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CONTRACTS - NEW YORK

Environmental Testing & Consulting, Inc. v. City of Buffalo

Supreme Court, Appellate Division, Fourth Department, New York - September 27, 2013 - N.Y.S.2d - 2013 N.Y. Slip Op. 06187

Buffalo Urban Renewal Agency (BURA) and the City of Buffalo entered into a contract whereby BURA, an environmental testing and remediation company, agreed to perform various services for homeowners who participated in the City's "Rehab Program," which provided funds to qualified homeowners seeking to improve their properties. The contract documents specified the fee to which BURA would be entitled for each of the three services provided by plaintiff to the homeowners. According to BURA, the City was obligated under the contract to retain it to perform between 220 and 260 lead paint tests, and an equal number of clearance tests and risk assessments. BURA contended that City breached the contract because it retained BURA to perform only 44 lead paint tests and no clearance tests or risk assessments.

The appeals court agreed with the City that the clear and unambiguous language of the contract provided only for a "fee for services" arrangement. The fee schedule sets forth only the agreed-upon per-unit price for each of the three services to be provided by BURA to the homeowners; it did not state that City is required to hire BURA to perform any minimum number of services.

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