



DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
MARYLAND HOME IMPROVEMENT COMMISSION
500 N. Calvert Street, Room 306
Baltimore, MD 21202-3651

October 9, 2018

Rommel Geronimo
5257 Turkeyfoot Lake Street
Waldorf, MD 20602

RE: Complaint/Claim: 17 (05) 937

Dear Rommel Geronimo:

The Maryland Home Improvement Commission has completed adjudication of a total of 11 Guaranty Fund claims against contractor Richard Stearns t/a Honest Exteriors. The awards in those 11 cases total \$106,008.14.

As you were previously advised, under the Maryland Home Improvement Law, the Commission may not pay a total of more than \$100,000.00 in Guaranty Fund Claims against any one contractor. Because the total of the approved claims exceeds the \$100,000.00 limit, it is necessary for the Commission to pay the claims on a "pro-rated" percentage basis. Based on the total award amount of \$106,008.14 and the \$100,000.00 payment limit under the law, the Commission may pay 93.85% of each approved claim award.

You will receive a *pro-rated* payment from the Guaranty Fund totaling 93.85% of your approved claim award. Therefore, you will receive a payment in the amount of \$11,544.02.

Please allow six (6) to eight (8) weeks from the date of this letter to receive the award from the State Treasury. If you have any questions concerning this matter, please feel free to contact this office at 410-230-6178.

Very truly yours,

Keyonna Penick

Keyonna Penick

Panel Specialist

Maryland Home Improvement Commission

PHONE: 410-230-6309 • FAX: 410-962-8482 • TTY USERS, CALL VIA THE MARYLAND RELAY SERVICE
INTERNET: WWW.DLLR.MARYLAND.GOV • E-MAIL: DLOPLMHIC-DLLR@MARYLAND.GOV

LAWRENCE J. HOGAN JR, GOVERNOR • BOYD K. RUTHERFORD, LT. GOVERNOR • KELLY M. SCHULZ, SECRETARY

<p>IN THE MATTER OF THE CLAIM</p> <p>OF ROMMEL GERONIMO,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF</p> <p>RICHARD A. STEARNS, T/A</p> <p>HONEST EXTERIORS,</p> <p>RESPONDENT</p>	<p>* BEFORE JOHN T. HENDERSON, JR.,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: DLR-HIC-02-17-25299</p> <p>* MHIC No.: 17 (05) 937</p>
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RECOMMENDED DECISION

STATEMENT OF THE CASE
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DISCUSSION
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STATEMENT OF THE CASE

On April 4, 2017, Rommel Geronimo (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for the reimbursement of \$12,300.00 of actual losses allegedly suffered because of a home improvement contract with Richard A. Stearns, t/a Honest Exteriors (Respondent).

On January 22, 2018, the Office of Administrative Hearings (OAH) mailed notice of the hearing to the Respondent by certified and regular mail to his address of record on file with the

MHIC. Md. Code Ann., Bus. Reg. § 8-312(d) (2015).¹ The notice advised the Respondent of the time, place, and date of the hearing. On February 26, 2018, the United States Postal Service returned the notice along with the receipt reporting that the mail was unclaimed and unable to forward. The Notice was mailed to the Respondent to 22835 Avenmar Drive, Leonardtown, Maryland 20650, his address of record. I determined that there was adequate notice of the hearing provided to the Respondent.

I held the hearing on March 8, 2018, LaPlata Public Library, 2 Garrett Avenue, LaPlata, Maryland 20646. Bus. Reg. §§ 8-312(a), 8-407(a) and (e) (2015). The Claimant appeared and represented himself. The Respondent did not appear. Shara Hendler, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the DLLR, 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); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 09.08.02; COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund because of the Respondent's acts or omissions?
2. If so, how much is the Claimant entitled to receive from the Fund?

¹ "The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission." Md. Code Ann., Bus. Reg. § 8-312(d) (2015).

SUMMARY OF THE EVIDENCE

Exhibits

I admitted into evidence exhibits offered by the Claimant as follows:

- Cl. Ex. 1 Claimant's check number 794, payable to the order of Honest Exteriors, in the sum of \$10,200.00, October 22, 2015; Claimant's check number 792, payable to the order of Honest Exteriors, in the sum of \$2,100.00, October 8, 2015; Navy Federal Credit Union checking account statement for the period of October 16, 2015 through November 15, 2015
- Cl. Ex. 2 Copies of text messages between the Claimant and Respondent from November 19, 2015 through December 7, 2016
- Cl. Ex. 3 Contract between Claimant and Respondent, October 3, 2015

I admitted exhibits on behalf of the Fund as follows:

- GF Ex. 1 Hearing Order from HIC, August 8, 2017
- GF Ex. 2 Notice of Hearing from the OAH, January 22, 2018
- GF Ex. 3 Home Improvement Claim Form, March 29, 2017
- GF Ex. 4 The Respondent's DLLR license history as of February 8, 2018

Testimony

The Claimant testified on his behalf. The Fund did not present any witness testimony.

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 contractor's license number 4728913 and was trading as Honest Exteriors.
2. The Claimant is not related to the Respondent.
3. The Claimant's property subject to this matter is located at 5257 Turkeyfoot Lake Street, Waldorf, Maryland 20602 (the Property).
4. The Property is the Claimant's primary residence.

5. The Claimant has not filed other claims against the Respondent outside of these proceedings.

6. On September 30, 2015, the Claimant and the Respondent entered into an agreement (the Contract) whereby the Respondent agreed to build a deck and fence on the rear of the Property.

7. The Claimant entered into the Contract with the Respondent's employee and sales representative, William Watts (Watts).

8. The contract price and payment terms were the following:

Total per Contract	\$12,300.00
Deposit	<u>\$ 2,100.00</u>
Due on Completion	\$10,200.00

9. The Contract provided for completion of the home improvement four to six weeks from the contract date.

10. The Respondent came to the Claimant's home to do a walk-through and to discuss the project about three to five days after the Contract was signed, or during the first week of October 2015.

11. The Claimant made the following payments by checks which were cashed by the Respondent:

October 8, 2015	Payable to the Respondent	\$ 2,100.00
October 22, 2015	Payable to the Respondent	<u>\$10,200.00</u>
	Total Payments	\$12,300.00

12. Although the work had not begun, the Claimant paid the Respondent the balance due at Respondent's request.

13. The Respondent did not begin nor make any effort to begin the home improvement. He did not purchase nor provide any materials to construct the project.

14. Despite the Claimant's repeated requests, the Respondent made no effort to construct the deck and fence and did not refund the \$12,300.00 to the Claimant after repeated demand.

DISCUSSION

In 1985, the Maryland General Assembly enacted legislation that first established the Fund. By this means, the legislature sought to create a readily available reserve of money from which homeowners could seek relief for actual losses sustained because of an unworkmanlike, inadequate, or incomplete home improvement performed by a licensed home improvement contractor. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411 (2015).² Under this statutory scheme, licensed contractors are assessed fees, which subsidize the Fund. Homeowners who sustain losses by the actions of licensed contractors may seek reimbursement for their "actual losses" from this pool of money, subject to a maximum of the lesser of \$20,000.00 or the amount paid by or on behalf of the claimant to the contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(1) and (5). A homeowner is authorized to recover from the Fund when he or she sustains an actual loss that results from an act or omission by a licensed contractor. Md. Code Ann., Bus. Reg. § 8-405(a). When the Fund reimburses a homeowner as a result of an actual loss caused by a licensed contractor, the responsible contractor is obligated to reimburse the Fund. Md. Code Ann., Bus. Reg. § 8-410. The MHIC may suspend the license of any such contractor until he or she reimburses the Fund in full with annual interest as set by law. Md. Code Ann., Bus. Reg. § 8-411(a).

Recovery against the Fund is based on "actual loss," as defined by statute and regulation. "[A]ctual 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.

² Unless otherwise indicated, all references are to the 2015 version.

§ 8-401. “By employing the word ‘means,’ as opposed to ‘includes,’ the legislature intended to limit the scope of ‘actual loss’ to the items listed in section 8-401.” *Brzowski v. Md. Home Improvement Comm’n*, 114 Md. App. 615, 629 (1997). The Fund may only compensate claimants for actual losses incurred as a result of misconduct by a licensed contractor. COMAR 09.08.03.03B(2). At a hearing on a claim, the Claimant has the burden of proving the validity of the claim 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).

There is no dispute that the Respondent held a valid contractor’s license in 2015 when he and his company entered into the Contract with the Claimant. Md. Code Ann., Bus. Reg. § 8-405(a). There is no dispute that the Claimant is the owner of the subject property and that there is no procedural impediment barring him from recovering from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a), (f). The next issue is whether the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement due to misconduct, and if so, whether the Respondent made good faith efforts to resolve the claim. A claim may be denied if the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim. Md. Code Ann., Bus. Reg. § 8-405(d). For the following reasons, I find that the Claimant has proven eligibility for compensation and has not unreasonably rejected good faith efforts by the Respondent to resolve the claim.

The Claimant is a twenty year airman with the United States Air Force National Guard, obtaining the rank of Master Sergeant. He was scheduled to be deployed overseas soon after the

hearing. He testified that on September 30, 2015, he and his wife Jenna Geronimo, signed the Contract with the Respondent's company. Watts was the sales representative of Respondent's company who presented the Contract to the Claimant and sold the home improvement service. According to the Claimant, he selected the Respondent's company from a kiosk he visited at a baseball game he and his wife attended.

The Claimant further testified that the contract terms required that the Respondent build a deck from the back of the home and a fence surrounding the back yard. The materials to be used included pressure treated wood with vinyl fencing and railings.

According to the Claimant, the Respondent came to the Claimant's home to do a walk-through about three to five days after the Contract was signed, or during the first week of October. The walk-through was the first time the Claimant met the Respondent in person. He had a previous telephone call with the Respondent to schedule the walk-through.

The Claimant testified that on October 8, 2015, he paid the Respondent a deposit of \$2,100.00; and on October 22, 2015, he paid the balance of \$10,200.00.

Although the Contract provided for completion of the home improvement within four to six weeks from the date the Contract was signed, the Claimant testified that the parties did not provide a firm start date because the Respondent suggested the upcoming winter months would make the build difficult. He recommended a start date of late March 2016 or early April 2016. The Claimant accepted the Respondent's opinion as to when the project should begin.

The Claimant testified that he made several efforts to communicate with the Respondent inquiring as to when the home improvement could begin after the permit was acquired in November 2015. The efforts to communicate included forty-eight days of text messaging the Respondent from November 29, 2015 through December 7, 2016. (Cl. Ex. 2.) The Respondent occasionally replied to the Claimant's text messages.

The Claimant testified that the Respondent never provided a start date after April 2016, that he backed out of the agreement and that he refused to refund money despite the Claimant's repeated requests. The Claimant testified that his last telephone conversation with the Respondent was in May 2016. The Respondent told the Claimant that he did not have money to refund because he used the Claimant's money to fund another project with a different customer. The Respondent told the Claimant that he, the Respondent, did not have money because of a negative balance in his bank account.

The Fund argued that the credible evidence shows that the Claimant proved a loss by the acts or omissions of the Respondent and recommended an award to the Claimant of \$12,300.00. I agree. I find that by failing to start and complete the home improvement, the Respondent did not complete the home improvement for which it was contracted. Thus, the misconduct in this case lies in the Respondent not performing the agreed upon work pursuant to the September 30, 2015 Contract. The Claimant sustained an actual monetary loss. He is eligible for compensation from the Fund. I now turn to the amount of the award, if any.

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). MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3) sets forth the various formulas for determining an "actual loss." According to the Fund, and I agree, the appropriate formula is the following:

- (3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

...

- (a) 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.

Using the formula in COMAR 09.08.03.03B(3)(a), the following calculations apply:

	<u>\$12,300.00</u>	Payment made to the Respondent by Claimant under the Contract
Total	\$12,300.00	
Less	<u>\$ -0-</u>	The value of materials or services provided by the Contractor
	\$12,300.00	Considered as actual loss

The fund may not pay a Claimant an amount in excess of the amount paid by or on behalf of a claimant to the contractor against whom the claim is filed. Md. Code Ann., Bus. Reg. § 8-405(e)(1) and (5). The Claimant has an "actual loss" of \$12,300.00.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual loss of \$12,300.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(e)(1) and (5) (2015); COMAR 09.08.03.03B(3)(a).

RECOMMENDED ORDER

I PROPOSE that the Maryland Home Improvement Commission:

ORDER that the Claimant sustained an actual loss; and

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$12,300.00; and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until he reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent as set by the Maryland Home Improvement Commission;³ and

³ 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

June 5, 2018.
Date Decision Issued

JTH/emh
174234

John T. Henderson, Jr.
Administrative Law Judge

PROPOSED ORDER

WHEREFORE, this 23rd day of July, 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.

Michael Shilling

***Michael Shilling
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION