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| <p>IN THE MATTER OF THE CLAIM OF RITA JONES, CLAIMANT AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ALLEGED ACTS OR OMISSIONS OF JAMES BRENT, T/A ATTENTION TO DETAIL MAINTENANCE, LLC, RESPONDENT</p> | <p>* BEFORE JOHN T. HENDERSON, JR., * AN ADMINISTRATIVE LAW JUDGE * OF THE MARYLAND OFFICE * OF ADMINISTRATIVE HEARINGS * * * * * * OAH No.: DLR-HIC-02-18-06983 * MHIC No.: 16 (75) 1442</p> |
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RECOMMENDED DECISION

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STATEMENT OF THE CASE

On October 18, 2016, Rita Jones (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for the reimbursement of \$10,000.00 of actual losses allegedly suffered because of a home improvement contract with James Brent, t/a Attention to Detail Maintenance, LLC (Respondent). On September 20, 2017, the Claimant amended her claim to \$3,500.00 of actual losses.

On March 19, 2018, the Office of Administrative Hearings (OAH) mailed notice of the hearing to the Respondent by certified and regular mail to his address of record on file with the MHIC. Md. Code Ann., Bus. Reg. § 8-312(d) (2015).¹ The notice advised the Respondent of the time, place, and date of the hearing. On March 28, 2018, the United States Postal Service returned the green certified receipt evidencing the notice was signed for by someone at the address of 2275 Progress Court, Waldorf, Maryland 20601, the Respondent's address of record. I determined there was adequate notice of the hearing provided to the Respondent.

I held the hearing on June 8, 2018, at the Largo Government Center-Penthouse Room, 9201 Basil Court, Largo, Maryland 20774. Bus. Reg. §§ 8-312(a), 8-407(a) and (e) (2015). The Claimant appeared and represented herself. The Respondent did not appear. Kris M. King, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), 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 OAH 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; COMAR 09.08.02; COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund because of the Respondent's acts or omissions?
2. If so, how much is the Claimant entitled to receive from the Fund?

¹ "The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission." Md. Code Ann., Bus. Reg. § 8-312(d) (2015).

SUMMARY OF THE EVIDENCE

Exhibits

I admitted into evidence exhibits offered by the Claimant as follows:

- Cl. Ex. 1 Respondent's contract with Claimant, July 15, 2015
- Cl. Ex. 2 Claimant's checking account statements from Community Federal Credit Union, July 31, 2015 and August 31, 2015
- Cl. Ex. 3 Text messages between Claimant and Respondent from September 2015 through May 23, 2016 (74 pgs.)
- Cl. Ex. 4 Six copies of photographs of subject home improvement
- Cl. Ex. 5 Proposal from Quintanilla Home Improvement (Quintanilla), September 19, 2017

I admitted exhibits on behalf of the Fund as follows:

- GF Ex. 1 Hearing Order from HIC, February 16, 2018
- GF Ex. 2 The Respondent's DLLR license history as of June 7, 2018
- GF Ex. 3 Affidavit of William Banks, Investigator with HIC, June 7, 2018
- GF Ex. 4 Home Improvement Claim Form, September 20, 2017
- GF Ex. 5 Claimant's claim amendment, September 20, 2017
- GF Ex. 6 DLLR license history of Carlos Quintanilla as of June 7, 2018

Testimony

The Claimant testified on her behalf. 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 contractor's license number 99038 and was trading as Attention to Detail Maintenance, LLC.
2. The Claimant is not related to the Respondent.
3. The Claimant's property subject to this matter is located at 3102 Tyler Court, Glenarden, Maryland 20706 (the Property).
4. The Property is the Claimant's primary residence.
5. The Claimant has not filed other claims against the Respondent outside of these proceedings.

6. In June 2015, the Claimant telephoned the Respondent to inquire about home improvement and the Respondent provided an estimate for work she requested.

7. On July 15, 2015, the Claimant and the Respondent entered into an agreement (the Contract) whereby the Respondent agreed to remodel the kitchen and the basement.

Specifically, the Respondent agreed to do the following:

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| Demo Kitchen and install new materials according to discussed specifications; install new 10x16 deck and sliding door; remove paneling at upstairs partition and stairwell and install drywall, finish and paint | \$14,000.00 |
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| Demo paneling to downstairs rec room and install drywall, finish and paint; install rec room floor tile and frame up wood burning stove platform and tile; install bi-fold doors to laundry area; finish drywall in back room and next to laundry, finish and paint; install new basement door | <u>\$14,000.00</u> |
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| Total | \$28,000.00 |
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8. The payment terms were the following:

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| Deposit | \$14,000.00 |
| Start of Phase 2 | \$ 7,000.00 |
| Completion | <u>\$ 7,000.00</u> |

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|-------|-------------|
| Total | \$28,000.00 |
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9. On July 16, 2015, the Claimant paid the Respondent \$14,000.00.

10. On August 14, 2015, the Claimant paid the Respondent \$14,000.00, for a total of \$28,000.00, the full contract price.

11. The Respondent began the home improvement a week after entering into the Contract.

12. The Respondent did not complete the agreed upon home improvement.

13. The Claimant made efforts to reason with the Respondent by text messaging to implore him to return and complete the home improvement.

14. The Respondent kept delaying and did not perform any work on the home improvement from November 2015 through May 23, 2016.

15. In June, 2016, the Respondent abandoned the Property and did not return to complete the home improvement.

16. The Respondent did not refund any money to the Claimant for incomplete work.

17. The Respondent did not complete the following agreed upon work, which remains incomplete as of the date of the hearing:

- Install the main door and storm door
- Install 150 feet of baseboard installation
- Install two vents
- Install marble around chimney in basement
- Install trim base around two doors
- Install four cover plates for outlets
- Install crown molding around the kitchen area
- Paint the installed drywall

18. On September 19, 2017, the Claimant received a proposal from Quintanilla who provided an estimate of \$3,500.00 to complete the home improvement as described in the Contract.

DISCUSSION

In 1985, the Maryland General Assembly enacted legislation that first established the Fund. By this means, the legislature sought to create a readily available reserve of money from which homeowners could seek relief for actual losses sustained because of an unworkmanlike, inadequate, or incomplete home improvement performed by a licensed home improvement contractor. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411 (2015).² Under this statutory scheme, licensed contractors are assessed fees, which subsidize the Fund. Homeowners who sustain losses by the actions of licensed contractors may seek reimbursement for their “actual losses” from this pool of money, subject to a maximum of the lesser of \$20,000.00 or the amount paid by or on

² Unless otherwise indicated, all references are to the 2015 version.

behalf of the claimant to the contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(1) and (5).

A homeowner is authorized to recover from the Fund when he or she sustains an actual loss that results from an act or omission by a licensed contractor. Md. Code Ann., Bus. Reg. § 8-405(a).

When the Fund reimburses a homeowner as a result of an actual loss caused by a licensed contractor, the responsible contractor is obligated to reimburse the Fund. Md. Code Ann., Bus. Reg. § 8-410. The MHIC may suspend the license of any such contractor until he or she reimburses the Fund in full with annual interest as set by law. Md. Code Ann., Bus. Reg. § 8-411(a).

Recovery against the Fund is based on “actual loss,” as defined by statute and regulation. “[A]ctual 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. “By employing the word ‘means,’ as opposed to ‘includes,’ the legislature intended to limit the scope of ‘actual loss’ to the items listed in section 8-401.” *Brzowski v. Md. Home Improvement Comm’n*, 114 Md. App. 615, 629 (1997). The Fund may only compensate claimants for actual losses incurred as a result of misconduct by a licensed contractor. COMAR 09.08.03.03B(2). At a hearing on a claim, the Claimant has the burden of proving the validity of the 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 Cty. Police Dep’t.*, 369 Md. 108, 125, n. 16 (2002), quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000).

There is no dispute that the Respondent held a valid contractor’s license in 2015 when he and his company entered into the Contract with the Claimant. Md. Code Ann., Bus. Reg.

§ 8-405(a). There is no dispute that the Claimant is the owner of the subject property and that there is no procedural impediment barring her from recovering from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a), (f). The next issue is whether the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement due to misconduct, and if so, whether the Respondent made good faith efforts to resolve the claim. A claim may be denied if the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim. Md. Code Ann., Bus. Reg. § 8-405(d). For the following reasons, I find that the Claimant has proven eligibility for compensation and has not unreasonably rejected good faith efforts by the Respondent to resolve the claim.

The Claimant testified that she and the Respondent attended high school together, which is the reason she sought him out and agreed to use his home improvement services. She testified that on July 15, 2015, she signed the Contract with the Respondent and his company. There was no start date provided within the contract, however, the Respondent began work about one week after the Contract was signed.

The Claimant further testified that the Respondent and a crew began the work and completed a substantial amount of work agreed upon in the Contract. However, the Respondent stopped working on the home improvement in September 2015. The Claimant made many attempts via text messaging to the Respondent, seeking a commitment for his return to finish the home improvement. At one point, the Respondent told her that he underbid the Contract, that he was having money issues and that his home was in foreclosure. The Claimant finally told the Respondent not to return to the Property as it was clear he abandoned the home improvement by June 2016.

The Fund argued that the credible evidence shows that the Claimant proved a loss by the acts or omissions of the Respondent and recommended an award to the Claimant of \$3,500.00,

representing the estimate provided by Quintanilla to complete the home improvement. I agree. I find that the Respondent failed to return and complete the home improvement. Thus, the misconduct in this case lies in the Respondent not completing the agreed upon work pursuant to the July 15, 2015 Contract. The Claimant sustained an actual monetary loss. She is eligible for compensation from the Fund. I now turn to the amount of the award, if any.

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). MHIC’s regulations offer three formulas for measurement of a claimant’s actual loss. COMAR 09.08.03.03B(3) sets forth the various formulas for determining an “actual loss.” According to the Fund, and I agree, the appropriate formula is the following:

- (3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

...

- (c) 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.

Using the formula in COMAR 09.08.03.03B(3)(c), the following calculations apply:

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| | \$28,000.00 | Payment made to the Respondent by Claimant under the Contract |
| | <u>\$ 3,500.00</u> | The Amount required to pay Quintanilla to complete the Contract |
| Total | \$31,500.00 | |
| Less | <u>\$28,000.00</u> | The original Contract price |
| | \$ 3,500.00 | Considered as actual loss |

The fund may not pay a Claimant an amount in excess of the amount paid by or on behalf of a claimant to the contractor against whom the claim is filed. Md. Code Ann., Bus. Reg. § 8-405(e)(1) and (5). The Claimant has an “actual loss” of \$3,500.00.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual loss of \$3,500.00 as a result of the Respondent’s acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(e)(1) and (5) (2015); COMAR 09.08.03.03B(3)(a).

RECOMMENDED ORDER

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

ORDER that the Claimant sustained an actual loss; and

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$3,500.00; and

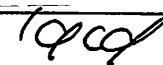
ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until he reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent as set by the Maryland Home Improvement Commission;³ and

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

Signature on File

September 5, 2018
Date Decision Issued

JTH/emh
#175692


John T. Henderson, Jr.
Administrative Law Judge

³ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 10th day of October, 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.

Bruce Quackenbush

Bruce Quackenbush

Panel B

MARYLAND HOME IMPROVEMENT COMMISSION