

IN THE MATTER OF THE CLAIM	*	BEFORE MICHAEL J. WALLACE,
OF RUTH WALKER,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	OAH No.: DLR-HIC-02-17-20905
FOR THE ALLEGED ACTS OR	*	MHIC No.: 14 (05) 727
OMISSIONS OF RANDY STULL,	*	
T/A R.E. STULL CONTRACTORS¹, LLC,	*	
RESPONDENT	*	

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On or about June 12, 2017, Ruth Walker (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) in the amount of \$3,200.00 for reimbursement for alleged actual losses suffered as a result of a home improvement contract with Randy Stull (Respondent), trading as Level 10 Basement, Bathroom and Kitchen Systems (Level 10).

¹ As discussed below, the contract at issue in this case involves home improvement work that was to be performed by Level 10 Basement, Bathroom and Kitchen Systems (Level 10). Randy Stull (Respondent) was licensed in the name of Randy Stull, trading as R. E. Stull's Contractors and was also licensed trading as Level 10 at that time and at all times relevant.

I convened a hearing on September 25, 2017, at the County Office Building in Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).² The Claimant was present and represented herself. The Respondent was also present and represented himself. Eric London, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), MHIC, represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the DLLR, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017), 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

The Claimant did not submit any documents for consideration.

I admitted the following exhibits on behalf of the Respondent:

- Resp. Ex. 1 Home Improvements Sale and Installation Agreement, dated October 21, 2013³
- Resp. Ex. 2 Letter from Respondent to Investigator Crawley, dated February 19, 2014
- Resp. Ex. 3 Letter from Respondent to All Concerned, dated February 3, 2014
- Resp. Ex. 4 Email from Claimant, dated February 4, 2014
- Resp. Ex. 5 Advertisement soliciting a licensed home improvement contractor, undated

² All citations to the Business Regulation Article refer to the 2015 Volume.

³ This document listed the date as October 21, 2014 on the first page. All other pages in the document reflect the date October 21, 2013.

- Resp. Ex. 6 Respondent's Contractor/Salesman License in the name of R.E. Stull's Contractors, expired April 27, 2015 with attached Certificate of Liability Insurance
- Resp. Ex. 7 Certificate of \$2,000,000.00 Liability Insurance
- Resp. Ex. 8 Letter from Respondent to MHIC, dated January 27, 2014

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 Notice of Hearing, dated August 2, 2017
- Fund Ex. 2 Hearing Order, dated July 3, 2017
- Fund Ex. 3 The Respondent's licensing history, dated September 19, 2017
- Fund Ex. 4 Home Improvement Claim Form, received June 12, 2014
- Fund Ex. 5 Letter from MHIC to Claimant, dated July 3, 2017
- Fund Ex. 6 Home Improvement Sale and Installation Agreement, dated October 21, 2013
- Fund Ex. 7 Copy of check paid by Claimant to Respondent, dated October 21, 2013

Testimony

The Claimant testified on her own behalf. The Respondent testified on his own behalf.

There was no testimony presented on behalf of the Fund.

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/salesman under MHIC license number 01-86401 trading as R.E. Stull Contractors.
2. At all times relevant to the subject of this hearing, the Respondent was also licensed under MHIC license number 01-86401-01, trading as Level 10. His license under Level 10 became effective April 27, 2013.
3. On or about June 10, 2013, the Respondent responded to an internet advertisement posted by Newton Gaynor.

4. Mr. Gaynor was soliciting home improvement contractors. Mr. Gaynor claimed to be a new full service business development firm that solicited clients for home improvement work. Mr. Gaynor wanted to partner with home improvement contractors to do home improvement as well as residential construction work.

5. The Respondent responded to Mr. Gaynor's advertisement and met with him on or about June 23, 2013 to discuss the possibility of a partnership. Mr. Gaynor proposed providing marketing services as well as financing for potential clients if the Respondent would agree to initially perform the home improvement work under the Respondent's license in the name of Level 10. The Respondent further agreed that he would later supervise other craftsmen.

6. After several more meetings, the Respondent ultimately agreed to this arrangement and provided Mr. Gaynor with a copy of his MHIC license number 01-86401, as well as a copy of his Certificate of Liability Insurance..

7. On or about July 16, 2013, the Respondent added Level 10 to his liability insurance, as well as to his MHIC license under number 01-86401-01 and changed the address on the license to reflect a new address in Largo, Maryland, the address provided by Mr. Gaynor.

8. On or about October 21, 2013, the Claimant entered a written contract (Contract) with Mr. Gaynor acting on behalf of Level 10 to provide home improvement services at the Claimant's residence located at 681 Mount Lubentia Court in Upper Marlboro, Maryland 20774.

9. The Contract was signed by the Claimant as well as by Mr. Gaynor.

10. At that time, the Claimant paid \$3,200.00 by check to Level 10. She gave the check to Mr. Gaynor.

11. The check was cashed by Mr. Gaynor on the same date it was issued.

12. No work was performed under the Contract.

13. On December 13, 2013, after months of suspicions that Mr. Gaynor was defrauding the Respondent as well as several potential clients, the Respondent went to the MHIC to have his MHIC license reissued under R.E. Stull Contractors, to remove Level 10 from his license, and to change the address of his business back to his original address in Adelphi, Maryland.

14. On June 12, 2014, the Claimant filed a claim for reimbursement from the Fund in the amount of \$3,200.00.

DISCUSSION

At a hearing on a claim, a claimant has the burden of proof. Md. Code Ann., Bus. Reg. §8-407(e)(1). A homeowner 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) (“The Fund may only compensate claimants for actual losses they 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. A claimant may not recover from the Fund any amount for “(a) Consequential or punitive damages; (b) Personal injury; (c) Attorney’s fees; (d) Court costs; or (e) Interest.” COMAR 09.08.03.03(B)(1). For the following reasons, I find that the Claimant has proven eligibility for compensation.

It was undisputed that on or about October 21, 2013, the Claimant entered into a Contract with Newton Gaynor who was purporting to be acting on behalf of Level 10 to provide home improvement services at the Claimant’s residence.

The Respondent did not dispute that he was a licensed home improvement contractor under MHIC license number 01-86401 trading as R.E. Stull Contractors. The Respondent argued, however, that while he was also licensed under MHIC license number 01-86401-01,

trading as Level 10, he was not liable for the actions taken by Mr. Gaynor acting on behalf of Level 10. The Respondent argued that Mr. Gaynor did not have any authority to act on his behalf, that the Respondent was the only one who was authorized to sign any contracts, and that Mr. Gaynor acted without the Respondent's knowledge in entering into home improvement contracts with individuals. The Respondent stated that he is extremely sorry that individuals were defrauded by Mr. Gaynor and maintained that he was fraudulently induced to enter into a partnership with Mr. Gaynor. He argued that it was not his intent to defraud anyone but that he believed, in good faith, that a partnership with Mr. Gaynor was legitimate and would further the Respondent's business plan. The Respondent stated that because he was defrauded and wrongfully induced to enter into a partnership with Mr. Gaynor, the Respondent is not responsible for the actions of Mr. Gaynor.

The evidence established that the Respondent's license under Level 10 was effective, according to the July 30, 2013 MHIC website, on April 27, 2013. The MHIC records, however, show that this license was effective September 25, 2013 until September 25, 2015. The Claimant produced evidence to show that on July 30, 2013, she went to the MHIC website and found that the Respondent, as Level 10, was licensed as a home improvement contractor under license 01-86401-01, effective April 27, 2013. I conclude, therefore, that Level 10 was licensed under the Respondent's name beginning on April 27, 2013. In any event, the Contract was entered into in October 2013 while the Respondent was licensed and doing business as Level 10.

The evidence established that sometime around June 10, 2013, the Respondent responded to an internet advertisement posted by "Nordan" Gaynor who was soliciting home improvement contractors. Mr. Gaynor claimed to be a new full service business development firm that solicited clients for home improvement work and wanted to partner with home improvement contractors to do home improvement as well as residential construction work. The Respondent

responded to Mr. Gaynor's advertisement and met with him on June 23, 2013 to discuss the possibility of a partnership. Mr. Gaynor proposed providing marketing services as well as financing for potential clients if the Respondent would agree to initially perform the home improvement work under the Respondent's license in the name of Level 10. The Respondent further agreed that he would later supervise other craftsmen. The Respondent ultimately agreed to this arrangement and provided Mr. Gaynor with a copy of his MHIC license as well as a copy of his Certificate of Liability Insurance. The evidence further established that in July 2013, the Respondent added Level 10 to his liability insurance, as well as to his MHIC license under number 01-86401-01 and changed the address on the license to reflect a new address in Largo, Maryland, the address provided by Mr. Gaynor.

The Respondent testified that over the intervening months, he became suspicious that Mr. Gaynor was defrauding the Respondent as well as several potential clients. The Respondent stated that Mr. Gaynor and his associate, Carolyn Bowman, failed to respond to the Respondent's inquiries about why the Respondent had not received a copy of the MHIC license for Level 10 and the Respondent later learned that Mr. Gaynor's name was not Nordan but was Newton. The Respondent further learned that there were home improvement contracts between individuals and Level 10 that were signed by Mr. Gaynor of which the Respondent was not aware and that the individuals were either unhappy because of poor work or because Mr. Gaynor had taken money and abandoned the projects or failed to perform any work at all. Finally, in December 2013, the Respondent contacted MHIC and had Level 10 removed from his license and had the address of his business changed back to his original address in Adelphi, Maryland.

I find that while the Respondent argued that he is not responsible to individuals for the actions of Mr. Gaynor, because he allowed his name and license to be used in Mr. Gaynor's scheme, albeit unknowingly, he is the licensed contractor and is subject to liability for

subsequent awards from the Fund. The Respondent certainly acted in good faith but he carelessly placed himself in a perilous situation when he so quickly trusted Mr. Gaynor with his license and insurance information without doing further investigation into Mr. Gaynor's background. While the Respondent contended that he tried to "vet" Mr. Gaynor, he stated that he was induced to believe Mr. Gaynor's name was "Nordan" instead of "Newton." This resulted in a website search with no negative findings.

Unfortunately, while the Respondent might have acted in good faith, he is nonetheless responsible for actions under a license issued in his name. The Fund was created to protect homeowners from incompetent or unscrupulous home improvement contractors but not for the protection of the contractors.

The evidence showed that on or about October 21, 2013, the Claimant entered a Contract with Level 10 to provide home improvement services at the Claimant's residence. The contract was signed by the Claimant as well as by Mr. Gaynor and, at that time, the Claimant paid \$3,200.00 by check to Level 10. The check was given to Mr. Gaynor who cashed the check on the same date. Ultimately, no work was performed under this contract resulting in a loss to the Claimant.

Determining that the Claimant is eligible for compensation, I must determine the amount of the Claimant's actual loss and the amount of the award, if any, to which the Claimant is entitled. As indicated above, the Fund may not compensate a claimant for consequential damages. 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:

(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.

COMAR 09.08.03.03B(3)(a).

The Claimant's actual loss is calculated after considering that she contracted with Level 10 and paid \$3,200.00 as a deposit. No work was ever performed under the Contract and her money was not returned. As the Respondent, trading as Level 10, abandoned the project, the Claimant is entitled to an award of \$3,200.00 from the Fund. Md. Code Ann., Bus Reg. §8-405 (e)(1).

PROPOSED 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 compensable by the Fund as a result of the Respondent's alleged acts and omissions. Thus, I recommend an award in the amount of \$3,200.00 from the Fund. Md. Code Ann., Bus. Reg. §§ 8-401 and 8-405; COMAR 09.08.03.03B(3)(a).

PROPOSED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$3,200.00;

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;

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

Signature on File

November 17, 2017
Date Decision Issued


Michael J. Wallace
Administrative Law Judge

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PROPOSED ORDER

WHEREFORE, this 25th day of January, 2018, 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