

IN THE MATTER OF:  
MATTHEW FEIN, et al.

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE COUNTY  
\* Case No.: 03-C-18-007756

\* \* \* \* \*

**ORDER**

On August 3, 2018, Petitioner, Frank Ambrosino, through counsel, filed a Petition for Judicial Review (Paper 1000). On October 17, 2018, Respondent, Maryland Home Improvement Commission, through counsel, filed a Motion to Dismiss (Paper 2000). A hearing was scheduled before this Court for January 25, 2019.

On January 24, 2019, counsel for Petitioner submitted a letter to this Court agreeing to the dismissal of the pending Petition for Judicial Review (Paper 5000). In light of Petitioner's January 24, 2019 correspondence, it was mutually agreed upon that no parties were to appear before this Court for the January 25, 2019 hearing.

In consideration of the papers presented, it is this 13<sup>th</sup> day of February 2019, by the Circuit Court for Baltimore County, hereby:

**ORDERED**, that Respondent's Motion to Dismiss (Paper 2000) is hereby **GRANTED**.

**Signature on File**

\_\_\_\_\_  
Mickey J. Norman / Judge  
Circuit Court for Baltimore County

Clerk, please docket only. Copies have been provided to:

**Stacie D. Trageser, Esq., 2215 Ellen Ave., Baltimore, MD 21234**  
*Attorney for Petitioner*

**Nicholas C. Sokolow, Esq., Assistant Attorney General, Office of the Attorney General  
Department of Labor, Licensing and Regulation, 500 North Calvert St., Suite 406, Baltimore,  
MD 21202**  
*Attorney for Respondent*

**Matthew Fein, 5426 Marsh Hawk Way, Columbia, MD 21045**  
*Respondent*

**Court File**

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**IN THE MATTER OF THE CLAIM**

**\* BEFORE LATONYA B. DARGAN,**

**OF MATTHEW FEIN AND**

**\* AN ADMINISTRATIVE LAW JUDGE**

**SVETLANA SOTCHENKO,<sup>1</sup>**

**\* OF THE MARYLAND OFFICE**

**CLAIMANTS,**

**\* OF ADMINISTRATIVE HEARINGS**

**AGAINST THE MARYLAND HOME**

**\***

**IMPROVEMENT GUARANTY FUND**

**\***

**FOR THE ALLEGED ACTS OR**

**\***

**OMISSIONS OF**

**\***

**FRANK AMBROSINO,**

**\***

**T/A ADDITIONS ETC., LLC,**

**\* OAH No.: DLR-HIC-02-17-32263**

**RESPONDENT**

**\* MHIC No.: 17 (75) 685**

**\* \* \* \* \***

**PROPOSED DECISION**

**STATEMENT OF THE CASE  
ISSUES**

**SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION**

**PROPOSED CONCLUSIONS OF LAW  
RECOMMENDED ORDER**

**STATEMENT OF THE CASE**

On March 15, 2017, Matthew Fein and Svetlana Sotchenko (Claimants) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$8,600.00 in actual losses allegedly suffered as a result of a home improvement contract with Frank Ambrosino, trading as Additions Etc., LLC (Respondent). On October 2, 2017, the MHIC ordered the Claimants should have a hearing to establish their eligibility for an award from the

<sup>1</sup> Svetlana Sotchenko's name was misspelled as "Svetanna Sotchenko" on the transmittal form sent to the OAH by the MHIC as well on as several other documents.

Fund, and forwarded the matter to the Office of Administrative Hearings (OAH) on October 10, 2017.

On February 6, 2018, I conducted a hearing at OAH headquarters in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimants represented themselves. Eric B. London, Assistant Attorney General, Department of Labor, Licensing, and Regulation (DLLR), represented the Fund. Stacie D. Trageser, Esquire, represented the Respondent, who was present.

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

#### ISSUES

1. Did the Claimants sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions; and
2. If so, what is the amount of that loss?

#### SUMMARY OF THE EVIDENCE

##### Exhibits

I admitted the following exhibits on the Claimants' behalf:

- Cl. Ex. A. Proposal, April 14, 2016
- Cl. Ex. B. Copies of cashed checks
- Cl. Ex. C. Photographs, November 2016
- Cl. Ex. D. *Curriculum Vitae*, Craig J. Kripas
- Cl. Ex. E. Estimate, All About Water Proofing, Inc., February 22, 2017

The Respondent did not submit any exhibits.

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 Notice of Hearing, November 21, 2017

Fund Ex. 2 Hearing Order, October 2, 2017

Fund Ex. 3 Licensing information, printed February 5, 2018

Fund Ex. 4 Home Improvement Claim Form, March 15, 2017

Fund Ex. 5 Letter from the MHIC to the Respondent, June 5, 2017

Testimony

The Claimants testified and presented the testimony of Craig J. Kripas, All About Water Proofing, Inc., whom I accepted as an expert in waterproofing:

The Respondent testified and did not present other witnesses.

The Fund did not present any witnesses.

PROPOSED FINDINGS OF FACT

I find the following by a preponderance of the evidence:

1. At all relevant times, the Respondent was a home improvement contractor licensed by the MHIC.

2. On April 14, 2016, the Claimants entered into a contract with the Respondent for him to waterproof the basement at the Claimants' residence in Parkville, Maryland (Property).

The contract included excavation of the exterior foundation walls, installation of drain tile, installation of sump pumps, grading of the surrounding yard, cleaning, and disposal of all debris.

Under the contract, work would begin on April 14, 2016. A completion date was not specified.

3. The original agreed-upon contract price was \$7,500.00.

4. The Claimants made two payments to the Respondent totaling \$7,000.00: a \$3,000.00 payment on April 18, 2016; and a \$4,000.00 payment on June 22, 2016.

5. Between April 14, 2016 and June 2016, the Respondent worked at the Property, to include some excavating of the yard and around the foundation walls.

6. The Respondent stopped working at the Property sometime in June 2016.

7. The Respondent did not perform the following work called for under the contract: install two sump pumps; complete the grading of the yard; and clear the yard of debris after work stopped in June 2016.

8. From late June 2016 through November 2016, water infiltrated the Property in the basement area, causing damage.

9. From late June 2016 through November 2016, the Claimants attempted to contact the Respondent approximately thirty times to notify the Respondent of the continued water infiltration issue and to request he return to the Property to fix the ongoing water infiltration issue. The Respondent finally returned the Claimants' calls sometime in mid-November 2016.

10. In mid-November 2016, the Claimants and the Respondent met at the Property to identify the water infiltration issues. The Respondent agreed to return to the Property to finish the work necessary to permanently waterproof the Property.

11. Shortly after the mid-November 2016 meeting, the Claimants sent an email to the Respondent to confirm the Respondent would perform the work agreed upon at the meeting.

12. The Respondent returned to the Property one time in November 2016 and performed some of the work on the list. However, the Respondent did not return after November 2016 and he did not complete all the items on the mutually agreed-upon list.

13. From November 2016 through February 2017, the Property continued to experience water infiltration issues in the basement.

14. In February 2017, the Claimants hired All About Waterproofing, Inc. (AAW) to perform the waterproofing work at the Property.<sup>2</sup>

15. Craig Kripas of AAW inspected the Property on February 17, 2017. At the time of the inspection, water infiltration was present. Mr. Kripas noted that the foundation walls did not show evidence of waterproofing preparation.

16. AAW installed an interior management system, excavated around the basement foundation walls, installed a drain, poured concrete, completed the grading of the yard, repaired the basement stairwell, and treated the foundation walls with fungicide. All the work performed by AAW, with the exception of the application of fungicide, was within the scope of the Claimants' original contract with the Respondent.

17. Since AAW completed all work, the Claimants have not experienced any water infiltration issues at the Property.

18. The Claimants paid AAW \$7,100.00 to waterproof the Property.

### DISCUSSION

#### *Legal Framework*

The Claimants have the burden of proving the validity of their claim and their entitlement to an award from the Fund, and to do so 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 (3d ed. 2000)).

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<sup>2</sup> AAW is a MHIC-licensed contractor.

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),<sup>3</sup> *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." Md. Code Ann., Bus. Reg. § 8-401. For the following reasons, I find that the Claimants have proven eligibility for compensation.

### *The Merits of the Case*

There is no dispute the Respondent was a licensed home improvement contractor at all relevant times, and it is undisputed the Claimants made payments to the Respondent in a manner consistent with the contract. Claimant Fein testified the final \$500.00 was not paid because the water infiltration problem at the Property continued after the Respondent stopped work.

The Claimants argue the Respondent failed to fix the water infiltration problem at the Property despite that being the reason they hired him. Under the contract, the Respondent was to waterproof the Property and, thus, stop further water infiltration. According to the Claimants, water continued to infiltrate the Property's foundation, causing damage to the interior of the home's basement, after the Respondent stopped work in June 2016. The Respondent does not dispute that water continued to infiltrate the basement after June 2016.

The Claimants further argue the Respondent's repairs to the Property were inadequate and incomplete. They contacted the Respondent approximately thirty times between June 2016 and November 2016 to advise him the Property continued to experience water infiltration. They were finally able to reach the Respondent, which led to a meeting in November 2016, at which time the Respondent inspected the Property. According to the Claimants, during that meeting the

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<sup>3</sup> Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume of the Maryland Annotated Code.



parties mutually agreed the Respondent would return to the Property to fix the ongoing water infiltration issues so water no longer seeped into the basement or any other area of the Property. The Respondent conceded he observed water damage at the Property during the November 2016 meeting, and he agreed to return to fix the existing issues.

The Respondent testified he returned to the Property to address the continuing water infiltration issues; but he was unable to complete the agreed-upon repairs during the winter months because of low temperatures. It was not clear from the Respondent's testimony if he ever communicated to the Claimants that he did not return to the Property during the rest of November 2016; or during December 2016 and January 2017; because of the weather. I find it is more likely than not the Respondent's work at the Property was incomplete, both in June 2016 when work initially stopped; and in November 2016, after the Respondent agreed to perform additional repairs.

In addition to demonstrating the Respondent's work was incomplete, the Claimants also demonstrated the work the Respondent *did* perform was inadequate and unworkmanlike. Craig J. Kripas, whom I accepted as an expert in waterproofing, inspected the Property on February 17, 2017, to identify the repairs necessary to fix the existing basement water infiltration issues. Mr. Kripas reported there was "evidence of current and previous water damage to the building materials at and adjacent to the rear basement door" of the Property. (Cl. Ex. E, p. 1.) Mr. Kripas noted some previous excavation work had been done in the cellar, but that there was no evidence to suggest the foundation walls had been scraped and cleaned in preparation for waterproofing. In Mr. Kripas' opinion, which was not challenged by the opinion of another expert in waterproofing, the work which was completed under the contract terms was not done in a workmanlike manner and therefore did not adequately waterproof the Claimants' basement. Based on his inspection, Mr. Kripas provided the Claimants with an estimate for the cost of the work needed to adequately

waterproof the basement, a total of \$7,100.00. According to Mr. Kripas, this amount represented a reasonable cost for the type of work which needed to be performed. The Claimants paid the \$7,100.00 upon hiring AAW to complete the waterproofing work.

Based on the evidence, I find the Claimants have demonstrated the Respondent performed an inadequate, incomplete, and unworkmanlike home improvement and they are, therefore, eligible for an award from the Fund. Having found the Claimants eligible for an award from the Fund, I must determine the amount of the Claimants' actual loss and the amount, if any, the Claimants are 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). The 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 Claimants retained another contractor to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimants' 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).

Applying the formula set out above leads to the following results:

Amount paid to the Respondent	\$7,000.00
+ Amount paid to correct or complete the work	<u>\$7,100.00</u>
	\$14,100.00
- Amount of original contract	<u>\$7,500.00</u>
Amount of actual loss	\$6,600.00

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for the 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 Claimants' actual loss is less than both the amount paid to the Respondent and the statutory cap of \$20,000.00. Therefore, the Claimants are entitled to recover their actual loss of \$6,600.00.

#### PROPOSED CONCLUSIONS OF LAW

I conclude as a matter of law the Claimants have sustained an actual and compensable loss of \$6,600.00 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).

I further conclude as a matter of law the Claimants are entitled to recover \$6,600.00 from the Fund. COMAR 09.08.03.03B(3)(c).

#### RECOMMENDED ORDER

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

**ORDER** the Maryland Home Improvement Guaranty Fund award the Claimant \$6,600.00; and

**ORDER** 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;<sup>4</sup> and

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

**Signature on File**

April 27, 2018  
Date Decision Issued

Latonya Dargan *U* *1E*  
Administrative Law Judge

LBD/cmg  
#172336

<sup>4</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 14<sup>th</sup> day of June, 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.***

***J. Jean White***

***I. Jean White  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**