

IN THE MATTER OF THE CLAIM
OF DEBRA CAMPBELL,
CLAIMANT

AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF NIXON ELVIR,
T/A MASTER GENERAL HOME
IMPROVEMENTS, INC.

RESPONDENT

* BEFORE SYEETAH HAMPTON-EL,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-18-06007
* MHIC No.: 15 (90) 1158
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PROPOSED DECISION

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STATEMENT OF THE CASE

On September 13, 2017, Debra Campbell (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$26,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Nixon Elvir, trading as Master General Home Improvements, Inc. (Respondent).

I held a hearing on May 30, 2018 at The Largo Government Center, 9201 Basil Court, Largo, Maryland 20774. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented herself. Kris M. King, Assistant Attorney General, Department of Labor, Licensing

and Regulation (Department), represented the Fund. After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.¹

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, 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 & Supp. 2017); COMAR 09.01.03; COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE²

Exhibits

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

- Clmt. Ex. 1 - Contract between the Claimant and the Respondent, dated November 8, 2014
- Clmt. Ex. 2- Website screenshots of the Respondent's website
- Clmt. Ex. 5a- MHIC Complaint and Narrative, dated May 15, 2015
- Clmt. Ex. 5b - 146 black and white pictures of the house before and after all renovations³
- Clmt. Ex. 6 - Letter from the Department to the Claimant, dated May 21, 2015, and Response letter from the Respondent to the Department

¹ Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on March 19, 2018 and May 7, 2018, and returned as undeliverable on April 17, 2018 and May 18, 2018. COMAR 09.08.03.03A(2). Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Respondent had received proper notice, and proceeded to hear the captioned matter.

² I did not admit exhibits 3, 4, 8, and 10 after objection from the Assistant Attorney General on behalf of the Fund. These items were retained for the file and were not used to render this Proposed Decision.

³ The record was held open to allow admission of 146 pictures by the Claimant. The Department was given one week to review the pictures and file an objection. An objection was noted and was resolved via a phone conference with the parties. The record closed on June 20, 2018.

- Clmt. Ex. 7- Violation Notice from the Prince George's County Department of Permitting, Inspections and Enforcement (DPIE) – Inspections Division, dated October 19, 2015. DPIE follow-up letter, dated December 27, 2015
- Clmt. Ex. 9 - District Court of Maryland for Prince George's County – Order to Show Cause and Consent Order, dated September 21, 2016
- Clmt. Ex. 11- Contract between the Claimant and Kiraz Construction, LLC, dated April 12, 2017. Two invoices from Kiraz Construction to the Claimant and five cancelled checks.
- Clmt. Ex. 12- Prince George's County DPIE Permits
- Clmt. Ex. 13- Home Improvement Claim Form, dated September 11, 2017

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - Returned Notice of Hearing, dated April 17, 2018
- Fund Ex. 2- Hearing Order
- Fund Ex. 3- License Records for Respondent
- Fund Ex. 4- Affidavit of Keyonna Penick, dated May 24, 2018
- Fund Ex. 5- Home Improvement Claim Form, dated September 11, 2017
- Fund Ex. 6- Letter from the Department to the Respondent, dated October 19, 2017
- Fund Ex. 7- License Records for Kiraz Construction, LLC

I did not admit exhibits on behalf of the Respondent.

Testimony

The Claimant testified on her own behalf.

The Respondent failed to appear.

The Fund did not provide testimony.

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 4545150.

2. On November 2, 2014, and amended on November 8, 2014, the Claimant and the Respondent entered into a contract to perform electrical update, complete interior and exterior laundry room renovation and insulation, and replace vinyl siding, flashing, and gutters at the Claimant's residence in College Park, Maryland. The November 8, 2014 contract amended the November 4, 2014 contract, as the Claimant requested additional work and the contract price increased. The additional work included insulation of the outer outside walls, drywall installation and completion of the inside and outside of the washroom/laundry room. Neither the original nor the amended contract listed a start date.

3. The original agreed-upon contract price was \$18,400.00. The amended contract signed on November 8, 2014 increased the contract price to \$21,600.00.

4. The Claimant paid the Respondent \$11,072.00 on November 8, 2014. The Claimant paid the balance of the contract minus \$600.00 due to incomplete work by the Respondent. The Respondent failed to upgrade the electrical box, change the wiring or contact Potomac Electric Power Company (PEPCO). The Respondent failed to remove and replace siding as agreed in the contract. The contract also included repair to a thirty-year-old washer and dryer. The Respondent agreed to fix the washer and dryer; however, the appliances were incorrectly connected. The Respondent also left a hole in the wall near the turnoff valve for the water. The Respondent failed to obtain property permits to complete electrical and insulation installation.

5. The Respondent agreed to complete the work within four to six weeks.

6. March 29, 2015 was the last date the Respondent performed work at the property.

7. On April 18, 2015, the Respondent promised to return to the property to fix outstanding problems. As a result of incomplete work, the Claimant withheld \$600.00 from the amended contract price.

8. The Respondent stopped communicating with the Claimant on May 15, 2015. The Respondent did not refund the Claimant for any of the incomplete work for which he was paid.

9. On October 19, 2015, the Claimant received a violation notice from DPIE – Inspections Division regarding her home. DPIE required the Claimant to remedy the below listed problems on or before November 19, 2015:

- Obtain required permits to complete remodel of laundry room and add insulation
- Obtain required inspections for work performed
- Pay a \$150.00 investigation fee
- Obtain an electrical permit for electrical work performed or remove electrical work. The work includes: new wires, outlets and a heavy up⁴
- Stop all work until issues are resolved

10. On September 21, 2016, the Claimant appeared in the District Court of Maryland for Prince George’s County and signed a Consent Order. The Order gave the Claimant 120 days to take corrective action on the outstanding violations.

11. On April 12, 2017, the Claimant entered into a contract with Kiraz Construction, LLC (Kiraz) to resolve the remaining issues from the Respondent’s original contract. The contract price was \$26,160.00. An addendum to the Kiraz contract called for rewiring outlets and ceiling wires, installing GFCI receptacles, and obtaining a plumbing permit to perform work in the laundry room. The work covered by the Kiraz contract did not exceed the contract between the Respondent and the Claimant.

12. Kiraz is a licensed contractor under the license number 5056898.

⁴ “Heavy up” is a term used to describe increasing the electrical capacity. <https://www.thespruce.com/heavy-up-meaning-1821546>

13. Kiraz agreed to complete the work in three to four weeks. Kiraz agreed to obtain required electrical and building permits as required by DPIE. Kiraz completed the work as agreed. Specifically, Kiraz agreed to perform the following renovation repairs:

- Obtain electrical permits to install new outlets as outlets were installed without a permit
- Remove existing electric panel and replace with a new electrical panel. Contact PEPCO to install a new meter
- Replace gutters and downspouts
- Remove siding and add insulation board
- Remove drywall on the exterior of the property and install insulation
- Rewire all outlets
- Build new wall in laundry room, add insulation, and obtain a plumbing permit for the laundry room renovation

14. On April 11, 2017, April 21, 2017, May 1, 2017, May 11, 2017, and May 22, 2017, the Claimant paid Kiraz amounts totaling \$26,160.00. The Claimant paid Kiraz in installment payments beginning at the time of contract signing, obtaining building and electrical permits and a final payment after satisfactory completion of the work.

15. The Claimant did not receive reimbursement or money from civil litigation against the Respondent or any insurance claims.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1) (2015); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3). “[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more

convincing force and produces . . . a belief that it is more likely true than not true.” *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

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),⁵ *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.” Md. Code Ann., Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. The Respondent operated under multiple names on the internet including Master General Home Improvements, Inc., Nixon Construction Company, and Nixon Remodeling Solutions.

The Respondent contracted with the Claimant to complete home improvements in four to six weeks after signing the contract. The Claimant hired the Respondent to enhance the warmth of the residence by installing insulation, replacing house siding, and addressing electrical issues, including replacement of the electrical box. As I have detailed above, the Respondent performed unworkmanlike, inadequate or incomplete home improvements. As a result of the inadequate work performed by the Respondent, the Claimant received a violation notice from DPIE citing her with multiple violations.

⁵ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume of the Maryland Annotated Code.

The Claimant was required to appear in the District Court of Maryland for Prince George's County; she signed a Consent Order agreeing to resolve the outstanding violations. The Claimant agreed to make corrections within 120 days, obtain permits to complete renovation work in the laundry room, and install insulation. In addition, the Claimant agreed to obtain required electrical permits to complete all electrical work, including installation of a new electrical box, and to complete rewiring.

The Claimant hired Kiraz to complete the work the Respondent left incomplete. Kiraz and the Claimant contracted only to complete the work that was within the scope of the original contract. Kiraz agreed to complete the work within three to four weeks, weather permitting. Kiraz agreed to obtain the required permits to perform the required work. The Claimant entered into a contract with Kiraz for a total contract price of \$26,160.00, including materials and labor. The Claimant refinanced her home to fund the renovation repairs necessitated by the Respondent's incomplete work. The Claimant paid Kiraz in installment payments beginning at the time of contract signing, obtaining building and electrical permits and a final payment after satisfactory completion of the work. The initial contract with Kiraz did not include obtaining a plumbing permit to perform plumbing work. After signing the contract, the Claimant and Kiraz amended the contract to include plumbing repairs totaling \$9,360.00. Kiraz obtained a plumbing permit to perform plumbing work in the laundry room. Although the Kiraz contract was greater than the Respondent's contract, I find the contract amount to be reasonable based on the evidence submitted by the Claimant and the Respondent's failure to rebut that evidence.

I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation, I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney

fees, court costs, or interest. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR

09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. COMAR 09.08.03.03B(3).

In this case, the Respondent performed some work under the contract, and the Claimant has retained other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

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).

In this case the Claimant paid the Respondent \$21,000.00 to obtain required permits and complete home renovations. Based on the evidence presented by the Claimant, the Respondent started the renovation work, but failed to obtain the required permits to complete the renovation work and failed to complete much of the agreed-upon work. Therefore, the Claimant hired another contractor, Kiraz, to complete the work not finished by the Respondent. The Claimant paid Kiraz \$26,160.00 to obtain permits and complete the unfinished work. As a result of the Respondent's incomplete performance of the contract, the Claimant's actual loss is \$25,560.00.

The actual loss is calculated as follows:

Claimant paid Respondent:	\$21,000.00
Claimant paid Kiraz to correct the deficiencies:	<u>\$26,160.00</u>
SubTotal:	\$47,160.00

Subtract amount of the original contract: -\$21,600.00
Actual Loss: \$25,560.00

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor, and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss of \$25,560.00 exceeds \$20,000.00. Therefore, the Claimant's recovery is limited to \$20,000.00. Md. Code Ann., Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual loss of \$25,560.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(C). I further conclude that the Claimant is entitled to recover the maximum amount of \$20,000.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; 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 ten percent (10%) as set by the Maryland Home Improvement Commission;⁶ and

⁶ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

ORDER that the records and publications of the Maryland Home Improvement

Commission reflect this decision.

Signature on File

August 20, 2018
Date Decision Issued

Syeetah Hampton-EL
Administrative Law Judge

SAH/cj
#174753

PROPOSED ORDER

WHEREFORE, this 14th day of September, 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