

<p>IN THE MATTER OF THE CLAIM</p> <p>OF DENISE GEIGER,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF AHMET KARADAG,</p> <p>T/A ZENITH KITCHEN AND BATH,</p> <p>LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE WILLIAM SOMERVILLE,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-22-00460</p> <p>* MHIC No.: 20 (75) 1084</p> <p>*</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On September 7, 2021, Denise Geiger (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$34,520.62 for actual losses allegedly suffered as a result of a home improvement contract with Ahmet Karadag, trading as Zenith Kitchen & Bath, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -

411 (2015).¹ On December 6, 2021, the MHIC issued a Hearing Order on the Claim. On December 16, 2021, the MHIC referred the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 28, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Andrew Brouwer, Assistant Attorney General, represented the Fund. The Claimant represented herself. Daniel Hisle, Esquire, represented the Respondent, who was present.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); Code of Maryland Regulations (COMAR) 09.01.03; and 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 offered by the Claimant:

Clmt. Ex. 1 - Contract document, undated (Claimant's handwritten comments on the document are not in evidence)

Clmt. Ex. 2 - Packet of photographs printed on printer paper

Clmt. Ex. 3 - Email message thread, various dates

Clmt. Ex. 4 - Estimate, 7-20-2021

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

I admitted the following exhibit offered by the Respondent:

Resp. Ex. 1 - Email thread, various dates

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Hearing Order, 12-6-2021

Fund Ex. 2 - Hearing Notice issued by OAH, 1-26-2022

Fund Ex. 3 - Prior Hearing Notice issued by OAH, 1-11-22

Fund Ex. 4 - Letter and Claim form, 9-7-2021

Fund Ex. 5 - Licensing History of the Respondent and his business

Testimony

The Claimant testified and did not present other witnesses.

The Respondent did not testify but presented the testimony of Daniel Barker, a designer and salesman for the Respondent's business.

The Fund presented no witnesses.

PROPOSED FINDINGS OF FACT

Having considered demeanor evidence, testimony, and other evidence, I find the following facts by a preponderance of the evidence:

1. At all times relevant to the subject of this hearing, both the Respondent, and his business, Zenith Kitchen & Bath, LLC, were licensed by the MHIC -- license numbers 01-112370 and 05-133922.

2. On May 18, 2019, the Claimant and the Respondent's business entered into a contract in which the Claimant would pay \$34,303.62, and the Respondent's business would renovate a master bathroom in the Claimant's residence in Howard County. The contract document called for installation of a shower, a tub, a toilet, and certain lights and outlets, among other things. In the contract document there was a term as follows:

In the event that a permit is needed for any reason necessary, the client will be responsible for obtaining permit(s) and any other expenses accrued. At this time, I Denise Geiger, wish to obtain an electrical and/or plumbing permit.

Yes

No

3. The Claimant checked "no" to that term.

4. From time to time, the Respondent's business works with customers who pull their own permits.

5. The salesperson for the Respondent's business who negotiated and signed the contract document called himself a "designer." At the time of the contract, the salesperson believed that Howard County would require some permits for the bathroom renovation. The salesperson did not manage the project or observe any work on the project. He was not an MHIC licensed salesperson.

6. Sometime in June of 2019, with a crew of three men, the Respondent's business started working on the project.

7. Sometime in August 2019, work was completed on the project.

8. Before the Claimant made the final payment to the business, the parties did a "walk-through" inspection, and a punch-out list was generated.

9. The punch-out list items were completed, except for the installation of an \$11.00 vent part.

10. Thereafter, the Claimant made the final payment. With that payment, the Claimant had paid the full amount due under the contract.

11. At some point before January 7, 2020, the Claimant learned that the Howard County government believed that she, or someone, should have obtained a building permit to do the work set forth in the contract document.

12. On January 7, 2020, the salesperson of the Respondent's business emailed the Claimant and suggested that for an additional \$1,900.00 the business could obtain county building, plumbing, and/or electrical permits for the Claimant. The salesperson also suggested that if "we are asked to open walls to facilitate inspection, there will be additional costs" (Clmt. Ex. 3 and Resp. Ex. 1.) The Respondent's business was also willing to extend a parts and labor warrantee.

13. At no time was a county building, plumbing, or electrical permit pulled for this project. At no time did county inspectors inspect the work.

14. At some point, the Claimant attempted to hire a private home inspector to inspect the work. A home inspector came to the site and explained that he could not look behind walls to discern the quality of workmanship or defects. The inspector produced no inspection report.

15. At some point, the Claimant discovered that an exhaust fan was not fully-vented through a soffit to the outdoors, and a GFI outlet was installed under a vanity.

16. On or about July 20, 2021, the Claimant obtained an estimate for having the bathroom project demolished and rebuilt, for \$28,500.00. In that estimate, the Claimant would be responsible for obtaining all needed permits.

17. On September 7, 2021, the Claimant filed a claim against the Fund.

DISCUSSION

Burdens

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 (2021); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means 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). The Respondent, on the other hand, bears the

burden to show an affirmative defense by a preponderance of the evidence, such as rejection of good faith efforts to resolve the dispute. COMAR 28.02.01.21K.

Applicable Law

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.

Arguments of the Parties

The Claimant argues that because no county inspector inspected the project, she does not know whether the Respondent’s work product, hidden behind walls, is unworkmanlike or incomplete. She also argues that the Respondent’s business had a legal obligation to educate her on the whether the project required county permits, including education on the risks and benefits of obtaining those, or not.

The Respondent argues that the Claimant has failed to show an unworkmanlike, inadequate, or incomplete home improvement, or an actual loss. The Respondent also argues that its good faith efforts to resolve the Claimant’s dispute by offering to pull permits from the county were unreasonably rejected.

The Fund argues that, despite there being some technical legal concerns with a failure by anyone to pull permits, and the use of an unlicensed salesperson,² the Claimant has not shown a compensable actual loss. It argues that no expert testified that there was justification to demolish the bathroom, and there was no evidence that industry standards were violated in the work. It

² This case is not a regulatory licensing case brought by the MHIC under Bus. Reg. § 8-311.

argues that no evidence of cost associated with an unworkmanlike, inadequate, or incomplete home improvement was offered.

Analysis

For the following reasons, I conclude that the Claimant has not proven eligibility for compensation.

Although the Respondent was the licensed home improvement contractor for the Respondent's business at the time it entered into the contract with the Claimant, there was no showing that the Respondent, or his business, performed unworkmanlike, inadequate, or incomplete home improvements. The Claimant argues that she does *not* know whether the work product met industry standards or county building code standards. She offered no expert opinions on the issue. No evidence showed a defect in the workmanship, except for possibly an exhaust fan not having been fully vented through a soffit. She has not shown 1) the need to restore, repair, replace, or complete the project in order to meet industry standards, or 2) the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement. Bus. Reg. § 8-401. The Claimant was concerned about possible poor workmanship behind the walls of the project, but she showed nothing to indicate poor workmanship. She showed that a GFI outlet was installed under a vanity but showed no nexus to a violation of an industry standard. She showed that an exhaust fan was not fully vented through a soffit, and the price of an \$11.00 part that might be used to vent the fan through a soffit, but she did not offer the cost of installing the vent or otherwise resolving that issue. The Claimant has not met her burdens.

The Claimant's argument that the Respondent, or his business, had a legal duty to educate her on the need for building permits is unsupported; she offers no legal authority for that premise. I conclude that there is no law requiring such a business to educate a competent, adult

customer in such matters. Even so, such a failing would not constitute an actual loss compensable by the Fund.

With regard to the Respondent's affirmative defense that the Claimant unreasonably rejected its good faith efforts to resolve the matter, Bus. Reg. § 8-405(d), I cannot conclude that there was a good faith effort. The offer of the Respondent's business to pull county permits for \$1,900.00, after the project was completed, and if asked by the county to open walls to facilitate inspection, then there would be unspecified additional costs (Finding of Fact 12), does not qualify as a good faith effort, in light of a contractor's duty to comply with county building permit rules before beginning construction. See Bus. Reg. § 8-611(violation of building laws); Bus. Reg. § 8-505 (notice to MHIC of building code violations). The salesperson who testified believed that the county required someone to pull permits for this project. (Finding of Fact 5.)

I conclude that the Claimant has not shown that she is eligible for compensation from the Fund. I need not address calculations of an amount of actual loss.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not shown by a preponderance of the evidence that she has sustained an actual and compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

June 23, 2022
Date Decision Issued

William J.D. Somerville III

William J.D. Somerville III
Administrative Law Judge

WS/emh
#198898

PROPOSED ORDER

WHEREFORE, this 19th day of August, 2022, 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**