

IN THE MATTER OF	* BEFORE STUART G. BRESLOW,
THE CLAIM OF BRETT STRAUSSER,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND	* OF ADMINISTRATIVE HEARINGS
HOME IMPROVEMENT	* OAH Case No.: DLR-HIC-02-15-07581
COMMISSION GUARANTY FUND	* MHIC No.: 14 (90) 389
FOR THE ACTS OR OMISSIONS OF	*
DAVID W. STYLES,	*
RESPONDENT	*
t/a STYLES PAINTING AND	*
REMODELING, INC.	*

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On July 23, 2014, the Claimant filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$15,850.11 for actual monetary losses suffered as a result of the alleged inadequate, incomplete or unworkmanlike home improvement performed by the Respondent. On February 12, 2015, the MHIC ordered that the Claimant should have a hearing in order to prove entitlement to an award from the Fund.

On August 4, 2015, I conducted a hearing at the Frederick County Department of Social Services. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented himself. Wayne Styles, son of the Respondent, appeared on behalf of the Respondent, who designated his son as his representative by executing and submitting a power of attorney on August 4, 2015, allowing him to appear on his behalf. Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation, represented the Fund.

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 (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 as a result of the Respondent's acts or omissions in performing home improvement work; and, if so,
2. What is the amount of the award to which the Claimant is entitled from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits for the Claimant:

- Cl. Ex. 1: Forty-two pages of photographs of the work performed by Respondent
- Cl. Ex. 2: December 5, 2012 Contract between Claimant and Respondent
- Cl. Ex. 3: Email string between Respondent and Claimant, dated May 24, 2013
- Cl. Ex. 4: Email string between Respondent and Claimant, dated June 6, through June 18, 2013
- Cl. Ex. 5: Email string between Respondent and Claimant, dated July 31, 2013 through August 2, 2013

- Cl. Ex. 6: Email from Respondent to Claimant, dated August 26, 2012
- Cl. Ex. 7: Photograph, undated
- Cl. Ex. 8: Email string between Respondent and Claimant, dated September 6, 2013 through September 9, 2013
- Cl. Ex. 9: Contract Proposal between Claimant and BJ Builders, dated October 29, 2013
- Cl. Ex. 10: Payment History with attachments, undated
- Cl. Ex. 11: Quote from Lowe's Home Centers, Inc., to Claimant, dated November 3, 2013
- Cl. Ex. 12: Letter from Michelle Escobar, MHIC Investigator, to Claimant, dated December 23, 2013
- Cl. Ex. 13: Work to be completed worksheet, undated

The Respondent did not submit any exhibits.

I admitted the following exhibits for the Fund:

- Fund Ex. 1: Notice of Hearing, issued June 4, 2015 with attached Hearing Order
- Fund Ex. 2: Licensing and Registration Information for Respondent
- Fund Ex. 3: Home Improvement Claim Form, dated July 23, 2014
- Fund Ex. 4: Letter from Joseph Tunney, MHIC Chairman, to Respondent, dated July 30, 2014

Testimony

The Claimant testified on his own behalf and presented the testimony of his wife, Julie Strausser, and Peter Stevens, painter. David Styles testified on behalf of the Respondent. The Fund did not present any witnesses.

FINDINGS OF FACT

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

1. At all relevant times, the Respondent was licensed as a home improvement contractor with the State of Maryland, under registration number 71665.
2. At all relevant times, the Claimant owned the private residence located at 4118 Garfield Road, Smithsburg, Maryland (the Property).
3. The Property consists of four buildings.
4. On or about December 5, 2012, the Claimant and the Respondent entered into a contract (Contract) for work to be performed in his Property. The scope of work (Project) included replacing and installing railings, paneling the porch ceiling with beaded board, scraping and painting wood trim, replacing shutters, scraping and painting wood trim in the main house. In addition, the Respondent was to replace rotten fascia boards with composite boards and scrape and paint all wood trim in the two car garage and paint gutters to match. The Respondent was to repair the door frame in the side entrance and repair the door frame and scrape and paint the three car garage. Finally, the Respondent was to scrape and paint the barn including the walls, trim, gutters and roof.
5. The original Contract price to complete all the work was \$26,254.30. Subsequently, there was a modification of the Contract price resulting in a reduction of \$600.00 because the Claimant no longer wanted the replacement of the rails on the steps to be part of the Project. On April 1, 2013, there was an increase in the Contract price of \$616.00 to account for additional railing costs that were not included in the original Contract. There was a deduction of \$400.00 for gingerbread installs that were not performed and a credit

- of \$3,132.79 for railings that were to be supplied by the Claimant resulting in a final Contract price of \$22,737.51.
6. The Claimant paid the Respondent a deposit of \$8,751.43 by check on December 5, 2012 with the signing of the Contract. An additional payment of \$5,551.98 was paid to the Respondent on May 16, 2013. A check in the amount of \$616.00 was paid to the Respondent on April 1, 2013 and a check in the amount of \$3,132.79 was issued to the Respondent on July 31, 2013. The total amount the Claimant paid the Respondent under the Contract was \$18,052.20.
 7. Much of the Project included painting. The paint selected for the project was Behr brand paint with a primer included in the paint. Two coats of paint were to be applied as part of the Project. The Contract required the Respondent to furnish the agreed paint.
 8. The Contract required that the Respondent use only Behr paint . The Claimant expressed a desire to take advantage of the five year warranty offered by Behr.
 9. Work on the Project began on or about March 29, 2013.
 10. Work progressed slowly on the Project.
 11. Behr paint was not used exclusively on the Project. Glidden paint and America's Finest paint brands were also used. These paint brands are considerably less expensive than Behr brand paint.
 12. The porch ceiling was to be bead board in accordance with the Contract. The installation was not bead board and instead, a low grade wood was utilized that contained many knots making it difficult for the paint to cover.
 13. The main house doors were to be scraped and painted in accordance with the Contract. None of this work was performed by the Respondent.

14. A single coat of paint was utilized on moldings and trim instead of the two coats required by the Contract.
15. Shutters were installed upside down. Once installed, improperly installed shutters cannot be reused.
16. Paint was splattered on brick and on other surfaces that was not removed by the Respondent.
17. Paint is cracking and peeling because the surface was not prepared properly before the paint was applied.
18. Two metal doors were left unprepared and unpainted by the Respondent.
19. The soffits were painted with only one coat of paint.
20. The back roof on the barn was not properly prepared or painted. Parts of the roof have no paint at all.
21. On September 8, 2013, Wayne Styles was working with a painter painting an unprepared surface. The Claimant asked them to leave the premises.
22. The following day, Wayne returned to the site and was told to leave again. September 9, 2013 was the last day the Respondent worked on the Project.
23. On October 29, 2013, the Claimant obtained a proposal from BJ Builders, a MHIC licensed contractor. The proposal included repair and completion of the work that was partially performed and remained to be performed by the Respondent.
24. The total price of the proposal was \$26,585.00.

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); *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. The claimant bears the burden of proof by a preponderance of the evidence to show entitlement to an award from the Fund. COMAR 09.08.03.03A(3). In this case, the Claimant seeks an award in the amount of \$21,899.69.¹ For the following reasons, I find the Claimant has satisfied his burden to demonstrate entitlement to an award from the Fund.

There is no dispute that at the time the Respondent performed the work at the Claimant’s Property, he was a licensed contractor. Nor is there a dispute the Property was a residence that included four buildings. The dispute centers on whether the Respondent’s work, as performed, was inadequate, incomplete, or unworkmanlike.

The main focus of the Project was to scrape and paint the four buildings on the Property. The parties agreed that the Respondent would use Behr brand paint. (Cl. Ex. 6). Behr paint is more expensive than either Glidden paint or America’s Finest. The parties agreed to use Behr paint on the Project because of its high quality and its five year warranty. The Claimant agreed to using Behr paint on the Project because he was concerned that if there was a problem that arose involving the paint, the Respondent may not be available to correct the problem because the Respondent was moving out-of-state, even though the Respondent provided a five year warranty on his work. (Cl. Ex. 2). The five year warranty from Behr gave the Claimant the added comfort that if he could not obtain warranty repairs from the Respondent, he could assert a claim against Behr under Behr’s five year warranty. Additionally, the Claimant wanted to use Behr paint because Behr has a reputation in the industry for high quality paint.

¹ The original claim was for \$15,850.00 which did not include all of the payments made on behalf of the Claimant. The claim was revised at hearing.

Peter Stevens, who was a painter hired by the Respondent to work on the Project, testified that he observed Behr paint labels on paint pails of America's Finest paint. When he questioned the Respondent as to why this was done, the Respondent replied that he was using less expensive paint, including Glidden and America's Finest to reduce his cost on the Project. Wayne Styles, the manager of the Project, testified that he was never told by the Respondent that Behr paint was to be used exclusively on the Project. As a result, Wayne Styles would not have been aware that using paint other than Behr brand paint would be a violation of the Contract terms. As the manager of the Project, it was essential that he be informed of the materials that were to be used to perform the work so that he could comply with the Contract.

The Respondent argues that the only work that needed to be completed at the time he was removed from the Property on or about September 9, 2013, was considered "punch list" items. The Claimant argues that the work needed to complete the Project were more than punch list items. The Claimant further argues that the work that was performed required repair and replacement because the work that was performed was performed in an unworkmanlike manner.

The evidence supports the Claimant's position that the remaining work was more than mere punch list items and that the work that was performed was performed in an unworkmanlike manner. The Claimant provided forty-two pages of photographs of the work performed by the Respondent. The photographs show the work that was performed in an unworkmanlike manner as well as the work that remained to be completed when the Respondent left the Property on or about September 9, 2013.

The work to be completed in the main house on the Property that was either not finished or performed in an unworkmanlike manner included installing the railings on the front steps, repainting the porch ceiling to avoid bleed-through due to knots in the wood. If the paint was

unable to cover the knots, the ceiling would need to be replaced with higher quality beaded wood. The front and side exterior entry doors and frames needed to be prepped and painted as well as the fascia, gutter and downspouts on the entire house. The paint that was spattered on the brick needs to be removed as well. All of the shutters would have to be removed and replaced because they were installed upside down and could not be reused.

The two car garage requires two coats of paint following preparation and priming, as necessary, for the soffits and fascia as well as the two entry doors and frames and the overhead garage door. This was not done when Wayne Styles left the premises on September 9, 2015.

The three car detached garage requires paint preparation and priming as necessary for the metal roof, the walls, doors soffits and fascia. Finally, the barn requires paint preparation, priming and painting of the metal roof, walls and doors, gutters and trim. These items were also left undone by the Respondent.

All of the items listed above were either not performed in a workmanlike manner or were not completed when the Respondent left the premises on September 9, 2013. Since that day, the Respondent has not returned to the Property.

The Claimant contacted BJ Builders to review the Contract and provide a proposal to correct the unworkmanlike work performed by the Respondent on the Project and to complete the Project that was left unfinished when the Respondent left the Property on September 9, 2013. On October 29, 2013, BJ Builders provided the proposal. (Cl. Ex. 9). The proposal cost from BJ Builders was \$26,585.00. None of the work in the proposal from BJ Builders exceeds the scope of work under the Contract.

Having reviewed the record, I find that the Respondent failed to perform the Contract in accordance with its terms. The Fund is in agreement with this finding. As a result, I have

determined that the Claimant did sustain an actual loss as a result of the Respondent's failure to complete the Project in accordance with the Contract terms.

Having found that the Claimant is eligible for compensation, I now turn to the amount of the award. 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 offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3)(a), (b) and (c). One of those formulas, as follows, offers an appropriate measurement 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. 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.

COMAR 09.08.03.03B(3)(c).

Applying the formula set out above, I find that the Claimant sustained an actual loss as follows:

Amount Paid to the Respondent	\$ 18,052.20
Amount Paid to Correct or Complete Work	\$ 26,585.00
Total	\$ 44,637.20
Amount of Original Contract	\$ 22,737.51
Amount of Actual Loss	\$ 21,899.69

Under Business Regulation § 8-405(e)(5), the amount of an award to a claimant is limited to the amount the claimant paid the contractor whose work was inadequate, incomplete, or unworkmanlike. Accordingly, I recommend an award to the Claimant in the amount of \$18,052.20.

CONCLUSION OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Claimant suffered an actual loss of \$21,899.69, and he is entitled to be compensated in the amount of \$18,052.20 as a result of the acts or omissions of the Respondent. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(e)(5) (2015); COMAR 09.08.03.03B(3)(c).

PROPOSED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$18,052.20; 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) (2015); and,

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

October 7, 2015
Date Decision Mailed

S **Signature on File**

Stuart G. Breslow
Administrative Law Judge

SGB/cj
#158219

**IN THE MATTER OF THE CLAIM
OF BRETT STRAUSSER
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR ALLEGED VIOLATIONS OF
DAVID W. STYLES, t/a
STYLES PAINTING AND
REMODELING, INC.**

* **MARYLAND HOME
IMPROVEMENT COMMISSION**
*
* **MHIC CASE NO. 14 (90) 389**

* * * * *

FINAL ORDER

**WHEREFORE, this 11th day of April, 2016, Panel B of the Maryland Home
Improvement Commission ORDERS that:**

- 1) The Findings of Fact of the Administrative Law Judge are Affirmed.**
- 2) The Conclusions of Law of the Administrative Law Judge are Amended as follows:**
 - A) COMAR 09.08.03.03B(3) provides that the Commission may determine that a particular claim requires a unique measure of actual loss.**
 - B) Based on review of the record in this matter, the Commission concludes that this claim requires a unique measure of actual loss, pursuant to the Commission's authority under COMAR 09.08.03.03B(3). Based upon review of the record in this matter, and applying its experience and expertise in the field of home improvement, the Commission concludes that the fair and reasonable measure of the cost to correct and complete the Respondent's work is \$17,732.00.**

C) Accordingly, the measure of the Claimant's actual loss is amended as follows:

- Amount paid on original contract	\$18,052.20
- Cost to correct and complete	<u>\$17,732.00</u>
	\$35,784.20
- Less original contract price	<u>\$22,737.51</u>
- Actual Loss	\$13,046.69

3) The Recommended Order of the Administrative Law Judge is Amended as follows:

A) The Claimant is Awarded \$13,046.69 from the Home Improvement Guaranty Fund.

B) Pursuant to Business Regulation Article, §8-411(a), any home improvement licenses held by the Respondent shall be Suspended at such time as any money is paid from the Home Improvement Guaranty Fund under this Order, and the Respondent shall then be ineligible for any home improvement license until such time as the Home Improvement Guaranty Fund has been reimbursed. The Respondent shall also be liable for 10% annual interest on any unreimbursed balance owed to the Fund.

4) This Final Order shall become effective thirty (30) days from this date. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.

**Joseph Tunney
Chair - Panel B
Maryland Home Improvement Commission**