

IN THE MATTER OF THE CLAIM	* BEFORE NANCY E. PAIGE,
OF DONALD REXRODE,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH No.: DLR-HIC-02-15-03846
FOR THE ALLEGED ACTS OR	* MHIC No.: 14 (90) 501
OMISSIONS OF JOHN BRILL,	*
T/A DONE RIGHT LAWN &	*
LANDSCAPE, LLC,	*
RESPONDENT	*

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On December 8, 2014, Donald Rexrode (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$900.00 in alleged actual losses suffered as a result of a home improvement contract with John Brill, T/A Done Right Lawn & Landscape, LLC (Respondent).

I held a hearing on August 5, 2015 at the Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented himself. The Respondent failed to appear after notice sent to his address of

record. John D. Hart, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), 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 compensable by the Fund as a result of any acts or omissions committed by the Respondent?
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:

- Cl. Ex. 1 March 30, 2012 agreement with Respondent
- Cl. Ex. 2 A-H Photographs
- Cl. Ex. 3 October 28, 2014 Proposal, Stewart Lawn & Landscape
- Cl. Ex. 4 October 30, 2013 Complaint

The Respondent did not offer any exhibits for admission in evidence.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 May 6, 2015 memorandum from OAH to Legal Services with attached April 22, 2015 Notice of Hearing
- Fund Ex. 2 May 7, 2015 letter from John D. Hart, Assistant Attorney General, to Respondent with attached Certified Mail return receipt
- Fund Ex. 3 June 16, 2015 memorandum from OAH to Legal Services with attached June 3, 2015 Notice of Hearing (Rescheduled)

- Fund Ex. 4 June 22, 2015 letter from John D. Hart, Assistant Attorney General, to Respondent with attached returned Certified Mail
- Fund Ex. 5 August 4, 2015 Respondent's licensing history
- Fund Ex. 6 August 4, 2015 Done Right Lawn & Landscape, LLC, licensing history
- Fund Ex. 7 January 6, 2012 Corporate Charter Approval Sheet with attachment
- Fund Ex. 8 Department Hearing Order (undated)
- Fund Ex. 9 November 20, 2014 Home Improvement Claim Form
- Fund Ex. 10 December 9, 2014 letter from HIC to Respondent

Testimony

The Claimant testified on his own behalf.

**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 01 103658.
2. On March 30, 2012, the Claimant and the Respondent entered into a contract to install boulder steps and a flagstone walkway leading from Claimant's driveway to Claimant's home. The contract called for a 60' by 4' irregular flagstone walkway and 56' by 4' boulder "steppers." The Claimant paid extra for large flagstone slabs on the landing and first step where the walkway joins the deck of his home.
3. The original agreed-upon contract price was \$7,860.00.
4. The Claimant paid a 50% deposit of \$3,930.00 upon signing the contract.
5. The parties subsequently agreed to change orders totaling \$2,275.00, bringing the total contract price to \$10,135.00. The Claimant paid the contract price in full.
6. The Respondent performed the contract in the summer and fall of 2012.

7. Within weeks of completing the work, seven feet of flagstone was not level and collected standing water in the rain. The Respondent returned and re-worked that portion, but broke the large flagstone slabs adjoining the deck, which he replaced with smaller, less expensive stone.

8. In the spring of 2013, sixty percent of the walkway was sinking and cracked.

9. The Claimant filed a complaint in October 2013. The Respondent returned to perform corrective work. He removed most of the walkway, added a base and patched, but did not replace broken stone. In addition, the Respondent left cement residue on the flagstones, which is unsightly.

10. The Respondent installed one boulder step which is one foot narrower than specified. He attempted to fill the space by cementing another stone to the step. The cemented stone has since broken off.

11. The cost to clean the stone steps and walkway, to repair a broken step and replace the undersize boulder step is \$900.00.

### **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) (2015). *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.” Bus. Reg. § 8-401 (2015). For the following reasons, I find that the Claimant has proved eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. The Respondent performed unworkmanlike and inadequate

home improvements to the Claimant's walkway and steps. Specifically, the Respondent installed one step that is a foot narrower than specified, and tried to fill the gap by cementing on another stone. The cemented piece has since broken off. Additionally, in the course of repairing uneven work, the Respondent broke the large slabs of stone that were purchased to form the landing and first step where the walkway adjoins the deck of the Claimant's home. He attempted to repair the damage by assembling smaller, less expensive and less attractive pieces of stone. In the course of his repair work, the Respondent left cement residue on the stones.

I find that the Claimant is eligible for compensation from the Fund for the cost of repairing the Respondent's work. 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. 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).

The Claimant's actual loss is calculated as follows:

Amount the Claimant paid to the Respondent	\$10,135.00
Amount to repair the work	<u>+\$900.00</u>
	\$11,035.00
Original contract price	<u>-\$10,135.00</u>
Claimant's actual loss	\$900.00

Accordingly, the Claimant is entitled to reimbursement of \$900.00. Bus. Reg. § 8-

405(e)(5) (2015).

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$900.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$900.00; 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;<sup>1</sup> and

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

**Signature on File**

October 15, 2015  
Date Decision Issued

\_\_\_\_\_  
Nancy E. Paige *ELY*  
Administrative Law Judge

NEP/emh  
#158681

<sup>1</sup> See Md. Code Ann., Bus. Reg. § 8-410(a) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 20th day of November, 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.***

***Jeffrey Ross***

***Jeffrey Ross  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**