

IN THE MATTER OF THE CLAIM	* BEFORE JUDITH JACOBSON,
OF TAMMY L. MUIR,	* 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 GLENN MASON,	*
T/A GOOD NEWS IMPROVEMENTS,	* OAH No.: DLR-HIC-02-16-13740
REMODELING AND HANDYMAN	* MHIC No.: 16 (05) 894
SERVICE, LLC,	*
RESPONDENT	*

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On April 12, 2016, Tammy Muir (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$15,691.00 in alleged losses suffered as a result of a home improvement contract with Glenn Mason, trading as Good News Improvements, Remodeling and Handyman Service, LLC (Respondent).

I held a hearing on November 1, 2016 at the Office of Administrative Hearings (OAH), Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).¹ The Claimant represented herself. Matthew A. Lawrence, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Respondent did not appear.

Procedure is governed by the contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, the MHIC hearing regulations, and the OAH Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 09.08.02.01B; COMAR 28.02.01.

Because the Respondent has no current MHIC license, the MHIC provided OAH with his address of record with the Motor Vehicle Administration. Notice of the hearing was mailed to him at that address by certified mail. COMAR 09.08.03.03A(2). The certificate was signed by someone on the Respondent's behalf. The Respondent did not request a postponement of the hearing. Since the Respondent was properly notified of the hearing and failed to appear, I proceeded with the hearing in his absence. COMAR 28.02.01.23A.

ISSUES

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions, and, 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 - Contract with the Respondent, September 18, 2015 (unsigned); Emails between the Respondent and the Claimant's husband, August 18, 2015, August 19, 2015; Emails between the Respondent and the Claimant, September 18, 2015.

¹ Unless otherwise noted, all references to the Business Regulation Article cite the 2015 Replacement Volume.

- Cl. Ex. # 2 - Check No. 2008, August 21, 2015
- Cl. Ex. # 3 - Emails between the Respondent and the Claimant, September 18, 2015; Email from the Respondent to the Claimant and her husband, October 15, 2015
- Cl. Ex. # 4 - Check No. 2011, September 21, 2015
- Cl. Ex. # 5 - Invoice for Services, November 13, 2015; Two diagrams
- Cl. Ex. # 6 - Email from the Respondent to the Claimant and her husband, November 13, 2015
- Cl. Ex. # 7 - Check No. 2017, November 20, 2015; Check No. 2020, November 27, 2015; Check No. 2052, December 4, 2015
- Cl. Ex. # 8 - Text messages, December 4, 2015 and December 14, 2015
- Cl. Ex. # 9 - Check No. 2013, October 16, 2015; Check No. 2015, October 29, 2015
- Cl. Ex. # 10 - Emails between the Claimant and the Respondent, November 13, 2015 and December 10, 2015
- Cl. Ex. # 11 - Carroll County Government Permit Status Inquiry, printed March 28, 2016
- Cl. Ex. # 12 - Email from the Respondent (receiving party not indicated), December 10, 2015; Email from the Claimant's husband to the Respondent, December 10, 2015
- Cl. Ex. # 13 - Eight photographs
- Cl. Ex. # 14 - Text messages, December 14, 2015 and December 28, 2015; Emails between the Respondent and the Claimant's husband, December 11, 2015, December 14, 2015, December 15, 2015, and January 8, 2016
- Cl. Ex. # 15 - Text messages, December 28, 2015, January 12, 2016, and January 21, 2016
- Cl. Ex. # 16 - Email from the Claimant to the Respondent, February 8, 2016
- Cl. Ex. # 17 - Proposal, Elite Decks/Home Remodeling, undated
- Cl. Ex. # 18 - Proposal, Hammer Down Home Improvement, March 16, 2016
- Cl. Ex. # 19 - Home Improvement Claim Form, undated; Proposal, Hammer Down Home Improvement, March 16, 2016

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

- Fund Ex. # 1 - Respondent's Licensing History, printed October 31, 2016

Fund Ex. # 2 - Motor Vehicle Administration record, printed October 31, 2016

No exhibits were submitted on the Respondent's behalf.

Testimony

The Claimant testified on her own behalf. The Fund did not present any testimony. No testimony was presented on the Respondent's behalf.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to this case, the Respondent was a licensed home improvement contractor under MHIC license number 05-131659.
2. On August 19, 2015, the Claimant and the Respondent entered into a contract to improve and expand a deck at the Claimant's home, including framing a roof and installing stairs. The contract did not indicate a start or end date.
3. The original contract price was \$28,009.00; a subsequent change order added \$1,300.00 to the agreed upon contract price.
4. The Claimant paid the Respondent a total of \$26,000.00.
5. The work began on September 18, 2015.
6. As of December 10, 2015, the Respondent left the work incomplete and he removed the remaining construction materials from the Claimant's home on that date.
7. The Claimant retained another contractor to complete the work under the contract, and the cost to complete the work is \$18,000.00.
8. The Claimant's actual loss is \$15,691.00.

DISCUSSION

Legal Framework

The Claimant has the burden of proving the validity of her 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 (3rd 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); *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. For the following reasons, I find that the Claimant has proven eligibility for compensation.

Eligibility for Compensation

At all relevant times, the Respondent was licensed by the MHIC. The Respondent and the Claimant agreed to a home improvement contract on August 19, 2015.² The work under the contract included the improvement and expansion of an existing deck at the Claimant’s home, including framing a roof and installing stairs. The work began on September 18, 2015. According to the Claimant’s testimony, which was corroborated by an email exchange between her and the Respondent, as of December 10, 2015, the Respondent left the work incomplete and removed his remaining construction materials from the Claimant’s home.

² There was no signed contract in evidence. The Claimant’s email accepting the contract was sent on August 19, 2015.

The evidence shows that the Respondent performed an incomplete home improvement, and the Claimant is eligible for compensation from the Fund on this basis.

Amount of Award

Having found eligibility for compensation I now turn to the amount of the award, if any, to which the Claimant is entitled. MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3).

The original contract price was \$28,009.00. A subsequent change order added \$1,300.00 to the contract price, for a total of \$29,309.00. The evidence, including copies of numerous checks, shows that the Claimant paid the Respondent a total of \$26,600.00. The Claimant hired another contractor to complete the work under the contract with the Respondent for \$18,400.00. The Fund did not dispute the reasonableness of this amount, and by failing to appear at the hearing, the Respondent lost his opportunity to contest the appropriateness of the amount.

Since the Respondent did work according to the contract and the Claimant solicited another contractor to complete the contract, the Claimant's actual loss is the amount paid to the Respondent under the contract, added to a reasonable amount she paid or would be required to pay another contractor to complete the original contract, less the original contract price. COMAR 09.08.03.03B(3)(c).

The amount the Claimant paid the Respondent was \$26,600.00. The cost to complete the contract is \$18,400.00. The total is \$45,000.00. Subtracting the total contract price of \$29,309.00 from this amount gives a result of \$15,691.00. The Fund agreed that the Claimant proved her eligibility for \$15,691.00. This is the amount of the Claimant's proven actual loss.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$15,691.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$15,691.00; 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;³ and

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

Signature on File

November 23, 2016
Date Decision Issued

Judith Jacobson
Administrative Law Judge

JJ/dlm
#165304

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

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PROPOSED ORDER

WHEREFORE, this 27th day of January, 2017, 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.

Michael Shilling

***Michael Shilling
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION