IN THE MATTER OF THE CLAIM	*	**BEFORE SYEETAH HAMPTON-EL**
OF JAMES BLANTON,	*	**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 ROBERT	*	
RODRIGUEZ,	*	
T/A HOME WORLD LLC,	*	
RESPONDENT	*	**OAH No.: LABOR-HIC-02-19-36387**
	*	**MHIC No.: 17 (90) 1077**

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PROPOSED DECISION

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STATEMENT OF THE CASE

On May 3, 2018, James Blanton (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of $18,925.00 in actual losses allegedly suffered as a result of a home improvement contract with Robert Rodriguez, trading as Home World LLC (Respondent). Md. Code Ann., Bus. Reg.

§§ 8-401 through 8-411 (2015).[1] On November 1, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on March 13, 2020 at the OAH Headquarters. *Id.* § 8-407(e). Nicholas Sokolow, Assistant Attorney General, Department of Labor (Department),[2] represented the Fund. The Claimant represented himself. After waiting approximately twenty minutes for the Respondent or the Respondent's representative to appear, when nobody appeared, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.[3]

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. 2019); 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 the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

Clmt. Ex. 1 – Three color photographs of a concrete driveway and patio, undated

Clmt. Ex. 2 – One color photograph of a woman standing on grass area, undated

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[1] Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code and the 2019 Supplement.
[2] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.
[3] Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on January 28, 2020, COMAR 09.08.03.03A(2), and the certified mail was returned as unclaimed on March 20, 2020. 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.

Clmt. Ex. 3 – One color photograph of grass and driveway, undated

Clmt. Ex. 4 – Three color photographs of plastic covering over concrete, undated

Clmt. Ex. 5 – Three color photographs of brick steps, concrete, and a text message, undated

Clmt. Ex. 6 – Three color photographs of wet concrete, undated

Clmt. Ex. 7 – Three color photographs of concrete, undated

Clmt. Ex. 8 – Two color photographs of concrete, undated

Clmt. Ex. 9 – Three color photographs of wet concrete, undated

Clmt. Ex. 10 – Three color photographs of concrete, undated

Clmt. Ex. 11 – Seven color photographs of a brick column and text messages, undated

Clmt. Ex. 12 – Two color photographs of brick and roof, undated

Clmt. Ex. 13 – Three color photographs of concrete and yard, undated

Clmt. Ex. 14 – Four color photographs of concrete, undated

Clmt. Ex. 15 – Two color photographs, undated

Clmt. Ex. 16 – One color photograph of concrete, undated

Clmt. Ex. 17 – Three color photographs of cracked concrete, undated

Clmt. Ex. 18 – Two color photographs of driveway, undated

Clmt. Ex. 19 – Two color photographs of driveway, undated

Clmt. Ex. 20 – One color photograph of driveway taped off to prevent entry, undated

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 – Notice of Hearing, dated January 28, 2020

Fund Ex. 2 – Hearing Order, dated October 28, 2019

Fund Ex. 3 – Letter from the Department to the Respondent, dated September 11, 2018, and the following attachment:

- MHIC Claim Form, dated May 3, 2018

Fund Ex. 4 – MHIC Licensing History, License 01-9683 and 05-127768, dated March 5, 2020

Fund Ex. 5 – Affidavit of William Banks, Jr., dated March 4, 2020

Fund Ex. 6 – Contract between the Claimant and the Respondent, dated January 9, 2017

Testimony

The Claimant testified and presented the testimony of Terry Files, friend and co-owner of the residential property.

The Fund did not present the testimony of any witnesses.

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 01-9683 and 05-127768.

2. On January 9, 2017, the Claimant and the Respondent entered into a contract to remove the old driveway, carport, and patio concrete at a residential property located in Essex, Maryland (Property). The Respondent agreed to grade the driveway for proper water drainage and install a new concrete driveway, carport, patio concrete, and a side entrance on the driveway (Contract). The Contract terms also included making the driveway square by removing some of the grass area and creating a 12-foot gate opening at the driveway entrance. The Contract stated that work would begin within sixty days of the signing and would be completed within sixty days of the start date.

3. The original agreed-upon Contract price was $18,400.00.

4. On January 9, 2017, the Claimant signed the Contract, paid the Respondent $10,000.00, and financed the remaining balance of $8,400.00. The Claimant agreed to finance

the balance of $8,400.00 with the Respondent, at a rate of 15.99% or a finance charge of $3,853.80, totaling $12,253.80.

5. The Claimant also paid the Respondent an additional $8,925.00 to remove a 4 ft x 80 ft grass area, which exceeded the original contract price and terms.

6. The Claimant paid the Respondent $27,325.00 plus the $3,853.80 financing charge, totaling $31,178.80.

7. The Property is owned by the Claimant and Terry Files.

8. On January 9, 2017, the Respondent's workers began to remove the old driveway at the Property.

9. Two days after removing the old driveway, the Respondent's workers arrived with a cement truck and began to pour cement. The workers laid the concrete but did not properly grade the area or use underlayment or crushed rock. The workers also hit the Claimant's brick column.

10. Due to improper grading, water pooled and caused cracks in the driveway and the basement steps, causing mold to develop.

11. The Respondent's workers removed the basement steps and shifted the wall away from the wrought iron railing.

12. The Claimant and Mr. Files both use the driveway and have scraped the bottom of their vehicles.

13. The Claimant and Mr. Files documented the progress and problems with the Respondent's work by taking pictures.

14. The Claimant notified the Respondent, who refused to fix the identified problems.

15. On May 3, 2018, the Claimant filed a claim with MHIC for $18,925.00.

16. The Claimant obtained an estimate[4] from a MHIC licensed contractor for $42,000.00 to repair the driveway and fix the brick column.

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). "[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)).

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"). "'[A]ctual 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.

The Claimant testified he is co-owner of the Property with Terry Files. He signed a Contract with the Respondent to perform work at the Property. He testified he paid the Respondent approximately $42,000.00 including a $10,000.00 deposit. He explained that the Respondent did not always show up to provide instruction or supervision to the workers. He testified that he and Mr. Files took pictures of the issues observed as the workers laid cement and

[4] The Claimant did not provide the actual estimate.

performed the work. Specifically, he stated the workers did not lay underlayment that is used to adhere to the property to prevent the cement from cracking. Because the workers did not use the underlayment, he explained the cement cracked. He testified he knew about the underlayment from prior unrelated experience. In addition, he testified the workers backed into the Property while using a backhoe and caused property damage. He explained the Respondent failed to properly slope the driveway to prevent the water from draining toward the house. Because of the improper slope, the water drained toward the house and entered the house. He explained he can use the driveway to park his vehicle, but his vehicle scrapes on the driveway due to the way the workers laid the cement. He obtained an estimate for $42,000.00 from a licensed contractor to fix the issues caused by the Respondent and to repair the brick column. The contractor told the Claimant he must remove the old concrete and resurface the space. Before getting an estimate, the Claimant asked the Respondent to fix the issues, but the Respondent refused to fix the issues.

Terry Files, the co-owner of the Property, also testified about the work performed by the Respondent. He testified that the Respondent agreed to move the drain to the middle of the driveway, grade the driveway, make the driveway square by removing some of the grass area, and creating a gate opening at the driveway entrance. In addition, the Respondent agreed to resurface the patio area as well. Mr. Files observed the Respondent and a few workers return to remove the grass area. He watched the crew and noticed they took the wrong measurements. On another day, Mr. Files observed the workers tearing up the old driveway but had to stop due to the rain. Two days later, Mr. Files said the workers returned with a cement tuck to pour the concrete. He questioned the workers since he did not see them put down crushed rock before beginning to pour concrete. He also noticed the workers incorrectly pouring and grading the

concrete. He testified the Respondent did not always supervise the workers because the Respondent's mother was in hospice.

Mr. Files explained the improper grading caused water to drain toward and into the house. In addition, the improper grading caused cracks in the driveway and caused mold on the outdoor basement steps. The workers also used a bulldozer and hit a brick column at the Property, shaking the house, and cracking the carport. Similar to the Claimant, Mr. Files stated he uses the driveway, but it scrapes the bottom of his car each time he enters or leaves the driveway. He stated he drives a "Ford Explorer that has good clearance."

Based on the evidence presented I find that the Claimant met his burden to show the Respondent performed unworkmanlike, inadequate or incomplete home improvements. In this case, the Claimant hired the Respondent to replace the driveway and move the drain to the center of the driveway to prevent water seepage at the home. However, the Respondent failed to complete the work as promised. I find the testimony of the Claimant and his witness to be credible about the unworkmanlike, inadequate, and incomplete work. The Respondent hired workers but failed to supervise the workers while at the Property. The workers removed the old driveway and grass but improperly poured new cement. They failed to properly grade the driveway causing water to run towards the house versus the center of the driveway as requested by the Claimant. In addition, the workers using a backhoe struck the Property causing damage to a brick column. Finally, the Claimant notified the Respondent of the issues and the Respondent refused to return to the Property to make any corrections or repairs.

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. The Fund may not

compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Md. Code Ann., 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.

In this case, the Respondent performed some work under the contract, and the Claimant intends to retain other contractors 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).

The Claimant testified he is neither related to nor a business partner with the Respondent. In addition, he testified there are no other claims, including insurance claims, involving the Contract performance. Although the Claimant filed a Claim seeking $18,925.00, neither the Claim nor the evidence presented provide a calculation to determine how he reached the amount of $18,925.00. He and his witness testified about an estimate but did not present the actual documentation. The Claimant and Mr. Files testified the estimate includes the cost to fix the brick column, which is not part of the claim before the Fund. Unfortunately, without the estimate, I am unable to determine the exact amount of the estimate relating to the driveway versus the driveway and the brick column. The repair to the brick column is excluded as it was not part of the Contract as performed by the Respondent. Therefore, the formula is based on the

amount paid, minus the finance charges, plus the total cost to repair, minus the contract price. By statute, finance charges or interest are excluded. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). Therefore, the $3,853.80 in finance charges is excluded.

I based the total cost to repair on the testimony of the Claimant and the witness, which both testified the estimate of $42,000.00 included removing the driveway and resurfacing the entire driveway and correcting the drainage. They both indicated the estimate included the cost to fix the brick column damaged by the workers operating the backhoe. The evidence shows the Claimant paid the Respondent $27,325.00 to complete Contract, not $42,000.00 like he testified. The original contract required the Respondent to remove the old driveway and pour a new driveway, which is similar to what is required to correct the errors. Therefore, it is reasonable to presume it will cost the same amount of money or $27,325.00 to redo the driveway work. Applying the formula as follows:

Amount paid to or on behalf of original contract:	$27,325.00
Reasonable amount paid or required to be paid to new contractor:	+ $27,325.00
Less Original Contract Price:	- $27,325.00
Total Actual Loss:	$27,325.00

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. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss of $27,325.00 exceeds $20,000.00. Therefore, the Claimant's recovery is limited to $20,000.00. Md. Code Ann., Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $27,325.00 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 $20,000.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $20,000.00; 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

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

May 21, 2020
Date Decision Issued

Syeetah Hampton-EL
Administrative Law Judge

SAH/cj
#185930

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

PROPOSED ORDER

WHEREFORE, this 14th day of July, 2020, 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.

Joseph Tunney

Joseph Tunney
Chairman
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION