

IN THE MATTER OF THE CLAIM	*	BEFORE JOHN T. HENDERSON, JR.
OF JOHN LUSKEY & MARY LUSKEY,	*	ADMINISTRATIVE LAW JUDGE
CLAIMANTS ¹	*	THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF	*	
ROBERT JOSEPH STEVENSON, T/A	*	
STEVENSON CONTRACTORS, LLC,	*	OAH No.: LABOR-HIC-02-23-14164
RESPONDENT	*	MHIC No.: 22(75)382

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On September 21, 2022, John Luskey and Mary Luskey (Claimants) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) under the jurisdiction of the Maryland Department of Labor (Department), for the reimbursement of \$9,120.00 for actual losses allegedly suffered because of a home improvement contract with Robert Joseph Stevenson, t/a Stevenson Contractors, LLC (Respondent). Md. Code Ann., Bus.

¹ Mary Luskey, wife of John Luskey, was added as a Claimant at the hearing of this proceeding without objection from any party.

Reg. §§ 8-401 through 8-411 (2015 & Supp. 2023).² On May 22, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 12, 2023, the OAH mailed a notice of Remote Video Hearing (Notice) to the Respondent by certified and regular mail to his address of record on file with the MHIC. Md. Code Ann., Bus. Reg. § 8-312(d) (2015).³ The Notice advised the Respondent of the time, place, and date of the hearing (August 17, 2023). On June 20, 2023, the United States Postal Service (USPS) returned to the OAH the certified mail receipt, “green card”, signed by the Respondent as having received the June 12, 2023 Notice.

I convened and held the remote video hearing on August 17, 2023. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B. The Claimants appeared and represented themselves. The Respondent appeared and represented himself and in his capacity as being the principal member of the LLC. MacKenzie Read, Assistant Attorney General for the Department, 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 (2021); COMAR 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the Claimants 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?

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

³ “The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission.” Bus. Reg. § 8-312(d).

SUMMARY OF THE EVIDENCE

Exhibits

I admitted into evidence Claimants' exhibit one offered by the Claimants, with attachments as follows:

- Cover letter, August 4, 2023 (p. 1)
- Email from the HIC to the Claimants, September 30, 2021 (p. 2)
- Order (letter) from the HIC to the Respondent, September 30, 2021 (p. 3)
- HIC Complaint form filed by the Claimants, September 24, 2021 (pp. 4-5)
- HIC Claim form filed by the Claimants, undated (p. 6)
- Letter (narrative) from the Claimants, September 24, 2021 (p. 7)
- Contract Proposal from the Respondent to the Claimants, December 31, 2020, signed January 4, 2021) (p. 8)
- Email from the Respondent to the Claimants, February 1, 2021 (p. 9)
- Invoice from the Respondent to the Claimants, February 1, 2021 (p. 10)
- Letter from the Respondent addressed: To whom it may concern, regarding HIC Complaint from the Claimants, undated (p. 11)
- Email from the Claimants to HIC, February 28, 2022 (p. 12)
- Photographs of Claimants' deck subject to home improvement, undated (pp. 13-16)
- Letter from the Claimants to HIC, September 19, 2022 (p. 17)
- Photographs of Claimants' deck sand screened porch, undated (p. 19-22)
- Photographs of Claimants' crawlspace (p. 23)
- Estimate from Ripple Brothers Contractors, Inc. (Ripple) February 27, 2023 (pp. 24-26)

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

- GF Ex. 1: Notice of Remote Hearing, June 12, 2023; Hearing Order, May 10, 2023
- GF Ex. 3: Department licensing history for the Respondent, July 12, 2023
- GF Ex. 4: HIC Claim Form, January 21, 2022
- GF Ex. 5: Letter to the Claimants from the HIC, September 22, 2022

Testimony

The Claimants testified on their behalf. The Respondent testified on his behalf. 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 under MHIC contractor's salesperson license number 01-100183 and company license number 05-129341, trading as Stevenson Contractors, LLC.

2. The Claimants are not relatives, employees, officers, or partners of the Respondent, and are not related to any employee, officer, or partner of the Respondent.

3. The Claimants' property subject to this matter is located in Bushwood, Maryland on Moore Road (the Property). It is their primary residence.

4. The Claimants have not filed other claims against the Respondent outside of these proceedings.

5. The agreement between the Claimants and the Respondent did not provide for an arbitration proceeding.

6. On January 4, 2021, the Claimants and the Respondent entered into a Contract for the construction of a porch deck on the Property. The scope of the home improvement, in summary, was the following:

- Remove all existing porch deck boards
- Replace rotted 6x6 posts with new
- Replace rotted 2x2 bottom board on screen section
- Install new primed pine tongue and groove deck boards on entire porch
- Repair rotted soffit boards
- Clean and haul away all job related debris

(Cl. Ex. 1, p. 8.)

7. The Claimants were to paint the porch themselves when the construction was complete.

8. The Respondent told the Claimants to make sure the porch floorboard wood did not get wet before painting them.

9. The fee agreed upon was \$7,320.00 requiring a 50% deposit (\$3,660.00) before the start of the home improvement to purchase materials. The remaining balance was to be paid at the completion of the home improvement.

10. The Claimants paid the Respondent for the Home Improvement, as follows:

January 4, 2021	Check number 1563	\$ 3,660.00
February 4, 2021	Check number 1567	\$ 3,660.00
	Total Paid:	\$ 7,320.00

11. On January 12, 2021, the Respondent began work on the home improvement. He used untreated lumber in the construction of the porch as there was no requirement within the Contract to use treated lumber.

12. On February 1, 2021, the Respondent sent an invoice to the Claimants for the total amount due of \$5,460.00. The invoice also provided that the “[w]arranty is void if contract is not paid in full.”

13. On February 4, 2023, the Respondent did additional work, which included replacing 4x4 wood posts and making certain adjustments to the porch roof. The additional work was not a part of the Contract. The Respondent invoiced the Claimants the sum of \$1,800.00, which the Claimants paid on February 4, 2021, for total payments to the Respondent of \$9,120.00.

14. In constructing the porch, the workers for the Respondent primed the porch floor boards outside, while it rained, which resulted in the porch floor boards getting wet. The workers primed only one side of the floor boards (the top) and did not prime the opposite (bottom) of the boards.

15. Priming of the boards consisted of applying a chemical to each board to assist in the adherence of paint.

16. The Respondent completed the work on February 4, 2021. A few days later, the Claimants noticed that the porch floor was buckling and warping in many places. A worker of the Respondent told the Claimants sometime after February 4, 2021, that he would notify the Respondent about the problem with the porch.

17. On March 19, 2021, the Claimants telephoned the Respondent since they had not heard from him after the Claimants reported the porch buckling problem to the worker. The Respondent went to the Property that evening.

18. The Claimants pointed out to the Respondent problems with the home improvement, listed as follows:

- The floor boards of the porch were not primed by the workers
- The porch floor boards warped

19. In March 2021, after he met with the Respondent, the Claimants painted the porch floor boards the color blue.

20. In June of 2021, the Claimants telephoned the Respondent to express continued dissatisfaction and to complain about standing water on the porch due to the floor boards buckling.

21. On July 13, 2021, the Respondent telephoned the Claimants and promised to fix the porch within two weeks from that date. The porch floor boards buckled again in a different location.

22. On July 30, 2021, at 2:30 p.m. two workers telephoned the Claimants and said they were on their way to the Property to belt sand the porch in an effort to correct the warping.

23. Upon the worker's arrival, the Claimants informed them that they wanted the porch replaced, not sanded.

24. The workers telephoned the Respondent and sent him photographs they took from their smart phones. The photographs showed a large hump and warping of floor boards. The workers left the Property without doing any work or repairs.

25. On August 6, 2021, the Respondent telephoned the Claimants and told them the Respondent would replace the porch floor, if the Claimants paid for the lumber. The Claimants told the Respondent that they would get back to him.

26. The Claimants did not get back with the Respondent but filed a claim against the Respondent with the MHIC.

27. The Respondent did not return to the property after August 6, 2021 because the Claimants did not agree to purchase new lumber for the porch floor.

28. On February 27, 2023, the Claimants received a proposal from Ripple Brothers Contractors, Inc., (Ripple). Ripple proposed, in summary, to “replace the wrap around porch floor with treated primed floor board. . . .” (Cl. Es. 1, pp. 25-26

29. Ripple proposed to furnish labor and material for the sum of \$16,600.00.

30. The Claimants did not contract with Ripple to do the home improvement pursuant to the February 27, 2023 proposal.

DISCUSSION

The Claimants had the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov’t § 10-217; 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 Cnty. 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) (Supp. 2022); *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 Claimants have proven eligibility for compensation.

By statute, certain Claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimants’ recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimants did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022). The Claimants reside in the home that is the subject of the claim and do not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2022). There was no arbitration provision within the agreement between the Claimants and the Respondent. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022). Each Claimant is not a relative, employee, officer, or partner of the Respondent, and each is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2022).

The Claimants did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022). According to the Claimants, they had a discussion with the Respondent on July 30, 2021 about their request to have the porch wood floor replaced by the Respondent. The Respondent did offer to replace the porch wood floor if the Claimants purchased new wood floor boards. The Claimants did not tell the Respondent that they agreed with the contingency to purchase new wood boards for the porch floor. Therefore, there was no agreement between the parties to resolve the problem with the porch buckling. The Respondent never returned to the Property after August 6, 2021. Due to the Respondent not properly priming the wood boards and allowing them to get wet prior to installation for the porch

floor, the Respondent performed an unworkmanlike, inadequate, and incomplete home improvement. I therefore find that the Claimants are eligible for compensation from the Fund.

According to the Claimants' testimony and admitted exhibits, the Contract totaled \$7,320.00. The Claimants paid the Respondent a total of \$7,320.00 for deposits and for the final contract price. The Respondent agreed to replace and construct a porch deck on the Property. The Contract did not require the Respondent to purchase treated wood deck boards for the construction of the porch, but did require that the wood boards be primed. Priming of the boards consisted of applying a chemical to each board to assist in the adherence of paint. According to the testimony of the Respondent, the application of primer and paint makes the floor boards water resistant.

The Respondent had his workers begin the work on January 12, 2021 and they finished on or about February 4, 2021 when the Respondent did additional work that was not a part of the Contract. The cost of the additional work was \$1,800.00, which the Claimants paid. The total paid to the Respondent was \$9,120.00.

The Respondent testified and did not refute that the porch he constructed was warping in certain places and did not refute the testimony from the Claimants that his workers applied primer to one side of the floor boards during rain. He did testify that he thought his workers primed the wood using saw horses or at least laid the wood upon a cloth or tarp for a dry surface.

According to the Respondent, untreated wood will swell and cause warping, hence the need to prime the untreated wood and paint it. According to the Respondent, he did not supervise the work while his workers were constructing the porch. He trusted his workers' experience to do the job correctly. He apologized to the Claimants during the hearing. He did not testify that the Claimants prevented him from returning to the property to make repairs.

From his testimony and the Claimant's testimony, any effort to make repairs stalled when the Claimants did not agreed to purchase new wood floor boards.

On February 27, 2023, the Claimants received a proposal from Ripple to replace the wrap around porch floor with treated primed floor boards for the price of \$16,600.00. As of the date of the hearing, the Claimants have not contracted with Ripple to replace the porch floor.

The Fund argues that the Claimants have met their burden of proof that they are entitled to an award from the Fund. According to the Fund, the Claimants have proved that they suffered an actual monetary loss as a result of unworkmanlike, inadequate, or incomplete home improvement work performed by the Respondent. The Fund is convinced that the evidence admitted tends to show by a preponderance that the Respondent's work was unworkmanlike, incomplete or inadequate.

I agree with the Fund. The evidence, by a preponderance shows that the Respondent's work in allowing the porch floor boards to warp causing a rise in the floor surface in certain locations and the pooling of water, resulted in an unworkmanlike, incomplete and inadequate construction. Although there was some communication between the Respondent and the Claimants about making repairs if the Claimants agreed to purchase new floor boards, no further work was done by the Respondent. I find that the Respondent did not abandon the project and the Claimants did not unreasonably reject the Respondent's good faith offer to make repairs. However, the condition to make repairs the Respondent imposed upon the Claimants (purchase new lumber) resulted in their being no agreement between the parties as to how repairs were to be made. It is reasonable for the Claimants to reject having to purchase new material to replace material that was damaged by the Respondent and not by the Claimants.

The Fund may not compensate Claimants for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). The MHIC's

regulations offer three formulas for measurement of a Claimants' actual loss. COMAR 09.08.03.03B(3) sets forth the various formulas for determining an "actual loss." The appropriate formula is the following:

(c) If the contractor did work according to the contract and the Claimants have solicited or is soliciting another contractor to complete the contract, the Claimants' actual loss shall be the amounts the Claimants have paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the Claimants 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.

Using the formula in COMAR 09.08.03.03B(3)(c), the following calculations apply:

\$ 9,120.00	Payment made to the Respondent by the Claimants as deposits and toward the contract price for the home improvement pursuant to the contract of January 4, 2021
<u>\$16,600.00</u>	The amount due to Ripple to repair, replace, correct and complete the home improvement
Total \$25,720.00	
Less <u>\$7,320.00</u>	The original January 4, 2021 contract price with the Respondent
\$18,400.00	Actual Loss

A claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and the Claimants here may not recover more than the amount paid to the contractor against whom the claim is filed.⁴ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimants' actual loss is more than the amount paid to the Respondent and more than the additional amount paid or required to be paid to Ripple to complete the original contract. Therefore, the Claimants are entitled to recover as their actual loss the sum of \$9,120.00.

⁴ On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. See *Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

PROPOSED CONCLUSION OF LAW

I conclude that the Claimants have sustained, and are entitled to recover from the Fund, an actual and compensable loss of \$9,120.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER


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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimants \$9,120.00; 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;⁵ and

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

November 6, 2023
Date Decision Issued



John T. Henderson, Jr.
Administrative Law Judge

JTH/at
#208274

⁵ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 22nd day of December, 2023, 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.

J Jean White

I Jean White

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***