

IN THE MATTER OF THE CLAIM	* BEFORE MARY R. CRAIG,
OF JOHN J. GRETZ,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF CHRISTOPHER	*
DEIGAN, t/a MARK 2 HOME	* OAH No.: DLR-HIC-02-15-15437
IMPROVEMENT,	* MHIC No.: 15(90)417
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, John J. Gretz (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$5,835.00 in actual losses which the Claimant alleged he suffered as a result of a home improvement contract with Christopher Deigan, trading as Mark 2 Home Improvement, (Respondent).

I held a hearing on August 19, 2015 at 100 East All Saints Street, Frederick, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).<sup>1</sup> The Claimant represented himself. The Respondent represented himself. Hope Sachs, 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, except Claimant's exhibits 20- through 23, which were not admitted:

- Clmt. Ex. 1 Contract between Claimant and Respondent, August 31, 2014
- Clmt. Ex. 2 Check from Claimant to Respondent, September 6, 2014
- Clmt. Ex. 3 Spreadsheet of claimed damages to Claimant's property, prepared September 2014
- Clmt. Ex. 4 Letter from Byron Mitchell to Claimant, October 22, 2014
- Clmt. Ex. 5 Letter from Byron Mitchell to Claimant, December 1, 2014

---

<sup>1</sup> Unless otherwise noted, all citations of the Business Regulation Article hereinafter refer to the 2015 Replacement Volume.

- Clmt. Ex. 6 Photograph of exterior light allegedly damaged by Respondent
- Clmt. Ex. 7 Photograph of vertical wooden board installed on Claimant's deck
- Clmt. Ex. 8 Photograph of horizontal boards installed on Claimant's deck
- Clmt. Ex. 9 Photograph of edge of corner of Claimant's deck
- Clmt. Ex. 10 Spreadsheet of Heymann Contracting's labor provided to Claimant's deck project, undated
- Clmt. Ex. 11 Contract between Heymann Contracting and Claimant, September 28, 2014
- Clmt. Ex. 12 Contract between Heymann Contracting and Claimant, September 21, 2014
- Clmt. Ex. 13A Checks (2) to Heymann Contracting from Claimant, October 2, 2014
- Clmt. Ex. 13B Checks (2) to Heymann Contracting from Claimant, October 14, 2014
- Clmt. Ex. 13C Check to Heymann Contracting from Claimant, October 23, 2014
- Clmt. Ex. 13D Check to Heymann Contracting from Claimant, October 30, 2014
- Clmt. Ex. 13E Check to Heymann Contracting from Claimant, October 30, 2014
- Clmt. Ex. 14 Photograph of joint of two horizontal boards installed on Claimant's deck
- Clmt. Ex. 15 Photograph of joint of vertical boards and white face material installed on Claimant's deck
- Clmt. Ex. 16 Photograph of three screw holes drilled into a board installed on Claimant's deck
- Clmt. Ex. 17 Photograph of white board with irregularly shaped cut
- Clmt. Ex. 18 Photograph of extra hole drilled into board
- Clmt. Ex. 19 Spreadsheet of Deck Post Box-In Project Expenses, April 2015
- Clmt. Ex. 20 not admitted - Letter from Bryce Blair, Heymann Contracting to Claimant, October 28, 2014
- Clmt. Ex. 21 not admitted - Emails exchanged between George Summers to Claimant, July 3, 2015

- Clmt. Ex. 22 not admitted - Statement from George D. Summers, February 6, 2015
- Clmt. Ex. 23 not admitted - Statement from George D. Summers, October 30, 2014
- Clmt. Ex. 24 Letter from Rebecca Robinson, Erie Insurance, to Claimant, October 3, 2014

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

- Fund Ex. 1 - Notice of Hearing, June 4, 2015, and Hearing Order, April 22, 2015
- Fund Ex. 2 - Statement from John Papavasiliou, Executive Director, MHIC, February 13, 2015
- Fund Ex. 3 - Claim, December 8, 2014

The Respondent offered no exhibits for admission into evidence.

### Testimony

The Claimant testified and presented the testimony of Fletcher Kinne.

The Respondent testified. The Fund did not present any witness.

### **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 108027.
2. On August 31, 2014, the Claimant and the Respondent entered into a contract (Contract) to perform the following work repairing and updating the existing exterior wood deck at the Claimant's residence, located at 9858 Notting Hill Drive, Frederick, Maryland:
  - a. Demolish the vertical posts;
  - b. Install newel posts;
  - c. Demolish the main deck boards;
  - d. Install new PVC deck boards;
  - e. Demolish existing stair boards;

- f. Install new stair boards;
- g. Install deck railings;
- h. Install stair railings;
- i. Install deck trim;
- j. Install stair trim; and
- k. Install post wrap.

3. The Contract did not state when the work would begin.

4. The Contract required the Claimant to provide all materials except \$195.00 worth of saw blades, which the Respondent agreed to purchase. The Claimant agreed to provide some of the labor, working along with the Respondent. The Respondent agreed to provide labor for the project.

5. The total Contract price was \$2,235.00.

6. On September 6, 2014, the Claimant paid the Respondent \$500.00. The Claimant made no other payments to the Respondent.

7. The Respondent began work on the project on September 3, 2014 and continuing on September 4 through 6, 2014 and September 8 through 12, 2014.

8. The Respondent's work on the Claimant's deck was inadequate in the following respects, with the \$754.19 paid by the Claimant to repair or correct the inadequate work as detailed:

- a. Sawed a piece of PVC deck board short (\$87.44);
- b. Drilled wrong holes in three wood railing posts (\$25.35);
- c. Dropped and broke solar security light (\$49.51);
- d. Dropped and broke battery security light (\$21.18);

- e. Sawed short one white PVC board (\$84.28);
- f. Cut PVC deck board unevenly (\$35.85);
- g. Removed bolts from lower landing resulting in landing being out of level (\$257.00);
- h. Drilled excess screw holes in six step boards (\$131.16);
- i. Scratched PVC riser boards (\$52.28); and
- j. Cracked horizontal frame board (\$10.14).

9. The Claimant performed some labor along with the Respondent.

10. The Claimant repeatedly expressed dissatisfaction with the quality of the Respondent's work. After many disagreements between the Claimant and the Respondent, the Respondent left the work site on September 12, 2014 and never returned.

11. On September 12, 2014, the Respondent offered to refund the Claimant the \$500.00 that the Claimant paid the Respondent; the Claimant refused the offer and stated that he was going to sue the Respondent. On September 13, 2014, the Respondent emailed the Claimant informing him that the Respondent would return to finish the work if the Claimant treated him respectfully or, if the Claimant chose, the Respondent would refund the \$500.00. The Claimant refused the Respondent's offer.

12. The Claimant paid Heymann Contracting, a licensed home improvement contractor, \$4,840.00 to repair the unworkmanlike home improvement work performed by the Respondent and to complete the work called for under the Contract.

13. The Claimant's actual loss is \$3,105.00.

## DISCUSSION

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Bus. Reg. § 8-405(a). *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. The Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. 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 County Police Dep’t.*, 369 Md. 108, 125, n. 16 (2002), quoting MPJI 1:7 (3rd. ed. 2000).

For the following reasons, I find that the Claimant has proven eligibility for compensation for a portion of the losses claimed. I further conclude that the Claimant’s recovery from the Fund is limited to \$500.00, the amount the Claimant paid the Respondent.

It is undisputed that the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Claimant testified that the Respondent performed unworkmanlike, inadequate home improvements. The Respondent acknowledged that there were deficiencies in the quality of some of the work he performed. The parties disagree about the cause and extent of the problems with the project.

The Claimant was extremely well prepared for the hearing. He appeared at the hearing with many boxes of exhibits he had assembled, including dozens of photographs of the progress

of the work on his deck.<sup>2</sup> I permitted the Claimant to offer the relevant, competent evidence but cautioned him many times that his recovery would be limited to the amount he paid the Claimant due to the statutory limit on recovery from the Fund.

Despite the fairly limited scope of the permissible recovery from the Fund, the hearing lasted over four hours, primarily because of the Claimant's determination to demonstrate the justness of his case. My evaluation of the Claimant's credibility was influenced by a number of factors. The Claimant evidenced deep animus toward the Respondent throughout the hearing. A reasonable homeowner can be justifiably aggravated by a home improvement project gone awry. However, the Claimant's ill will toward the Respondent was far out of proportion to the Claimant's loss. This was an elective exterior project undertaken on a portion of the Claimant's house not necessary for everyday enjoyment of the residence. The Claimant objected to virtually every action taken by the Respondent, he hovered over the Respondent while the Respondent was working on the site, constantly questioning the Respondent and basically badgering him throughout. While the Respondent's work quality was unacceptable, it is difficult to imagine that anyone would do his best while subjected to such "supervision."

While the Respondent was testifying, the Claimant engaged in numerous face gestures and body postures exhibiting derision toward the Respondent's version of the events. The Claimant appeared to still be very angry with the Respondent about the way the deck project turned out.

The Claimant testified that the Respondent threatened him, damaged the PVC boards that had been screwed onto the stairs, damaged other areas with a crow bar, and misled him about the

---

<sup>2</sup> The Claimant requested \$300.00 from the Fund for the cost of the photocopies he made in preparation for the hearing. While I have no doubt that he spent that much, this is not a recoverable item in a Claim proceeding. COMAR 09.08.03.03B(1).



need for a building permit. The Claimant did not acknowledge that his conduct played any part in the difficulties with completing this home improvement project.

The Respondent, whom I found to be a credible witness, denied all of these alleged transgressions. The Respondent candidly admitted in testimony that he had limited experience as a home improvement contractor. He also admitted honestly in testimony that he underestimated the time the job required. According to the Respondent, the Claimant harassed and belittled him the whole time he was working on the deck. When the two ultimately parted ways and the Respondent offered to refund the Claimant's partial payment, the Claimant refused, telling the Respondent that he would sue him and take his house.

During his testimony the Respondent was calm and focused, despite the fact that the Claimant accused him of many improprieties. The Respondent did not evade any question and I assessed his answers to be truthful and complete. For these reasons, I have given the Respondent's testimony great weight.

For the above reasons, I discounted much of the Claimant's testimony. The Claimant used exaggerated language to describe the difficulties he encountered with the Respondent. The Claimant was extremely agitated and highly excitable during the hearing. It appeared that the Claimant was barely able to control himself while in the presence of the Respondent.

As indicated above, a degree of displeasure is understandable, but the Claimant's ill will toward the Respondent was way out of proportion to the circumstances and at times completely fanciful. For example, the Claimant testified that the Respondent discriminated against him because the Claimant's wife is Asian. This testimony was bizarre, given the lack of any evidence that the Respondent ever met or communicated with Mrs. Gretz and absent any specific facts on which the Claimant based this notion.

In summary, I conclude that the Claimant's testimony must be carefully considered in order to separate the facts from the exaggerations fueled by the Claimant's hostility toward the Respondent. In this respect, I have used the photographs of the project presented by the Claimant to measure the deficiencies in the Respondent's work. On the whole, the Respondent did not deny that the photographs in evidence accurately depicted the conditions of the deck project. I have given the photographs more weight than the Claimant's testimony in reaching my decision.

The items of defective work for which the Claimant is entitled to recover from the Fund include improperly drilled holes in wooden beams, mismatched joinder of wood, scratched PVC boards, and several broken lights. The Claimant did not produce an expert witness to testify about the defects in the Respondent's work, but under these circumstances expert testimony was not necessary. The photographs in evidence show that the Respondent drilled some large screw holes in the new boards the Claimant purchased for the deck project, only to have to drill additional holes in the same board because the holes he originally drilled were misaligned. Clmt. Ex. 7, 8, 16.

In addition, the Claimant's photographs show that the Respondent's joints were not level or flush. Clmt. Ex. 5, 18. The Respondent admitted that he had limited experience performing home improvement work. I conclude that the Respondent performed defective work on the deck project.

The Claimant obtained another licensed home improvement contractor to repair or replace the Respondent's defective work. I conclude that the cost to replace or repair the items of the Respondent's defective work was reasonable; the Respondent did not contest this issue. I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I now turn to the amount of the award, if any, to which the Claimant is entitled. 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). The Claimant thus may not recover for the cost to prepare materials for the hearing or the extensive emotional distress to which he testified.

The 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).

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

Amount paid to the Claimant under the Contract:	\$500.00
Plus amount paid to repair poor work and complete Contract:	\$4,840.00
Total	\$5,340.00
Less original Contract price:	\$2,235.00
Actual Loss:	\$3,105.00

Pursuant to the Business Regulation Article, the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the

Respondent. Bus. Reg. § 8-405 (e)(1), (5). In this case, the Claimant's recovery from the Fund is limited to \$500.00, the amount he paid the Respondent.

The last issue raised in this case is whether the Claimant is barred from recovery from the Fund because the Respondent offered to complete the project or refund the Claimant the \$500.00 which the Claimant paid him. Section 8-405(e) of the Business Regulation Article provides that "The Commission may deny a claim if the Commission finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim."

I conclude that the Respondent made a good faith effort to resolve the claim. The Respondent was willing to come back and finish the job, if the Claimant agreed to treat him respectfully, i.e., to not harass him while he was working. In the alternative, the Respondent agreed to refund the Claimant's \$500.00 so the Claimant could find someone else to do the job.

However, I further conclude that the Claimant reasonably rejected the Respondent's good faith offer. With respect to the offer of a refund, as the itemization of the defective work in finding of fact 8 shows, it cost the Claimant more than \$500.00 to repair the defective work. So the Claimant was reasonable in refusing to accept the offer of a refund of the partial payment he made to the Respondent. With respect to the offer to finish the job, the myriad of defective items performed by the Respondent justly led the Claimant to decline to let the Respondent perform more work on the deck project. For these reasons, I conclude that the Claimant is not barred from recovery of \$500.00 from the Fund.

#### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$500.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015). I further conclude that the Claimant is not barred from recovery because the Claimant

reasonably rejected the Respondent's good faith offer to resolve the dispute. Md. Code Ann., Bus. Reg. § 8-405(e) (2015).

**RECOMMENDED ORDER**

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$500.00; 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 as set by the Maryland Home Improvement Commission;<sup>3</sup> and

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

**Signature on File**

November 3, 2015  
Date Decision Issued

\_\_\_\_\_  
Mary R. Craig  
Administrative Law Judge

MRC/cj  
#158849

<sup>3</sup> See Md. Code Ann., Bus. Reg. § 8-410(a) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 10th day of December, 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.***

***J. Jean White***

***I. Jean White  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**