IN THE MATTER OF THE CLAIM	*	**BEFORE NANCY E. PAIGE,**
OF ADAM BIEGELEISEN,	*	**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 DOUGLAS	*	
MORGAN,	*	**OAH No.: DLR-HIC-02-17-40092**
T/A MORGAN & MORGAN SOLAR,	*	**MHIC No.: 16 (05) 914**
LLC,	*	
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 August 11, 2017, Adam Biegeleisen (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of $6,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Douglas Morgan, trading as Morgan & Morgan Solar, LLC (Respondent).

I held a hearing on April 12, 2018 at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant

represented himself. Kris King, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. After waiting more than 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 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 EVIDENCE

Exhibits

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

Cl. #1. September 16, 2015 contract between Claimant and Respondent

Cl. #2. September 16, 2015 check for $15,000.00 from Claimant to Respondent

Cl. #3. September 18 – October 19, 2015 emails between Claimant and Respondent, with attachment

[1] Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on March 14, 2018, COMAR 09.08.03.03A(2), and not returned as unclaimed/undeliverable. Furthermore, Mr. King advised that he had tracked the return receipt on the United States Postal Service website, which indicated that the certified mail was delivered on March 16, 2018. In addition, DLR mailed a Proposed Order to the Respondent at the same address and the Respondent requested a hearing because he disagreed with the Proposed Order. 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.

Cl. #4. October 7, 2016 email between Claimant and Dillon Yeung, with attached emails between Claimant, Dillon Yeung, Vik Sheth, Madan Dubey; screen shots of text messages and November 12, 2015 email from Respondent to Claimant

Cl. #5. [Not admitted]

Cl. #6. District Court for Howard County Case Information, State of Maryland v. [Respondent], Case #0T00096089, with attached Subpoena and Notice of Judgment of Restitution

Cl. #7. [Not admitted]

Cl. #8. CD recording of Case #0T00096089

Cl. #9. April 5, 2016 Home Improvement Claim Form with attachments (revised)

Cl. #10. July 6, 2016 Solar PV Installation Agreement between Claimant and 21st Century Power Solutions, with attached invoices and checks

Cl. #11. [Not admitted]

Cl. #12. Undated letter from Konrad Kutter to Claimant

Cl. #13. A & B. Photographs

Cl. #14. Undated Certificate of The North American Board of Certified Energy Practitioners to Konrad Kutter (expiration date: December 21, 2020)

Cl. #15. Photographs

I admitted the following exhibits on behalf of the Fund:

Fund #1. March 3, 2018 Notice of Hearing with certified mail receipts

Fund #2. December 11, 2017 Hearing Order

Fund #3. April 4, 2018 licensing history

Fund #4. Request for hearing received December 1, 2017 with attachments

Fund #5. April 5, 2016 Home Improvement Claim Form with attachment (received April 11, 2016)

Fund #6. April 14, 2016 letter from Joseph Tunney, Chairman, MHIC, to Respondent

Fund #7. August 11, 2017 Home Improvement Claim Form (revised)

Fund #8. March 1, 2017 letter from Michael Miller, Investigator, MHIC, to Respondent

Testimony

The Claimant testified in his own behalf and presented the testimony of Konrad Kutter, Project Manager, 21st Century Solar Installation, accepted as an expert in solar panel installation.[2]

No other witnesses testified.

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 1-103407.

2. On September 16, 2015, the Claimant and the Respondent entered into a contract to install solar panels on the Claimant's home (Contract). The Contract stated that work would begin on November 1, 2015 and would be completed by November 15, 2015.

3. The original agreed-upon contract price was $20,776.00.

4. On September 16, 2015, the Claimant paid the Respondent $15,000.00.

5. The Respondent performed some work on the Contract, but abandoned the job in early November 2015.

6. The Contract called for a Solar Edge Inverter. The Respondent began installation of a system that was not compatible with a Solar Edge Inverter.

[2] Mr. Kutter is certified by The North American Board of Certified Energy Practitioners as a PV Installation Professional.

7. The work performed by the Respondent was unworkmanlike and not in conformity with the Contract.

8. The value of the work done by the Respondent is $142.00.

9. The Claimant received restitution of $9,000.00 from the Respondent pursuant to the Order of the District Court of Maryland for Howard County in Case No. #0T00096089.

10. The Claimant suffered an actual loss of $6,000.00.

DISCUSSION

In this case, 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).[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 Civil 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);[4] *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.

---

[3] As noted above, "COMAR" refers to the Code of Maryland Regulations.

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

The Claimant's contract with the Respondent called for installation of a "Solar Photovoltaic system Consisting of 42 Solar Panels" [with a] Solar Edge Inverter." Cl. #1 at 2. Konrad Kutter, the Claimant's expert explained in great detail, first, why the Solar Edge Inverter offers a significant advantage, and second, why the work begun by the Respondent was of only minimal value.

Solar panels convert sunlight to DC current. In order to be useable in a residence, the current must be converted to AC. The Solar Edge System uses one inverter, installed in the basement of the home or on ground level, to accomplish this. The Respondent began installation of a different system which uses multiple inverters on the roof. The single inverter is more accessible and allows the system to be shut down more easily in an emergency. The rails and brackets that the Respondent installed were for a different system which did not use a single inverter and were not compatible with the Solar Edge panels. In addition, the installation of the brackets by the Respondent was unworkmanlike, in that the seals were compromised and permitted leakage and the bolts fastening the brackets to the roof were galvanized rather than stainless steel and therefore subject to corrosion. As a result, most of the work done by the Respondent needed to be removed. Only some electrical work, estimated to be worth $142.00, was salvageable.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract. The Respondent performed unworkmanlike, inadequate and incomplete home improvements. 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. Mr. Kutter's company removed the work done by the Respondent and installed a solar panel system with a single inverter on the Claimant's home at a cost of $37,805.00, with no charge for the electrical work

that was salvaged from the Respondent's work. He was paid in full. The system he installed included better panels and produced a higher voltage. He calculated the difference in cost of the system he installed compared to the system called for in the Contract as $305.00.

The Claimant testified that, as a result of a criminal case brought against the Respondent in District Court, he received restitution of $9,000.00.

The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. 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 retained another contractor 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). Using this formula, but deducting the $9,000.00 restitution received by the Claimant, the Claimant's actual loss would be calculated as follows:

Amount paid to the Respondent:	$15,000.00
Less restitution	- 9,000.00
	$ 6,000.00
Plus amount paid to complete the contract work	+37,500.00
	$43,500.00
Less original contract price	- 20,776.00
Actual loss	$22,724.00

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. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is more than the amount paid to the Respondent. Therefore, the Claimant is entitled recover $6,000.00.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual loss of $22,724.00 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 $6,000.00, which is the amount he paid the Respondent, less restitution. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $6,000.00; 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;[5] and

[5] *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

June 26, 2018
Date Decision Issued

Nancy E. Paige
Administrative Law Judge

NEP/emh
173600

PROPOSED ORDER

WHEREFORE, this 8th day of August, 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.

Andrew Snyder

Andrew Snyder
Panel B

MARYLAND HOME IMPROVEMENT COMMISSION