

IN THE MATTER OF,
MICHAEL AND MAUREEN BAKER,
CLAIMANTS

v.

THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ACTS OR OMISSIONS OF
WILLIAM PREHN T/A
BILL PREHN HOME IMPROVEMENTS,
RESPONDENT

* BEFORE TAMEIKA LUNN-EXINOR,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS

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* OAH No.: DLR-HIC-02-17-15566
* MHIC No.: 17 (90) 135

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
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DISCUSSION
PROPOSED CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On November 16, 2016, the Claimants filed a claim with the Maryland Home Improvement Commission's (MHIC) Guaranty Fund (Fund) for monetary losses allegedly suffered as a result of the inadequate, incomplete or unworkmanlike home improvement performed by William Prehn t/a Bill Prehn Home Improvements (Respondent), at the Claimant's primary residence.

On July 20, 2017, I conducted a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2015). The Claimants

were present and represented themselves. Andrew Brouwer, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the Fund. William Prehn was present and represented the Respondent.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of DLLR, and the Rules of Procedure of the OAH govern this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 28.02.01.

ISSUE

Did the Claimants sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

SUMMARY OF THE EVIDENCE

Exhibits

A complete exhibit list is attached as an Appendix.

Testimony

The Claimants both testified in support of their case and presented the following additional witness:

- Patrick Barbe, Inspector & Project Manager, Soil & Structure Consulting

The Respondent testified on his own behalf.

The Fund did not present witnesses.

FINDINGS OF FACT

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

1. At all times relevant to this matter, the Respondent was licensed as a home improvement contractor by the MHIC, under registration number 4722475. His most recent license, issued on July 14, 2015, expired on July 30, 2017.

2. In October 2014, the Claimants purchased a family-owned property and wanted to contract to repair the basement wall that had a large crack through the middle.
3. On October 14, 2014, the Claimants had an inspection of the damaged basement wall performed by an engineer, Nader Elhaji, who provided suggestions for the repair of the wall.
4. On or around November 13, 2014, the Claimants entered into a contract with the Respondent for the Respondent to perform home improvement work at the Claimants' primary residence on Palo Circle in Halethorpe, MD (the Property). Under the contract, the Respondent was to replace 24 feet of basement wall, installing 8 steel beams in the basement as per architect specs. Job to be done as per proposal dated October 25, 2014. See [e]nclosed (sic)".¹
5. On November 21, 2014, the county inspector approved the use of the footer at the Property so there was no need to replace the footer².
6. The Respondent was required to tie the drain line into the sump pump or outside daylight.
7. The contract price was \$20,170.00 for the basement wall repair.
8. Under the contract, the work was to commence in November 2014, and be completed in or around December 2014.
9. The Respondent completed the work on the wall in December 2014. The Contract amount was paid in full.
10. In July, 2015, the Claimants saw cracks in the new wall.

¹ The Claimants and the Respondent also signed a contract to have the Claimants' 12 foot by 18 foot crawl space replaced. This contract is not at issue in this case.

² Footings – an important part of foundation construction. They are typically made of concrete with rebar reinforcement that has been poured into an excavated trench. The purpose of footings is to support the foundation and prevent settling. Footings are especially important in areas with troublesome soil. (www.concretenetwork.com, last visited: October 18, 2017)

11. The Respondent visited the Claimants' residence and informed them that his company could not repair the foundation issues.
12. On September 19, 2015, engineer Nader Elhajj evaluated the Claimants' wall and made suggestions for repairs of the wall and the drainage system.
13. In January 2016, the Claimants made an insurance claim in an attempt to repair the wall and it was denied.
14. In March 2016, the Claimants contracted with JES Construction (JES) to repair the cracks in the wall, install push piers to shore up the foundation of the wall and tie in the drain pipe to the sump pump.
15. On March 24, 2016, Patrick Barbe, an Inspector and Project Manager at Soil and Structure Consulting, inspected the foundation at the wall once it was excavated by JES and confirmed that the drain pipe was not tied into the sump pump, resulting in saturation of the subgrade by improperly drained water.
16. The Claimants paid JES \$10,900.00.

DISCUSSION

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 & Supp. 2017); *see also* COMAR 09.08.03.03B(2). Actual 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 (2005). The Claimants bear the burden of proof by a preponderance of the evidence to show entitlement to an award from the Fund. COMAR 09.08.03.03A(3). For the following reasons, I find that the Claimants have proven eligibility for compensation.

There is no dispute that the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimants and during the time he performed work at the Property. The Claimants hired the Respondent to replace 24 feet of a basement wall that was cracked and damaged. The amount of the final contract was \$19,070.00.³ There is no dispute that the Claimants paid the contract price in full. (Cl. Ex. 1, pp. 46-48, 50) The work was to be performed per the Respondent's Proposal dated October 25, 2014. (Cl. Ex. 1, pg.17) The Respondent began the work at the Claimants' residence in November 2014 and completed the work on the wall in December 2014. However, in July 2015, the Claimants noticed and photographed new cracks in the new wall. (Cl. Ex. 2, pp. 5-7). Claimant Michael Baker testified that prior to hiring the Respondent, he had an engineer, Nader Elhajj, come out to the residence on August 8, 2014 to evaluate the wall and give suggestions for repair options. (Cl. Ex. 1, pp. 2-6). The Claimant testified that when he hired the Respondent, he provided the Respondent with a copy of the engineer's evaluation and the engineer's report is referenced in the contract with the Respondent. Claimant testified that the wall was completed by the Respondent in December 2014. The Claimant noticed cracks in the wall in July 2015 and made an insurance claim in January 2016, which was denied. On September 19, 2015, the engineer, Mr. Elhajj, returned to the Claimants' home to evaluate the new wall and he found that the interior drainage system was not working properly and he suggested that it be opened and inspected for functionality. (Cl. Ex. 1, pp. 7-10)

The Claimant, Mr. Baker, stated that in March 2016, he hired JES to repair the wall for a second time. The contract amount to install push piers to support the wall foundation by JES was \$10,900.00. (Cl. Ex. 1, pp. 33-38) The Claimant, Mr. Baker, testified that when JES excavated around the wall, they found that the drain tile was not tied into the sump pump or

³ The original contract amount was \$20,170.00. An additional \$500.00 was added to the contract to cover the cost of larger concrete blocks used for the wall. Also, a \$1,600.00 credit was awarded for Air Conditioning work that was not required resulting in a contract amount of \$19,070.00 (Cl. Ex. 1, pg. 50)

drained outside, which was required by the engineer's report. The Claimant testified that JES installed push piers to support the wall and it tied the drain tile into the sump pump for proper water drainage. It is undisputed that the Claimants paid JES in full for the work they performed. Mr. Baker testified that the Respondent did come out to his home to evaluate the cracks in the wall and stated that his company would patch up the cracks, but it was not set up to do structural foundation repairs. Claimant, Mrs. Baker testified that she recalled a conversation with the Respondent when he agreed to help them financially with the foundation repair.

The Respondent, Mr. William Prehn, testified that his employees performed the work at the Claimants' residence. He recalled that he visited with the Claimants to view the cracks in the new wall and that there was a lot of tension that made him feel unsafe so he did not return to the Claimants' property. The Respondent testified that he believes some of the foundation damage to the Claimant's property is due to a large tree in the yard that the engineer, Mr. Elhadj suggested be cut down in his September 19, 2015 report. The Respondent contends that he was not required to replace the footer because the old footer was approved by the county inspector. He admits that the wall his company replaced should not have cracked within 7 months. He stated that he was at the Claimants' home during the repairs 75% of the time and he instructed an employee to tie the drain line into the sump pump, however, he could not say whether the employee complied with his request. The Respondent testified that there should be a drain line from outside coming into the sump pump and based on the Claimants' photos there is no drain line. The Respondent testified that he does not know what caused the cracks in the Claimants' wall in 7 months.

Through the testimony of Patrick Barbe, an inspector and project manager for Soil and Structure Consulting, the Claimants demonstrated the Respondent's work on the basement wall was inadequate and unworkmanlike. Prior to the start of the work performed by the Respondent,

a county inspector, inspected the footer for the wall that was to be replaced and approved the use of the old footer. Therefore, the contract with the Respondent did not include replacement of the footer. (Cl. Ex. 1, pg. 26) However, the Respondent's scope of work included the following: install eight beams at 24 inches from center to reinforce the new wall and installation of a new drain tile that drains to daylight or a sump pump. Mr. Barbe explained that he inspected the Claimants' property prior to the work performed by JES and found that the drain pipe was not tied into the sump pump or drained to the outside. He also found that the subgrade around the footings of the property was saturated with water due to the drained water going directly into the foundation instead of being drained into a sump or outside area. Mr. Barbe testified that there was saturated water next to the sump pump. The Claimants provided supporting photos that show the excavated ground and the clear distance between the drain tile and the sump pump as well as saturated subgrade around the drain tile and the sump pump. (Cl. Ex. 2, pp. 12-16). Mr. Barbe also testified that the rebar placed by the Respondent to support the wall was not set every 24 inches as required by the contract but instead was set every 48 inches. The Claimants also provided photographic evidence of the rebar to prove that the Respondent failed to install it properly. (Cl. Ex. 2, pg. 11). Mr. Barbe testified that the rebar and the drain tile issues led to the Claimants' problems with the new wall.

The very fact the Claimants could observe cracks in a brand new wall 7 months after its installation leads the reasonable person to believe that there is a problem structurally with the new wall. The Claimants did not provide expert testimony in this case; however, they did provide sufficient evidence to show that the drain was not properly tied into the sump pump, causing subgrade saturation around the foundation of the new wall, and that the rebar was not installed per the contract with the Respondent. The Respondent did not refute the overwhelming

evidence presented by the Claimants. Therefore, I find that the work performed by the Respondent was inadequate and unworkmanlike and the Claimants are entitled to compensation.

Having found that the Claimants are eligible 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. COMAR 09.08.03.03B(1). I find that the cost incurred by the Claimants to pursue this claim, such as the printing and mailing costs and supplies, are consequential damages. Also, Claimant Michael Baker submitted an invoice for his lost time at work while pursuing this claim, which is also consequential and not recoverable. MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3)(a), (b) and (c). 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).

Applying the formula set out above, I find that the Claimants sustained an actual loss as follows:

Amount Paid to the Respondent	\$19,070.00
Amount Paid to Correct or Complete Work	<u>+\$10,900.00</u>
	\$29,970.00
Amount of Original Contract	<u>-\$19,070.00</u>
Amount of Actual Loss	\$10,900.00

Under Business Regulation § 8-405(e)(5) (2015 & Supp. 2017), the amount of an award to a claimant is limited to the amount the claimant paid the contractor whose work was

inadequate, incomplete, or unworkmanlike. Accordingly, I recommend an award to the Claimants in the amount of \$10,900.00.

PROPOSED CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Claimants suffered an actual loss of \$10,900.00, and they are entitled to be compensated in the amount of \$10,900.00 as a result of the acts or omissions of the Respondent. Md. Code Ann., Bus. Reg. §§ 8-401 (2015), 8-405(e)(5) (2015 & Supp. 2017); COMAR 09.08.03.03B(3)(c).

PROPOSED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$10,900.00; and,

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Fund for all monies disbursed under this Order plus annual interest of at least ten percent as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2015); and,

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

Signature on File

October 18, 2017
Date Decision Issued


Tameika Lunn-Exinor
Administrative Law Judge

TLE/cmg
#170395

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*
* OAH No.: DLR-HIC-02-17-15566
* MHIC No.: 17 (90) 135

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APPENDIX: FILE EXHIBITS

I admitted the following exhibits for the Claimants:

Cl. Ex. 1: Numerous documents pertaining to the Claimants' case (pp. A, 1-84):

- Claimants' Cost Breakdown Chart, not dated (pg. A)
- Claimants' Deed to the Property, November 6, 2014 (pg. 1)
- Inspection Report from Nader Elhajj, P.E., dated October 8, 2014 (pp. 2-6)
- Inspection Report from Nader Elhajj, P.E., dated September 19, 2015 (pp. 7-10)
- Email correspondence between the Claimants, Nader Elhajj and Patrick Barbe from Soil and Structure, dated April 6, 2016 (pp. 11-14)⁴
- Proposal from Bill Prehn Home Improvements (Basement Wall), dated October 8, 2014 (pp. 16-18)
- Proposal from Bill Prehn Home Improvements (Crawl Space Wall), dated October 8, 2014 (pp. 19-20)
- Various Baltimore County Building Permit Documents, Permit Issued: November 14, 2014 (pp. 21-28)⁵
- Credit Card Payment Form for JES, dated February 26, 2016 (pg. 33)
- JES Invoice, dated March 18, 2016 (pg. 34)
- JES Project Summary, dated February 26, 2016 (pg. 35-37)
- JES Financing Program document, not dated (pg. 38)

⁴ Cl. Ex. 1, pg. 15 was removed. It was a duplicate of Cl. Ex. 1, pg. 16.

⁵ Cl. Ex. 1, pp. 29-32 were not admitted due to relevancy.

