

**CLAIM OF KRISTEN VENUTI
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND,
REGARDING THE ALLEGED ACTS
AND OMISSIONS OF PATRICK M.
DOYLE T/A BUILDING BEYOND
EXPECTATIONS,
THE RESPONDENT**

*** BEFORE MARLEEN B. MILLER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH NO.: DLR-HIC-02-14-22393
* MHIC NO.: 13 (90) 1361
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RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On March 31, 2014, Kristen Venuti (the Claimant) filed a claim (the Claim) with the Maryland Home Improvement Commission (the MHIC or the Commission) Guaranty Fund (the Fund), for reimbursement of the actual losses she allegedly suffered as a result of the acts and omissions of Patrick M. Doyle t/a Building Beyond Expectations (the Respondent). After investigation, the Commission issued a June 20, 2014 Hearing Order and, on December 3, 2014, forwarded the case to the Office of Administrative Hearings (OAH).

On January 7, 2015, I conducted a hearing at OAH's Administrative Law Building in Hunt Valley, Maryland, pursuant to section 8-407(a) (incorporating the hearing provisions of section 8-312) of the Maryland Annotated Code's Business Regulation Article (the Business

Regulation Article). Assistant Attorney General Peter Martin appeared on the Fund's behalf. The Claimant represented herself. Because the Respondent died intestate on October 28, 2014 and no personal representative had been appointed to represent him, I proceeded to hear the case without anyone representing his interests.¹ See Business Regulation Article § 8-312(h); Code of Maryland Regulations (COMAR) 09.01.02.09.

The contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); the Commission's Hearing Regulations, COMAR 09.01.03, 09.08.02.01, and 09.08.03; and OAH's Rules of Procedure, COMAR 28.02.01, govern procedure in this case.

ISSUES

Did the Claimant sustain an actual loss as a result of the Respondent's acts or omissions and, if so, what amount is the Claimant entitled to recover from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

The Claimant submitted the following documents, which I admitted into evidence as the exhibits numbered below:

1. Contractor Agreement, undated and signed only by the Respondent
2. Three checks written to the Respondent by the Claimant
3. February 5, 2014 Service Proposal and Agreement from Brothers Services Company
4. Photographs
5. January 11, 2015 e-mail from the Claimant

The Respondent submitted no documents for admission into evidence.

¹ The Respondent's wife and son acknowledged receipt of the Notice of Hearing, but they could show no formal authorization to represent the Respondent's interests.

The Fund submitted the following documents, which I admitted into evidence as the exhibits numbered below:

1. October 27, 2014 Notice of Hearing with the Commission's June 20, 2014 Hearing Order
2. November 25, 2014 certification from Assistant Commissioner John Papavasiliou
3. The Respondent's October 28, 2014 Certificate of Death
4. Mr. Martin's December 3, 2014 letter to the Respondent's wife and son
5. The Respondent's licensing history, printed on January 6, 2015
6. April 1, 2014 letter from the Commission to the Respondent, with an attached copy of the Claim

Testimony

The Claimant was the only witness to testify at the hearing.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all relevant times, the Respondent was a licensed home improvement contractor, License # 01-89563.
2. At all relevant times, the Claimant owned and resided in property located at 140 North Collington Avenue in Baltimore, Maryland (the Property).
3. On or about November 30, 2012, the Claimant entered into a verbal agreement (the Contract) with the Respondent to renovate a bathroom in the Property, at a cost of \$5,800.00. The renovation was to include the following work (the Work):
 - Framing and sheet-rocking doorway;
 - Installing and painting sheetrock throughout bathroom;
 - Installing cement backer board on subfloor;
 - Leveling floor;

- Supplying tub, toilet and pedestal sink;
- Supplying and installing all plumbing per code;
- Supplying and installing all required electrical wiring and devices;
- Supplying and installing all traps, vertical fixture supply lines and shut-off valves;
- Installing and applying tile and grout for floor and three tub walls, with tile to be purchased by the Claimant;
- Supplying, installing, prime coating and finishing wood baseboard and shoe molding to match hallway and bedroom;
- Tearing out and replacing bathtub;
- Installing a faucet, medicine cabinet and shower head provided by the Claimant; and
- Installing a light, pedestal sink, and toilet, with the Claimant being responsible for purchasing the medicine cabinet and faucet

4. The Respondent estimated that the Work would take two to three days to complete, but the work progressed very slowly and was completed in two and one-half weeks.

5. The Claimant observed serious problems with the Work during and after the Work was supposedly completed.

6. The Respondent made at least three unsuccessful attempts to repair the defective Work, after which, the Claimant informed him that she was going to make a claim against the Fund and have someone else repair/replace the Work.

7. The Claimant paid the Respondent a total of \$4,800.00 for the Work and purchased 35 square feet of tile at \$10.99 per square foot.

8. The Respondent's Work was defective in the following ways:
- The sheetrock/drywall was sloppily installed, with bubbling and cracked drywall tape and uneven transition between walls, ceilings and corners.
 - The tile and grout were unevenly installed, and many tiles were cracked, gouged, or buckled during installation.
 - The bathroom floor was not level, causing a trip hazard.
 - The wall tile was not installed with waterproof backing.
 - The plumbing of the shower/tub never worked properly, i.e., the water for the shower and tub could not flow separately and the water temperature was too cold.

9. The Claimant employed Brothers Services Company (Brothers) to redo the renovation of her bathroom at a cost of \$7,766.00. The only reasonable way for Brothers to redo the Work properly was to tear out all of the Respondent's Work (at a cost of \$1,600.00) and start over.

10. Brothers was able to reuse the tub (which cost \$345.00), the sink (which cost \$337.85), and the toilet (which cost \$299.99), for a total savings of \$1,052.84.

11. Brothers supplied and installed additional tile, as well as a marble threshold at the doorway to the bathroom. That work was not provided for in the Respondent's Contract with the Claimant.

12. On March 19, 2014, the Claimant filed her Claim against the Fund.

DISCUSSION

Pursuant to Business Regulation Article §§ 8-405(a) and 8-407(e)(1), to recover compensation from the Fund, the Claimant must prove, by a preponderance of the evidence, that they incurred an actual loss, which resulted from a licensed contractor's acts or omissions.

Business Regulation Article § 8-401 defines an “actual loss” as “the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” For the reasons set forth below, I conclude that the Claimant has met this burden, by proving that the Respondent failed to properly perform the Work required under the Contract, and that the Claimant incurred an actual loss entitling her to an award of \$4,800.00.

The Fund presented unrefuted evidence that the Respondent was a licensed home improvement contractor at all times relevant to this case. The Claimant testified and presented documentation establishing the Contract terms,² the payments made to the Respondent, the Respondent’s unsuccessful efforts to correct the deficiencies in the Work and the reasonableness of the estimates she received from replacement contractors. The Claimant’s photographs make it obvious to any layman that the Work was substantially defective, and the Claimant described her problems with the Work in detail during the hearing. She further explained why demolition and redoing of all of the Work was the only reasonable way to correct the substantial deficiencies. Moreover, the Claimant’s testimony convinced me that the Respondent was unwilling and/or unable to adequately repair or replace the Work. No one was available to represent the Respondent’s interests or to refute any of the Claimant’s testimony or documents.

The Fund acknowledged, and I agree, that the evidence establishes the Claimant’s entitlement to an award from the Fund under the following formula set forth in COMAR 09.08.03.03B(3)(c):

B. Measure of Awards from Guaranty Fund.

....

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

....

² On or about November 30, 2012, the Respondent signed and left a written agreement for the Claimant’s signature. Although the Claimant never signed that agreement, she was able to confirm most of its terms and to explain what modifications the parties orally made to that agreement, e.g., the Claimant’s responsibility to provide the tile, medicine cabinet and faucet.

(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 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. . . .

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

\$ 4,800.00	Amount the Claimant paid the Respondent
<u>+ 6,713.16</u>	Cost to correct the Respondent's Work (\$7,766.00 - 1,052.84) ³
\$ 11,513.16	
<u>- 5,800.00</u>	Contract price
\$ 5,713.16	The Claimant's actual loss

I recognize that Brothers supplied and installed some additional tile, as well as a marble threshold at the doorway to the bathroom, for which the Claimant provided no separate pricing. Nevertheless, because the Claimant can recover no more than the amount she paid to the Respondent, \$4,800.00,⁴ I believe that any related discrepancy is more than made up for by the difference between her actual loss and the lesser amount she is able to recover from the Fund. See COMAR 09.08.03.03B(3), which permits me to use a unique measurement when necessary.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant has met her burden of proving that she incurred an actual loss as a result of the Respondent's inadequate and unworkmanlike home improvement work. Business Regulation Article §§ 8-405(a) and 8-407(e)(1). I further conclude that the total amount of that loss that the Claimant should be awarded from the Fund is \$4,800.00. *Id.* at § 8-405(e)(1); COMAR 09.08.03.03B(3).

³ I agree with the Fund's representative that the cost of the tub, sink and toilet (\$1,052.84) that the Respondent provided and that Brothers was able to reuse must be deducted from Brothers' contract price).

⁴ Business Regulation Article § 8-405(e)(5).

RECOMMENDED ORDER

Upon due consideration, I **RECOMMEND** as follows:

1. The MHIC **ORDER** that the Claimant, Kristen Venuti, be awarded \$4,800.00 from the MHIC Fund, for the actual losses she sustained as a result of the Respondent's inadequate and unworkmanlike performance of agreed-upon home improvement work; and
2. The records and publications of the MHIC reflect this decision.

Signature on File

March 2, 2015
Date Decision Issued

MBM/cj
#154643



Marleen B. Miller
Administrative Law Judge

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