

IN THE MATTER OF THE CLAIM OF * BEFORE ANN C. KEHINDE,
 JASON AND CHRISTINE CARR * 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-02-13-08859
 OMISSIONS OF TROY HALL, t/a * MHIC NO.: 11(90)763
 TRUSTWORTHY HOME *
 IMPROVEMENT COMPANY, *
 RESPONDENT *

* * * * *

RECOMMENDED DECISION

STATEMENT OF THE CASE
 ISSUE
 SUMMARY OF THE EVIDENCE
 FINDINGS OF FACT
 DISCUSSION
 CONCLUSIONS OF LAW
 RECOMMENDED ORDER

STATEMENT OF THE CASE

On August 8, 2011, Christine and Jason Carr (Claimant¹) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$21,782.00 for actual losses allegedly suffered as a result of a home improvement contract with Troy Hall, t/a Trustworthy Home Improvement Company (Respondent).

I held a hearing on July 22, 2013, at the Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2012). The Claimant

¹Although the claim was in Jason and Christine Carr's names, only Ms. Carr testified. Ms. Carr inherited the property after her husband, Jason's father, died; Ms. Carr had all the interactions with the Respondent. I will therefore use Claimant throughout the Decision for ease of reference to refer to Christine Carr, unless otherwise noted.

represented herself. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Respondent failed to appear after notice of the hearing was properly sent to him.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, 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. 2013); Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; and 28.02.01.

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:

1. Home Improvement Claim Form, dated July 25, 2011
2. Summary of payments to and on behalf of Respondent
3. Payments and purchases (section III in Claimant's binder)
4. Claimant's attempts to contact Respondent (section IV in Claimant's binder)
5. Complaint Form (section V in Claimant's binder)
6. Contract
7. Affiliation Agreement between Joe Chavis and Troy Michael Hall, dated June 6, 2010
8. JJH Consultant report
9. Pictures (A through H)

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

1. Notice of Hearing, dated April 26, 2013²
2. Respondent's Licensing History Letter
3. Hearing Order, dated January 30, 2013

There were no documents from the Respondent as he failed to appear for the hearing.

Testimony

Christine Carr testified in support of the claim and also presented the testimony of the following witnesses: Jeff Isola, JT Waterworks, Inc.; Robert Miller, Comfort Masters Heating & Cooling, Inc.; and, John Heyn, licensed home inspector. The Fund did not present 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 01-48454. On April 9, 2012, the Respondent relinquished his contractor's license.
2. In 2005, Jason Carr and his father bought the property at 518 S. Montford Avenue, Baltimore, Maryland 21224. The plan was to completely gut the property and renovate it as a learning project for the son. They gutted the property, worked on some load-bearing walls, framed the walls and put in windows. In 2007, Jason Carr's father was diagnosed with cancer and all work on the property ceased. After Mr. Carr died, Claimant Christine Carr, his widow, inherited his interest in the property.

² The April 26, 2013 Notice of Hearing was sent to a new address for the Claimants. An earlier Notice of Hearing, dated March 20, 2013, was sent to the parties and a certified mail return receipt was signed by the Respondent on April 2, 2013, and returned to the OAH by the U.S. Postal Service and is part of the case file. The Respondent's address on the March 20, 2013 Notice (which he received and signed for) was the same address used on the April 26, 2013 Notice.

3. In May of 2010, the Claimant contracted an inspector to inspect the property and determined what needed to be done to bring the property up to code.

4. On or about May 11, 2010, the Claimant met with Joe Chavis who told the Claimant that he had a partner with a home improvement contractor's license.

5. On or about June 6, 2010, the Claimant met with Mr. Chavis and the Respondent. The Respondent introduced himself as Mr. Chavis' partner. Mr. Chavis gave the Claimant a written "affiliation agreement" stating that Mr. Chavis worked under the Respondent's home improvement contractor's license. A copy of the Respondent's home improvement contractor's license was part of the agreement.

6. On June 6, 2010, Mr. Chavis and the Claimant signed a contract for the following work to be performed on the property: remove bump-out to first floor rear; make necessary repairs to framing; install insulation into ceiling and walls; install French doors to second floor rear; hang, finish and paint sheetrock to walls and ceilings; install all interior doors, trim and casings where needed; finish interior fittings of closets; install hard wood floors throughout; install ceramic tile to both bathrooms; install kitchen cabinets; clean out and fill holes in basement, paint basement walls and floors; wrap exterior windows and doors with metal; remove all debris from rear yard; close off area on way to basement with block and concrete; build deck on upper rear of building; and, apply stucco to rear and side of house.

7. The total contract price was \$44,000.00 with \$11,000.00 to be paid as a deposit and a first draw of \$11,000.00 to be made after the sheetrock, doors and trim were completed. The contract also provided that a second draw of \$11,000.00 was to be made after the hardwood and ceramic tile floors were installed, cabinets were installed, and the basement and exterior work were done. The final balance of \$11,000.00 was due when the work was completed. As the

work began, the parties orally agreed to change orders in the amount of \$3,800.00 for additional work. The total contract price was then \$47,800.00

8. On June 8 and 17, 2010, and on July 6, 2010, the Claimant made payments directly to Mr. Chavis in the amount of \$33,000.00. The Claimant made additional payments to Mr. Chavis for the change orders of \$2,000.00 on June 17, 2010; \$1,800.00 on July 6, 2010; and, \$200.00 on August 22, 2010. The Claimant paid \$37,000.00 directly to Mr. Chavis.

9. Mr. Chavis, or workers associated with Mr. Chavis, worked on the property starting in June 2010 through September 2010. Mr. Chavis did not perform any work on the property after October 2010. At the time Mr. Chavis and his workers stopped working, the following work was left incomplete or unworkmanlike: HVAC not installed; tile was not installed in the bathrooms; vanities were incorrectly measured by contractor and could not be installed in the bathroom because they did not fit (they were left unpacked and ultimately damaged); toilets were not installed; a tub was installed in the basement against an outside wall (no way to access plumbing) and left unprotected; joists had been cut off in the basement and needed "sistering"; the sump pump was improperly installed and in the wrong location; the water heater blocked access to the ejector pump and the ejector pump and piping were incomplete; the furnace was set on a rotted wood base instead of a masonry base; no railing was installed on the main stairs; mortar and paint primer damaged the steps and the final treads were not installed or finished; there was no kitchen sink installed or plumbing for a hot and cold drain line, no dishwasher or exhaust fan was installed in the kitchen; kitchen cabinets were damaged by the workers; the transom was incomplete on the front door; the porch railings on the rear of the house were split and crooked and the posts needed to be replaced; a fence nail pierced the 200 amp main electric cable and was a fire/safety hazard; the hatch cover to the basement leaked; debris was left in the rear yard; first floor duct work and crown molding was left unfinished; the walls were primed but no final coat

of paint applied, the hardwood flooring was incomplete and mismatched during installation; sheetrock was damaged when the hardwood floors were installed; a window was not installed in the back bedroom; doors and hardware were not installed; and there were no electrical outlet covers or plates installed throughout the house.

10. The Claimant made the following payments on behalf of Mr. Chavis for work or materials supplied by others that were part of the contract with Respondent:

- a. Mosaic Tile - \$539.59 on April 20, 2010
- b. Baltimore Windows (kitchen cabinets) - \$2,432.76 on October 19, 2010
- c. Wood Floors Plus - \$842.24 on November 4, 2010; and \$320.55 on November 8, 2010
- d. Classic Granite - \$1,255.31 on November 20, 2010
- e. Electric work - \$400.00 on April 21, 2011 and \$320.00 on April 24, 2011
- f. Comfort Masters Heating & Cooling (HVAC) - \$1,100.00 on July 25, 2011
- g. JT Waterworks - \$2,000.00 on August 9, 2011

11. The Claimant paid a total of \$46,210.45 to Mr. Chavis, or to others on behalf of Mr. Chavis, for the work specified in the contract.

12. The Claimant made sixty-seven telephone calls in October and November 2010 to try and get him to finish the work.

13. On November 27, 2010, the Claimant went to the Respondent's home in Bel Air, Maryland, to try and get the Respondent to finish the work.

14. The Respondent agreed to meet with the Claimant. The Respondent met with the Claimant in December 2010 and tried to get Mr. Chavis to finish the work. Neither Mr. Chavis nor the Respondent finished the work.

15. On March 21, 2011, the Claimant hired John Heyn, a licensed home inspector to inspect the property.

16. The Claimant paid \$17,796.98 to other contractors to complete the Respondent's incomplete and unworkmanlike home improvement performance. The Claimant incurred consequential damages to her roof and kitchen cabinets as a result of the Respondent's unworkmanlike performance. The Claimant also hired a consultant to determine how to proceed with finishing the project after the Respondent failed to complete it.

DISCUSSION

Respondent's Failure to Appear:

A contractor is required to notify the MHIC within ten days of any change in address. Md. Code Ann., Bus. Reg. § 8-309 (2012). Notice of a hearing must be sent to the contractor at least ten days "before the hearing by certified mail to the business address of the licensee on record with the Commission [MHIC]." Md. Code Ann., Bus. Reg. § 8-312(d) (2012).

On March 20, 2013, a Notice of Hearing was sent to the Respondent's address of record advising him that a hearing in this matter would be held on July 22, 2013. The Notice was sent by certified and regular mail. On April 4, 2013, the OAH received a return receipt for certified mail signed and dated by the Respondent on April 2, 2013. Therefore, the Respondent received actual notice of the July 22, 2013 hearing at least ten days prior to the scheduled hearing. The case proceeded despite the Respondent's failure to appear. Md. Code Ann., Bus. Reg. § 8-312(h) (2012).

Merits of Claim:

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) (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). A claimant may not recover an

amount in "excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed." Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2012). For the following reasons, I find that the Claimant has proven eligibility for compensation.

First, although Mr. Chavis signed the contract with the Claimant, the Respondent gave Mr. Chavis "permission" to work under his contractor's license. (Claimant's Ex. 7). Further, the Claimant testified that the Respondent was with Mr. Chavis on June 6, 2010, and was introduced as Mr. Chavis' partner on the day the contract was signed.

Second, there is no dispute that the work on the property was incomplete and unworkmanlike. Mr. Heyn testified in detail about the incomplete and unworkmanlike performance and reviewed pictures that clearly showed the deficient and incomplete performance. There is also no dispute that the Claimant repeatedly tried without success to persuade Mr. Chavis and, when that proved unsuccessful, the Respondent to finish the work.

Having found that the Claimant proved the Respondent's performance was incomplete, 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).³ The Claimant may not collect from the Fund an amount greater than was paid by the Claimant to the Respondent for the work done. Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2012).

The MHIC argued that the formula used in COMAR 09.08.03.03B(3)(c) should determine the Claimant's award. That formula involves adding the amount the Claimant has

³ Unfortunately, the Claimant has incurred many expenses in this case that are not compensable by the Fund. For example, the washer and dryer were stolen from the basement by the workers, and there was damage to the roof by improper venting, as well as damage to the new kitchen cabinets.

paid to the amount the Claimant paid to other contractors to complete the contract.⁴ Applying the formula from COMAR 09.08.03.03B(3)(c) results in an award of \$16,207.43, as calculated below:

Amount paid to Respondent or on Respondent's behalf	\$46,210.45
Plus reasonable amount to repair/complete	17,796.98
Total	\$64,007.43
Minus cost of original contract	\$47,800.00
Actual Loss	\$ 16,207.43

The Claimant argued that she is entitled to an award that is more than \$16,000 because she has had to pay well over \$60,000.00 to finish the contract, they are still finding things that were done wrong, and they will never recoup all of damages caused by the Respondent. Further, she noted that Mr. Heyn testified that the work that was done by the Respondent was both unworkmanlike and incomplete.

The Fund acknowledged that if Mr. Heyn's valuation was used, the Claimant would be entitled to a larger award. Mr. Heyn testified that although the Claimant paid the Respondent \$37,000.00, the value the Claimant received was only half of what she paid him, or \$18,500.00. Under COMAR 09.08.03.03B(3)(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."

⁴ COMAR 09.08.03.03B(3)(c) provides: "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. 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 measurement accordingly."

The problem with using COMAR 09.08.03.03B(3)(b) is that the Claimant did solicit other contracts to complete the contract. Further, although the Claimant argued that she had to pay over \$60,000.00 to complete the contract, she has not documented those costs.⁵ Claimant's Exhibit 2 documents \$17,796.98 in "additional costs to complete" the contract.⁶ Therefore, I conclude COMAR 09.08.03.03B(3)(c) is the appropriate formula to use and under that calculation, the Claimant has documented that she is entitled to an award in the amount of \$16,207.43.

CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$16,207.43 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 \$16,207.43; 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

⁵ In addition, the Fund may not award more than \$20,000.00 to any one claimant for the acts or omissions of one contractor. Code Ann., Bus. Reg. § 8-405(e)(1) (2012).Section 8-405(e)

⁶ The Claimant also included a payment of \$2,400 to Tony Fluers for roof damage but as this was a consequential damage, it is non-compensable from the Fund. Similarly, the Claimant may not recover \$500.00 for damaged kitchen cabinets or \$500.00 she paid for home improvement documentation and consultation.

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

Signature on File

October 21, 2013
Date decision mailed

Ann C. Kehinde
Administrative Law Judge

ACK/emh
#145646

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EXHIBIT LIST

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