailed submission was prepared by APA Property Services Ltd including photographic records and estimates for the necessary remedial works required.

The NHBC submitted a defence relying upon their opinion the works would not exceed the £500 (index linked) minimum level of a claim and in support of this supported an estimate from a contractor for £475 + VAT.

Using Basic mathematics APA Property Services Ltd calculated that this in itself exceed the minimum £500 level but the NHBC sought to rely upon index linking the minimum value claiming that since the inception of the policy the minimum value had now increased to approximately £675.

It was submitted by APA Property Services Ltd that the correct test in establishing whether or not the estimate (£475+ VAT) represented a reasonable and realistic value of the remedial works was not the cost to the NHBC through a negotiated contract and discounted prices but the reasonable cost that the ordinary person would incur employing the ordinary contractor at market/commercial rates. The claimants were not in a position to negotiate discounted rates as those afforded by the NHBC's contractors.

A meeting at the premises was attended by representatives from both APA Property Services Ltd, the NHBC, and the Arbitrator. The Arbitrator carried out an inspection and referred to the submissions of APA Property Services Ltd.

The meeting the NHBC were asked to give an opinion as to whether they believed the staircase had been installed correctly. They belatedly conceded that it was not but again relied upon the minimum value of a claim as a defence to the claim.

The Arbitrator issued his award on 24th January 2007.

Summary of arbitrator's award

I HEREBY DETERMINE, AWARD AND ORDER AS FOLLOWS: -

1. I determine that Mr & Mrs ???? failure to notify the Builder of the movement in the staircase does not invalidate their claim under the Policy;
2. I determine that there is a Defect and Damage (as defined in the Policy) giving rise to a claim under the policy;
3. I determine that Mr & Mrs ???? are entitled to payment of £1,768.38 (including VAT) in respect of their claim under the Policy;

4. I decline to determine that NHBC shall reimburse Mr & Mrs ???? the fees incurred in employing Mr Antino of APA Property Services Ltd prior to this arbitration;
5. I award Mr & Mrs ???? their costs in the arbitration (including the fee paid by them to the RICS for my appointment) which, if not agreed by the parties, I am willing to determine;
6. I order that the NHBC shall, no later than 14 days from the date of this award, pay to Mr & Mrs ?????? the sum of £1,768.38 (including £263.38 VAT) in respect of their claim under the Policy; and
7. I order that NHBC shall, no later than 14 days from the date of this award, pay my fees and expenses which I determine are £2,163.88 (including £322.28 VAT). Payment of £1,576.38 (including £234.78 VAT) shall be made to me and payment of £587.50 (including £87.50 VAT) shall be made to Mr & Mrs ????? in reimbursement of their payment of my commitment fee.

This award is made in England on 24 January 2007.

Pomerance – v – Crest Nicholson

The claimants purchased a new house within an executive and exclusive development of Crest Nicholson (developers) the defendants.

Shortly after occupying the house a number of problems arose primarily relating to defective guttering surface water, drainage, leaking shower trays, defectively installed boiler, pressurised heating system and associated plumbing installations.

A number of defects were attended to by Crest Nicholson but not to the satisfaction of the claimants. The claimants instructed APA Property Services to provide an independent report identifying any issues and/or defects which may exist within the property.

A schedule of defects were prepared and submitted to Crest Nicholson.

Various attempts were made and exhaustive site meetings and negotiations with Crest Nicholson to rectify the remedial works were executed but unsuccessful. A dispute arose, and the claimants sought arbitration to resolve the dispute.

An arbitrator was appointed and submissions by both APA Property Services and Crest Nicholson, the arbitrator arranged for a meeting and inspection of the property to determine and consider the allegations of defective building works.

Following the meeting the arbitrator issued his award.

Summary of award

The arbitrator concluded that defects existed and have not been properly attended to with regards to underground surface water drainage, surface water guttering and downpipe installations, boiler installations.