

<p>IN THE MATTER OF THE CLAIM</p> <p>OF AMY R. SANCHEZ,</p> <p>CLAIMANT,</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF PATRICK PERKINS,</p> <p>t/a JOB ONE CONSTRUCTION &</p> <p>RENOVATION, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE DEBORAH H. BUIE,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH NO.: DLR-HIC-02-14-27227</p> <p>* MHIC NO.: 12(75)607</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>
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PROPOSED DECISION

STATEMENT OF THE CASE
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FINDINGS OF FACT
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STATEMENT OF THE CASE

On February 22, 2012, Amy R. Sanchez (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of actual losses allegedly suffered as a result of a home improvement contract with Patrick Perkins, t/a Job One Construction & Renovation, LLC (Respondent).¹

¹ Due to an unexplained delay, the claim was not time-stamped by the MHIC until April 9, 2014 and thereafter, on July 25, 2014, the matter was referred for a hearing.

I held a hearing on January 28, 2015 at the Maryland Department of Agriculture in Annapolis, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2010 & Supp. 2014). Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented herself. The Respondent failed to appear.

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.

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

An Exhibit List is attached to this Proposed Decision.

Testimony

The Claimant testified in support of the Claim. The Fund presented no witnesses. No testimony was presented on the Respondent's behalf.

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 home improvement contractor, licensed by the MHIC.

2. The Claimant owns a house located at 203 Hawthorne Road, Linthicum Heights, Maryland (the Property). Her husband, Sergio, is co-owner.
3. On or about September 19, 2011, the Claimant and her husband entered into a home improvement contract (the Contract) with the Respondent to renovate the unfinished basement of their recently purchased Property, to include: framing and drywall, lighting, plumbing for a full bath, installation of doors, carpet and tile, and painting (the Work).
4. The agreed-upon Contract price was \$20,160.00. The Claimant paid \$9,080.00 as a deposit upon signing the Contract.
5. The Work began approximately two days later with the construction of the framing. On September 27, 2011, the Respondent requested an additional \$7,000.00 for the drywall. The Claimant paid the \$7,000.00 and, thereafter, some drywall was installed and openings for electrical outlets were done. The Respondent framed out the bathroom, installed the bath tub, tile and flooring.
6. In early October 2011, the Claimant went on vacation and upon the family's return, on October 18, 2011, the Respondent requested another payment of \$2,080.00 for carpet and flooring. The Claimant paid the Respondent the requested \$2,080.00.
7. The Claimant did not return to the Property after October 18, 2011. The Claimant and her husband placed numerous telephone calls to the Respondent without reaching him. Messages were left but not returned by the Respondent. The Claimant paid the Respondent a total of \$18,160.00.
8. The Claimant took photos of the incomplete Work and began searching for another contractor to take over the Work. The following Work was left incomplete:
 - Floor tile
 - Carpet in television room area

- Painting
- Electrical outlets and receptacles/recessed lighting
- Installation of toilet, sink, vanity, and light in bathroom

9. The tiles the Respondent installed in the shower were not done properly. The tiles were installed without proper grout and the appearance was messy and unworkmanlike.

10. In February 2012, the Claimant hired All About U to complete the Work for \$8,500.00. All About U finished the floor tiling, installed carpet in the living room; spackled poorly finished walls and completed all painting; and installed recessed lighting. The bathroom tiles that had been installed by the Respondent were torn out and re-installed. All About You installed a toilet, sink, vanity and light in the bathroom. The Claimant paid All About You a total of \$8,500.00.

11. The Claimant hired Comfort Always to finish duct work started by the Respondent in the bathroom sewage system; she paid this company \$1,000.00 for this work.

12. The Claimant hired C. Abend Plumbing & Heating, Inc. to replace a valve in the bathroom that had been improperly installed by the Respondent. The Claimant paid this company \$1,580.00 to complete the replacement of the valve.

13. The Claimant hired All Power Plus Electric to complete the installation of electrical outlets and obtain required county permits. The Claimant paid this company \$850.00.

14. The Claimant paid a total of \$11,930.00 to other contractors to repair and complete the Work that the Respondent was obligated to provide under the Contract.

DISCUSSION

The Respondent's Failure to Appear

Neither the Respondent nor anyone authorized to represent the Respondent appeared. On October 30, 2014, the OAH sent a Notice of Hearing (Notice) by certified and regular first class

mail to the Respondent's last address of record, 29 Cypress Point Court, Westminster, Maryland 21158. This address is the address on record with the MHIC as the business and home address. The Notice advised the Respondent of the time, place and date of the hearing. The certified mail copy of the Notice was returned to OAH by the United States Postal Service (USPS) as unclaimed. The first class mail was not returned and is, therefore, presumed to have been delivered.

COMAR 28.02.01.05A requires that "reasonable notice of the hearing shall be provided to the parties" in hearings before the OAH. The record reflects that the Fund met the notification requirements for the hearing when the record notices were sent to the Respondent at his last addresses of record. Md. Code Ann., State Gov't §§ 10-208, 10-209 (2014); Md. Code Ann., Bus Reg. § 8-312 (d), (h) (Supp. 2014). When the Respondent failed to appear and no one appeared on his behalf by approximately 10:20 a.m., I proceeded in the Respondent's absence.

The Merits of the 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. (Bus. Reg.) § 8-405(a) (Supp.2014). *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." Bus. Reg. § 8-401. Md. Code Ann., Bus. Reg. § 8-405(e)(1) (2010) provides that the Commission may not award from the Fund "more than \$20,000 to one claimant for the acts or omissions of one contractor." For the following reasons, I find that the Claimant has proven eligibility for compensation.

In this case, the Respondent simply failed to fulfill his obligations under the Contract. Although a portion of the Work was started, none of the construction contracted for was

completed. The Claimant presented a credible account of her disappointing experience with the Respondent, maintaining that she hired him to renovate her unfinished basement in September 2011, paid him a deposit and two additional payments, and in return the Respondent worked a few days, with only a few tasks initiated, abandoning the job in October 2011. She supported her testimony with photographs, proposals from other companies and cancelled checks paid to the other contractors for completion of the basement renovation. In addition, the Respondent was not present to dispute the Claimant's assertions.

I am persuaded by a preponderance of the evidence that the Respondent abandoned the job on October 18, 2011, after requesting and receiving a third payment from the Claimant and, thereafter, ignored the Claimant's efforts to reach him (phone calls). I am further persuaded that at the time he abandoned the job, the Respondent had only performed a fraction of the required Work; that is, some framing and some tile installation in the bathroom. The Claimant produced credible proof of three payments to the Respondent totaling \$18,160.00. It should be noted that the Claimant's evidence was subject to the Fund's cross-examination and was ultimately accepted by the Fund in its closing argument.

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, and the Claimant does not seek such damages. COMAR 09.08.03.03B(1). MHIC's regulations at COMAR 09.08.03.03B(3) offer three formulas for measurement of a claimant's actual loss:

(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 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.

As the Respondent performed work under the Contract and the Claimant has solicited another contractor to complete the work, I conclude that the formula at COMAR 09.08.03.03B(3)(c) is an appropriate measure of damages. Using the above formula, the Claimant's actual loss is \$9,930.00 and is calculated as follows:

\$ 18,160.00	Amount the Claimant paid the Respondent
<u>\$ 11,930.00</u>	Adding the amount paid to other contractors for repairs
\$ 30,090.00	Subtotal
<u>\$ 20,160.00</u>	Minus the original contract amount
\$ 9,930.00	The Claimant's actual loss

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant has sustained an actual loss in the amount of \$9,930.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 and 8-405 (2010 & Supp. 2014). The Claimant, therefore, is entitled to reimbursement from the Fund in the amount of \$9,930.00.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$9,930.00; and

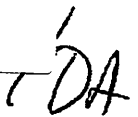
ORDER that the Respondent be ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg.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

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

Signature on File

April 2, 2015
Date Decision Issued

Deborah H. Buie
Administrative Law Judge



DHB/lh
155054

<p>IN THE MATTER OF THE CLAIM</p> <p>OF AMY SANCHEZ,</p> <p>CLAIMANT,</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF PATRICK PERKINS,</p> <p>t/a</p> <p>JOB ONE CONSTRUCTION LLC.</p> <p>RESPONDENT</p>	<p>* BEFORE DEBORAH H. BUIE,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH NO.: DLR-HIC-02-14-27227</p> <p>* MHIC NO.: 12(75)607</p> <p>*</p> <p>*</p> <p>*</p>
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FILE EXHIBIT LIST

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

- Cl. Ex.1 Diagram of basement
- Cl. Ex. 2 Contract, September 19, 2011
- Cl. Ex. 3 Canceled check, September 19, 2011
- Cl. Ex. 4 Canceled check, September 27, 2011
- Cl. Ex. 5 Canceled check, October 18, 2011
- Cl. Ex. 6 All About U Proposal, February 6, 2012
- Cl. Exs. 7 thru 10 Photographs
- Cl. Ex. 11 Canceled checks, February 7 and 17, 2012
- Cl. Ex. 12 C. Abend Plumbing Proposal, February 13, 2012 and Canceled Checks
February 13 and March 2, 2012
- Cl. Ex. 13 Comfort Always Proposal, February 12, 2012 and Canceled checks
February 13 and 18, 2012
- Cl. Ex. 14 Canceled check, March 5, 2012

Cl. Ex. 15 All Power Plus Electric, Inc Proposal, March 7, 2012 and Canceled checks, March 7 and 9, 2012

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

Fund Ex. 1 Notice of hearing, dated October 30, 2014, July 25, 2014 Hearing Order attached

Fund Ex. 2 MHIC licensing history for Respondent MHIC, dated January 26, 2015

Fund Ex. 3 Home Improvement Claim Form, dated February 22, 2012, time-stamped April 9, 2014, with letter to Respondent (May 14, 2014) attached

The Respondent presented no documents.

PROPOSED ORDER

WHEREFORE, this 13th day of May, 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.

Andrew Snyder

***Andrew Snyder
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION