

IN THE MATTER OF THE CLAIM OF	*	BEFORE GERALDINE A. KLAUBER,
JORDAN T. PULASKI	*	AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND HOME	*	OF THE MARYLAND OFFICE
IMPROVEMENT GUARANTY FUND	*	OF ADMINISTRATIVE HEARINGS
FOR THE VIOLATIONS OF	*	OAH NO.: DLR-HIC-02-12-26108
HAMIDREZA MANSOURABADI, T/A	*	MHIC NO.: 10 (75) 968
SWAN VALLEY HOME	*	
IMPROVEMENT	*	

* * * * *

RECOMMENDED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
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CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On July 22, 2010, Jordan T. Pulaski (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$2,574.96 for an actual loss suffered as a result of home improvement work performed by Hamidreza Mansourabadi, t/a Swan Valley Home Improvement (Respondent).

A hearing was held on January 29, 2013, at the Wheaton location of the Office of Administrative Hearings (OAH), Wheaton, Maryland, before Geraldine A. Klauber, Administrative Law Judge (ALJ), on behalf of the MHIC. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2)(i) (2010). The Claimant appeared and represented himself. Eric

London, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the Fund. The Respondent failed to appear.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations of the DLLR, and the Rules of Procedure of the OAH. 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 09.08.03; COMAR 28.02.01.

ISSUE

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

SUMMARY OF THE EVIDENCE

Exhibits

The Claimant submitted the following exhibits, which I admitted into evidence:

Cl. #1 – July 3, 2006 contract between Claimant and Respondent for the remodeling of the master bathroom and widening of the hallway

Cl. #2 – September 2, 2009 contract between Claimant and Paul Davis Restoration and Remodeling

Cl. #3-3C – Eight photographs of work done by the Respondent and Paul Davis

Cl. #4 – Claimant's credit card statements for September 9, 2009 through November 9, 2009 reflecting payment to the Respondent

Cl. #5 – October 19, 2011 email from Charles Speake, Paul Davis Restoration, to Claimant

The Fund submitted the following exhibits, which I admitted into evidence:

Fd. #1 – December 7, 2012 Notice of Hearing

Fd. #2 – June 8, 2012 Hearing Order

Fd. #3 – MHIC Licensing History of Respondent

Fd. #4 – July 20, 2010 Home Improvement Claim Form

Fd. #5 – July 23, 2010 letter from MHIC to Respondent

Testimony

The Claimant testified on his own behalf.

The Fund called no witnesses.

FINDINGS OF FACT

Having considered the evidence, 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 with the MHIC.
2. At all times relevant to the subject of the hearing, the Claimant owned the property known as 14016 Beechvue Lane, Silver Spring, Maryland 20906 (the Property).
3. On July 3, 2006, the Claimant entered into a home improvement contract with the Respondent. The contract called for the completion of a master bathroom remodeling, including the installation of a roll-in shower, and the widening of a hallway.
4. The total contract price was \$22,450.00.
5. The Claimant paid the Respondent the full contract price.
6. In August 2009, while moving furniture in his daughter's room, the Claimant noticed dampness and mold growth on the wall that abuts the bathroom.
7. In August 2009, the Claimant contacted a mold remediation company to inspect the mold in the bedroom.
8. The Claimant contacted the Respondent on or about August 7, 2009 to report the problem. The Respondent did not return the Claimant's telephone call so he emailed the Respondent. The Respondent informed the Claimant that he would be out to the residence within the next several days to take a look at the shower. The Respondent never returned to the property.

9. Subsequent to the Claimant's contact with the Respondent, the mold remediation company provided the Claimant with an opinion that the mold developed from the leaking shower, which had not been waterproofed.
10. The Claimant hired the mold remediation company to perform the mold remediation work which included ripping out a portion of the bedroom wall and carpet and disinfecting the area. The Claimant's homeowners' insurance policy covered the cost of the remediation work.
11. On September 2, 2009, the Claimant entered into a contract with Paul Davis Restoration and Remodeling to repair the leaking shower by installing a waterproof membrane and reinstalling the same tile.
12. The Claimant paid Paul Davis Restoration and Remodeling \$2,574.96 for the repair of the shower.
13. On July 22, 2010, the Claimant filed a claim with the MHIC.
14. The Respondent's MHIC license expired on January 17, 2009 and has not been renewed or reinstated.

DISCUSSION

Neither the Respondent nor anyone authorized to represent the Respondent appeared for the hearing.

On August 28, 2012, the OAH mailed a Notice of Hearing (Notice) by certified and first class mail to the Respondent's address of record. The Notice advised the Respondent of the hearing on January 29, 2013 at 10:00 a.m. at 2730 University Boulevard, West, Suite 205 Wheaton, Maryland. The United States Postal Service (USPS) returned to the OAH the signed domestic return receipt card. The USPS did not return the copy of the Notice sent by first class mail. On December 7, 2012, the OAH reissued the Notice that noted a change of address of the January 29, 2013 hearing to 11510 Georgia Avenue, Suite 190, Wheaton, Maryland .The

domestic return receipt for certified mail was not returned by the USPS and the USPS did not return the copy of the Notice sent by first class mail. As of the date of the hearing, the Respondent had not requested a postponement of the hearing. The Respondent did not contact the OAH indicating that he had appeared at the location noted on the original Notice. I therefore find that service was proper and that the Respondent was on notice of the hearing. Consequently, I directed that the hearing proceed in the Respondent's absence pursuant to section 8-312(h) of the Business Regulation Article, section 10-209 of the State Government Article, and COMAR 09.01.02.07.

Section 8-405 of the Business Regulation article provides that an owner may recover compensation from the Guaranty 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. 2011). Section 8-401 defines "actual loss" as "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).

COMAR 09.08.03.03B governs the calculation of awards from the Fund:

B. Measure of Awards from Guaranty Fund.

(1) The Commission may not award from the Fund any amount for:

- (a) Consequential or punitive damages;
- (b) Personal injury;
- (c) Attorney's fees;
- (d) Court costs; or
- (e) Interest.

(2) The Fund may only compensate claimants for actual losses they incurred as a result of misconduct by a licensed contractor.

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

(a) 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.

(b) 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.

(c) 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, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurements accordingly.

In July 2006, the Claimant solicited the Respondent to remodel a master bathroom and widen a hallway. The Appellant is disabled and the remodeling of the bathroom included the installation of a roll-in shower that could accommodate the Claimant's wheelchair.

In August 2009, when moving furniture from the wall of his daughter's bedroom, the Claimant noticed moisture and mold on the walls and carpet. He contacted a mold remediation company that informed him that the source of the mold was moisture from the shower that abutted the bedroom wall.

The Claimant presented evidence that established that the Respondent constructed the shower in an unworkmanlike manner. The contractor who performed the repair work provided a written statement that the Respondent had not installed a waterproof membrane under the floor of the shower or behind the tile backer, allowing water to seep between the floor and wall. The Claimant offered photographs taken during the repair process that depicted the absence of waterproof membrane and the existence of mold. The photographs corroborated the Claimant's testimony and the written statement from Paul Davis Restoration's senior estimator. The

Respondent failed to appear at the hearing to offer any evidence to the contrary. Thus, I conclude that the Respondent constructed the shower without installing the necessary rubber membrane under the floor of the shower and behind the tile backer. The Respondent's failure to include a waterproof membrane constituted poor workmanship and allowed water from the shower to leak between the floor and the wall. The poor construction and leaking shower resulted in damage and mold growth on the wall and carpet of an abutting room. The Claimant's homeowner's insurance covered the cost of the mold remediation but did not cover the cost of the replacement of the shower. The Claimant paid a contractor \$2,574.96 to install the waterproof membrane and reconstruct the shower with existing tile.

Although the home improvement work was completed in or about July or August 2006, the Claimant did not file his claim until July 20, 2010. COMAR 09.08.03.02G provides that a claim may not be brought against the Fund after three years from the date that the claimant discovered, or by exercise of ordinary diligence should have discovered, the loss or damage. The Claimant testified credibly that he did not discover the leaking shower until he moved furniture away from his daughter's bedroom wall in August 2009 and saw mold growth on the wall. According to the Claimant, damage from the leaking shower did not manifest itself anywhere else in the home. Therefore, I conclude that there is no issue regarding the Claimant's lack of diligence in discovering the loss or damage and no statute of limitations issue with his claim against the Fund.

Although the Claimant was honest and stated that he thoroughly distrusted the Respondent's professionalism because he had installed a shower without waterproofing and therefore would not allow the Respondent to perform any repair work, he did notify the Respondent of the problems and asked him to come to the home to inspect the shower. The

Respondent failed to respond to the Claimant's offer. Thus, I find that the Claimant made a good faith effort to contact the Respondent and provide him with an opportunity to address the poor workmanship involved in his construction of the shower.

In calculating the Claimant's actual loss, I have applied the formula set forth in COMAR 09.08.03.03B (3) and have calculated the Claimant's actual loss as follows:

Amount paid under original contract	\$ 22,450.00
	+
Reasonable cost to complete work	<u>\$ 2,574.96</u>
	<u>\$25,024.96</u>
	-
Original contract price	<u>\$22,450.00</u>
	\$ 2,574.96

CONCLUSION OF LAW

I conclude as a matter of law that the Claimant has sustained an actual loss of \$2,574.96 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010); COMAR 09.08.03.03B(c)(3). I further conclude as a matter of law that the Claimant is entitled to an award of \$2,574.96 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1) (Supp. 2011).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$2,574.96; 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

February 7, 2013
Date Decision Issued

Geraldine A. Klauber
Administrative Law Judge

GAK/fe
#140311

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FILE EXHIBIT LIST

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PROPOSED ORDER

WHEREFORE, this 2nd 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.

Joseph Tunney

*Joseph Tunney
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION