

iv. The decision of the arbitrator shall fix responsibility and describe the nature and extent of the defect. The decision shall include a summary of testimony and evidence, a statement of factual findings, such technical analysis as may be necessary to support the decision and a statement of the rationale for the decision.

v. In all cases where an arbitration decision has been rendered, there shall be no recourse to subsequent arbitration. In the event the decision of the arbitrator requires clarification, either the claimant or the Division may request the arbitrator's jurisdiction be reinstated for the sole purpose of clarification of the award.

vi. A claimant who does not agree to binding arbitration may subsequently request an administrative hearing to review the decision of the arbitrator on the grounds that evidence was improperly excluded by the arbitrator or that the decision was unreasonable. Any such hearing request shall include the specific factual and/or legal basis for any claim of improper exclusion of evidence or unreasonableness of the decision, as the case may be.

vii. The Division shall, upon a finding by the Director that there exists a contested case, provide an administrative hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 17:27, when a party who applied for arbitration but did not agree that it would be binding submits a hearing request including all required information within 15 days of the date of service of the arbitrator's decision. The record of the hearing shall be limited to the record of the arbitration proceeding, except to the extent it is determined that the arbitrator incorrectly excluded any evidence that should have been admitted. The arbitrator may not be called as a witness by either party. The standard of review shall be the reasonableness of the arbitrator's decision.

4. Notwithstanding the provisions of (g)1 above, if the builder was notified of a major structural defect during the first two years of warranty coverage and is currently registered, the Division shall process a claim for remediation of such defect in accordance with subsection (c) above.

Amended by R.1980 d.158, effective April 15, 1980.
See: 12 N.J.R. 249(d).

Amended by R.1980 d.316, effective July 17, 1980.
See: 12 N.J.R. 303(b), 12 N.J.R. 452(d).
Amended by R.1981 d.181, effective June 4, 1981.
See: 13 N.J.R. 187(c), 13 N.J.R. 333(d).

(c)3ii(1): "The Bureau . . . notice of such decision" added.

(e)1: "the Bureau of Construction Code Enforcement" added.

Amended by R.1982 d.386, effective November 1, 1982.

See: 14 N.J.R. 944(a), 14 N.J.R. 1210(a).

Added seven day limit to (b). Notice of Claim within 14 days after 30 day expiration period added to (b)3.

Amended by R.1986 d.141, effective May 5, 1986.

See: 17 N.J.R. 2816(a), 18 N.J.R. 959(a).

Substantially amended.

Amended by R.1991 d.140, effective March 18, 1991.

See: 22 N.J.R. 1701(a), 23 N.J.R. 847(c).

Stylistic revisions.

Amended by R.1992 d.246, effective June 15, 1992.

See: 24 N.J.R. 1149(a), 24 N.J.R. 2244(b).

New Home Security Fund liability limited.

Amended by R.1994 d.50, effective February 7, 1994.

See: 25 N.J.R. 4986(a), 26 N.J.R. 796(b).

Amended by R.1996 d.93, effective February 20, 1996.

See: 27 N.J.R. 4058(a), 28 N.J.R. 1225(a).

Amended by R.1998 d.126, effective March 2, 1998.

See: 29 N.J.R. 3916(a), 30 N.J.R. 825(a).

In (c)3i, rewrote (1).

Amended by R.1998 d.585, effective December 21, 1998 (operative March 1, 1999).

See: 30 N.J.R. 3632(a), 30 N.J.R. 4349(a).

Case Notes

Even if regulations required homeowners filing claim under New Home Warranty and Builders' Registration Act to submit two bid estimates by design professional for design work needed on structural repairs to their home, and homeowners were provided adequate notice of this requirement, homeowner's failure to provide those estimates did not justify the Bureau of Homeowner Protection's summary rejection of their claim; claims supervisor informed homeowners they would be allowed forty-five days to submit additional bids, but rejected homeowners' claim for unrelated reasons only nineteen days later. Lakhani v. Bureau of Homeowner's Protection. N.J.Super.A.D., 2002.

Closure of claim due to builder's compliance with arbitration requirements appropriate. Rafferty v. Department of Community Affairs, Bureau of Homeowner Protection, New Home Warranty Program, and Everlast Homes/Michael Rifkin, 97 N.J.A.R.2d (CAF) 58.

Home owner who refused to supply name of contractor doing repairs was not entitled to payment of claim by New Home Warranty Program. Hack v. Bureau of Homeowner Protection, 96 N.J.A.R.2d (CAF) 64.

Third-year new home warranty claim denied because complaints did not constitute major structural defects. Kershaw v. Homeowner Protection Bureau, 96 N.J.A.R.2d (CAF) 27.

Home warranty claim denied when no evidence of structural damage presented. Stephens v. BHP/NHWP, 96 N.J.A.R.2d (CAF) 19.

Hiring another contractor to remedy alleged defects without obtaining agency authorization operated to preclude remuneration under new home warranty program. Krochmal v. Department of Community Affairs, 95 N.J.A.R.2d (CAF) 89.

Unilateral repairs without resorting to required claims procedures precluded coverage under new home warranty program. Elliott v. Department of Community Affairs, 95 N.J.A.R.2d (CAF) 81.

Purchasers' warranty claims timely when filed within 14 days of builder's response through verbal acknowledgment. Lloyd v. Bureau of Homeowners Protection, 95 N.J.A.R.2d (CAF) 71.

Owners were justified in hiring another contractor to complete work upon initial contractor's unsuccessful attempt to waterproof basement. Lincoln Chester v. Bureau of Homeowner Protection, 95 N.J.A.R.2d (CAF) 59.

Homeowner relinquished any right to reimbursement for warranty work to correct defects by failing to obtain prior authorization. Lizzi v. Bureau of Homeowners Protection, 95 N.J.A.R.2d (CAF) 45.

Claims under new home warranty program were either untimely filed or were insufficient for failure to establish major structural defects. Harborview Condominium v. Bureau of Homeowner Protection, 95 N.J.A.R.2d (CAF) 38.

Repair of water streaming could only be accomplished by waterproofing as recommended by warranty analyst under arbitration award. Halaby v. Bureau of Homeowner Protection, 95 N.J.A.R.2d (CAF) 26.

Claim under common element warranty was dismissed when filed more than two years after warranty expired. *Aleem v. Community Affairs*, 95 N.J.A.R.2d (CAF) 24.

Denial of recovery; delay in filing claim and replacement of heating system before Bureau of Homeowner Protection had opportunity to inspect it. *Cessaro v. Bureau of Homeowner Protection*, 94 N.J.A.R.2d (CAF) 98.

Refusal to accept last settlement offer was proper reason for dismissal of claim. *Kushner v. Barry Freedman, Inc.*, 94 N.J.A.R.2d (CAF) 85.

Claim for additional work due to unforeseen damage was denied where the owner did not allow the Bureau of Homeowner Protection to inspect. *Promenade Condo Association v. Bureau of Homeowner Protection*, 93 N.J.A.R.2d (CAF) 63.

Failure to give written notice and failure to perfect notice caused the claims to be rejected. *Yelinko v. Department of Community Affairs*, 93 N.J.A.R.2d (CAF) 54.

Warranty claim was treated as second year claim even though the builder admitted within the allowed time defects existed but failed to take action. *Schwanda v. Department of Community Affairs*, 93 N.J.A.R.2d (CAF) 39.

Failure to obtain two estimates and written authorization prior to repair precluded recovery on warranty. *Lavin v. Bureau of Homeowner Protection, Dept. of Community Affairs*, 92 N.J.A.R.2d (CAF) 68.

Warranty fund is to pay for correction of defects in the least costly manner. *Bogaev v. New Home Warranty Program*, 92 N.J.A.R.2d (CAF) 49.

Repair prior to inspection barred payment for cost. *Lipton v. Department of Community Affairs*, 92 N.J.A.R.2d (CAF) 30.

Failure to file claim within one-year period for defects caused by faulty workmanship and defective materials barred recovery. N.J.S.A. 46:3B-2, 46:3B-3. *Bridgewaters Townhouse Condominium Ass'n v. New Home Warranty Program*, 92 N.J.A.R.2d (CAF) 25.

Claim under New Home Warranty and Builders' Registration Act was untimely. *Bridgewaters Townhouse Condominium Association v. New Home Warranty Program*, 92 N.J.A.R.2d (CAF) 24.

Procedural requirements under former regulation; reimbursement amount to owner from builder to be determined by Bureau of Construction Code Enforcement. *Kratchman v. Gabriel S. DiMedio, Inc.*, 5 N.J.A.R. 202 (1981).