



**State of New Jersey**  
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**PHILIP D. MURPHY**  
*Governor*

**LT. GOVERNOR SHEILA Y. OLIVER**  
*Commissioner*

**Via Regular Mail**

Sean and Allison Breitstein  
119 Orchard Road  
Demarest, NJ 07627

**Via Electronic Mail**

Robert Nylund  
Claims Analyst  
Bureau of Homeowner Protection  
New Home Warranty

Re: Final Agency Decision  
OAL Docket No. CAF 12220-16

Dear Parties:

Enclosed please find a copy of the Final Decision in the matter referenced above. Should you wish to appeal from this Decision, you have the right to take an appeal with the Appellate Division of the Superior Court [Rules Governing the Courts of New Jersey, 2:2-3(a)(2)]. You must do so, however, within 45 days from the date of service of this Decision.

Sincerely,

Donald Palombi  
Chief Regulatory Officer

Enclosure



**STATE OF NEW JERSEY  
DEPARTMENT OF COMMUNITY AFFAIRS**

**FINAL AGENCY DECISION**

OAL DKT. NO. CAF 12220-16

AGENCY DKT. NO. BHP # 204-16

**SEAN AND ALLISON BREITSTEIN  
119 ORCHARD ROAD, DEMAREST, NEW JERSEY 07627**

Petitioners,

v.

**BUREAU OF HOMEOWNER PROTECTION,  
NEW HOME WARRANTY PROGRAM,**

Respondent,

Having reviewed the Initial Decision of the Administrative Law Judge (“ALJ”) in this matter, as well as the exceptions filed by the parties, I hereby APOPT the Initial Decision, with the following comments.

This case concerns an appeal by Petitioners of a Work List issued by Petitioner Bureau of Homeowner Protection (“the Bureau”) with regard to Petitioner’s home. Specifically, the Work list provided that the home builder (Intervenor 119 Orchard LLC) must repair, rather than replace, the defective flooring in the home. In an Initial Decision dated December 4, 2017, the ALJ ordered that the Work List be modified to include replacement of the floor.

Subsequently, former DCA Commissioner Charles A. Richman remanded the case to the OAL in order to address two issues. The first was whether the Intervenor’s expert had been denied access to the home and thus an opportunity to inspect the floor in person. The second was the need for a decision on whether the floor was engineered or solid wood. In response to a request from Petitioners, I issued on June 11, 2018 an Order clarifying the remand. The ALJ has now issued a second initial Decision, dated July 31, 2018.

In that second decision the ALJ addressed both of the remand issues. First, the ALJ found that Intervenor’s expert was not denied access to the home, and that no further inspection

was thus called for. Second, the ALJ noted that on remand the parties entered into a consent agreement providing that the floor is solid rather than engineered wood, thereby resolving that issue. The ALJ specifically concluded that this fact did not alter the original determination in the case. Thus, the ALJ concluded, once again, that the Work List should be modified to include replacement.

The Intervenor filed exceptions to this decision with this Office, and a reply to the exceptions was filed by Petitioners. In those exceptions the Intervenor argues that the ALJ improperly relied on two letters submitted by Petitioner. These letters provide estimates of the cost of replacing the floor. The Intervenor argues that these estimates are unreliable and are hearsay and should thus be discounted. However, the Intervenor misunderstands the process. The ALJ made no findings as to the appropriate cost for the floor replacement; rather, that issue will be dealt with in the future as per the normal Bureau procedure.

Second, the Intervenor argues that the photographs of the floor taken by the Petitioners and introduced in evidence (P-1 to P-17) were not provided prior to the hearing. In reply the Petitioner states that no discovery was in fact sought by the Intervenor. In any event, the Petitioner testified as to the photographs at the hearing, and the Intervenor thus had an opportunity for cross-examination. Petitioner's testimony regarding the photographs was described in detail in the Initial Decisions.

In addition, the Intervenor contends that the ALJ improperly gave more weight to Petitioner's expert, even though he initially incorrectly described the floor as engineered wood. Intervenor also argues that its expert was more qualified. However, the ALJ had an opportunity to hear testimony from both individuals and to judge their credibility, and ultimately concluded, based on the totality of the evidence, that the Work List should be modified to include replacement. That decision is supported by the record.

Finally, the Intervenor states that there is an "inference" in the Initial Decision that the ALJ is only ordering that the floor be replaced in certain limited situations (for example, when there is a gap greater than 1/8 of an inch). The initial decision is clear that the Work List should be modified to include replacement. I read the decision to say defective flooring should be replaced, not repaired.

Date: 9/14/18



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**Lt. Governor Sheila Y. Oliver**  
**Commissioner**