

**IN THE MATTER OF THE CLAIM
OF KAREN MILLER,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF COREY BOWLING,
T/A BOWLINGS HOME
IMPROVEMENTS, INC.,
RESPONDENT**

*** BEFORE LORRAINE E. FRASER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DLR-HIC-02-15-28754
* MHIC No.: 15 (90) 662
*
*
*

* * * * *

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 April 29, 2015, Karen Miller (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$4,985.00 in alleged actual losses suffered as a result of a home improvement contract with Corey Bowling, trading as Bowlings Home Improvements, Inc. (Respondent).

I held a hearing on February 23, 2016 at the LaPlata Public Library in LaPlata, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).¹ Sandra L. Strissel, Esq., represented the Claimant. 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:

- Cl. Ex. 1 Downstairs floor plan
- Cl. Ex. 2 Contract with the Respondent, 11/2/11
- Cl. Ex. 3 Checks paid to the Respondent: \$6,112.41 on 11/10/11, \$7,852.29 on 1/6/12, \$1,008.37 on 3/29/12, \$2,658.83 on 5/8/12; check from State Farm Fire and Casualty Company \$2,217.13 on 4/11/12
- Cl. Ex. 4 Photographs
- Cl. Ex. 5 Estimate, Boston Construction, LLC, 3/15/15
- Cl. Ex. 6 Letter to the Claimant from the Respondent, 6/29/12
- Cl. Ex. 7 Letter to the Respondent from the Claimant, 6/15/12

The Respondent did not offer any exhibits into evidence.

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

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 Notice of Hearing, 12/31/15; Hearing Order, 8/18/15
- Fund Ex. 2 Licensing History for the Respondent, 2/22/16
- Fund Ex. 3 Letter to the Respondent from MHIC, 5/14/15; Home Improvement Claim Form, received 4/29/15; letter to MHIC from the Claimant, 4/25/15

Testimony

The Claimant testified.

The Respondent testified and presented the testimony of Anthony Wineke.

The Fund did not present any witness 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 numbers 01 45624 and 05 45623.
2. On November 2, 2011, the Claimant and the Respondent entered into a contract to remediate water damage in the lower level of the Claimant's home. The work included removing the contents from four rooms and disposing of or storing the contents in a rented Pod; removing wet carpet, doors, jambs, casing, baseboard, and paneling, and drywall from the floor to two feet up; clean, dry, and apply anti-microbial agent; install new paneling; stain and install new baseboard, doors, jambs, and window casing; install new carpet and padding; install new drywall from the floor to two feet up, mud, tape, finish, prime, and paint one coat.
3. The original agreed-upon contract price was \$18,337.23.
4. On November 9, 2011, the Respondent began work on the project.
5. On November 10, 2011, the Claimant paid the Respondent \$6,112.41.
6. On January 6, 2012, the Claimant paid the Respondent \$7,852.29.

7. The Claimant notified the Respondent of problems she had with his work while he was working in her home.
8. On January 31, 2012, the Respondent completed work on the project.
9. On March 29, 2012, the Claimant paid the Respondent \$1,008.37.
10. On April 11, 2012, the Claimant paid the Respondent \$705.33.
11. On May 8, 2012, the Claimant paid the Respondent \$2,658.83.
12. On May 15, 2012, the Claimant met with the Respondent and discussed repairs she wanted him to make to his work and damage she said he caused to her possessions. She wanted the Respondent to compensate her for her damaged possessions.
13. The Respondent did not perform any work on the Claimant's home after January 31, 2012.
14. On April 29, 2015, the Claimant filed her claim with the Fund.

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.” Md. Code Ann., Bus. Reg. § 8-401 (2015). There are certain limitations on recovery from the Fund, however. Among those limitations is a three-year limitation on filing claims with the Fund. COMAR 09.08.03.02G states: “A claim may not be brought against the Fund after 3 years from the date that the claimant discovered, or by exercise of ordinary diligence should have discovered, the loss or damage.”

In this case, the Respondent performed work on the Claimant's home from November 9, 2011 through January 31, 2012. During the hearing, the Claimant described the problems she

had with the Respondent's work. The Claimant took photographs of the Respondent's work as he was performing it. For example, the Claimant photographed the bare wood studs after the Respondent had removed the drywall and installed new studs, before he installed new drywall. The Claimant testified that the Respondent cut the studs off and nailed other 2x4s to the cut-off studs. She complained that the Respondent did not install new studs from floor to ceiling. The Claimant photographed bare studs that she said showed mold on the wood, and she said the Respondent did not replace the wood or the insulation. She photographed the shelf in the utility room and complained that the Respondent moved the shelf to the right and that it was not located where it had been. She photographed the floor to show that he had not cleaned it properly. She stated that the Respondent installed a door that opened the wrong way and that she told him she did not like the door. She testified that the doors and the trim around the doors was not sanded, stained, and finished properly. She stated that shelves under the stairs were too close together and unusable. She complained that the Respondent failed to put the glass shade back on the ceiling light and that as a result the glass shade was broken when the item it was resting on was moved. The Claimant submitted into evidence a letter she wrote to the Respondent on June 15, 2012 identifying problems with his work. In her letter, the Claimant noted that she and the Respondent met at her home on May 15, 2012 and discussed the work she was dissatisfied with and her damaged possessions. In her letter, she also noted that as of June 15, 2012, the Respondent had not called her, come to her home to make the repairs, or compensated her for the damages. She testified that she waited until July 2012 for the Respondent to make the repairs. When asked why she did not file a claim with the Fund until April 2015, the Claimant stated that she had hospitalizations, and that she has asthma and rheumatoid arthritis.

I understand the Claimant has had some health concerns; however, the Claimant did not adequately explain why she did not file a claim for over three years after January 31, 2012 – the

last day the Respondent performed work at her home. The Claimant's testimony and letter clearly show that she was dissatisfied with the Respondent's work while he was still working in her home. Thus, the Claimant was aware of the problems at that time.

In order to be eligible for compensation from the Fund, the Claimant was required to file her claim with the Fund within three years from the date she discovered the problems with the Respondent's work. Thus, the Claimant should have filed her claim with the Fund by January 31, 2015 at the latest. Unfortunately for the Claimant, she did not file her claim with the Fund until April 29, 2015, and as a result, she is barred from recovery from the Fund by COMAR 09.08.03.02G.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not sustained a compensable loss as a result of the Respondent's acts and omissions. The Claimant failed to file her claim with the Fund within three years from the date she discovered the problems with the Respondent's work. Md. Code Ann., Bus. Reg. § 8-401 (2015); COMAR 09.08.03.02G.

RECOMMENDED ORDER

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

ORDER that the Claimant is ineligible for an award from the Maryland Home Improvement Guaranty Fund; and

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

May 20, 2016
Date Decision Issued

Signature on File

Lorraine E. Fraser
Administrative Law Judge

LEF/sm
162467

PROPOSED ORDER

WHEREFORE, this 29th day of June, 2016, 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