- Foundation Piers Warranty from JES to the Claimants, issued March 22, 2016 (pg. 39)⁶
- Email from Complainant Michael Baker to JES, dated March 27, 2016 (pg. 42)
- Evaluation from Soil & Structure Consulting, Inc., dated April 25, 2016 (pg. 43)
- Email between Complainant Michael Baker and Robert Peters (county inspector), dated July 8, 2016 (pp. 44-45)
- Invoice from Respondent, dated December 5, 2014 (pg. 46)
- Invoice from Respondent, dated December 15, 2014 (pg. 47)⁷
- Additional Work Authorization from Respondent, dated January 27, 2015 (pg. 50)
- Claimants' Quicken search for payments to the Respondent, not dated (pg. 51)
- Claimants' check payment to Soil & Structure Consulting, Inc., dated April 21, 2016 (pg. 52)
- Invoice from Nader Elhaji, P.E., dated September 7, 2015 (pg. 53)
- Claimants' Post Office Receipts for filing this MHIC Claim, dated July 27, 2016 and November 12, 2016, (pg. 54)
- HIC Complaint Form, dated July 26, 2016 (pp. 55-60)
- Walmart Receipt, dated July 12, 2017 (pg. 61)
- Email from MHIC to Claimants, dated August 5, 2016 (pg. 62)
- Letter from MHIC to the Claimants, dated October 27, 2016 (pg. 63)⁸
- Letter from MHIC to Respondent, dated November 22, 2016 (pg. 65)
- Order from MHIC to Respondent, dated August 9, 2016 (pg. 66)
- Letter from Claimant Michael Baker to MHIC, dated August 24, 2016 (pg. 67)
- Claimants' Post Office Receipt, dated August 29, 2016 (pg. 68)
- Letter from Respondent to MHIC, with attachments, dated August 22, 2016 (pp. 69-82)
- Invoice from Michael Baker Consulting, dated July 19, 2017 (pg. 83)
- Receipt from Staples, dated July 17, 2017 (pg. 84)

Cl. Ex. 2: Various photos of the Claimants' property (pp. 1-18)⁹:

- Photos of the inside and outside of the basement wall before repairs, labeled A-F, no date (pg. 2)
- Photo of wall area during repairs, no date (pg. 3)
- Two photos of completed wall, taken December 11, 2014 (pg. 4)
- Two photos of a crack in the new wall, taken July 27, 2015 (pg. 5)
- Two photos of a second crack in the new wall, taken July 12, 2015 (pg. 6)
- Three photos measuring the second crack in the new wall, labeled A-C, taken July 12, 2015 (pg. 7)
- Two photos from the beginning of work performed by JES, labeled A and B, no date (pg. 8)

⁶ Cl. Ex. 1, pp. 40-41 were not admitted due to relevancy.

⁷ Cl. Ex. 1, pp. 48-49 were not admitted due to relevancy.

⁸ Cl. Ex. 1, pg. 64 was removed as it was not a true copy of the original Home Improvement Claim Form sent to the MHIC on November 22, 2016. See Fund Ex. 3 for the original Claim Form sent to the MHIC.

⁹ Cl. Ex. 2, pg. 1 is the cover page for the Claimants' photos entitled "Baker Residence MHIC Hearing".

- Three photos of JES working at Claimants' residence, labeled A-C, no date (pg. 9)
- Photo of JES workers and footer, no date (pg. 10)
- Two photos of rebar in the basement wall, labeled A and B, no date (pg. 11)
- Two photos of repaired wall showing water lines, labeled A and B, no date (pg. 12)
- Two photos of repaired wall showing water lines, labeled A and B, taken March 23, 2016 (pg. 13)
- Photo of water line and sump pump, taken March 23, 2016 (pg. 14)
- Photo of concrete sump pump and drain pipe, no date (pg. 15)
- Photo of original sump pump area before JES contract, no date (pg. 16)
- Various photos of the interior of the wall after JES construction, labeled A-E, no date (pg. 17)
- Photo of wall crack repair performed by Respondent, no date (pg. 18)

I admitted the following exhibits for the Fund:

Fund Ex. 1: Hearing Order, March 23, 2017

Fund Ex. 2: Notice of Hearing, May 23, 2017

Fund Ex. 3: Letter from MHIC to the Respondent enclosing the Claim Form, November 22, 2016

Fund Ex. 4: Respondent's DLLR Licensing Information

Fund Ex. 5: JES Construction LLC's DLLR Licensing Information

No exhibits were submitted for the Respondent.

MARYLAND HOME IMPROVEMENT COMMISSION

**Andrew Snyder
Panel B**

Andrew Snyder

WHEREFORE, this 14th day of December, 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.

PROPOSED ORDER