IN THE MATTER OF THE CLAIM	*	**BEFORE MICHAEL D. CARLIS,**
OF OLLIE COLLIER,	*	**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	*	
CONTRACTOR, LLC,	*	**OAH No.: DLR-HIC-02-19-08653**
RESPONDENT	*	**MHIC No.: 18 (90) 898**

* * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE

On April 24, 2018, Ollie Collier (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (Commission)[1] Guaranty Fund (Fund) for an actual loss of $33,684.36 arising out of a home improvement contract[2] with Dominic Hicks, trading as

[1] The Commission is part of the Department of Labor (Department). Md. Code Ann., Bus. Reg. § 2-108(a)(15) (2015).

[2] A "home improvement contract" includes a "written agreement between a contractor and an owner for the contractor to perform a home improvement." *Id.* § 8-101(h) (Supp. 2018). An "owner" includes a "homeowner." *Id.* § 8-101(k). A "home improvement" includes an "improvement . . . [or] . . . remodeling . . . of a . . . part of a building that is used . . . as a residence . . . ." *Id.* § 8-101(g)(1)(i).

Working Man General Contracting, LLC (Respondent). On March 15, 2019, the Commission ordered a hearing to allow the Claimant an opportunity to prove his Claim. On March 21, 2019, the Commission transmitted the case to the Office of Administrative Hearings (OAH) to conduct a hearing.

On June 21, 2019, I held a hearing at the County Office Building in Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented himself. The Respondent did not attend the hearing, despite having been mailed proper notice to his address of record. Nicholas Sokolow, Assistant Attorney General, and the Office of the Attorney General, represented the Fund.

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. 2018); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

ISSUES

The issues are:

A. Whether the Claimant sustained an actual loss compensable by the Fund as a result of the Respondent's acts or omissions; and, if so,

B. What is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimant, except as indicated:

Claimant Ex. 1: Online Banking Account Activity Transaction, dated October 30, 2017;

Claimant Ex. 2: Online Banking Account Activity Transaction, dated October 16, 2017;

Claimant Ex. 3: Online Banking Account Activity Transaction, dated November 2, 2017;

Claimant Ex. 4a-d, f-k:[3] An Estimate from the Respondent, dated August 10, 2017, and an email stream between the Respondent and the Claimant's wife from September 25, 2017, through October 19, 2017;

Claimant Ex. 5(a-d): Notices from the District Court of Maryland for Prince George's County, dated from April to September 2018;

Claimant Ex. 6(a-b): Objection based on relevance sustained (exhibit not admitted);

Claimant Ex. 7: Metropolitan Bath and Tile Job Specifications, dated April 9, 2018;

Claimant Ex. 8: Estimate from KBR, dated April 2, 2018;

Claimant Ex. 9: Johns Easter Company, Inc., damage estimate, dated January 22, 2019;

Claimant Ex. 10(a-g): Photographs; and

Claimant Ex. 11(a-e): Photographs.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1: Notice of Hearing, dated April 25, 2019;

Fund Ex. 2: Hearing Order, dated March 15, 2019;

Fund Ex. 3: Licensing history;

Fund Ex. 4: Letter to the Respondent, with attachment, dated May 7, 2018; and

Fund Ex. 5: Work Order Contract Agreement, dated October 14, 2017.

Testimony

The Claimant testified for himself. The Fund offered no witnesses.

PROPOSED FINDINGS OF FACT

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

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

[3] Claimant Ex. 4(e) was not admitted, because it was essentially a blank page.

2. On October 14, 2017, the Claimant and Respondent entered into a home improvement contract (contract) for a complete renovation of a bathroom at the Claimant's residence in Prince George's County.

3. Under the contract, the Claimant agreed to make four installment payments: three payments of $2,628.12 and a final payment upon completion of the contract of $2,628.14.

4. On a date not established in the record, the Claimant also agreed to pay an additional $2,000.00 for infrared heating of the bathroom floor.

5. The Respondent agreed to begin the home improvement on October 14, 2017, and finish the home improvement on November 18, 2017.

6. The Claimant made the following payments to the Respondent: $2,628.12 on October 16, 2017; $2,628.12 on October 30, 2017; $2,628.12 on November 2, 2017, and $2,000.00 on a date not established in the record.

7. Sometime after the Claimant's final payment to the Respondent on November 2, 2017, the Claimant complained to the Respondent that he was very dissatisfied with the quality of the Respondent's work. The Respondent said he would make things right but first required the final payment from the Claimant. When the Claimant refused, citing the payment schedule in the contract, and said he would seek restitution against the Respondent, the Respondent told him to go ahead and sue because he (the Respondent) had nothing anyways.

8. After the discussion between the Claimant and Respondent about the Claimant's complaints of workmanship, the Respondent performed no other work on the home improvement.

9. The Respondent's home improvement work under the contract was unworkmanlike, inadequate, and incomplete.

10. The Claimant obtained proposal from Metropolitan Bath and Tile (Metropolitan) and KBR to remodel the bathroom as the Respondent had agreed to do under the contract. Both contractors described the Respondent's home improvement work as the worst they had seen and said the Respondent's work would have to be demolished.

11. KBR's estimate on April 2, 2018, was for $25,800.00, and Metropolitan's estimate on April 9, 2018, was for $37,757.00. Both estimates are for the same scope of work as the original contract between the Claimant and Respondent.

DISCUSSION

The Home Improvement Contract

The Fund offered a copy of the home improvement contract that was signed by the Claimant and Respondent on October 14, 2017. The contract describes the home improvement as a "Hall Bathroom Remodel" for a total cost of $10,512.50. It contains a "Description and Specification" section that describes the scope of work as follows:

Demolition:	Remove all building & finish materials with the bathroom down to bare wall studs.
Framing:	Frame standing walk-in shower with half wall for custom glass installation.
Boarding:	Install drywall throughout the hall bathroom/green board in wet areas.
Lighting:	Install (4) recessed lights.
Paint:	Paint entire hall bathroom.
Flooring:	Install ceramic tiles on main floors & shower floors in hall bathroom.
Trim:	Install new base trim where applicable.

Hardware: Install new cabinet hardware, towel racks & paper holders/Install (2) 24" grab bars.

Fixtures: Install new plumbing fixtures.

Cabinets: Install (1) new vanity in hall bathroom.

Countertops: Install (1) new vent fan to be vented outdoors.

Sink: Install (1) new sink in hall bathroom.

Finish Elements: Install (1) new bathtub & (1) new toilet (1) new flush wall mirror.

Additional: Install ceramic tiles on shower walls in hallway.

Scope 1: Install storage shelving.

The contract obligated the Claimant to make three payments of $2,628.12 and one payment of $2,628.14 according to the following schedule: the first payment as a deposit, the second payment upon the completion of demolition, the third payment upon completion of the "Framing/Trade Work/Boarding," and the final payment upon completion of the home improvement.

The contract contained a start date of October 14, 2017, and an end date of November 18, 2017. The materials were to be provided by the Respondent based on a "price range established by both agreeing parties." The contract also contained the following:

> Written Change Orders signed by both parties are required for any changes or additional services beyond the original scope of work [Exhibit B]. The Change order should state:
>
> - The additional services or changes requested
> - Whether the change or services requested will impact the original Contract amount
> - The total cost of the additional services requested or resulting decrease of Contract amount due to requested changes
> - The new total amount of the Contract

> Working Man General Contracting, LLC shall provide the Client a signed copy of the Change Order form before commencing any additional or changed work. Except for those items specifically described in the Change Order, all other Contract terms shall remain unchanged. Payment for additional work is due upon completion of all the additional or changed work and submittal of an invoice by the contractor. Client and Working Man General Contracting LLC will negotiate any additional fees for services beyond the scope of the work described above.

