

IN THE MATTER OF THE CLAIM
OF RICHARD ADAMS,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF SCOTT RILL,
T/A RILL ESTATE HOMES, LLC,
RESPONDENT

* BEFORE RACHAEL BARNETT,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS.
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* OAH No.: LABOR-HIC-02-19-24062
* MHIC No.: 19(75)241

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PROPOSED DECISION

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STATEMENT OF THE CASE

On October 12, 2018, Richard Adams (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$22,502.50 in actual losses allegedly suffered as a result of a home improvement contract with Scott Rill, trading as Rill Estate Homes, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹ On July 15, 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 herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

I held a hearing on November 21, 2019 at the OAH, in Hunt Valley, Maryland. Bus. Reg. § 8-407(e). Andrew Brouwer, Assistant Attorney General, Department of Labor (Department),² 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. Code of Maryland Regulations (COMAR) 28.02.01.23A.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 behalf:

- Clmt. Ex. 1 - Contract, January 22, 2018
- Clmt. Ex. 2 - Canceled checks, January 23, 2018, May 10, 2018, and June 12, 2018
- Clmt. Ex. 3 - Bureau of Permits and Inspections, Carroll County, Maryland, permit disapproved and inspection record, May 24, 2018, May 29, 2018, and June 28, 2018
- Clmt. Ex. 4 - Estimate for deck replacement, Seipp Construction & Remodeling, LLC, October 21, 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 the address of record by regular and certified mail on September 3, 2019, COMAR 09.08.03.03A(2), and returned as unclaimed on October 1, 2019. 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. Ex. 5 - Photographs of the deck, November 21, 2018

Clmt. Ex. 6 - Estimate for deck replacement, Dynamic Decks and Construction, LLC,
July 31, 2018

The Respondent did not offer any documents into evidence.

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Hearing Order, July 10, 2019

Fund Ex. 2 - Notice of Hearing, September 3, 2019

Fund Ex. 3 - Notice of Claim, October 16, 2018, with attached Claim, October 9, 2018

Fund Ex. 4 - Department of Labor, Licensing & Regulation registration information for Rill
Estate Homes, LLC, October 29, 2019

Fund Ex. 5 - Affidavit of William Banks, Jr., October 30, 2019

Testimony

The Claimant testified and presented the testimony of Jenny Adams, his spouse.

The Respondent did not testify nor present the testimony of any witnesses.

The Fund did not present the testimony of 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 under MHIC license number 142643.
2. On January 22, 2018, the Claimant and the Respondent entered into a contract to remove the Claimant's old deck from the back of his home and construct a new deck with lighting in the same location (Contract). The Contract stated that work would begin within 120 days from when both the contract was signed and the Claimant paid the Respondent a down payment. The contract did not specify a completion date.
3. The original agreed-upon Contract price was \$17,250.00.

4. On January 22, 2018, the Claimant paid the Respondent a down payment of \$3,500.00.
5. In April 2018, the Respondent tore down the old deck and installed footers.
6. On May 10, 2018, the Claimant paid the Respondent \$6,875.00.
7. On May 24, 2018, L. Mallick⁴ from the Bureau of Permits and Inspections for Carroll County (Carroll County) inspected the deck while under construction and issued a notice that the work conducted was “disapproved” because “footers must be clear of water and mud” and “flashing/tape goes behind housewrap.”⁵ (Claimant Ex. 3)
8. On May 25, 2018, another inspector⁶ for Carroll County approved the footers.
9. On May 30, 2018, the Respondent began installing the framing for the deck.
10. In June 2018, the Respondent began installing deck boards to the framing.
11. On June 12, 2018, the Claimant paid the Respondent \$3,437.50 for a total paid amount of \$13,813.00.⁷
12. On June 28, 2018, L. Mallik disapproved the deck construction for the following reasons, “Deck cannot slope towards house – correct and have reinspected. Note: max stringer spacing with composite decking is [twelve] inches or provide manufacturer spec[ifications]. Fully support bottom of stringers.” (Claimant Ex. 3).
13. The Respondent never finished installing the deck boards, leaving approximately one third of the deck unsafe to walk on. He also never installed railings or deck lights.
14. After the second failed inspection, the Respondent did not return to the Claimant’s home to remedy the deck sloping nor to do any other work.

⁴ Mr. Mallik only used his first initial when signing the notice.

⁵ Housewrap is usually referred to as Tyvek, which is a brand of synthetic material used as a waterproof barrier in construction.

⁶ The inspector’s signature is illegible.

⁷ I am rounding up from \$13,812.50 to \$13,813.00.

15. The Claimant made the following efforts to contact the Respondent:

- a. June 2018 – Sent six text messages and left ten voicemails on Respondent’s cell phone.
- b. July 2018 – Sent twelve text messages and left ten voicemails on Respondent’s cell phone.

16. On July 20, 2018, the Claimant and Respondent resumed reciprocal communication when the Claimant sent Respondent a text asking whether he was returning to the job and the Respondent replied that he would come back on Monday.

17. On July 23, 2018, when the Respondent had not arrived Claimant texted him to inquire whether he still planned to come to the Claimant’s home that day. Respondent replied that he would return after the flood on Wednesday.⁸

18. The Respondent never returned to the Claimant’s property.

19. On August 17, 2018, the Claimant sent the Respondent a text message in which he threatened legal action if the Respondent did not return to work on the deck. The Respondent replied that his attorney would be in touch with the Claimant’s attorney.

20. The Claimant and Respondent had no further communication.

21. The decking materials installed by the Respondent could not be reused in a new deck construction.

22. The Claimant hired Seipp Construction & Remodeling, LLC (Seipp), a Maryland licensed home improvement contractor, to remove the deck components installed by the Respondent and build a new deck to the same specifications as the Claimant had agreed to with the Respondent.

23. The Claimant paid Seipp \$27,800.00 to rebuild the deck to completion, and Seipp completed the project.

⁸ The following Wednesday was July 25, 2018.

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); 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.” 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.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant.

The Respondent performed unworkmanlike, inadequate or incomplete home improvements. The Respondent partially constructed a deck that sloped towards the Claimant’s home, which caused the construction to fail inspection with Carroll County. Building codes represent the minimum standard for the construction industry. Therefore, any construction that fails a building code cannot reasonably be considered a workmanlike home improvement. *See* Bus. Reg. § 8-401. The Respondent never remedied the sloping issue. Rather, after receiving the second “disapproved” inspection notice from Carroll County, the Respondent abandoned the

job, leaving the deck only partially finished. These facts demonstrate “unworkmanlike, inadequate, and incomplete” home improvement work. *Id.*

After many attempts to communicate with the Respondent, the Claimant succeeded in eliciting a few responses; however, the Respondent never made good on his promise to return to the property and then finally informed the Claimant that his lawyer would be in touch with the Claimant, which reasonably led the Claimant to conclude that the Respondent would not do anymore work on the deck. The Claimant was left with a partially built deck that had failed inspection and was unsafe for foot traffic. The Claimant’s work was incomplete and its poor construction made it unworkmanlike. *See Bus. Reg. § 8-401*

The Claimant testified that when he got bids for rebuilding the deck, he learned that the composite boards the Respondent used in construction could not be removed and reused. The deck therefore had to be rebuilt from scratch. The Respondent was not present to contradict this assertion and both bids submitted included all materials, so I find this testimony credible.

Dynamic Decks and Construction bid \$39,783.00 and Seipp bid \$27,800.00.

The Claimant selected Seipp, because Seipp had done work in his area. Seipp removed all components of the deck and reconstructed the deck on the site to the specifications provided in the Claimant’s original contract with the Respondent. The Claimant paid Seipp \$27,800.00, and he testified the deck was completed in May 2019. I thus find that the Claimant suffered an actual loss as a result of the Respondent’s acts and omissions because the Claimant had to pay another contractor to replace the Respondent’s incomplete and unworkmanlike work. Therefore, the Claimant is eligible for compensation from the Fund. The Claimant requests \$22,502.50.

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). The 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 has retained another contractor to remedy and complete 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).

Under the original contract, the Claimant paid \$13,813.00 to the Respondent. The Respondent abandoned the job prior to completion and thus never received the full amount of the \$17,250.00 contract price. From \$13,813.00 one must add \$27,800.00 the Claimant paid to Seipp, which I find to be a reasonable amount to complete the contract because, among other reasons, the alternative bid was much higher. The resulting amount is \$41,613.00. From this amount, one must deduct the original contract price with the Respondent (\$17,250.00), for a result of \$24,363.00.

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 \$24,363.00 exceeds both the statutory limit of \$20,000.00 and the amount paid to the Respondent, \$13,813.00. Therefore, the

Claimant's recovery is limited to the lesser amount, \$13,813.00. 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 \$13,813.00 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. Md. Code Ann, Bus. Reg. § 8-405(e)(1), (5) (2015); COMAR 09.08.03.03B(4), D(2)(a).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$13,813.00; 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.

February 10, 2020
Date Decision Issued

CONFIDENTIAL

Rachael Barnett
Administrative Law Judge

RAB/cmg
184385

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

PROPOSED ORDER

WHEREFORE, this 6th day of April, 2020, 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***