

**IN THE MATTER OF THE CLAIM
OF CLARA TAYLOR,
CLAIMANT,
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF STANLEY
STEVENSON T/A HUNNY DO, LLC,
RESPONDENT**

* **BEFORE DOUGLAS E. KOTEEN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No. LABOR-HIC-02-19-16797
* MHIC No. 18 (90) 1299**

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PROPOSED DECISION

**STATEMENT OF THE CASE
ISSUES
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PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER**

STATEMENT OF THE CASE

On September 7, 2018, Clara Taylor (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$1,140.00 in actual losses allegedly suffered as a result of a home improvement contract with Stanley Stevenson, trading as Hunny Do, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹ On May 28, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

¹ Unless otherwise noted, all references to the Business Regulation Article of the Maryland Annotated Code are to the 2015 Replacement Volume.

I held a hearing on August 26, 2019 at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e).² Nicholas Sokolow, Assistant Attorney General, Department of Labor (Department),² represented the Fund. The Claimant represented herself. After waiting for more than fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing in his absence.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 (CL) behalf:

- CL Ex. 1. Invoice from Respondent, dated April 10, 2017;
- CL Ex. 2. M&T Bank Statement for Claimant, dated March 16, 2017 through April 14, 2017; with attached Check Register, dated April 2017;
- CL Ex. 3-15. Thirteen photographs, undated;
- CL Ex. 16. Home Depot Receipts, dated April 4-6, 2017; with attached Home Depot Invoice, dated April 6, 2017;
- CL Ex. 17. Home Depot Invoice, dated April 4, 2017; and
- CL Ex. 18. TKR Home Repairs, LLC, Estimote, dated July 30, 2018.

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 his address of record on file with the MHIC by regular and certified mail on June 21, 2019, and was returned "unclaimed" (certified mail) on July 23, 2019, and "attempted - not known" (regular mail) on July 8, 2019. Md. Code Ann., Bus. Reg. § 8-312(d); Code of Maryland Regulations (COMAR) 09.08.03.03A(2). The Respondent was required to keep the MHIC apprised of his correct address. Md. Code Ann., Bus. Reg. § 8-309. Applicable law permits me to proceed with a hearing in the Respondent's absence if the Respondent fails to attend after being sent proper notice. Md. Code Ann., Bus. Reg. § 8-312(h). I determined that the OAH sent proper notice to the Respondent at his address of record on file with the MHIC and, therefore, I conducted the hearing in the Respondent's absence.

I admitted the following exhibits on behalf of the Fund (GF):

- GF Ex. 1. Notice of Hearing, dated June 21, 2019, for August 26, 2019 hearing;
- GF Ex. 2. MHIC Hearing Order, dated May 22, 2019;
- GF Ex. 3. MHIC I.D. Registration and Professional License History, dated August 20, 2019;
and
- GF Ex. 4. Letter from Joseph Tunney, Chairman, MHIC, to Respondent, dated September 17, 2018; with attached Home Improvement Claim Form, filed September 7, 2018.

As the Respondent was not present, he submitted no exhibits at the hearing.

Testimony

The Claimant testified on her own behalf. No other testimony was presented.

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 registration number 94032.

2. On or about April 10, 2017, the Claimant and the Respondent entered into a contract to perform the following work:

- Remove existing vanity and toilet;
- Demo[lish] existing flooring and install new vinyl flooring;
- Reinstall toilet and install new vanity; and
- Paint bathroom.

The contract called for use of the following materials:

- Moisture resistant drywall, plumbing supplies, adhesives, fasteners,
joint compound, primer, paints, and electrical supplies.

The contract also provided that the Claimant would purchase and supply all materials not expressly listed. (CL Ex. 1.)

3. The Claimant agreed to the contract price in the Respondent's invoice of \$1,140.00. (CL Ex. 1.)



4. The Respondent completed the work described in the contract. Upon completion, the Claimant paid the Respondent \$1,140.00 on April 11, 2017 by check. (CL Ex. 2.) The Respondent did not furnish the Claimant with the invoice or other written contract until after the work was performed.

5. The Respondent performed home improvement work at the Claimant's home in an unworkmanlike and inadequate manner. The drain in the sink of the new bathroom vanity that the Respondent installed did not open and close properly. The Respondent performed sloppy patchwork on the back side of the vanity.

6. The Respondent did not properly seal and apply caulking to the toilet he installed.

7. The Respondent painted the bathroom walls, ceiling, and door in a sloppy manner. He left dark lines and patches in some areas of the ceiling and walls and failed to apply a second coat to display a proper appearance. The Respondent also failed to paint the existing bathroom door to match the color of the paint elsewhere in the bathroom.

8. The Respondent failed to properly install the baseboard near the corner of the new vanity and left the baseboard with a very sloppy appearance.

9. The Respondent broke a corner of the medicine cabinet during installation and left red marks on the wall. The Respondent also left red ink in the sealant in the bathroom.

10. The Claimant discussed her concerns about the poor work with the Respondent shortly after the work was completed. The Respondent returned to the Claimant's residence to view the areas of concern, but refused to make any repairs.

11. The Claimant obtained a proposal from TKR Home Repairs, LLC (TKR), on July 30, 2018, to repair and correct the poor work performed by the Respondent in the Claimant's master bathroom. TKR is licensed by the MHIC as a home improvement contractor. TKR proposed to replace the damaged medicine cabinet, repair and paint poorly installed molding,

replace the sloppy patchwork on the back side of the vanity, including by installing and drilling holes for plumbing and painting the area, and repairing the faucet drain. TKR also proposed to correct the poor paint job, including by applying a second coat of paint to the bathroom walls and ceiling. (CL Ex. 18.)

12. The cost of the work proposed by TKR to repair and correct the Respondent's inadequate work was \$968.00. (CL Ex. 18.)

13. The Claimant suffered an actual loss due to the Respondent's unworkmanlike and inadequate home improvement work in the amount of \$968.00. (CL Ex. 18.)

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); *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." Md. Code Ann., Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation from the Fund.



The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. (CL Ex. 1.) The Claimant explained that she did not obtain a written contract from the Respondent before he performed the home improvement work at her residence. However, she requested and received an invoice from the Respondent for the work performed on or about April 10, 2017 after the work was completed. (CL Ex. 1.)

The Claimant contracted with the Respondent to remove the existing vanity and toilet from her master bathroom and reinstall a new vanity and toilet. The contract also called for the Respondent to remove or demolish the existing flooring and install new vinyl flooring in the bathroom.⁴ Additionally, the contract called for the Respondent to paint the entire bathroom. Aside from certain materials listed in the invoice that were provided by the Respondent, the Claimant purchased additional materials that were not listed, including a new bathroom vanity, medicine cabinet, and new toilet. (CL Ex. 1.)⁵

The Respondent performed home improvement work at the Claimant's residence in an unworkmanlike and inadequate manner. The Claimant testified in some detail and submitted numerous photographs to demonstrate the poor quality of the Respondent's work. The photographs, accompanied by explanation from the Claimant, clearly show substantial deficiencies in the Respondent's work. The Respondent failed to properly install the bathroom vanity and left unsightly patch work on the back side of the vanity, which required repair. (CL Ex. 3.) The baseboard adjacent to the corner of the new vanity was installed in a sloppy manner and required repair. (CL Ex. 4.) The Respondent failed to paint the existing molding white to

⁴ The Claimant testified that she was satisfied with the work performed by the Respondent concerning the installation of new vinyl flooring.

⁵ The contract listed moisture resistant drywall among the materials supplied by the Respondent at a cost of \$100.00. (CL Ex. 1.) The Claimant testified that the contract did not provide for the installation of drywall and that the Respondent did not supply any drywall. There is no itemized list of the cost of the various materials supplied by the Respondent, which resulted in a combined cost of \$100.00. Therefore, I cannot find on this record that the Claimant suffered an actual loss regarding the cost of drywall, even though the Respondent apparently did not supply the Claimant with any drywall in performing the home improvement work.



match the white paint on the baseboard. (CL Ex. 5.) The Respondent also failed to paint the bathroom door to match the color of the bathroom walls. (CL Ex. 6.)

In addition, the Respondent failed to properly install the faucet drain in the bathroom sink. (CL Ex. 7.) The Respondent damaged the corner of the new medicine cabinet during installation and left red ink on the wall. (CL Exs. 8-9.) The Respondent also failed to properly apply sealant and caulking around the toilet when installing the toilet in the master bathroom, and left red ink in some of the sealant. (CL Exs. 10, 14.)

The Respondent also performed poorly in painting the bathroom walls and ceiling. The photographs demonstrated that the walls and ceiling showed lines, patches, and streaks, indicating that the Respondent did not apply the paint properly. (CL Exs. 11-13, 15.) Repair of the paint job required that a second coat of paint be applied throughout the bathroom walls and ceiling.

Since the Respondent failed to appear after being sent proper notice of the hearing, I have relied on the Claimant's straightforward testimony and supporting photographs and other documentation to establish the Claimant's eligibility for compensation from the Fund. The Claimant's testimony and her revealing photographs clearly demonstrate that the Respondent performed home improvement work in the Claimant's master bathroom in an unworkmanlike and inadequate manner. Md. Code Ann., Bus. Reg. § 8-401, 8-405.

After observing multiple deficiencies in the work, the Claimant promptly contacted the Respondent to express her dissatisfaction and request that repairs be made. The Respondent returned to the Claimant's residence to observe the Claimant's areas of concern. However, the Respondent became angry during this process and refused to perform any repairs. Therefore, the Claimant is eligible for compensation from the Fund to repair or correct unworkmanlike or inadequate home improvement work performed by the Respondent.



Because the Respondent failed to make any repairs, the Claimant contacted another licensed home improvement contractor, TKR Home Repairs, LLC. The Claimant obtained an estimate from TKR, dated July 30, 2018, to make necessary repairs to the Respondent's poor work. The cost of the estimate was \$968.00. (CL Ex. 18.) TKR proposed to make the following repairs:

- Replace damaged medicine cabinet;
- Repair molding;
- Replace back side of vanity, including installing and drilling holes for plumbing and painting white;
- Correct poor paint job, including applying second coat of paint on walls and ceiling;
- Repair bathroom faucet; and
- Paint molding white.

(CL Ex. 18.)

Having found the Claimant eligible for compensation, I must determine the amount of the Claimant's actual loss and the amount 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 did not abandon the contract without doing any work, so that formula is inapplicable. COMAR 09.08.03.03B(3)(a). Moreover, the Claimant is seeking another contractor to complete or remedy the Respondent's work, so the formula in which a claimant is not soliciting another contractor to complete the contract is also not applicable. COMAR 09.08.03.03B(3)(b).

In this case, the Respondent performed some work under the contract, and the Claimant intends to retain another contractor, TKR, to complete or remedy the 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 estimate the Claimant obtained from TKR demonstrates that TKR proposed to repair or correct the deficiencies in the work performed by the Respondent. Therefore, the cost of the proposed repairs set forth in the TKR estimate of \$968.00 constitutes an actual loss based on the Respondent's unworkmanlike or inadequate home improvement work. (CL Ex. 18.)

The Claimant requested that she be reimbursed an additional amount beyond the TKR estimate based on the cost of replacing the bathroom vanity. She submitted a receipt from Home Depot which demonstrates the cost of a new vanity as \$316.94. (CL Ex. 16.) The Claimant argued that she was entitled to this additional amount because the Respondent "butchered" her vanity when he performed sloppy patch work in the back of the vanity. She insisted that she would have a difficult time selling her home if TKR only repaired the back side of the vanity, rather than replacing it with a brand new vanity at an additional cost of \$316.94.

I agree with the Claimant's argument that she is entitled to a proper repair that would reflect the installation of a new vanity in her master bathroom consistent with what she contracted for in April 2017. However, the Claimant has failed to prove that she is entitled to be reimbursed the full cost of a new vanity of \$316.94. The TKR estimate demonstrates that TKR proposed to *replace* the back side of the vanity, which includes installing and drilling holes for plumbing and painting the area white. Yet, the only problem the Claimant identified with the vanity was sloppy patchwork on the back side. She did not identify any other problems with the

vanity, aside from the faucet drain, the cost of which is already included in the TKR estimate.

The estimate demonstrates that TKR intends to replace the back side of the vanity at a cost of \$150.00. (CL Ex. 18.) The Claimant has not established on this record that she is entitled to an entirely new vanity at a full cost of \$316,94 because she has not identified any additional work to be performed on the vanity that was not already addressed by the TKR estimate. The Claimant was concerned that TKR would be unable to repair the back side of the vanity to make it appear new. However, this was mere speculation and is inconsistent with the TKR estimate that calls for replacement of the back side of the vanity. Accordingly, I conclude that the TKR estimate establishes the full cost to repair the Respondent's poor work.

In this case, the Claimant paid the Respondent \$1,140.00 to perform the renovation work in her master bathroom under the contract. For the reasons addressed above, I conclude the

Claimant will have to pay another contractor \$968.00 to repair the deficiencies in the

Respondent's home improvement work. The correct calculation to determine the amount of the

Claimant's actual loss is as follows:

Amount paid to Respondent:	\$1,140.00
Cost to repair work:	+ \$ 968.00
	<u>\$2,108.00</u>
Original contract amount:	- <u>\$1,140.00</u>
Actual Loss:	\$ 968.00

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 is less than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant's actual loss to repair the unworkmanlike or inadequate home improvement work performed by the Respondent in the Claimant's master bathroom is \$968.00. The Claimant is thus entitled to an

award from the Fund in the amount of \$968.00 to compensate the Claimant for her actual loss.

Md. Code Ann., Bus. Reg. §§ 8-401, 8-405; COMAR 09.08.03.03B(3)(c).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$968.00 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 that amount from the Fund.

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$968.00; 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,⁶ and

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

November 8, 2019
Date Decision Issued

CONFIDENTIAL

Douglas E. Koteen
Administrative Law Judge

DEK/da
182883

⁶ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**IN THE MATTER OF THE CLAIM
OF CLARA TAYLOR**

*** MARYLAND HOME IMPROVEMENT
* COMMISSION**

**AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ACTS OR OMISSIONS
OF STANLEY STEVENSON t/a
HUNNY DO, LLC**

*** MHIC CASE NO. 18(90)1299
* OAH NO. LABOR-HIC-02-19-16797**

* * * * *

FINAL ORDER

This matter was heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on August 26, 2019. Following the evidentiary hearing, the ALJ issued a Proposed Decision on November 8, 2019, concluding that the homeowner Clara Taylor (“Claimant”) sustained an actual and compensable loss of \$968.00 as a result of the acts and omissions of Stanley Stevenson t/a Hunny Do, LLC (“Contractor”). *OAH Proposed Decision* p. 11. In a Proposed Order dated December 18, 2019, the Maryland Home Improvement Commission (“MHIC”) affirmed the Proposed Decision of the ALJ to award the Claimant \$968.00 from the MHIC Guaranty Fund. The Contractor subsequently filed exceptions of the MHIC Proposed Order.

On February 20, 2020, a hearing on the exceptions was held before a three-member panel (“Panel”) of the MHIC. The following three preliminary exhibits were offered by Andrew Brouwer, Assistant Attorney General, as the presenter of evidence at the hearing: 1) December 18, 2019 Cover Letter with the OAH Proposed Decision, 2) Contractor’s Written Exceptions dated January 13, 2020, and 3) Notice of February 20, 2020 Exceptions Hearing. Neither the Contractor nor the Claimant produced a copy of the transcript of the hearing before the ALJ, and therefore the Panel’s review was limited to the ALJ’s proposed decision, the exhibits introduced into evidence at the OAH hearing, and the preliminary exhibits offered by AAG Brouwer at the exceptions

hearing. COMAR 09.01.03.09(G) - (I).

The Commission finds that the Contractor's exceptions were time-barred because they were filed over 20 days from the postmark date of the Commission's Proposed Order. Code of Maryland Regulations ("COMAR") 09.01.03.09A governs the deadline by which exceptions of a Proposed Order of the Commission must be filed and reads as follows:

A. Filing Exceptions.

(1) A party adversely affected by a proposed order shall have 20 days from the postmark date of the proposed order to file exceptions with the administrative unit.

(2) The date of filing exceptions with the administrative unit shall be the date of personal delivery to the unit or the postmark date on mailed exceptions.

The cover letter under which the OAH Proposed Decision, and MHIC Proposed Order were sent to the parties is dated December 18, 2019. *Exceptions Hearing Exhibit 1*. The Commission's file, however, also contains the copy of the cover letter, OAH Proposed Decision and MHIC Proposed Order that was mailed to the Contractor via certified mail, and returned unclaimed.¹ The envelope containing this letter is postmarked December 20, 2019. Even when this later starting date is used, exceptions should have been filed on or before January 9, 2020. The cover letter notified the parties that they had 20 days from the postmark date of the letter to file written exceptions to the enclosed decision, and that if no exceptions were filed the Proposed Order becomes final. *Exceptions Hearing Exhibit 1*. The Contractor dated his written exceptions January 13, 2020. *Exceptions Hearing Exhibit 2*. Therefore, the exceptions were filed untimely, and the Commission's Proposed Order became final at the expiration of the 20-day deadline on January 9, 2020. The Proposed Order, affirming the OAH Proposed Decision to award the Claimant \$968.00

¹ Although the certified mail was returned unclaimed, the regular mail was not returned. Moreover, the address used to mail the OAH Proposed Decision and MHIC Proposed Order is the same address later used by the Contractor on his company letterhead in responding with written exceptions.

from the MHIC Guaranty Fund, remains the final decision of the Commission.

Having considered the evidence in the record and the OAH Proposed Decision, it is this

19th day of May 2020 **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**; AND
- C. That the Proposed Decision and Order of the Administrative Law Judge is **AFFIRMED**;
- D. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Robert Altieri

**Chairperson –Panel
Maryland Home Improvement
Commission**