Summary of the Parties' Cases

The Claimant

The Claimant testified the business relationship with the Respondent was a "nightmare." According to the Claimant, there were many problems with the Respondent's workmanship. He stated the new floor and tub were not level and all of the Respondent's tile work as "shoddy," "bad," and "terrible." In addition, the Claimant testified the drain to the tub was "inoperable" and water leaked from a radiator installed by the Respondent that caused part of the ceiling below to collapse.[4] The Claimant testified the faucets, light fixtures, and electrical outlets were improperly installed: the faucets were not securely attached, the electrical outlets were improperly sized, and material used for the lighting was inadequate for the moisture level of a bathroom.

The Claimant also testified the Respondent's employee who performed the home improvement recommended the installation of an infrared heated floor for an additional $2,000.00. The Claimant testified he agreed and paid the employee $2,000.00 by cashier's check, although the infrared heating was never installed. The Claimant attempted to contact the employee many times without success and filed a civil suit against him. The Claimant testified he has not collected any of the money he paid to the employee.

[4] The damage to the room below the basement was covered by the Claimant's homeowner's insurance policy.

The Claimant testified he paid the Respondent $7,884.36. Exhibits corroborate three payments of $2,628.12 on October 16, 2017, October 30, 2017, and November 2, 2017. The Claimant testified he complained to the Respondent about the shoddy workmanship after the third payment. According to the Claimant, in response, the Respondent "asked" for the final payment to enable him to complete and fix the home improvement. The Claimant testified he refused, telling the Respondent he expected the job to be done as they had originally agreed or he would "seek restitution." The Respondent told him to "go ahead and sue because he had nothing anyway."

Photographs offered by the Claimant and admitted as Claimant Exs. 4 and 10 clearly show pervasive unworkmanlike and incomplete home improvement. The photographs depict very sloppy grouting of tiles; improperly cut tiles that show at least one large gap between the tile and door frame; many areas without any grout; incomplete tiling in the shower and extensive messy tile surfaces; incomplete electrical work, including hanging wires and at least one outlet dangling from exposed wiring; and a hole in a wall where the Claimant testified the medicine cabinet was to have been installed.

The Claimant testified he obtained two estimates from other contractors. He testified both contractors told him the Respondent's work was the "worst renovation [they] ever encountered." Both estimates include the complete demolition of the Respondent's work. The Claimant also testified the scope of work of the two estimates is the same as the scope of work in the contract he had with the Respondent. Neither of the proposals is signed.

On April 2, 2018, KBR offered to renovate the bathroom for $25,800.00. Pursuant to the KBR proposal, the Claimant was to provide the following materials: faucet; tub, waste, and overflow; tub/shower fixture, toilet, accessories, light fixture, and medicine cabinet. All of the proposed work is within the scope of the original contract with the Respondent.

On April 9, 2018, Metropolitan proposed to renovate the bathroom for $37,757.00. This estimate included using the following materials left behind by the Respondent: tub, toilet, vanity cabinet, sink top and faucet, and shower faucet. All of the proposed work is within the scope of the original contract with the Respondent.

Arguments of the Participating Parties

The Claimant

The Claimant argued the experience with the Respondent was a "total drain on our [his and his wife's] resources" and his wife's health. He asked for "restitution so we can at some point have a completed bathroom."

The Fund

The Fund supported the Claimant's award for an actual loss based on the very sloppy grout work, inadequate or incomplete electrical work, and the contractor's estimates that indicate nothing is salvageable. The Fund argued COMAR 09.08.03.03B(3)(c) is the correct formula to determine the amount of the Claimant's actual loss. The Fund recommended an award of $9,884.36, which included what the Claimant had paid under the contract and the $2,000.00 for the infrared heated floor.

Analysis

The Claimant has the burden of proof. Md. Code Ann., Bus. Reg. § 8-407(1) (2015).[5] The standard of proof is a preponderance of the evidence. Md. Code Ann., State Gov't § 10.217 (2014). To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so," when all of the evidence is considered. *Coleman v.*

[5] Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

Anne Arundel Cty. Police Dep't, 369 Md. 108, 125 n.16 (2002); *see also Mathis v. Hargrove*, 166 Md. App. 286, 310 n.5 (2005).

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) ("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.

Findings of Pre-Actual Loss Material Facts

None of the evidence admitted into the record for the Claimant or Fund was refuted. The Respondent did not appear at the hearing to defend against the Claim, and the Fund agreed the Claimant suffered an actual loss.

Based on the Claimant's testimony, photographs of the home improvement work, and the proposals the Respondent received from other contractors, I find the Respondent performed unworkmanlike, inadequate, and incomplete home improvement.

As testified to by the Claimant and corroborated by photographs, some of the tile work was incomplete and much, if not all, of it was obviously done in an unworkmanlike manner. Some areas of the bathroom space were not tiled, for example, the shower floor; much if not all of the grout was very sloppily applied or not applied at all; and some tiles were incorrectly cut. In addition, the Respondent left a large hole in a wall where a medicine cabinet was to have been installed; some electrical wires were left hanging from the walls; and an electrical receptacle was left dangling by wires from an unfinished cut-out. I also find credible the Claimant's testimony that the Respondent failed to level the bathroom floor and to securely attach the tub and faucets. I also give some probative weight to the Claimant's hearsay testimony that both contractors who

gave the Claimant estimates to renovate the bathroom said the Respondent's work was the worst home improvement they had ever seen. Accordingly, based on the evidence discussed above, I find the Claimant suffered an actual loss that resulted from the acts and omissions of the Respondent.

The Amount of the Claimant's Actual Loss

COMAR 09.08.03.03 regulates the calculation of the amount of a claimant's actual loss. Under the circumstances of this case, the Claimant's actual loss is determined under Regulation .03B(3)(c), which states:

> 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.

The Claimant made three payments of $2,628.12, or $7,884.36, by check to the Respondent. In addition, based on the Claimant's unrefuted credible testimony, the Claimant paid the Respondent's employee $2,000.00 for a heated bathroom floor, which was not installed. Under section 8-405 of the Business Regulation Article, "For purposes of recovery from the Fund, the act or omission of a licensed contractor includes the act or omission of . . . a[n] employee of a licensed contractor, whether or not an express agency relationship exists." Bus. Reg. § 8-404(b). Therefore, I find the total amount the Claimant paid to the Respondent was $9,884.36.

The record also includes the proposals from Metropolitan for $37,757.00 and KBR for $25,800.00 to demolish the Respondent's unsalvageable home improvement and to renovate the bathroom consistent with the scope of the original home improvement contract. I accept the

Claimant's testimony that the reason these companies' estimates are significantly higher than the cost under the Respondent's contract is because Metropolitan and KBR are reputable companies who do quality work, and I find these estimates reasonable.

Based on the application of the formula set forth in COMAR 09.08.03.03B(3)(c), the Claimant's actual loss is $15,800.00 ($9,884.36 + $25,800.00[6] = $35,684.36 – $12,512.50 = $23,171.86). However, the Maryland legislature has limited the amount of actual loss a claimant may recover from the Fund. One such limitation is as follows: "The Commission may not award for the Fund . . . an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed." That amount is $9,884.36 ($2,628.12 x 3 = $7,884.36 + $2,000.00 = $9,884.36), which is the amount I shall recommend the Commission award the Claimant.

PROPOSED CONCLUSIONS OF LAW

I conclude the following:

1. The Claimant has sustained an actual and compensable loss of $9,884.36 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).

2. The Claimant is entitled to recover $9,884.36 from the Fund. Bus. Reg. §§ 8-405, 8-407.

[6] This amount is the lowest amount of the two proposals submitted by the Claimant.

RECOMMENDED ORDER

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

1. The Maryland Home Improvement Guaranty Fund award the Claimant $9,884.36;

2. 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;[7] and

3. The records and publications of the Maryland Home Improvement Commission reflect this decision.

Signature on File

September 16, 2019
Date Proposed Decision Issued

Michael D. Carlis
Administrative Law Judge

MDC/da
#181913

[7] *See* Bus. Reg. § 8-410(a)(1)(iii)(2) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 22nd day of October, 2019, 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.

Robert Altieri

Robert Altieri
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION