

IN THE MATTER OF THE CLAIM
OF BRUCE M. WILLIAMS,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF
JOHN RIDGELY, T/A HOME
VISIONS, INC.,
RESPONDENT

* BEFORE JEROME WOODS, II,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-16-30775
* MHIC No.: 16 (90) 915

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PROPOSED DECISION

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STATEMENT OF THE CASE

On June 3, 2016, Bruce M. Williams filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$3,030.00 in

alleged actual losses suffered as a result of a home improvement contract with John Ridgely, t/a/ Home Visions, Inc. (Respondent).

On May 25, 2017, I convened the hearing in this matter at the Tawes State Office Building, Department of Natural Resources, 580 Taylor Avenue, Annapolis, Maryland 21401. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).¹ The Claimant represented himself. Andrew Brouwer, Assistant Attorney General (AAG), Department of Labor, Licensing and Regulation (Department or DLLR), appeared to represent the Fund. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, 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 & Supp. 2016); 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 behalf of the Fund:

- F Ex. 1 - Hearing Order, September 27, 2016
- F Ex. 2 - Notice, April 17, 2017
- F Ex. 3 - Notice, December 21, 2016

¹ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 volume.

- F Ex. 4 - Letter from DLLR to the Respondent, June 10, 2016 and Home Improvement Claim Form, May 31, 2016
- F Ex. 5 - Licensure History, March 13, 2017
- F Ex. 6 - Licensure History, April 27, 2017 (1)
- F Ex. 7 - Licensure History, April 27, 2017 (2)

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

- Cl. Ex. 1 - Contract, July 1, 2015
- Cl. Ex. 2 - Color photographs (11) of storm door, driveway, siding, shutters, October 2016
- Cl. Ex. 3 - Eastern Shore Window and Door, estimate, May 20, 2016; Step It Up Construction, estimate, May 18, 2016

The Respondent did not offer exhibits into evidence.

Testimony

The Claimant testified on his own behalf.

The Fund did not present any witnesses.

The Respondent testified on his own behalf.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to this hearing, the Respondent was a licensed home improvement contractor operating under MHIC contractor's license number 69364.
2. On July 1, 2015 the Claimant and the Respondent entered into a contract for the Respondent to install siding, doors, and shutters on the Claimant's home.
3. The Respondent's salesperson/agent represented the Respondent and conducted the transaction on behalf of the Respondent.

4. The Respondent was to perform the following:
 - replace interior door on the front of the house;
 - install a new storm door on the front of the house;
 - replace interior door on the rear of the house;
 - reinstall existing rear storm door;
 - remove old siding on the exterior of the house and replace with new siding; and
 - install shutters on four windows.
5. The parties agree the contract price was \$21,290.00.
6. The installation of fascia trim shield, rake trim shield and gutters was not part of the contract.
7. The Respondent's agent started the work in September 2015 and completed it in October 2015.
8. The Respondent himself (Mr. Williams) never went to the project site. His agent performed all of the work.
9. The Respondent was paid in full.
10. The shutters installed by the Respondent do not run the full length of the windows, and are approximately four inches too short.
11. At the time the parties entered into the contract, the Claimant requested that the shutters run the full length of the windows, and the Respondent's representative agreed to provide them.
12. The cost of shutters that run the full length of the windows are \$100.00 per shutter, \$60.00 for labor.
13. Four shutters need to be replaced on the Claimant's home.

14. When the Respondent's agent reinstalled the existing rear storm door, there was a gap between the length of the door and the side of the door way. The gap is big enough for rain and insects to get in.

15. The existing rear storm door is not damaged.

16. The cost of a new rear storm door is approximately \$279.00 to \$630.00.

17. The cost to rehang the existing rear storm door is \$75.00.

18. The Claimant contacted the Respondent to inform him of the defects regarding the rear storm door and the shutters.

19. On an unspecified date, the Respondent's salesperson went to the Claimant's home to discuss the defects.

20. Subsequent to the completion of the project and the Claimant's assertion of defects, the Respondent subsequently filed for bankruptcy and went out of business.

21. The Respondent did not ameliorate the work regarding the shutters and rear door.

22. The Claimant's actual loss is \$460.00 for the shutters and \$75.00 to rehang the door, for a total of \$535.00.

DISCUSSION

In this case, 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).

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). 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, but not in the amount requested.

The Respondent was a licensed home improvement contractor at the time he entered into the contract to perform the Project. The Respondent was to essentially install shutters, doors and siding at the Claimant's home.

With regard to the installation of the shutters on the Claimant's four windows, the contract does not indicate the size of the shutters to be installed. The shutters installed by the Respondent do not run the full length of the windows. A review of the photographs indicates that the installed shutters are too short for the windows.

The Respondent testified that the size of the shutters was not discussed. The Claimant testified that he requested installation of shutters that run the full length of the windows. I believe the Claimant because he testified with specificity that he spoke with the Respondent's salesperson regarding the windows and length of the shutters. Additionally, the Respondent did not talk with the Claimant directly about the work to be performed but delegated that responsibility to the salesperson. Moreover, the photographs of the shutters depict the fact that the shutters do not fit the windows, length wise. It is not reasonable to conclude that the Claimant would purposefully request or agree to have shutters installed that were too short and unaesthetically appealing.

With regard to the rear storm door, the parties acknowledge that the Respondent was supposed to reattach an existing door. This is what the Claimant contracted for. The installed door is not damaged but there is a thin but noticeable gap between the length of the door and the doorway. Even though the Respondent agreed to install the preexisting door it was not installed in a workmanlike manner. The gap between the door and the doorway is large enough for

insects and rain water to get inside the exterior of the home. The installation of the storm door is to precisely prevent this phenomenon i.e., keep out moisture and insects. Although the Claimant wanted the preexisting door installed and was aware that the door was an old door, I find him credible that he wanted the door to be installed and function the way it was supposed to. The photographs indicate the door fits the frame, but was simply installed in a way that a gap was present.

The Claimant informed the salesperson after the installation of the shutters that they were not installed according to the agreed upon specifications. He also informed the salesperson of the improper installation of the rear storm door. The Respondent's company filed for bankruptcy and went out of business and as a result, the Claimant's concerns were never addressed.

I find that the work performed by the Respondent failed to meet industry standards with regard to the installation of the shutters and rear door, and thus, was both unworkmanlike and inadequate. I conclude, therefore, that the Claimant is eligible for compensation from the Fund for the incorrect installation of the door and shutters. The shutters will cost \$460.00 to replace and the door will cost \$75.00 to rehang.

With regard to other items, the Claimant obtained an estimate for \$2,400.00 for work regarding installing new rake boards, detaching gutters, installing new fascia and removing and reattaching gutters. The estimate also included work for supplying new shutters that would fit the length of the windows. I have not given this estimate any weight because with the exception of the shutters, the rest of the work was not work to be performed by the Respondent under the contract. Additionally, the estimate does not specifically indicate the amount necessary to correct the installation of the shutters. Also, the Claimant presented a \$630.00 estimate to replace the rear storm door. He is not entitled to this amount either. The preexisting door was

not damaged but simply hung improperly. Moreover, the Claimant acknowledged that he wanted the preexisting door to be mounted and hung. He did not purchase a new rear storm door and has not presented any evidence that the preexisting rear storm door was damaged by the Respondent.

The Fund agreed the Claimant incurred an actual loss as a result of the unworkmanlike and inadequate work of the Respondent, with regard to the shutters and rear storm door installation. The Fund agrees with the cost to replace the shutters and did not argue that a new rear storm door was necessary.

The Respondent was licensed with the MHIC at all times relevant to this matter. I conclude that the Claimant is entitled to compensation from the Fund.

Having found eligibility for compensation, I now turn to the amount of the award. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest, and none are sought here. 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). One of those formulas, as follows, offers an appropriate measurement 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, the Claimant's actual loss is \$535.00 calculated as follows:

Amount paid to the Respondent	\$21,290.00
Amount required to correct the inadequate work	<u>+\$535.00 (\$460.00 + \$75.00)</u>
Total	\$21,825.00
Contract price	<u>-\$21,290.00</u>
Actual loss	\$535.00

Hence, the Claimant is entitled to reimbursement in the amount of \$535.00 from the Fund.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss as a result of the Respondent's unworkmanlike and inadequate work. I further conclude that the amount of that actual and compensable loss is \$535.00. 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 \$535.00; 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;² and

² 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

August 14, 2017
Date Decision Issued

Jerome Woods, II
Administrative Law Judge

JW/cj
#169382

PROPOSED ORDER

WHEREFORE, this 12th day of September, 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.

Sachchida Gupta

***Sachchida Gupta
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION
