

<p>IN THE MATTER OF THE CLAIM</p> <p>OF DERRELL & AMELDA</p> <p>MATTHEWS,</p> <p>CLAIMANTS,</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF JOSEPH RIEMAN</p> <p>T/A IRONWOOD BUILDERS, INC.</p> <p>RESPONDENT</p>	<p>* BEFORE MARY SHOCK,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH No: DLR-HIC-02-12-27578</p> <p>* MHIC NO: 10 (05) 183</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>
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STATEMENT OF THE CASE

On November 14, 2011, Derrell and Amelda Matthews (Claimants) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$20,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Joseph Reimer, t/a Ironwood Builders, Inc. (Respondent).

On January 16, 2013, I held a hearing at the Largo Government Center, 9201 Basil Court, Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2012). Claimant Amelda Matthews represented the Claimants. The Respondent represented himself. Hope Sachs,

Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

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. 2012), Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; and 28.02.01.

ISSUE

Did the Claimants 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 Claimants' behalf:

- CL #1 Complaint Form, August 4, 2009
- CL #2 Contract, March 21, 2008
- CL #3 Respondent HIC licensing information, August 4, 2009
- CL #4 Letters from DLLR to Claimant and Respondent, March 30, 2010, January 11, 2010, August 7, 2009
- CL #5 Taylor & Associates, Proposal, October 30, 2011
- CL #6 Twenty photographs of basement renovation
- CL #7 Photocopy of checkbook, check 1001, undated, and check 1004, October 8, 2008, Federal Credit Union, Posted Transactions, October 27, 2008 through March 28, 2008

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

- RSP #1 Magnificent Deck Company, Home Improvement Contract, undated

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

- FUND #1 Notice of Hearing and attachments, August 28, 2012, Certified Mail Receipt, returned "Not Deliverable as Addressed"
- FUND #2 Notice of Hearing and attachment, August 28, 2012, Regular Mail, returned, "No Such Street"
- FUND #3 Affidavit of Thomas Marr, IV, September 24, 2012

FUND #4 Notice of Hearing, October 2, 2012
FUND #5 Respondent's licensing history, January 14, 2013

Testimony

The Claimants testified on their own behalf. The Respondent testified on his own behalf.

The Fund did not call any witnesses.

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 #124095. (FUND #5.)
2. On March 21, 2008, the Claimants and the Respondent entered into a contract to renovate the Claimants' basement, including installing (CL #2):
 - a. wet bar
 - b. exercise room
 - c. bathroom, ceramic flooring, sink, toilet, shower
 - d. frame walls, insulation, drywall, trim, paint
 - e. relocate sprinkler pipes
 - f. electrical work
 - g. plumbing
 - h. heating, air conditioning, ventilation system
 - i. flooring
 - j. microwave and mini-refrigerator
3. The contract provided for an optional gas fireplace for an additional cost to be stated in a change order. (CL #2.)
4. The original agreed upon contract price was \$39,500.00. (CL #2.)
5. The Claimants paid the Respondent as follows: (CL #7.)

April 7, 2008	\$13,035.00
July 8, 2008	11,000.00
October 9, 2008	<u>11,964.00</u>
Total	\$35,999.00
6. The Respondent did not complete the work called for in the contract, including: (CL #5.)
 - a. doors – knobs, bedroom, bathroom, hall closet, door stops, matching hinges

- b. drywall – patch, repair
 - c. painting – new and repaired drywall, walls and ceilings, doors, frames, windows, molding, bar, bathroom
 - d. trim – base, casing, crown molding, mill-work where missing
 - e. handrail on stairs
 - f. flooring and carpet
 - g. bathroom accessories, medicine cabinet, towel bars, toilet paper holder, shower door, mirrors
 - h. plumbing – polyvinyl chloride (PVC) pipe for waste and vent for bar sink, water lines, icemaker, bar sink and faucet, toilets, bathroom sink
 - i. electrical – electrical switches, plugs, microwave circuit, cover plates, back-splash receptacles
 - j. HVAC system, registers and vent covers
 - k. cabinetry – base and upper wall cabinets in bar area, vanity sink, countertops
7. The cost to complete the home improvement totals \$28,335.00. (CL #5.)
8. Claimant’s actual loss is \$24,834.00.

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) (Supp.2012). *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 Claimants have proven eligibility for compensation.

First, the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. Second, the Respondent acknowledged that he performed incomplete home improvements. He stated that he was unable to do so for financial reasons.

Having found eligibility for compensation, I now turn to the amount of the award. 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). The following formula is the appropriate measurement in this case:

If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price[.]

COMAR 09.08.03.03B(3)(c).

The Claimants submitted a proposal from Taylor & Associates suggesting a total cost of \$38,385.00, to complete the work. (CL #5.) The Respondent noted a second proposal from Magnificent Deck Company suggesting a total cost of \$14,550.00 to complete the work. (RSP #1.) Also, the Respondent testified that the work was three-fourths complete.

I find that the Taylor & Associates proposal is more reliable than the Magnificent Deck Company proposal because it is more detailed. The proposal states exactly what work needs to be performed in specific categories such as drywall, painting, trim, flooring, electrical, plumbing, and cabinetry. The Magnificent Deck proposal describes the work more generally and includes installing the fireplace, finishing the wet bar, installing flooring – carpet and tile- and installing the bathroom tile floor, tile shower, vanity, and toilet. The proposal does not address specifics like the stairway railing, drywall, painting, electrical switches and covers. The photographs offered by the Claimants, demonstrate that those items need to be completed. (CL #6.)

Additionally, the Taylor & Associates proposal is consistent with the Claimants' testimony and the photographs they submitted into evidence. (CL #6.) For example, the Claimant's husband testified that there was no railing on the stairway, open wire throughout the basement, incomplete flooring, tile and cabinets, no water and electric at the bar, and incomplete installation of heater ducts, the exhaust system, and doors. Those conditions are shown in the photographs and documented in the Taylor & Associates proposal. While the Respondent stated that he completed most of the work, he failed to point out any items in the Taylor & Associates

proposal or the photographs that did not require further work to complete. For these reasons, I accept the Taylor & Associates' proposal as sufficient to show that it is more likely than not that the work listed is required to complete the work outlined in the parties' contract.

Also, both proposals address a gas fireplace. However, the original contract provided that the fireplace was optional, with the price to be added to the contract price as a change order. (CL #2.) The Claimants did not submit any evidence that the parties ever agreed to and signed a change order. Thus, I have subtracted \$5,200.00 for the fireplace masonry work that Taylor & Associates included in its proposal from the cost to complete the work.

Finally, the Taylor & Associates itemized costs include \$4,850.00 for decorating. That cost is not explained in the proposal and the Claimants did not state that decorating was part of their contract with the Respondent and that the Respondent failed to decorate as required. Thus, I have subtracted \$4,850.00 from the Taylor & Associates proposal, resulting in a total cost to complete the work of \$28,335.00. (\$38,385.00 less \$10,050.00 = \$28,335.00.)

The Claimants' actual loss is computed as follows:

Amount paid to Respondent	\$35,999.00
Amount to complete the work	<u>28,335.00</u>
Total	\$64,334.00
Contract price	<u>- 39,500.00</u>
Actual loss	\$24,834.00

In accordance with Maryland law, the maximum recovery from the Fund is limited to the lesser of \$20,000.00, or the amount paid by the Claimants to the Respondent. Md. Code Ann., Bus. Reg. §8-405 (e)(1) and (5) (Supp. 2012). Because the Claimants' actual loss exceeds \$20,000.00, they are only entitled to that portion of their actual loss from the Fund.

CONCLUSIONS OF LAW

I conclude that the Claimants have sustained a compensable loss of \$20,000.00 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 Claimants \$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.

Signature on File

March 13, 2013
Date Decision Mailed

Mary Shóek
Administrative Law Judge

MKS/kkc
#140892

IN THE MATTER OF THE CLAIM	* BEFORE MARY SHOCK,
OF DERRELL & AMELDA	* AN ADMINISTRATIVE LAW JUDGE
MATTHEWS,	* OF THE MARYLAND OFFICE
CLAIMANTS,	* OF ADMINISTRATIVE HEARINGS
AGAINST THE MARYLAND HOME	* OAH No: DLR-HIC-02-12-27578
IMPROVEMENT GUARANTY FUND	* MHIC NO: 10 (05) 183
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF JOSEPH RIEMAN	*
T/A IRONWOOD BUILDERS, INC.	*
RESPONDENT	*

* * * * *

FILE EXHIBIT LIST

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FUND #5 Respondent's licensing history, January 14, 2013

PROPOSED ORDER

WHEREFORE, this 18th day of April 2013, 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.

J. Jean White

*I. Jean White
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION