IN THE MATTER OF THE CLAIM	*	**BEFORE GERALDINE A. KLAUBER,**
OF DAVID WEBSTER,	*	**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 DOMINIC HICKS,	*	
T/A WORKING MAN GENERAL	*	**OAH No.: LABOR-HIC-02-20-03136**
CONTRACTING, LLC,	*	**MHIC No.: 18(90) 706**
RESPONDENT	*	

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PROPOSED DECISION

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STATEMENT OF THE CASE

On May 6, 2018, David Webster (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),[1] for reimbursement of $26,025.00 in actual losses allegedly suffered as a result of a home improvement contract with Dominic Hicks, trading as Working Man General Contracting, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through

[1] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

8-411 (2015).[2] On January 13, 2020, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on November 16, 2020 using the WebEx videoconferencing platform. Maryland. Bus. Reg. § 8-407(e). John Hart, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself.

After waiting twenty minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing in his absence. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. Code of Maryland Regulations (COMAR) 28.02.01.23A. On June 25, 2020, notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail, COMAR 09.08.03.03A(2), and was returned by the United States Postal Service "attempted-not known. Unable to forward." The Respondent did not notify the OAH of any change of address and the address on file with the MHIC was also the address of record with the Maryland Motor Vehicle Administration.[3] COMAR 28.02.01.03E. I determined that the Respondent had received proper notice, and I proceeded to hear the captioned matter.

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. 2020); COMAR 09.01.03 and COMAR 28.02.01.

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

[3] See Fund Ex. 6.

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 behalf:

Clmt. Ex. 1 - Contract, Work Order Scope and Payment Schedule, July 5, 2017

Clmt. Ex. 2 - Citi Card statement, November 17, 2017

Clmt. Ex. 3 - DSP Contractors LLC Quote, May 2, 2018

Clmt. Ex. 4 - Photograph of kitchen

Clmt. Ex. 5 - Photograph of hallway carpet

Clmt. Ex. 6 - Photograph of damaged carpet in hallway

Clmt. Ex. 7 - Photograph of living room

Clmt. Ex. 8 - Photograph of breakfast nook

Clmt. Ex. 9 - Luna Contract for hardwood floor installation, June 28, 2018

I admitted the following exhibits on the Fund's behalf:

Fund Ex. 1 - Notice of Hearing, June 25, 2020

Fund Ex. 2 - Notice of Hearing, October 5, 2020

Fund Ex. 3 - Hearing Order, January 8, 2020

Fund Ex. 4 - Letter from MHIC to the Respondent, May 14, 2018

Fund Ex. 5 - Home Improvement Claim Form, May 6, 2018

Fund Ex. 6 - Licensing History of the Respondent; Affidavit of Charles Corbin, November 2, 2020

As the Respondent failed to appear, no exhibits were entered on his behalf.

Testimony

The Claimant testified and did not present other witnesses.

The Fund did not present any witnesses.

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.[4]

2. On July 5, 2017, the Claimant and the Respondent entered into a home improvement contract (Contract). The Contract provides for the following work: install six recessed lights in the kitchen; paint the main and second levels; refinish hardwood floors on main level; install new plumbing fixtures in kitchen including faucet and garbage disposal; install new cabinets in kitchen; install new granite countertops with 4" backsplash; install new sink in kitchen; repair deck/power wash, sand and paint or stain. The agreed-upon Contract price was $15,500.00.

3. The Contract included a section 10.0 notes, which provided for the following additional work: crown molding; hardwood flooring (engineered)[5]; replace gas fireplace. The agreed upon price for this additional work was $5,331.20.

4. The total agreed-upon contract price was $20,831.20.

[4] The Respondent's license has since lapsed (as of August 12, 2019).
[5] The hardwood flooring in this section of the Contract referred to the living room and breakfast nook areas that were carpeted.

5. The Claimant made three direct payments to the Respondent in the amount of $3,875.00 each, for a total of $11,625.00.[6]

6. The Respondent removed the existing tile from the kitchen floor and put down new tile. The Respondent used too much cement and the tiles were not flush.

7. The Respondent installed the incorrect piece of granite for the countertop and the granite was chipped. The backsplash installed by the Respondent was cracked. The Respondent removed the granite countertop and backsplash but never replaced them.

8. The Respondent improperly installed the kitchen cabinets so that the doors were not flush when closed. The kickboard of the cabinets was also damaged.

9. The Respondent sanded the floors on the main level hallway but applied the wrong color stain on two occasions. The Respondent walked on the floors before the stain had fully dried, leaving footprints on the stain.

10. While painting, the Respondent spilled paint on the dining room carpet. As compensation for the damaged carpet, the Respondent agreed to install hardwood floors in the dining room.

11. The Respondent did not install the hardwood floors in the living room, dining room, or breakfast nook.

12. The Respondent improperly patched the deck and did not apply the correct stain.

13. The Respondent did not perform any of the work provided for in section 10.0 of the Contract.

[6] The payments were made by credit card on July 6, 2017, August 30, 2017, and September 29, 2017.

14. In September 2017, the Claimant contacted the Respondent about the unworkmanlike and incomplete work. The Respondent refused to make corrections or complete the work until the Claimant paid him additional money. The Claimant refused to pay the Respondent any more money until the issues with the work performed were corrected.

15. In November or December 2017, an individual who identified himself as affiliated with Working Man LLC, contacted the Claimant and informed the Claimant that the Respondent was no longer working on the Claimant's contract. The individual demanded additional payments from the Claimant before work would resume. The Claimant refused to pay any additional money and the work was never completed.

16. The Claimant performed some remedial work, including the installation of a faux granite kitchen countertop and replacement of a few tiles on the kitchen floor that had buckled.

17. The Claimant obtained an estimate from DSP Contractors (DSP) to repair and complete the work provided for in the original contact with the Respondent. The amount of the proposal was $21,300.00.[7]

18. None of the work contained in DSP's proposal has been performed.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means

[7] The total estimate from DSP was $29,900.00 but $8,600.00 of that amount was for work either not included in the Claimant's original contract with the Respondent or work that the Respondent had completed.

to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor . . . ." Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for 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." Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Claimant established that the Respondent, a licensed contractor at the time, performed unworkmanlike, inadequate, and incomplete home improvements. The Respondent performed just a portion of the work set forth in the Contract and the work he performed was clearly done in an unworkmanlike manner. The Claimant established through photographs and testimony that the granite kitchen countertop installed by the Respondent was an incorrect piece, did not have the correct size cutout for the sink, and was chipped. The backsplash installed by the Respondent was also damaged. The kitchen cabinets were damaged at the kickboard and were installed improperly, resulting in the cabinet doors not being flush when closed. The hardwood floors contracted for were not installed and the wrong color stain was applied to the sanded hardwood floor on the first level. The Respondent also walked on the wet stain, leaving footprints. The Respondent repaired the deck and stained it; however, the deck was improperly patched,[8] and the wrong stain was applied. The only work properly completed by the Respondent was the painting.

[8] The DSP proposal noted that the deck was improperly patched and stained.

The Claimant provided the Respondent with an opportunity to correct and complete the work, but the Respondent refused to perform any additional work until he was paid more money. The Claimant was justified in refusing to pay the Respondent additional funds because the work for which the Claimant had already paid Respondent was unworkmanlike. The Claimant paid the Respondent more than half of the total contract price but had nothing to show for it except some painted walls. 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. 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 performed some work under the Contract, and the Claimant intends to retain other contractors to complete or remedy that 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 Claimant paid the Respondent $11,625.00. The Claimant testified that he hired and paid Luna to install the hardwood floors that the Respondent failed to install. The Claimant

presented an invoice from Luna in the amount of $7,112.49 but the invoice reflects that in addition to the hardwood floors, Luna installed carpet throughout the Claimant's home. The Luna invoice was not itemized and therefore cannot be used in the calculation of the Claimant's actual loss. The Claimant also obtained a proposal from DSP, a licensed contractor, to repair and complete the Respondent's work. DSP's proposed total contract price was $29,900.00. The proposal included the installation of carpet in areas not included in the Respondent's contract and paint on the second level walls and ceilings. According to the Claimant's testimony, the Respondent completed the painting set forth in the Contract. For purposes of calculating the Claimant's actual loss, I have deducted the amounts allotted for the installation of carpet and painting from the DSP proposal. The cost of the carpet was $5,250.00 and the cost of the painting was $3,350.00. After subtracting those amounts, the DSP contract price was $21,300.00.

Using the above formula, I calculate the Claimant's actual monetary loss as follows:

Amount paid to the Respondent	$ 11,625.00
+ Amount paid to correct or complete the work	$ 21,300.00
	$ 32,925.00
- Amount of original contract	$ 20,831.00
Amount of actual loss	$ 12,094.00

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. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss of $12,094.00 exceeds the amount he paid the Respondent ($11,625.00). As the Claimant's recovery cannot exceed the

amount paid to the Respondent, the Claimant's recovery is limited to $11,625.00. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $11,625.00 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 $11,625.00 from the Fund. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $11,625.00; 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;[9] and

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

January 28, 2021
Date Decision Issued

Geraldine A. Klauber
Administrative Law Judge

GAK/at
#190024

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

PROPOSED ORDER

WHEREFORE, this 7th day of April, 2021, 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
Chairman
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION