

IN THE MATTER OF THE CLAIM * BEFORE LORRAINE E. FRASER,
OF MARY BELL * AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND HOME * OF THE MARYLAND OFFICE
IMPROVEMENT GUARANTY FUND * OF ADMINISTRATIVE HEARINGS
FOR THE ALLEGED ACTS OR * OAH NO.: DLR-HIC-02-10-35745
OMISSIONS OF ANDREA * MHIC NO.: 09(56)1100
WILLIAMSON * *05*

* * * * *

RECOMMENDED DECISION

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STATEMENT OF THE CASE

On September 23, 2009, Mary Bell (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$27,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Andrea Williamson (Respondent).

I held a hearing on March 9, 2011 at the Largo Government Center, in Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010). Jessica Kaufman, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. Philip Murray, Esq., represented the Claimant. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010), Code of Maryland Regulations (COMAR) 09.01.03.01-09.01.03.10; 09.08.02.01-09.08.01.02; and 28.02.01.01-28.02.01.27.

ISSUE

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimant's behalf:

- Claimant Ex. 1 Recommended Decision of Richard O'Connor, 5/4/10
- Claimant Ex. 2 Judgment in Civil Case No. 0505-0016669-2007, District Court of Maryland for Prince George's County, 11/14/08
- Claimant Ex. 3 Contract, 11/24/06
- Claimant Ex. 4 Contract, 12/11/06
- Claimant Ex. 5 Cancelled checks: 11/8/06, 11/11/06, 11/30/06
- Claimant Ex. 6 Case Information, District Court of Maryland for Prince George's County; Complaint

I admitted the following exhibits on the Fund's behalf:

- Fund Ex. 1 Notice of Hearing, 12/7/10; Hearing Order, 9/17/10; returned certified mail
- Fund Ex. 2 Transmittal; Hearing Order, 9/17/10; Claim Form, 9/23/09
- Fund Ex. 3 Respondent's licensing history
- Fund Ex. 4 Letter to the Respondent from MHIC, 10/9/09; Claim Form, 9/23/09

The Respondent did not offer any exhibits into evidence.

Testimony

The Claimant testified.

The Respondent testified.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 01 72531.
2. In November 2006, the Respondent and Mack Johnson were building an addition on the house of one of the Claimant's neighbors. The Claimant asked the Respondent to give her an estimate to build an addition on her home. The Respondent told the Claimant they would build her addition after they finished building the neighbor's addition.
3. Mack Johnson is the Respondent's uncle. Mack Johnson is not and was not licensed by the MHIC.
4. On November 24, 2006, the Claimant and the Respondent entered into a contract for the Respondent to draw architectural plans for an addition to the Claimant's home.
5. The agreed upon contract price for the plans was \$2,400.00.
6. On December 11, 2006, the Claimant and Mack Johnson entered into a contract for M and J Construction/Elohim, Inc., to construct an addition to the Claimant's home. The contract listed the Respondent's MHIC number 72531.
7. The Respondent owns Elohim, Inc.
8. The contract identified the scope of work as follows: remove existing roof structure, frame interior and exterior walls for addition "as per plan," install windows and doors, install vinyl siding "as per plans," install all rough electrical, install all plumbing, install electrical and plumbing fixtures, install mechanical heating and air conditioning system, and install all flooring "as per plan." Cl. Ex. 4. The contract stated that work would begin on December 11, 2006 and would be completed by March 11, 2007.

9. The original agreed upon contract price was \$58,000.00.
10. On November 8, 2006, the Claimant paid the Respondent \$1,200.00 for the plans. On November 11, 2006, the Claimant paid M & J Construction \$19,300.00 for materials. Both the Respondent and Mack Johnson were present when the Claimant gave them the check for \$19,300.00. On November 30, 2006, the Claimant paid the Respondent \$1,200.00 for the plans.
11. The Respondent drew some architectural plans for the Claimant's addition; however, when the Claimant showed the plans to a licensed architect he told her that the plans could not be approved as drawn.
12. Neither the Respondent nor Mack Johnson performed any work for the Claimant pursuant to the building contract.
13. Neither the Respondent nor Mack Johnson returned any money to the Claimant.
14. The Claimant's actual loss is \$21,700.00.

DISCUSSION

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor." Md. Code Ann., Bus. Reg. § 8-405(a) (2010). *See also* COMAR 09.08.03.03B(2). Actual loss "means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Md. Code Ann., Bus. Reg. § 8-401 (2010). For the following reasons, I find that the Claimant has proven eligibility for compensation.

First, the Respondent was a licensed home improvement contractor at the time he entered into the contracts with the Claimant. The Respondent claimed that he did not receive the \$19,300.00 and he did not sign the December 11, 2006 building contract. However, the

Respondent admitted that he knew about the addition to the Claimant's home and knew the Claimant had given Mack Johnson \$19,300.00. The Respondent stated that he "probably was aware" Mack Johnson was using his MHIC license number. (Respondent's testimony.) The Respondent admitted that Elohim, Inc., was his company. The Respondent admitted he took \$2,400.00 from the Claimant.

MHIC's records show the Respondent was using Elohim, Inc., as a trade name. The Claimant credibly testified that the Respondent and Mack Johnson were present when they discussed the addition to her home and when she gave them \$19,300.00 for materials. Thus, I conclude that the Respondent was working with Mack Johnson performing home improvements and entering into home improvement contracts. I further conclude that the Respondent was aware that Mack Johnson was using the Respondent's trade name and MHIC number in the course of entering into contracts and performing home improvements. The Respondent's denials were not credible. The fact that the Respondent did not personally receive the \$19,300.00 is immaterial; it was received under his trade name and MHIC license number by his uncle, with whom he was working on home improvement projects.

Second, the Respondent performed an unworkmanlike, inadequate or incomplete home improvement to the extent that he produced architectural plans that were unusable. I note the plans themselves were not offered into evidence. The Respondent did not dispute that the plans were unusable and he admitted to taking \$2,400.00 from the Claimant. Moreover, the Respondent admitted no work was performed on the Claimant's home and no materials were purchased.

Having found eligibility for compensation, I now turn to the amount of the award, if any. The Fund may not compensate a claimant for consequential or punitive damages, personal

injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). One of those formulas, as follows, offers an appropriate measurement in this case:

"If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract." COMAR 09.08.03.03B(3)(a).

"If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor." COMAR 09.08.03.03B(3)(b).

The Claimant paid the Respondent \$2,400.00 for architectural plans that were unusable. Thus, I find those plans have no value. Further, the Claimant paid the Respondent and his uncle \$19,300.00 for materials that were never purchased. Moreover, no work was performed on the Claimant's home. Therefore, the Claimant's actual loss is the full amount she paid to the Respondent and his uncle: \$21,700.00.

The maximum amount recoverable from the Fund is \$20,000.00. Md. Code Ann., Bus. Reg. § 8-405(e)(1) (2010). Thus, the Claimant is entitled to recover \$20,000.00.

CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$21,700.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).

RECOMMENDED ORDER


I **PROPOSE** that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

ORDER that the records and publications of the Maryland Home Improvement Commission reflect this decision.

June 6, 2011
Date mailed


Lorraine E. Fraser
Administrative Law Judge

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PROPOSED ORDER

WHEREFORE, this 5th day of August 2011, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

Marilyn Jumalon

*Marilyn Jumalon
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION