

<p>IN THE MATTER OF CHAD REEDY,</p> <p>CLAIMANT,</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT COMMISSION</p> <p>GUARANTY FUND FOR THE</p> <p>ALLEGED ACTS OR OMISSIONS</p> <p>OF FERDINAND MAGALLENES, t/a</p> <p>MCC GENERAL CONTRACTORS,</p> <p>INC.</p>	<p>* BEFORE LATONYA B. DARGAN,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH Case No.: DLR-HIC-02-12-26031</p> <p>* MHIC Case No.: 09 (05) 1764</p> <p>*</p> <p>*</p> <p>*</p>
--	---

* * * * *

DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
ORDER

STATEMENT OF THE CASE

On February 24, 2010, the Claimant filed a claim against the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), alleging actual monetary losses suffered as a result of the acts or omissions of Ferdinand Magallanes (Respondent), t/a MCC General Contractors, Inc. On May 17, 2012, the MHIC ordered a hearing to allow the Claimant an opportunity to prove his claim.

On November 15, 2012, I conducted a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp.

2012). The Claimant represented himself. Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the Fund. The Respondent failed to appear despite receiving a certified mail copy of the August 14, 2012 Notice of Hearing on August 16, 2012.¹ As I determined, based on the certified mail receipt, that the Respondent had actual notice of the hearing, I directed that the hearing proceed in the Respondent's absence under section 8-312(h) of the Business Regulation Article, section 10-209 of the State Government Article, and Code of Maryland Regulations (COMAR) 09.01.02.07B.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of DLLR, and the Rules of Procedure of the OAH govern this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2012), Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; and 28.02.01.

ISSUE

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits for the Claimant:

- Claimant Ex. 1: February 3, 2009 Contract
- Claimant Ex. 2: Spreadsheet for project expenditures
- Claimant Ex. 3: The Respondent's March 6, 2009 invoice, with attachments
- Claimant Ex. 4: E-mail correspondence between the Claimant and the Respondent
- Claimant Ex. 5: Assorted Invoices
- Claimant Ex. 6: The Respondent's February 16, 2009 invoice, with attachments

¹ The green certified mail return receipt card was admitted into evidence as part of Fund Ex. 1.

- Claimant Ex. 7: June 2, 2009 Design Expo invoice, with attachments
- Claimant Ex. 8: The Respondent's February 9, 2009 invoice, with attachments
- Claimant Ex. 9: The Respondent's February 24, 2009 invoice, with attachments
- Claimant Ex. 10: June 18, 2009 Proposal from Creative Custom Carpentry
- Claimant Ex. 11: Check #221, dated June 22, 2009 and payable to Jerry Schultheis
- Claimant Ex. 12: Receipts for materials
- Claimant Ex. 13: Email correspondence between the Claimant and Stephen Carson, with attachments
- Claimant Ex. 14: June 22, 2009 Invoice from Porcelain Refinishers, Inc.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1: August 14, 2012 Notice of Hearing with attached certified mail return receipt
- Fund Ex. 2: MHIC's May 17, 2012 Hearing Order
- Fund Ex. 3: Respondent's licensing history
- Fund Ex. 4: Real Property Search
- Fund Ex. 5: November 30, 2010 Home Improvement Claim Form
- Fund Ex. 6: John Borz' February 18, 2010 letter to the Respondent

There were no exhibits submitted for the Respondent.

Testimony

The Claimant testified and did not present any other witnesses. No one testified on behalf of the Respondent or the Fund.

FINDINGS OF FACT

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

1. At all times relevant to this matter, the Respondent was a licensed home improvement contractor. (Fund Ex. 3.)
2. On February 3, 2009, the Claimant entered into a contract with the Respondent for the Respondent to perform certain home improvement work at the Claimant's primary residence. Specifically, the Respondent was to finish the Claimant's basement by including a full bathroom and a bedroom. (Claimant Ex. 1.)
3. Under the contract, the work was to start on or around February 5, 2009 and be substantially completed by February 13, 2009. (*Id.*)
4. The work under the contract was to be completed in phases as follows: framing, electrical rough-in, plumbing rough-in, drywall, painting. (*Id.*)
5. The total contract price was \$30,000.00. The Claimant was to pay the contract price in installments, with a \$5,000.00 deposit due upon the signing of the contract; \$5,000.00 payments due at the start of the framing, electrical, plumbing and drywall phases of the project, respectively; \$2,500.00 due at the start of the painting phase; and the \$2,500.00 balance due at the completion of the owner punch list. (*Id.*)
6. At some point after entering into the contract but prior to the commencement of the work, the Claimant and the Respondent agreed that the Respondent would also replace the front door of the Claimant's residence. The Claimant paid a \$1,000.00 deposit for the replacement of the front door. Although the Respondent collected the deposit, he never ordered or replaced the door. (T.² Claimant; Claimant Exs. 2, 3.)

² The abbreviation "T" stands for testimony.

7. At the outset of the project, the Respondent advised the Claimant that it would not be necessary to obtain work permits from the county government. The Respondent's assertion that permits were not necessary was incorrect. (T. Claimant.)
8. The Claimant paid the \$5,000.00 deposit to the Respondent on February 3, 2009. The Claimant made subsequent \$5,000.00 payments to the Respondent at the start of each of the framing, electrical, plumbing and drywall phases of the project. Including the deposit for the replacement of the front door, the Claimant paid the Respondent a total of \$26,000.00 in connection with the project. (T. Claimant; Claimant Exs. 1, 3, 5, 6 and 8.)
9. Approximately four weeks into the project, at the beginning of March 2009, a county inspector notified the Claimant that permits had to be obtained, and that the work had to cease until such permits were obtained. A stop-work notice was also placed on the Claimant's residence. (T. Claimant.)
10. The Respondent did not do any work at the residence while the stop-work notice was in effect. (*Id.*)
11. The necessary work permits were obtained on or around March 30, 2009. (*Id.*)
12. After the permits were obtained, the Respondent returned to the residence approximately four times to perform work, but he stopped coming altogether sometime in the second week of April 2009. (Claimant Ex. 4.)
13. The Claimant made several attempts throughout April, May, and June 2009 to contact the Respondent to determine when he planned to return to the residence to complete the project, but the Respondent did not respond. (T. Claimant; Claimant Ex. 4.)

14. At the time the Respondent abandoned the project, he had not completed the following items under the contract: the electrical work, plumbing, flooring, drywall, the installation of French doors, and the installation of the bathroom vanity.
15. The Claimant ultimately paid an additional \$14,361.21 for other licensed contractors to complete the work started by the Respondent. (T. Claimant; Claimant Ex. 2.)

DISCUSSION

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Md. Code Ann., Bus. Reg. § 8-405(a) (Supp. 2011); *see also* COMAR 09.08.03.03B(2). Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401 (2010).

There is no dispute that the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant and during the time he performed work at the Claimant’s residence. There is also no dispute that the Respondent failed to complete work at the residence after the necessary permits were obtained. The Claimant’s unrefuted testimony is that the Respondent ceased work on the project when the county government issued a stop-work order because the proper permits were not obtained. Although the Respondent returned to the residence on a handful of occasions after the permits were obtained, he did not complete the scope of work outlined in the contract. The Respondent was unresponsive to the Claimant’s numerous attempts to contact him to inquire whether he intended to finish the job. As a result of the Respondent’s abandonment of the project, the Claimant dealt directly with several of the licensed subcontractors to get the work completed, and even performed some of the work

himself. I find that the Claimant is entitled to compensation as a result of the Respondent's incomplete home improvement work.

Having found that the Claimant is eligible for compensation, I now turn to the amount of the award, if any. It must be noted that the Claimant submitted a spreadsheet of expenditures as Claimant Ex. 2. According to the spreadsheet, the total amount of additional expenditures paid by the Claimant to complete the work was \$17,461.21. Of that amount, \$200.00 was paid to an individual named Jerry Schultheis, who assisted the Claimant with some of the carpentry work. (T. Claimant; Claimant Ex. 11.) No evidence was submitted indicating that Mr. Schultheis is a licensed home improvement contractor, so I have not included the payment made to him in the calculation of the Claimant's actual loss. Likewise, although the Claimant submitted a proposal totaling \$2,900.00 from Creative Custom Carpentry,³ which is a licensed home improvement contractor (Claimant Ex. 10), the Claimant also testified that he performed the work himself rather than paying Creative Custom Carpentry to do so. When the amounts of \$200.00 and \$2,900.00 are subtracted from the Claimant's total expenditures, the resulting balance is \$14,361.21.⁴

The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3)(a), (b) and (c). One of those formulas, as follows, offers an appropriate measurement in this case:

³ The work included under the proposal was as follows: install the bedroom baseboards, vanity and baseboard in bathroom, and shower door; repair electrical access panels; install stairs and provide materials for stairs/trim around the stairs. (Claimant Ex. 2. p. 2.)

⁴ I have not included the \$2,900.00 in the calculation of the Claimant's actual loss, even though the Claimant testified that this is an estimate of the cost of the labor based on information from Creative Custom Carpentry, because the Claimant did the work himself rather than securing the services of a contractor. The unit of measurement I relied upon to calculate the Claimant's actual loss, found at COMAR 09.08.03.03B(3)(c), contemplates that a claimant would hire another licensed contractor to repair the work or to complete the original contract. Neither the Claimant nor Mr. Schultheis are licensed contractors, therefore, I do not think these amounts are appropriate for inclusion in the calculations under Regulation .03B(3)(c).

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).

Applying the formula set out above, I find that the Claimant sustained an actual loss as follows:

Amount Paid to the Respondent	\$26,000.00
Amount Paid to Correct or Complete Work	<u>+\$14,361.21</u>
	\$40,361.21
Amount of Original Contract	<u>-\$30,000.00</u>
Amount of Actual Loss	\$10,361.21

Pursuant to Md. Code Ann., Bus. Reg. §8-405 (a) and (d) (Supp. 2012), the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. In this case, the Claimant's actual loss is less than the amount paid by him to the Respondent. Therefore, the Claimant is entitled to an award in the amount of \$10,361.21 from the Fund.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Claimant has suffered an actual loss of \$10,361.21 and is entitled to be compensated for that amount as a result of the acts or omissions of the Respondent. Md. Code Ann., Bus. Reg. §§ 8-401 (2010); COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

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

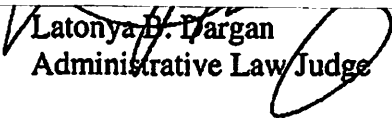
ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$10,361.21; and,

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 at least ten percent as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and,

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

Signature on File

January 30, 2013
Date Decision Mailed



Latonya D. Dargan
Administrative Law Judge

LBD/kkc
#140125

IN THE MATTER OF CHAD REEDY, * BEFORE LATONYA B. DARGAN,
CLAIMANT, * AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND HOME * OF THE MARYLAND OFFICE
IMPROVEMENT COMMISSION * OF ADMINISTRATIVE HEARINGS
GUARANTY FUND FOR THE * OAH Case No.: DLR-HIC-02-12-26031
ALLEGED ACTS OR OMISSIONS * MHIC Case No.: 09 (05) 1764

OF FERDINAND MAGALLENES, t/a
MCC GENERAL CONTRACTORS,
INC.

* * * * *

FILE EXHIBIT LIST

I admitted the following exhibits for the Claimant:

- Claimant Ex. 1: February 3, 2009 Contract
- Claimant Ex. 2: Spreadsheet for project expenditures
- Claimant Ex. 3: The Respondent's March 6, 2009 invoice, with attachments
- Claimant Ex. 4: E-mail correspondence between the Claimant and the Respondent
- Claimant Ex. 5: Assorted Invoices
- Claimant Ex. 6: The Respondent's February 16, 2009 invoice, with attachments
- Claimant Ex. 7: June 2, 2009 Design Expo invoice, with attachments
- Claimant Ex. 8: The Respondent's February 9, 2009 invoice, with attachments
- Claimant Ex. 9: The Respondent's February 24, 2009 invoice, with attachments
- Claimant Ex. 10: June 18, 2009 Proposal from Creative Custom Carpentry
- Claimant Ex. 11: Check #221, dated June 22, 2009 and payable to Jerry Schultheis

Claimant Ex. 12: Receipts for materials

Claimant Ex. 13: Email correspondence between the Claimant and Stephen Carson, with attachments

Claimant Ex. 14: June 22, 2009 Invoice from Porcelain Refinishers, Inc.

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1: August 14, 2012 Notice of Hearing with attached certified mail return receipt

Fund Ex. 2: MHIC's May 17, 2012 Hearing Order

Fund Ex. 3: Respondent's licensing history

Fund Ex. 4: Real Property Search

Fund Ex. 5: November 30, 2010 Home Improvement Claim Form

Fund Ex. 6: John Borz' February 18, 2010 letter to the Respondent

There were no exhibits submitted for the Respondent.

PROPOSED ORDER

WHEREFORE, this 26th day of February 2013, 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.

Marilyn Jumalon

*Marilyn Jumalon
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION