

IN THE MATTER OF THE CLAIM	* BEFORE MARY R. CRAIG,
OF ANTHONY L. LAWRENCE,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF JAMES REXRODE,	*
T/A REXRODE REMODELING,	* OAH No.: DLR-HIC-02-14-19361
RESPONDENT	* MHIC No.: 12(05)142

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On April 4, 2014, Anthony L. Lawrence (Claimant), filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$16,304.17 in alleged actual losses suffered as a result of a home improvement contract with James Rexrode, t/a Rexrode Remodeling (Respondent).<sup>1</sup> On May 29, 2014, the MHIC issued a Hearing Order against the Respondent. The MHIC transmitted the case to the Office of Administrative Hearings (OAH) for a hearing. The OAH received the case on June 2, 2014.

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<sup>1</sup> The Claim also referenced Daniel Rexrode, who is not a licensed home improvement contractor. The MHIC did not issue a Hearing Order against Daniel Rexrode. The Claim is an amended version of the Claimant's initial \$14,074.74 claim, which was received by the MHIC on March 4, 2014.

I held a hearing on December 9, 2014 at the Hunt Valley, Maryland offices of the OAH. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2010 and Supp. 2014). Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. Brennan W. Walter, Esquire, D'Alesandro & Miliman, P.A., represented the Claimant. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 28.02.01.

### ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of that loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

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

- Clmt. Ex. 1 - Contract, May 12, 2011
- Clmt. Ex. 2 - Claimant's \$8,000.00 check, May 12, 2011
- Clmt. Ex. 3 - Claimant's \$7,000.00 check, June 3, 2011
- Clmt. Ex. 4 - Interior photographs of the House (photographs M, N, O, W, X were not offered or admitted)
- Clmt. Ex. 5 - Photograph of sample kitchen cabinets
- Clmt. Ex. 6 - Report from Highland Renovations, with photographs, December 20, 2011
- Clmt. Ex. 7 - Itemization of Damages:
  - Highlands Renovations Invoice, December 19, 2011;
  - Receipts from Lowe's and Home Depot, various dates;
  - Direct Buy Invoice, May 8, 2012;
  - The Tile Shop Invoices, September 11, 2012, October 24, 2012;
  - Andonian's Carpet Warehouse Invoice, November 2, 2012;
  - Accurate Heating & Air Conditioning Invoice, September 30, 2011;
  - Mosaic Tile Invoice, December 7, 2012;
  - BD&Save Contract, November 15, 2011;

- Dundee Corporation Proposals and Receipts, November 14, 2012;
- Highlands Renovations Invoice, December 19, 2011;
- Lawrence Renovations Proposal, December 20, 2011;
- The Tile Shop Invoice, September 11, 2012;
- BGE Home Invoice, date illegible

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

- Fund Ex. 1 - Returned certified mail copy of Notice of Hearing and Hearing Order, mailed October 6, 2014
- Fund Ex. 2 - Respondent's licensing history
- Fund Ex. 3 - Letter from HIC to Respondent, April 23, 2014, with Claim, Amended Claim, and Itemization of Damages

The Respondent offered no exhibits for admission into evidence.

### Testimony

The Claimant and the Respondent testified.

The Fund did not present a witness.

### **PROPOSED 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 91999.
2. At all relevant times, the Claimant has resided at his home, 5503 Cedella Avenue, Baltimore, Maryland 21206 (House).
3. On May 12, 2011, the Claimant (with his wife, Deborah Lawrence) and the Respondent entered into a contract (Contract) to perform the following work at the House:
  - a. renovate the kitchen "per plan and drawings provided" including new cabinets, counter, sink and opening up one wall;
  - b. renovate one bathroom, including new tub, tile, toilet, vanity, medicine cabinet, paint, faucet and diverter;
  - c. install new hardwood flooring throughout the first floor;

- d. paint all first floor paneling;
  - e. all necessary demolition and removal of all debris; and
  - f. install three recess lights over the kitchen peninsula. Clmt. Ex. 1.
4. The Contract was written by Jay Hamilton, one of the Respondent's employees who acted on behalf of Rexrode Remodeling at all relevant times.
5. The Respondent's work at the House was performed by the Respondent's employees.
6. The Respondent was not involved in the day-to-day work at the House.
7. The Contract required the Respondent to start the work as soon as possible and to complete the work in 30 days.
8. The Claimant agreed to pay the Respondent a total of \$19,700.00 as follows:
- a. \$8,000.00 upon signing of the Contract;
  - b. \$7,000.00 upon completion of half the work and before the cabinets arrive;
  - c. \$3,000.00 upon completion and acceptance of the work by the Claimant; and
  - d. \$1,700.00 at the end of the work.
9. The Claimant paid the Respondent as follows:
- a. \$8,000.00 on May 12, 2011 (Clmt. Ex. 2); and
  - b. \$7,000.00 on June 3, 2011 (Clmt. Ex. 3).
10. The Respondent's employees began work at the end of May 2011.
11. The Respondent demolished the existing bathroom, and removed the radiator, sink, bathtub and vanity from the bathroom. The Respondent removed the bathroom floor tile.
12. The Respondent installed a new bathtub, tile floor, and tile on the wall around the bathtub.

13. The Respondent did not install a new radiator or any other source of heat in the bathroom.
14. The Respondent removed the bathroom sink and did not replace it.
15. The Respondent installed new tub faucets incorrectly so that there was no hot water in the bathroom tub.
16. The Respondent installed a new toilet in the bathroom. The toilet seat was not secured correctly, causing it to shift and break.
17. The threshold installed beneath the door in the bathroom by the Respondent was not flush with the bottom of the bathroom door. There was a visible gap between the threshold and the bottom of the door.
18. The Respondent removed the existing carpet from the first floor of the House.
19. The Respondent did not install new flooring on the first floor of the House.
20. The Respondent removed the railing on the side of the steps from the first to second floor of the House. The Respondent did not replace the railing.
21. The Respondent installed a new electrical outlet on the wall at the bottom of the stairs on the first floor and in the dining room. The Respondent did not cover the outlet.
22. The Respondent demolished the existing kitchen.
23. At the end of June 2011, one of the Respondent's employees, Jay Hamilton, emailed the Claimant a photograph of the kitchen cabinets, promising that the Respondent would install them in the kitchen. Cl. Ex. 6. Mr. Hamilton, on behalf of the Respondent, told the Claimant that the Respondent would purchase and install four base cabinets and four upper cabinets. The Respondent did not purchase or install any kitchen cabinets or counters.
24. The Respondent installed new electrical outlets in the kitchen but did not cover the electrical outlets.

25. The Respondent prepared the walls on the first floor of the House for painting, primed the walls and began (but did not finish) painting.

26. The Respondent left construction debris in the House.

27. The Respondent installed crown molding in the living room. The crown molding was sloppily done so that some of the pieces were uneven.

28. The Respondent's employees intermittently worked at the House. Sometimes the Respondent's employees would work for several days and then not return to the House for a week or more. The Respondent's employees performed no work at the House after July 2011.

29. Throughout the time period beginning at the end of May 2011 and ending at the end of August 2011, the Claimant called the Respondent and left messages, asking when the job would be completed.

30. James Rexrode sent his brother, Daniel Rexrode, to meet with the Claimant around the end of July. They discussed the work that had been performed and the missing kitchen cabinets. Based on that conversation, James Rexrode concluded that the cabinets the Claimant expected to be installed were too expensive, i.e., that if he provided those cabinets, Rexrode Remodeling would lose money on the project. James Rexrode refused to honor the Claimant's request that he provide the cabinets shown in the photograph that Mr. Hamilton had emailed to him in June 2011.

31. The Claimant paid a total of \$19,349.17 to repair and restore the House after the Respondent abandoned the job. The Claimant performed some of the work himself.

32. The cost to complete, repair and restore the work that the Respondent agreed to perform under the Contract consisted of the following:

- a. \$909.36 - caulk, hardware, paint and miscellaneous construction items from Home Depot;

- b. \$5,750.00 – paid to Dundee Corp. for installing kitchen cabinets and appliances, plumbing, electrical and carpentry work pursuant to contract dated November 14, 2012;
  - c. \$2,523.00 – paid to Dundee Corp. to purchase and install granite counters in the kitchen and one kitchen sink pursuant to contract dated November 14, 2012;
  - d. \$945.00 – paid to Accurate Heating & Air Conditioning to install a new radiator in the bathroom pursuant to invoice dated September 30, 2011;
  - e. \$680.02 – paid to The Tile Shop for kitchen tile pursuant to invoices dated September 11, 2012 and October 24, 2012;
  - f. \$140.00 – paid to BGE Home Products;
  - g. \$2,721.25 – paid to Andonian’s Carpet Warehouse for sanding and applying polyurethane coating to first floor and installing kitchen tile pursuant to invoice dated November 2, 2012;
  - h. \$376.98 – paid to Mosaic Tile for labor and materials to finish tile on bathroom wall pursuant to two invoices dated December 7, 2012;
  - i. \$603.98 – paid to Lowe’s for miscellaneous construction items, e.g., hardware; and
  - j. \$4,699.58 – paid to DirectBuy for maple kitchen cabinets and hardware.
33. The Claimant’s actual loss is \$14, 649.17.

### 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. 2014). *See also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct

by a licensed contractor”). 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.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. The Respondent was not involved in the negotiations for the Contract or its drafting. Those acts were performed by Mr. Hamilton, whom the Respondent conceded was his agent. The Contract is somewhat vague, e.g., it calls for the installation of a new bathroom, but does not specify the type or quality of the materials to be provided. However, as Mr. Hamilton was authorized to negotiate and sign the Contract on behalf of Rexrode Remodeling, the Contract is binding on the Respondent. *Walton v. Mariner Health of Maryland, Inc.*, 391 Md. 643 (2006).

The Respondent testified that he never met the Claimant; the Contract was signed on his behalf by Mr. Hamilton. The Respondent testified that, in his opinion, the Contract was too vague. It did not specify the work to be performed, leading to confusion and disagreement. As explained above, I have concluded that there was a meeting of the minds between the parties about the work to be performed by the Respondent’s employees at the House. My conclusion is that, if the Respondent had been involved in the negotiations, he would have charged the Claimant more than the agreed contract price. However, the Contract was signed by an agent or employee of the Respondent, acting on behalf of his home improvement business. The Respondent is bound by its terms, even if the Contract did not turn out to be beneficial to the Respondent. The Claimant was entitled to insist that the Respondent perform under the Contract, but the Respondent clearly did not.



The Claimant clearly and credibly testified to the terms of the Contract. The Respondent disputed that the Contract price was reasonable to cover the cost of installing a new kitchen, especially kitchen cabinets. The Claimant produced Clmt. Ex. 5, which he identified as a photograph of the cabinets which Mr. Hamilton told the Claimant the Respondent would purchase and install under the Contract. I conclude that the Claimant proved by a preponderance of the evidence the work the Respondent agreed to perform at the House, including cabinets comparable to those shown in the picture that Mr. Hamilton emailed to the Claimant.

The Respondent performed unworkmanlike, inadequate and incomplete home improvements. The Claimant proved that the Respondent performed work under the Contract in an unworkmanlike manner. The Contract involved renovations to the bathroom, kitchen and first floor living room and dining room. The Respondent demolished the bathroom at the House, removing the bathtub, toilet, and vanity, including the sink. Additionally, the Respondent removed the radiator in the bathroom, which provided the only source of heat in the room. In the kitchen, the Respondent removed the existing kitchen. The Respondent removed the existing wall-to-wall carpet in the living room and dining room. The switch plates covering the electrical outlet and wall switches were removed by the Respondent. The hand railing along the steps from the first to the second floor of the House was removed.

In the bathroom, the Respondent installed a bathtub, toilet, and tile on the floor and the wall surrounding the bathtub. The bathtub installed by the Respondent was not properly secured, so that the tub moved when it was occupied by a bather. The threshold under the bathroom door installed by the Respondent was too small, leaving a gap between the bottom of the door and the top of the threshold. The tile on the wall was unfinished, leaving a jagged edge. The faucets in the bathtub were installed improperly so that no hot water came out of the faucet.

The Respondent performed incomplete home improvements. After the end of July 2011, the Respondent abandoned the home improvement Contract. The Respondent did not install a bathroom sink, a new radiator or re-install the old radiator, so that the bathroom had no heat. The Respondent removed the carpet from the living room and dining room, left debris, and did not install new flooring. The Respondent did not paint the living room and dining room. A major omission occurred in the kitchen. The Respondent did not install new kitchen counters and cabinets. Some electrical outlets were left exposed, with some live electrical wires exposed.

The Claimant obtained a report from Highland Renovations, a licensed home improvement contractor, detailing the unworkmanlike and incomplete home improvements at the House. The Highland report, accompanied by annotated photographs, clearly and convincingly corroborated the Claimant's testimony about the incomplete and unworkmanlike work performed at the House. Clmt. Ex. 6.

James Rexrode testified that on the sole occasion when he spoke with the Claimant, he told the Claimant that he wanted to try to resolve the dispute with him. The Claimant said he was finished trying to work with the Respondent. This conversation did not occur in a vacuum. It occurred several months after the work started, which I have found was the end of May 2011. By inference, therefore, the sole conversation between the Claimant and James Rexrode occurred around the end of July 2011. By that point, the Claimant had made many telephone requests to the Respondent's office telephone number to have the work finished. The Claimant had already met with Daniel Rexrode and explained the cabinets which Mr. Hamilton had promised him. Daniel Rexrode had conveyed that information to James Rexrode.

James Rexrode testified that the hot water problem in the bathroom faucet, missing railing, and incomplete paint were "punch list items," which could have been easily remedied if the Claimant had permitted it. He admitted that the missing vanity, missing kitchen cabinets, and

unfinished floor were not punch list items. He explained that the electrical outlets were left uncovered because his company had not finished painting.

Mr. Rexrode acknowledged that the Claimant called his company's telephone number multiple times, leaving messages for him. Mr. Rexrode sent his brother, Daniel, to the Claimant's house, in an attempt to satisfy the Claimant. According to Mr. Rexrode, the Claimant and Daniel Rexrode could not come to an agreement about the type of kitchen cabinets to be installed "within the budget," and that is where the breakdown occurred.

I found Mr. Rexrode to be credible. He admitted that he received \$15,000.00 from the Claimant, but he only performed \$10,000.00 worth of work at the House. However, I conclude that Mr. Rexrode's view of his obligations under the Contract is not supported by the law. He thinks that there was no agreement between the parties about the quality of the kitchen cabinets. Mr. Rexrode admitted he did not know what Mr. Hamilton verbally promised the Claimant. He was also unaware that Mr. Hamilton had emailed the Claimant a picture of the cabinets promised under the Contract. Again, the Respondent is responsible for the representations made on his behalf by Mr. Hamilton.

Based on all the evidence, I conclude that the Claimant did not refuse to permit the Respondent to perform the work under the Contract. The Claimant reasonably concluded that James Rexrode was not willing to honor the Contract, especially as it pertained to the kitchen cabinets.

I thus find that the Claimant is eligible for compensation from the Fund. Having found eligibility for compensation I now turn to the amount of the award, if any, to which the Claimant is entitled. 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 provide three formulas for measurement of a claimant's actual loss. COMAR

09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss 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.

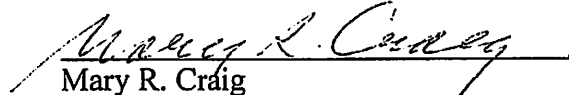
COMAR 09.08.03.03B(3)(c).

The Claimant proved that he purchased some items and did some of the work himself. He was unable to describe every small item purchased from Lowe's and Home Depot, but the Claimant testified credibly that, when he purchased items for the repairs to the House, he kept the receipts in an envelope. I listened to the Claimant's testimony carefully, and I conclude that it is entitled to weight. The Claimant was certainly treated wrongly by the Respondent, but he did not exaggerate the extent of the unsatisfactory work performed. There were no items included in my calculation of the amount of the Claimant's loss that were outside the scope of the work the Respondent agreed to perform under the Contract.

The Claimant proved that he purchased some materials which were installed by others. The Claimant hired Accurate Plumbing to install a radiator in the bathroom and get the heat working in that room. He had the living room and dining room floors sanded and coated with polyurethane by Andonian's Carpet. The Claimant bought kitchen cabinets from DirectBuy, which were installed in the kitchen by Dundee Corp. That contractor also provided and installed granite countertops in the kitchen. I have examined the invoices and receipts produced by the Claimant, and I am convinced that they accurately reflect the cost to repair the unworkmanlike home improvement services provided by the Respondent.

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

February 23, 2015  
Date Decision Issued

  
Mary R. Craig  
Administrative Law Judge

MRC/cj  
#154524

Applying the correct formula, I calculate the Claimant's actual loss as follows:

\$15,000.00	the amount the Claimant paid to the Respondent under the Contract
+19,349.17	plus the reasonable amount the Claimant paid to repair poor work done by the Respondent under the Contract and complete the original Contract
- 19,700.00	less the original Contract price.
\$14,649.17	Claimant's actual loss

Pursuant to the Business Regulation Article, the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Md. Code Ann., Bus. Reg. § 8-405 (e)(1), (5) (Supp. 2014). The Claimant paid the Respondent \$15,000.00, so his actual loss of \$14,649.17 is compensable by the Fund. Accordingly, the Claimant is entitled to reimbursement of \$14,649.17 from the Fund. Md. Code Ann., Bus. Reg. § 8-405 (e)(5) (Supp. 2014).

#### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$14,649.17 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 and 8-405 (2010 & Supp. 2014).

#### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$14,649.17; 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 (10%) 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 23, 2015  
Date Decision Issued

\_\_\_\_\_  
Mary R. Cráig  
Administrative Law Judge

MRC/ej  
#154524

**PROPOSED ORDER**

***WHEREFORE, this 25th day of March 2015, 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**