

IN THE MATTER OF THE CLAIM	* BEFORE JOHN J. LEIDIG,
OF COREY MCCAFFREY,	* 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 JAMES MARTIN,	*
T/A PROMPT RESTORATION, INC.	* OAH No.: DLR-HIC-02-17-25293
RESPONDENT	* MHIC No.: 17 (05) 768

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On June 21, 2017, Corey McCaffrey (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$21,200.74 in actual losses allegedly suffered as a result of the acts or omissions of James Martin, trading as Prompt Restoration, Inc. (Respondent).

On November 20, 2017, I held a hearing at the Office of Administrative Hearings (OAH) in Kensington, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented himself. Kris M. King, Assistant Attorney General, Department of Labor, Licensing,

and Regulation (Department or DLLR), represented the Fund. After waiting twenty 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:

- CLMT 1 - Email from Alex Goodman to the Claimant, June 17, 2015
- CLMT 2 - Email from the Respondent to Erie Insurance (Erie), August 9, 2015
- CLMT 3 - Water Damage Repair Estimate from the Respondent, June 29, 2015
- CLMT 4 - Letter from Erie to the Claimant, October 26, 2015
- CLMT 5 - Check ****1784, October 26, 2015
- CLMT 6 - Emails between the Claimant and Erie, December 8, 2015 and January 13, 2016

¹ Notice of the hearing was mailed to the Respondent's addresses of record by regular and certified mail on September 26, 2017, COMAR 09.08.03.03A(2), but were returned as unclaimed/undeliverable in October. Further notices were sent by regular mail to the Respondent's two addresses of record, as well as to two alternate addresses provided by the Fund. See FUND 1. 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 7 - Email from Erie to the Claimant, January 13, 2016
- CLMT 8 - Email from the Claimant to Erie, January 13, 2016
- CLMT 9 - Email from Erie to the Claimant, January 14, 2016
- CLMT 10 - Check ****1784 (showing signed endorsement on the back), October 26, 2015
- CLMT 11 - Text messages between the Claimant and Alex Goodman, January 8 to May 25, 2016
- CLMT 12 - Transcription of text messages between the Claimant and Alex Goodman, January 8 to February 1, 2016
- CLMT 13 - Emails between the Claimant and Erie, March 7 and March 16, 2016
- CLMT 14 - Affidavit signed by Alma Warren-Corley (Bank United Vice President), March 15, 2016
- CLMT 15 - Docket for Case 5D00345770 in the District Court of Maryland for Montgomery County (Respondent is the defendant), printed June 12, 2016
- CLMT 16 - Proof of Claim filed by the Claimant in Bankruptcy Case 16-11352 (U.S. Bankruptcy Court for the District of Maryland), Debtor is Prompt Restoration, Inc. (Bankruptcy Case), filed June 13, 2016
- CLMT 17 - Final Decree in the Bankruptcy Case, October 17, 2017

I did not admit any exhibits on the Respondent's behalf.

I admitted the following exhibits on behalf of the Fund:

- FUND 1 - Portion of OAH file containing the file copy of the Notice of Hearing dated November 8, 2017
- FUND 2 - Hearing Order issued by DLLR, August 8, 2017
- FUND 3 - Printouts regarding Respondent's DLLR licensing status and history, printed November 17, 2017
- FUND 4 - Motor Vehicle Administration Driving Record Information for the Respondent, printed November 7, 2017
- FUND 5 - MHIC Claim form completed by the Claimant, July 21, 2017
- FUND 6 - Letter from DLLR to the Respondent, July 26, 2017

Testimony

The Claimant testified in his own behalf. Assistant Attorney General King testified.

PROPOSED FINDINGS OF FACT

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

1. Except as otherwise noted, the Respondent was a licensed home improvement contractor at all relevant times (MHIC license number 100702).
2. In June 2015, the Claimant's home suffered extensive water damage from a broken intake pipe for a toilet on the second floor. The damage included wet and moldy carpets, warped wood floors, and water damage to electrical and HVAC equipment.
3. The Claimant contacted his insurance company, Erie, to make a claim for the water damage, and Erie assigned an adjuster to the claim.
4. The Claimant also contacted Goodman, Gable and Gould (GGG), a certified public adjustor, to assist him and his wife with the insurance claim.
5. GGG recommended the Respondent to perform the repairs.
6. On or about August 3, 2015, the Respondent provided the Claimant a detailed estimate of \$42,637.85 to complete the necessary repairs (Estimate), and the Claimant presented the Estimate to Erie.
7. On October 26, 2015, Erie approved the Estimate and issued Check No. ****1784 in the amount of \$21,200.74 jointly payable to the Claimant, the Claimant's wife, and Bank United. (Erie held back \$20,492.98 of the approved replacement cost of repairs.)
8. On November 11, 2015, the Respondent met the Claimant and his wife at their home. During that meeting, the Respondent told the Claimant and his wife that it would be

difficult and complicated to obtain Bank United's endorsement on the check and set up an escrow account for the purpose of completing the repairs.

9. At the urging of the Respondent, the Claimant and the Claimant's wife endorsed (i.e. signed) the back of the Check and gave it to the Respondent to be deposited into an escrow account. The parties anticipated that withdrawals could be made from the escrow account as necessary to fund the repairs, and the parties agreed that work would begin in January 2016.

10. The Respondent forged an endorsement for Bank United on the back of the Check and negotiated (i.e. cashed) the Check using the forged endorsement.

11. When the Claimant discovered that the Respondent had negotiated the Check, he made numerous attempts to contact the Respondent to complete the work or return the funds.

12. The Respondent never performed any of the work described in the Estimate he provided to the Claimant.

13. On at least two occasions in January 2016, the Respondent promised to return the \$21,200.74 to the Claimant, but he has not repaid any of the funds.

DISCUSSION

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).² “[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)).

² As noted above, “COMAR” refers to the Code of Maryland Regulations.

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);³ *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 Claimant has proven eligibility for compensation.

The Claimant’s testimony, coupled with documentation of his dealings with the Respondent, GGG, Erie, and Bank United, persuade me that the Respondent forged Bank United’s endorsement on the back of the Check, abandoned the project without performing any work, and failed to honor his repeated promises to repay the money he stole from the Claimant. The Claimant testified credibly that the Respondent drew up a detailed Estimate in August 2015 to complete water damage restoration work (CLMT 3). On November 11, 2015, the Respondent met with the Claimant and his wife and convinced them to endorse the Check and turn it over to him to be deposited into escrow. Instead of obtaining Bank United’s endorsement, however, the Respondent forged Bank United’s endorsement and withheld the funds from the Claimant. See CLMT 10 (copy of front and back of Check) and CLMT 14 (Affidavit of Alma Warren-Corley, Bank United Vice President, indicating that Bank United did not endorse, or receive any benefit from, the Check).

By preparing and tendering the Estimate to perform water damage restoration, the Respondent was agreeing to perform “home improvement,” which is statutorily defined to

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

include “repair, or replacement of a building or part of a building that is used or designed to be used as a residence or dwelling place.” Md. Code Ann., Bus. Reg. § 8-101(g)(1-2). The fact that the Claimant never signed a final written agreement with the Respondent does not preclude a recovery from the Fund because the Claimant’s testimony, coupled with the Estimate, the Check, and the Bank United Affidavit, provide sufficient evidence that the Respondent agreed to perform home improvements for the Claimant and his wife.

In addition, the evidence shows that the Respondent was a licensed MHIC contractor as of November 11, 2015, when he took the Check from the Respondents, and as of November 13, 2015, when he negotiated the forged Check. See CLMT 10 (front and back of endorsed Check). Although there was a lapse in the Respondent’s MHIC license from October 19 to November 9, 2017, this lapse does not affect the Claimant’s ability to recover from the Fund because the Respondent remained continuously licensed from November 10, 2015 to October 19, 2017, and the Claimant suffered an actual loss during that period. See FUND 3 (Respondent’s MHIC licensing history).

By stealing the insurance funds and abandoning the project before ever starting any restoration work, the Respondent is liable for “incomplete” home improvements. See Md. Code Ann., Bus. Reg. § 8-401 (“incomplete” home improvements give rise to claims for “actual loss” compensable from the Fund). 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. COMAR 09.08.03.03B(3). The Respondent abandoned the contract without doing any work. Accordingly, the appropriate formula is as follows: "If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract." COMAR 09.08.03.03B(3)(a).

For purposes of applying this formula, I conclude that the amount of the forged Check (\$21,200.47) is the "amount which the claimant paid to the contractor under the contract." The Claimant allowed the Respondent to have possession of the Check in reliance on the Respondent's written Estimate to perform restoration work, as well as the Respondent's promise that the money would be put into escrow and be paid out in accordance with the Estimate. The Respondent never performed any work on the project and never returned any funds to the Claimant. In addition, although the Claimant filed a police report for theft and a proof of claim in the bankruptcy case of the Respondent's company (Prompt Restoration, Inc.), the Claimant did not recover any funds as a result of those efforts. See CLMT 15 (Docket for theft case against the Respondent in the District Court of Maryland for Montgomery County); CLMT 16 (Proof of Claim filed by the Claimant in the Prompt Restoration, Inc., bankruptcy case); and CLMT 17 (Final Decree in the Bankruptcy Case).

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03B(4),

D(2)(a). In this case, the Claimant's actual loss of \$21,200.74 exceeds \$20,000.00. Therefore, the Claimant's recovery is limited to \$20,000.00.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant sustained an actual and compensable loss of \$20,000.00 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, D. I further conclude that the Claimant is entitled to recover \$20,000.00 from the Fund.

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;⁴ and

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

Signature on File

February 12, 2018
Date Decision Issued

John J. Leidig
Administrative Law Judge

JJL/dlm
#170942

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

PROPOSED ORDER

WHEREFORE, this 9th day of March, 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.

Joseph Tunney

***Joseph Tunney
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION