

IN THE MATTER OF THE CLAIM	* BEFORE JOHN T. HENDERSON, JR.,
OF SAROJA DODDAMANI,	* ADMINISTRATIVE LAW JUDGE
CLAIMANT	* THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF	*
JESUS SILVA, T/A	*
ATRIUM CONTRACTORS, LLC	* OAH No.: LABOR-HIC-02-19-24783
RESPONDENT	* MHIC No.: 19 (90) 424

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On March 12, 2019, Saroja Doddamani (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for the reimbursement of \$4,925.00 of actual losses allegedly suffered because of a home improvement contract with Jesus Silva, t/a Atrium Contractors, LLC (Respondent). On August 1, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on January 7, 2020 at the OAH office in Rockville, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015).¹ Eric B. London, Assistant Attorney General, Department of Labor (Department),² represented the Fund. The Claimant represented herself. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, 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); 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?

SUMMARY OF THE EVIDENCE

Exhibits

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

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|-----------|---|
| Cl. Ex. 1 | 12 photographs of fencing, gate and rear deck, subject of the home improvement |
| 1A | Proposal from Respondent to Claimant for home improvement, August 17, 2017 |
| 1B | Contract for home improvement between Claimant and Respondent, August 18, 2017 |
| Cl. Ex. 2 | Copy of check number 11299, in the sum of \$1,800.00 from the Claimant to the Respondent, August 21, 2017; copy of check number 1300, in the sum of \$1,600.00 from the Claimant to the Respondent, August 26, 2017 |
| Cl. Ex. 3 | Settlement statement for 19801 McFarlin Drive, Germantown, MD, January 26, 2018 |
| Cl. Ex. 4 | Emails from Claimant to Derek Oladimes, June 6, 2018, February 16, 2018, January 10, 2018, and January 8, 2018 |

¹ Unless otherwise indicated, all references to the Business Regulation Article are to the 2015 version.

² On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

- Cl. Ex. 5 Complaint Form filed by Claimant against Respondent, January 29, 2018
- Cl. Ex. 6 Proposal to Claimant from VEK General Maintenance, LLC, December 10, 2018

The Respondent did not offer any documents to be admitted into evidence.

I admitted exhibits offered by the Fund as follows:

- GF Ex. 1 Notice of Hearing, October 10, 2019
- GF Ex. 2 Hearing Order from MHIC, July 26, 2019
- GF Ex. 3 MHIC license history of the Respondent as of September 10, 2019
- GF Ex. 4 Home Improvement Claim Form dated February 10, 2019 and received by the Fund March 12, 2019
- GF Ex. 5 Letter from the Department to the Respondent, July 25, 2019
- GF Ex. 6 Two photographs (front and back of page) of Claimant's rear deck
- GF Ex. 7 Photograph of Claimant's rear deck, ground view
- GF Ex. 8 Photograph of Claimant's rear deck, side stair view
- GF Ex. 9 Addendum contract for the purchase and sale of the subject property, January 7, 2018

Testimony

The Claimant testified on her own behalf. The Respondent testified on his own behalf.³

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 numbers 01-114181 and 05-134757, and was trading as Atrium Contractors, LLC.
2. The Claimant is not related to the Respondent.

³ Ophelia Cabrera of Ad Astra, Inc. served as the Spanish language interpreter for the Respondent, when he needed.

3. The Claimant's property subject to this matter was located at 19081 McFarland Drive, Germantown, Maryland 20874 (the Property).

4. The Property was the Claimant's primary residence.

5. The Claimant does not own more than three residences or dwelling places.

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

7. In August of 2017, the Claimant went to the Home Depot to inquire about someone refurbishing and repairing the rear deck of the Property. Home Depot referred the Claimant to the Respondent.

8. On August 18, 2017, the Claimant and the Respondent entered into an agreement (the Contract) whereby the Respondent agreed to replace the floor of the deck on the subject property, demo one wall under the deck, replace and paint two wooden panels located in the front of the subject property above the entrance to the garage and fix and paint in black the first two metal post at the beginning of the stairs in front of the house. (Cl. Ex. 1B.)

9. The Respondent was to provide all the material for the work, identified as Prime Ground Contact Pressure-Treated Lumber, paint for the deck, wood for the panels and paint for the metal handrails, necessary to the realization of the home improvement.

10. The Contract price was \$3,400.00, to be paid in the following installments:

\$1,800.00 upon acceptance of Contract
\$1,600.00 upon completion of the home improvement
\$3,400.00 Total amount of Contract

11. Work was to begin on August 22, 2017 and to be completed by August 31, 2017.

12. The Respondent began work on August 21, 2017 and completed the job on August 26, 2017.

13. The Claimant paid the Respondent as follows:

August 21, 2017	\$1,800.00
August 26, 2017	<u>\$1,600.00</u>
Total Payments	\$3,400.00

14. The Respondent did not return to the Property after August 26, 2017.

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 unworkmanlike, inadequate, or incomplete home improvement work performed by a licensed home improvement contractor. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411. 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. *Id.* § 8-405(e)(1), (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. *Id.* § 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. *Id.* § 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. *Id.* § 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.” *Id.* § 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., 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)).

