

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

JOHN GILBERTSON,
Plaintiff,
Case Number: SCSC721816

v.

ORDER ON APPEAL**LIBERTY HOME GUARD, LLC,**
Defendant.

1. Introduction

This is a case about jurisdiction. Does the American Arbitration Association have exclusive jurisdiction to hear this case or does the Small Claims Court for Polk County, Iowa have concurrent jurisdiction?

The Magistrate ruled for the Defendant, Liberty Home Guard, LLC, finding the court did not have jurisdiction and dismissed the claim. The Plaintiff, John Gilbertson, appealed. For the following reasons, this Court finds the Magistrate had concurrent jurisdiction over the claim with the American Arbitration Association. The Court reverses and vacates the decision of the Magistrate and renders partial judgment in favor of Mr. Gilbertson.

2. Summary

Mr. Gilbertson paid for a home warranty (Agreement) from Liberty Home Guard. The Agreement guaranteed Liberty Home Guard would cover the expenses to repair or replace various household appliances when they broke down due to normal wear and tear. The Agreement contained a clause for choice of jurisdiction mandating the American Arbitration Association (AAA) arbitrators resolve Agreement disputes.

On a cold, February morning, Mr. Gilbertson's home water heater stopped working. The water heater was covered under the Agreement. Mr. Gilbertson exchanged several emails with Liberty Home Guard to send a service technician, but they were unable to find one. Liberty Home Guard instructed him to hire his own technician, and they would reimburse him directly for the replacement. The broken water heater was replaced by another technician, but Liberty Home Guard told Mr. Gilbertson it would only cover a fraction of the costs to replace it because it had "leaks."

A dispute arose and Mr. Gilbertson filed a claim in the Small Claims Court for Polk County against Liberty Home Guard alleging consumer fraud. Liberty Home Guard answered by asking the Magistrate to dismiss the claim and force arbitration with AAA pursuant to the Agreement. The Magistrate agreed with Liberty Home Guard and dismissed the claim, citing the mandatory arbitration clause.

3. Issues

The Court answers three questions to resolve this appeal. First, was mandatory arbitration keeping Mr. Gilbertson from the concurrent jurisdiction of small claims? Second, if arbitration was not mandatory, and small claims had jurisdiction, did Mr. Gilbertson prove Liberty Home Guard engaged in consumer fraud? Third, if there was no consumer fraud, were there other remedies available to Mr. Gilbertson due to a breach of contract?

4. Principles of law

4.1 Jurisdiction of small claims court

In Iowa, small claims are started by a claim for money judgment where the amount in controversy is “six thousand five hundred dollars or less...exclusive of interest and costs.”¹

Courts have two kinds of jurisdiction: personal and subject matter. Personal jurisdiction is “[a] court’s power to bring a person into its adjudicative process.”² Subject matter jurisdiction is “[j]urisdiction over the nature of the case and the type of relief sought.”³ The constitution or a statute must grant subject matter jurisdiction.⁴ Iowa magistrate judges have subject matter jurisdiction over small claims.⁵ The parties cannot give jurisdiction to the court.⁶ No one can waive subject matter jurisdiction through consent, waiver, or estoppel.⁷

¹ Iowa Code § 631.1.

² *Personal jurisdiction*, BLACK’S LAW DICTIONARY (12th ed. 2024).

³ *Subject-matter jurisdiction*, BLACK’S LAW DICTIONARY (12th ed. 2024).

⁴ *De Stefano v. Apts. Downtown, Inc.*, 879 N.W.2d 155, 164 (Iowa 2016).

⁵ Iowa Code § 602.6405.

⁶ *Id.* (citing *Schott v. Schott*, 744 N.W.2d 85, 87 (Iowa 2008)).

⁷ *State v. Mandicino*, 509 N.W.2d 481, 482 (Iowa 1993).

There is no federal equivalent for small claims court because the minimum dollar amount for claims in federal court is \$75,000.00.⁸ When there is diversity among the parties (parties from different states) the claim must still exceed the minimum federal dollar amount for the federal courts to have jurisdiction.⁹

One court may also have jurisdiction with another court. This is called concurrent jurisdiction, meaning “jurisdiction exercised by different courts, at the same time, over the same subject-matter, and within the same territory, and wherein litigants may, in the first instance, resort to either court indifferently.”¹⁰

In small claims, most motions, including questions about jurisdiction, are heard at the time of trial.¹¹

4.2 Appeal from judgment of the magistrate

Appeals from the magistrate are decided “without regard to technicalities or defects which have not prejudiced the substantial rights of the parties.”¹² The appellate court “may affirm, reverse, or modify the judgment, or render judgment as the...magistrate should have rendered.”¹³ The review is *de novo*.¹⁴

4.3 Federal and state law on arbitration

Both the United States and Iowa have laws governing arbitration agreements. Arbitration is a matter of contract.¹⁵ Under the Federal Arbitration Act (FAA)¹⁶ arbitration agreements are considered valid and enforceable and are favored above court intervention.¹⁷ Any agreement to arbitrate, covering disputes arising under interstate commerce, are subject to the FAA.¹⁸ The FAA does not bestow any automatic federal jurisdiction,¹⁹ thus allowing state courts opportunity to implement the law.

Iowa law also favors arbitration over litigation.²⁰ The law as written, however, allows a court to invalidate any agreement for arbitration if it is a contract of adhesion.²¹ A contract of adhesion is described as

⁸ 28 U.S.C. § 1332.

⁹ See *Albion Elevator Co. v. Chicago & N.W. Transp. Co.*, 254 N.W.2d 6, 12 (Iowa 1977).

¹⁰ *Mallory v. Paradise*, 173 N.W.2d 264, 267 (Iowa 1969).

¹¹ Iowa Code § 631.7(3)-9

¹² Iowa Code § 631.13(4)(a)(1).

¹³ *Id.*

¹⁴ *Sunset Mobile Home Park v. Parsons*, 324 N.W.2d 452, 454 (Iowa 1982).

¹⁵ *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 67 (2010).

¹⁶ 9 U.S.C. §§ 1-16 (2022).

¹⁷ See e.g., *Ommen v. Milliman, Inc.*, 941 N.W.2d 310, 314 (Iowa 2020).

¹⁸ See e.g., *Sutcliffe v. Mercy Clinics, Inc.*, 856 N.W.2d 382 (Table), 2014 WL 4631406, at *2 (Iowa Ct. App.).

¹⁹ *Hursh v. DST Systems, Inc.*, 54 F.4th 561, 563 (8th Cir. 2022).

²⁰ See, generally, Iowa Code § 679A.1.

²¹ *Id.*

one “drafted unilaterally by the dominant party and then presented on a ‘take-it-or-leave-it’ basis to the weaker party who has no real opportunity to bargain about its terms.”²² Though Iowa law strips automatic arbitrations from contracts of adhesion, federal law steps in and mandates it through the Supremacy Clause.²³ When the FAA applies, an agreement is only invalidated if there are “grounds as exist at law or in equity for the revocation of any contract”²⁴ including lack of interstate commerce nexus.²⁵ Thus, Iowa law that pierces arbitration agreements in contracts of adhesion, is nullified by federal law.²⁶

4.4 Consumer arbitration rules and interpretation

The AAA created the Consumer Arbitration Rules and the accompanying guides to assist in interpreting arbitration clauses.

Arbitrators—the judges and factfinders of arbitration disputes—are neutral and independent decision makers who are not employees of the AAA.²⁷

In consumer contracts, typically contracts of adhesion, the AAA uses specific consumer-based arbitration clauses in “agreements between individual consumers and businesses where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized...services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices.”²⁸ The AAA rules apply when the contract contains a provision for arbitration by AAA and references application of the Consumer Arbitration Rules.²⁹ Then the Consumer Arbitration Rules become essential terms of the agreement.³⁰ But the parties may change the rules if they agree to the changes in writing.³¹

²² *Pennsylvania Life Ins. Co. v. Simoni*, 641 N.W.2d 807, 813 (Iowa 2002).

²³ *Vis v. American Family Life Assur. Co. of Columbus*, 778 F.Supp.2d 971, 980 (N.D. Iowa 2011) (citing *Haberlin Farms, Inc. v. IGF Ins. Co.*, 641 N.W.2d 816, 819 (Iowa 2002)).

²⁴ 9 U.S.C. at § 2 (noting limited exceptions other than lack of interstate commerce do exist but do not apply to the matter covered herein).

²⁵ One related matter concerns the reverse-preemption doctrine under the McCarran-Ferguson Act, which applies only to insurance providers and declares this area of law outside interstate commerce.

²⁶ *See Vis*, 778 F.Supp.2d at 980 (discussing preemption of Iowa Code § 679A.1(2) and its provisions).

²⁷ AAA Consumer Arbitration Rules at 7 (2014) (“The Arbitrator”) (accessible at www.adr.org/consumer).

²⁸ *Id.* at 6 (“Introduction”).

²⁹ AAA Consumer Arbitration Rule 1(a) (2014) (accessible at www.adr.org/consumer).

³⁰ *Id.* at 9.

³¹ *Id.* at Rule 1(c).

The AAA also has due process standards to protect the parties called the Consumer Due Process Protocol.³² The AAA arbitrator will accept a case after the AAA reviews the arbitration agreement and the agreement substantially and materially complies with the rules and the protocol. If the AAA arbitrator declines “to administer an arbitration”, then either party may take the case to court.³³ But, the arbitrator has the initial authority to apply the rules.³⁴

Importantly, the Consumer Arbitration Rules provide a choice of jurisdiction granting small claims court concurrent jurisdiction: “If a party’s claim is within the jurisdiction of a small claims court, either party may choose to take the claim to that court instead of arbitration.”³⁵ “The parties may take their claims to small claims court without first filing with the AAA.”³⁶ The AAA published the following statement to help parties understand this concept:

Consumer [Alternative Dispute Resolution] Agreements should make it clear that all parties retain the right to seek relief in small claims court for disputes or claims within the scope of its jurisdiction.

Consumer arbitration agreements cannot foreclose the possibility of resolution via small claims court for disputes that qualify. Accordingly, Rule R-9 of the Consumer Rules discusses either party’s option to bring a case to small claims court if it qualifies.

As the National Consumer Disputes Advisory Committee remarked in its comments to the Protocol, access to small claims court may provide the most efficient method for resolving small disputes, and thus made that option available under Principle 5. The Committee also noted the effectiveness of “desk arbitration” and telephone hearings for resolving low dollar claims.

An example of a clause that violates this principle is one that specifically prohibits the filing of cases with an applicable small claims court. Parties to consumer [Alternative Dispute Resolution] clauses can name the AAA’s *Consumer Arbitration Rules* to satisfy this Principle of the Protocol.³⁷

Therefore, either the plaintiff or defendant of a consumer contract dispute in which the AAA Consumer Arbitration Rules apply has discretion to bring the case to small claims court or to arbitration.

³² *Id.* at Rule 1(d).

³³ *Id.* at Rule 1(d).

³⁴ *Id.* at Rule 1(e).

³⁵ *Id.* at Rule 9(a).

³⁶ *Id.*

³⁷ Adam Shoneck and Neil Currie, *A Guide to Understanding the America Arbitration Association’s Consumer Due Process Protocol and Consumer Arbitration Rules*, American Arbitration Association (2024) (emphasis added).

4.5 Iowa law for consumer fraud

The Iowa Consumer Fraud Private Right of Action gives individuals the right to sue if they are victims of fraud or other “prohibited practice.”³⁸ The burden is on the victim to prove the prohibited practice related to a “material fact or facts” upon which they relied.³⁹ Such prohibited practices include deception, fraud, false pretense, false promise, misrepresentation, concealment, suppression, or omission of a material fact.⁴⁰ If a victim proves an unfair practice by a preponderance of the evidence, the victim is entitled to actual damages.⁴¹ Damages include anything “proximately caused by the prohibited practice or act that are reasonably ascertainable in amount.”⁴² The damages increase three-fold if the victim proves by clear, convincing, and satisfactory evidence the defendant’s actions were in “willful and wanton disregard for the rights...of another.”⁴³ A defendant is not liable, however, if the prohibited practice was not intentional and was a reasonable error.⁴⁴

4.6 Principles of contracts apply

The Agreement is a contract, so basic contract principles also apply. “In a breach-of-contract claim, the [plaintiff] must prove: 1) the existence of a contract; 2) the terms and conditions of the contract; 3) that it has performed all the terms and conditions required under the contract; 4) the defendant's breach of the contract in some particular way; and 5) that plaintiff has suffered damages as a result of the breach.”⁴⁵ If a party proves a breach of contract, they are entitled to an award for damages. Damages in a breach of contract are only those injuries which “aris[e] naturally from the breach” or were reasonably in “contemplation of the parties, at the time of contracting, as a probable result of the breach.”⁴⁶

When a dispute over a contract arises, the courts presume the contract is in effect. This is called a presumption of validity: the presumption disfavors interpretations that would nullify the provision or the

³⁸ Iowa Code § 714H.3(1).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Iowa Code § 714H.5(1).

⁴² Iowa Code § 714H.2(1).

⁴³ Iowa Code § 714H.5(4).

⁴⁴ Iowa Code § 714H.5(7).

⁴⁵ *Molo Oil v. River City Ford Truck Sales*, 578 N.W.2d 222, 224 (Iowa 1998).

⁴⁶ *R.E.T. Corp. v. Frank Paxton, Inc.*, 329 N.W.2d 416, 420 (Iowa 1983).

entire instrument.⁴⁷ “[A] legal text, especially a statute or contract, [is] interpreted in a way that gives the document force rather than makes it fail.”⁴⁸ The presumption simply means: “1) interpretation of a legal instrument always depends on context; 2) context always includes evident purpose; and 3) evident purpose always includes effectiveness.”⁴⁹

All laws and statutes are “part of every contract, and...read into it as through [they] were specifically referred to [in the contract].”⁵⁰ When a contract refers to a subject where lawmakers enacted the law, “the parties [are presumed] to [contract] with reference to such law.”⁵¹ But the “parties may not contract in defiance of a statute which regulates the subject matter of their agreement.”⁵²

5. Findings of fact

5.1 The Agreement

Mr. Gilbertson is a homeowner in Des Moines, Iowa. In June 2023, he purchased a year-long home warranty through Liberty Home Guard, a New York company, for \$575.00. According to Liberty Home Guard, “[a] home warranty is a service contract that covers repair and replacement costs when your home’s systems and appliances break down due to normal wear and tear. Liberty Home Guard oversees the process of repairing your home equipment from start to finish” and uses its own licensed technicians to provide service. This Agreement is not an insurance policy because it deals with repairing and replacing items from regular wear and tear. Liberty Home Guard promises, depending on the plan, that “the amount you spend on a policy premium is less than what you would have spent on home repairs out of pocket.”

The Agreement covered home systems, appliances, and other matters. Included in the covered systems were water heaters. The Agreement included a choice-of-law provision for jurisdiction. This provision “designate[d] the jurisdiction whose law will govern any disputes that may arise between the parties.”⁵³ The choice-of-law provision in this Agreement was arbitration. The arbitration clause said in full:

⁴⁷ Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* at § 5 (2012).

⁴⁸ *Ut res magis valeat quam pereat*, BLACK’S LAW DICTIONARY (12th ed. 2024).

⁴⁹ Scalia and Garner, *Reading Law: The Interpretation of Legal Texts* at § 4.

⁵⁰ *Cornick v. Southwest Iowa Broadcasting Co.*, 107 N.W.2d 920, 921 (Iowa 1961).

⁵¹ *Id.*

⁵² *Id.* at 922.

⁵³ *Choice-of-law*, BLACK’S LAW DICTIONARY (12th ed. 2024).

The parties agree to mediate in good faith, before resorting to mandatory arbitration. Unless You make written application to LHG and LHG agrees in writing to allow You to bring a lawsuit against LHG solely in your individual capacity, any claim, dispute, or controversy regarding any legal claim arising out this Agreement shall be resolved by one arbitrator through binding arbitration administered by the American Arbitration Association (“AAA”), under the AAA Commercial or Consumer, as applicable, Rules in effect at the time the claim is filed (“AAA Rules”).....The arbitrator’s decision shall be final, binding, and non-appealable. Judgment upon the award may be entered into and enforced in any court having jurisdiction. This clause is made pursuant to a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act. Neither party shall sue the other party other than as provided herein or for enforcement of this clause or of the arbitrator’s award, and any such suit may be brought only in Federal District Court, or, if any such court lacks jurisdiction, in any state court that has jurisdiction. The arbitrator, and not any federal, state, or local court, shall have exclusive authority, and/or formation of this Agreement, including any claim that all or any part of the Agreement is void or voidable...”

In short, the choice of jurisdiction was arbitration and only arbitration, unless Liberty Home guard agreed otherwise.

5.2 The broken water heater

On February 3, 2024, Mr. Gilbertson’s water heater stopped working. He immediately notified Liberty Home Guard and received a response that day stating a technician would contact him within 24 to 48 hours. On February 4, Liberty Home Guard sent an email saying an “LHG-Certified” technician was assigned to the claim and promised to schedule the appointment shortly. No appointment was ever scheduled.

On February 6, Mr. Gilbertson received two emails from Liberty Home Guard. The first was an automated email prematurely saying: “We are happy to hear you are satisfied with the outcome of your recent Water Heater claim.” It asked Mr. Gilbertson to write a review on Google. Then, less than an hour later came a second email from Liberty Home Guard stating a technician was still not yet assigned to his case, after originally claiming the day before that one was assigned. They erroneously cited the COVID-19 pandemic as a reason for the delay, months after emergency pandemic measures ended. They said “[w]e’re escalating your claim to a specialized team of individuals within our dispatching department whose primary responsibility is to source technicians where our automated modules fail.” On February 7, Mr. Gilbertson received yet another email that a technician was still unavailable. Then they authorized him to go through the Liberty Home Guard Reimbursement Program. Mr. Gilbertson was allowed to find a technician to diagnose the problem, then submit the diagnosis to Liberty Home Guard’s Authorization Team. He found a local

company who stated he needed a full replacement of the broken water heater and quoted a price of \$2999.29 for the price of the water heater and installation.

On February 8, Mr. Gilbertson spoke by phone to a personal representative from Liberty Home Guard. The representative asked whether there were any leaks in the broken water heater unit. Mr. Gilbertson acknowledged there were small leaks of no significance. The call ended without resolution.

On Saturday, February 10, Mr. Gilbertson had a new water heater installed by a local company, not one from Liberty Home Guard. He paid the full \$2,999.29 out-of-pocket: \$1,622.03 for the price of the replacement and \$1,377.29 for labor.

The following Monday, February 12, Mr. Gilbertson received notification from Liberty Home Guard they were not covering replacement water heater because the old one had leaks. They offered a \$250.00 “courtesy fee” instead of the replacement value. Mr. Gilbertson rejected this payment. He protested, asking them to fulfill their part of the bargain. Then, on February 14, Liberty Home Guard made a final offer to settle for \$400.00, suggesting \$400.00 was the price they would pay for a new water heater had they bought it on their own. Mr. Gilbertson declined.

This is not the first time Liberty Home Guard denied a customer’s claim for reimbursement. From March through April 2024, the Better Business Bureau (BBB) posted complaints from many customers about Liberty Home Guard’s poor customer satisfaction. The BBB summary says:

BBB files indicate a Pattern of Complaints regarding the claims process, customer service, and sales tactics for Liberty Home Guard. BBB has noted that the volume of complaints for the company has significantly increased since 2023. Customers are reporting to BBB that they are paying up-front service fees for technician appointments, and in many cases, appointments are delayed or cancelled, extending the claims process. Consumers also note a lack of response from Liberty Home Guard about when they can expect their claims to be evaluated and approved. Many consumers say that the scope of coverage and the dollar amount paid out for claims is contradictory to Liberty Home Guard's advertising and policy agreements. Consumers also claim that coverage of certain appliances was denied despite assurances from the company's sales reps that they would be at the time the policy was purchased.

In April 2024, Mr. Gilbertson filed this small claims action alleging consumer fraud. He asked for damages of \$6,488.12. This included \$1,622.03 in actual damages and \$4866.09 for the three-times enhanced damages of consumer fraud.⁵⁴

After the Magistrate dismissed the case for lack of jurisdiction, Mr. Gilbertson appealed.

6. Analysis

6.1 The arbitration rules give concurrent jurisdiction to small claims court

The Agreement contains a conflict: it divests concurrent jurisdiction of the claim in small claims court whilst incorporating the AAA Consumer Arbitration Rules.

The Court gives harmony to these competing provisions using principles of statutory construction between the AAA Consumer Rules of Arbitration and the Agreement. “Our canons of statutory interpretation counsel us to avoid interpretations that create conflict and instead adopt interpretations that are harmonious.”⁵⁵ “The provisions of a text [are] interpreted in a way that renders them compatible, not contradictory.”⁵⁶

The Agreement cannot take away concurrent jurisdiction from small claims court without also violating the Consumer Arbitration Rules. Under the rules, either party may file a claim in small claims court or, alternatively, pursue arbitration. Certainly, the AAA allows parties to deviate from the rules if they contract in writing to do so. But completely removing small claims jurisdiction is an exception to deviation. After all, “[c]onsumer arbitration agreements cannot foreclose the possibility of resolution via small claims court for disputes that qualify.”⁵⁷

This harmonious reading gives either party the ability to bring the case to small claims without first seeking judgment from the arbitrator, just as the rules provide: “the parties may take their claims to small claims court without first filing with the AAA,”⁵⁸ and the “[p]arties may not contract in defiance” of a rule

⁵⁴ Iowa Code § 714H.5(4).

⁵⁵ *Myers v. City of Cedar Falls*, 8 N.W.3d 171, 180 (Iowa 2024) (citing Scalia and Garner, *Reading Law: The Interpretation of Legal Texts* at § 180).

⁵⁶ *Id.*

⁵⁷ Shoneck and Currie, *A Guide to Understanding*, at 5.

⁵⁸ AAA Consumer Arbitration Rule 9(a).

incorporated in the Agreement.⁵⁹ This reading also enforces the Agreement. Mr. Gilbertson and Liberty Home Guard agreed to arbitration and simultaneously agreed to apply the rules. The AAA Consumer Arbitration Rules were incorporated as essential terms within the Agreement. Liberty Home Guard knows, or should know, creating a contract of adhesion divesting a small claims court of any jurisdiction contradicts the AAA Consumer Due Process Principles.

Liberty Home Guard maintains Iowa smalls claims court lacks jurisdiction. They also claim, without providing any authority, these same rules have been tested before in favor of arbitration over small claims court. This Court found the opposite. In New York City, where Liberty Home Guard is headquartered, the City Court concluded it had concurrent jurisdiction with AAA:

[B]y adopting the [AAA] standards to govern arbitration, [Defendant] made the Consumer Rules an essential term of the contract (Rule 1). *The court is not ignoring the contract's arbitration clause; it is enforcing it*, including Rule 9(a). This rule allows a party to avoid arbitration and instead to go to small claims court. [Plaintiff] has exercised her right under the arbitration clause of the contract to do just that.⁶⁰

An appeals court in Oklahoma also “tested” the rules and said: “[p]ursuant to [AAA] rules, Homeowners may seek relief in small claims court even if Contractor files an arbitration action.”⁶¹ Finally, the New Mexico Supreme Court said this AAA small claims carve-out in consumer arbitration rules was an exercise in “basic fairness.”⁶²

The Magistrate was required to exercise concurrent jurisdiction over Mr. Gilbertson’s claim because he chose small claims court instead of arbitration as authorized by the AAA Consumer Arbitration Rules. The Magistrate’s dismissal is vacated and reversed.

6.2 Mr. Gilbertson did not prove consumer fraud

The Court turns to the merits of the claim. Mr. Gilbertson presented written evidence and his personal testimony. Liberty Home Guard presented no evidence or testimony, only argument over the Agreement.

⁵⁹ See *Cornick*, 107 N.W.2d at 922.

⁶⁰ *Caponera v. Atl. Bldg. Inspection Serv.*, 66 Misc. 3d 748, 757, 117 N.Y.S.3d 822, 829 (N.Y. City Ct. 2020) (emphasis added).

⁶¹ *James v. Zachritz*, 2006 Ok. Civ. App. 46, at 5, 134 P.3d 926, 927.

⁶² *Dalton v. Santander Consumer USA Inc.*, 385 P.3d 619, 624-25 (N.M. 2016).

Mr. Gilbertson needs to prove by clear, convincing, and satisfactory evidence Liberty Home Guard's actions were in willful and wanton disregard of his rights to win enhanced damages. Clear and convincing evidence is higher than the preponderance standard but lower than beyond a reasonable doubt used in criminal cases. The evidence must indicate that "the thing to be proved is highly probable or reasonably certain."⁶³ Alternatively, Mr. Gilbertson may win actual damages if he proved Liberty Home Guard committed the prohibited practice by a preponderance of the evidence.

Mr. Gilbertson's fraud claims fail under both "clear and convincing" and "preponderance of the evidence" standards. The evidence is compelling but insufficient. It consists of his account of what happened, the guarantees from Liberty Home Guard upon which he relied, and the Better Business Bureau negative consumer reviews of Liberty Home Guard. It recounts his assessment of a very frustrating experience with a home repair provider who guaranteed satisfactory results. "At Liberty Home Guard, we believe a problem in your home is a problem in ours, and we won't rest until it's resolved." Liberty Home Guard failed to live up to its promise to use "reasonable efforts to repair or replace the [water heater] with items of similar core mechanical functionality..." A failure to live up to its promises, however, is not a willful and wanton disregard of Mr. Gilbertson's rights.

Mr. Gilbertson's other evidence from the Better Business Bureau is hearsay. The reviews by multiple dissatisfied customers show a pattern of claims denied by Liberty Home Guard. None of those other reviewers testified. The Court does not know enough relevant facts of those reviews and Liberty Home Guard was not given the chance to confront those disgruntled customers in court. The Better Business Bureau review evidence is reliable bad reputation evidence but still does not overcome the heavy evidentiary burden of willful and wanton behavior.

Likewise, the Court is not convinced Liberty Home Guard engaged in fraud or deception. Liberty Home Guard tried and failed to find a technician to replace the water heater. Mr. Gilbertson is rightly disappointed by their service, but the evidence does not support the nefarious conduct contemplated by the legislature when creating the private right of action. After failing to uphold their part of the bargain, Liberty

⁶³ *Clear and convincing evidence*, BLACK'S LAW DICTIONARY (12th ed. 2024).

Home Guard made a half-hearted attempt to provide nominal compensation. Providing less-than-bargained-for performance does not give rise to fraud or deception.

Mr. Gilbertson did not prove his consumer fraud claims. Therefore, he is not entitled to statutory enhanced damages nor actual damages under Iowa's consumer fraud law.

6.3 Liberty Home Guard is in breach of contract

Mr. Gilbertson still partly prevails despite his fraud claims failing. The Court is empowered to do what is fair.⁶⁴ A fair outcome is to decide this case under contract principles and find Liberty Home Guard breached the Agreement.

Mr. Gilbertson satisfied all his obligations under the home warranty by paying the premium and notifying Liberty Home Guard of the broken water heater. He then followed their instructions when directed to use the alternative reimbursement program.

Liberty Home Guard breached their obligations in several ways. First, Liberty Home Guard was unable to find a suitable contractor to fix the water heater, despite telling Mr. Gilbertson an "LHG-Certified technician [had] been assigned" to his claim and would schedule an appointment. This was not true. Second, Liberty Home Guard told Mr. Gilbertson to use the "Liberty Home Guard Reimbursement Program" and authorized him to hire his own technician. This was a negligent misrepresentation. Mr. Gilbertson relied on the misrepresentation to his detriment. Third, Liberty Home Guard denied reimbursement, claiming "leaks" as the reason. This was arbitrary. The Agreement says Liberty Home Guard will not repair "leaks," but there is nothing in the Agreement where a water heater replacement claim is denied due to "leaks." There is nothing in the record connecting "leaks" to the water heater failure. There is no explanation from Liberty Home Guard why "leaks" nullify the Agreement to replace a broken water heater. There is no evidence that "leaks" in a water heater are considered anything other than normal wear and tear. Liberty Home Guard simply breached the Agreement.

Mr. Gilbertson is entitled to actual damages from the breach. This breach occurred on February 14, 2024, when Liberty Home Guard attempted to settle the claim for the nominal \$400.00. His actual damages

⁶⁴ Iowa Code § 631.13(4)(a)(1).

are \$1,622.03. These damages were in reasonable contemplation at the time Liberty Home Guard entered the Agreement. Mr. Gilbertson will also receive interest starting from the date of the breach.

7. Conclusion

The Court finds the Magistrate had concurrent jurisdiction to hear Mr. Gilbertson's claim in Small Claims Court for Polk County. The arbitration clause in the home warranty unfairly precluded Mr. Gilbertson from filing in small claims because the Agreement violated the AAA Consumer Arbitration Rules. Granting small claims court concurrent jurisdiction gives effect to the Agreement because the AAA Consumer Arbitration Rules are incorporated into the Agreement. Liberty Home Guard's conduct while dealing with Mr. Gilbertson's claim was insufficient and arbitrary, but the conduct did not rise to the level of consumer fraud. Finally, Liberty Home Guard is in breach of contract for failing to fully reimburse Mr. Gilbertson's replacement water heater.

8. Order

The decision of the Magistrate dismissing Mr. Gilbertson's claim is **VACATED AND REVERSED**.

JUDGMENT IS ENTERED FOR PLAINTIFF, John Gilbertson against Liberty Home Guard, LLC for \$1,622.03 and interest at 6.83% beginning February 14, 2024. All costs assessed against Liberty Home Guard, LLC.



State of Iowa Courts

Case Number
SCSC721816

Case Title
//APPEALED//JOHN GILBERTSON VS LIBERTY HOME
GUARD LLC
OTHER ORDER

Type:

So Ordered

Brendan Greiner, District Associate Judge
Fifth Judicial District of Iowa

Electronically signed on 2024-12-17 14:41:46