There is no dispute that the Respondent held a valid MHIC contractor’s license in 2017 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 was the owner of the subject property at the time of the home improvement and that there is no procedural impediment barring her from recovering from the Fund as a former owner of the subject property. *Id.* § 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. *Id.* § 8-405(d). For the following reasons, I find that the Claimant has not proven eligibility for compensation from the Fund because she has not proved an unworkmanlike, inadequate or incomplete home improvement and has not suffered an “actual loss.”

The Claimant testified that on August 18, 2017, she and the Respondent entered into a Contract to have the rear deck of her home repaired and refurbished. The Respondent began work on August 21, 2017 and completed the work on August 26, 2017. On August 26, 2017, the

Claimant paid the Respondent the final installment for a total of \$3,400.00 in full satisfaction of the Contract price.

The Claimant further testified that she was not satisfied with some aspects of the work as she stated there were gaps between the home and wood decking. In addition, she testified, the Respondent used a thinner wood to replace what she considered thicker wood of the deck. According to the Claimant, the Respondent agreed to replace the deck with the same type of wood. She testified that she paid the Respondent believing that he would fix the gap between the door and floorspace of the deck.

According to the Claimant, she sent the Respondent text messages and called him many times asking that he fix the gap between the door and floorspace of the deck. According to the Claimant, the Respondent did not return her messages and did not return to the Property after August 26, 2017.

The evidence shows that the Claimant began seeking reimbursement from the Respondent for the money she paid him on or around January 8, 2018, during the time she put the Property on the market for sale. The Claimant sold the Property on January 26, 2018 and gave the buyer a credit of \$4,000.00 to be used to repair the rear deck.

The Respondent testified that he secured the job with the Claimant through Home Depot and the Claimant showed him exactly what she wanted done to the deck when he met with her in August 2017. According to the Respondent, he began work on August 22, 2017 and completed the work on August 26, 2017.

The Respondent further testified that prior to performing the work, he took measurements to purchase the necessary material, consulted with the Claimant about the Contract and material needed, and signed the Contract with the Claimant on August 18, 2017. According to the Respondent, there was no disagreement with the Claimant about the Contract and material to be

used, which was pressure treated wood for the decking, as identified within photographs the Respondent took after he completed the work on August 26, 2017. (GF Exs. 6-8.)

According to the Respondent, the previous wood on the deck he removed was about 2.5 inches thicker than the replacement pressure treated wood he used; and there was no hazard presented by the gap between the door and the floorspace of the deck. He further testified that he first heard in September 2018 that the Claimant had issues with the work he performed.

When the Claimant filed her claim, received by the Fund on March 12, 2019, she was no longer the owner of the Property. An owner may make a claim against the Fund only if the owner resides in the home as to which the claim is made or does not own more than three residences or dwelling places. Md. Code Ann., Bus. Reg § 8-405(f)(2). Because the Claimant was an owner of the Property at the time she contracted for the home improvement, I find that she had standing to make a claim against the Fund, pursuant to Md. Code Ann., Bus. Reg § 8-405(f)(2).

However, the Claimant failed to prove by a preponderance of the evidence that the Respondent did not complete the agreed upon work. She further failed to prove by a preponderance of the evidence that the Respondent performed the completed work in an unworkmanlike or inadequate manner. Further, I find the Respondent's testimony concerning the work he performed, and the Contract agreed upon, more credible than the Claimant's testimony. The Claimant did not at first remember she had a written Contract with the Respondent. She was reminded of the Contract on cross-examination by the Fund. Further, the Claimant paid the Respondent in full for the agreed upon work and did not complain or seek corrective repairs prior to selling the Property in January 2018 and filing the claim against the Fund eight months after she sold the Property. The Claimant is seeking to have returned a

portion of the \$4,000.00 seller's credit she gave to the buyer of the Property. As the Claimant has failed to prove the validity of her claim, her claim is denied.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has not shown by a preponderance of the evidence that she suffered an actual loss compensable by the Fund. Md. Code Ann., Bus. Reg. §§ 8-401- 8-411 (2015). I further find that the Claimant has not shown by a preponderance of the evidence that the Respondent did not complete the agreed upon work or that he performed the completed work in an unworkmanlike or inadequate manner. *Id.* §§ 8-401, 8-405(e)(1), (5) (2015); COMAR 09.08.03.03B(3)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim of March 12, 2019; and

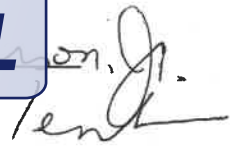
ORDER that the records and publications of the Maryland Home Improvement Commission reflect this decision.

March 31, 2020
Date Decision Issued

JTH/da
#185416

CONFIDENTIAL

John T. Henderson, Jr.
Administrative Law Judge



PROPOSED ORDER

WHEREFORE, this 8th day of May, 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.

Jim Berndt

Jim Berndt

Panel B

*MARYLAND HOME IMPROVEMENT
COMMISSION*

