

IN THE MATTER OF THE CLAIM  
OF LINDA CORBIN,  
CLAIMANT,  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF JASON TART,  
T/A SUNRISE CUSTOM HOMES, INC.,  
RESPONDENT

\* BEFORE JOY L. PHILLIPS,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: DLR-HIC-02-14-05527  
\* MHIC No.: 13 (75) 765  
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**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSION OF LAW  
PROPOSED ORDER

**STATEMENT OF THE CASE**

On April 13, 2013, Linda Corbin (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$61,000.00 for alleged actual losses suffered as a result of a home improvement contract with Jason Tart, trading as Sunrise Custom Homes, Inc. (Respondent).

I held a hearing on July 11, 2014 at the Department of Agriculture, Annapolis, Maryland. Md. Code Ann., Bus. Reg. § 8-312 (Supp. 2014) and § 8-407 (2010). Eric London, Assistant

Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. John Gabel, Esquire, represented the Claimant.

Despite notice from the Office of Administrative Hearings (OAH) having been sent to the last known address of record, neither the Respondent nor anyone acting on his behalf appeared at the hearing or requested a postponement. The Notice of Hearing was sent through the United States Postal Service via regular and certified mail to the Respondent at 2100 Winstone Court, Darlington, MD 21034. The certified mail was returned as unclaimed. The regular mail was not returned as undeliverable. Having determined that proper notice was sent, I proceeded with the hearing in the Respondent's absence. *See* Md. Code Ann., Bus. Reg. § 8-312(h) (Supp. 2014); Code of Maryland Regulations (COMAR) 09.01.02.09.

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 (2009 & Supp. 2014), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 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 that loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits on the Claimant's behalf:

- |                |  |
|----------------|--|
| Claimant Ex. 1 | Home Inspection, dated November 19, 2010, with attached photos numbered 1 – 16 |
| Claimant Ex. 2 | Deed, dated June 6, 2008   |

- Claimant Ex. 3 Contract, dated March 5, 2010 (original and copy, for legibility) and Addenda
- Claimant Ex. 4 Copies of checks from the Claimant to the Respondent, dated March 5, 2010 to July 28, 2010
- Claimant Ex. 5 Invoices from Chilltrol, dated December 6, 2010, April 30, 2011 and August 31, 2012
- Claimant Ex. 6 Memorandum created by the Claimant showing amounts paid for work
- Claimant Ex. 7 Letter from David Wallace, Structural Consultant, to the Claimant, dated April 5, 2011

I admitted the following exhibits on the Fund's behalf:

- GF Ex. 1 Notice of Hearing, dated May 7, 2014
- GF Ex. 2 Notice of Hearing returned as undeliverable, unclaimed and unable to forward
- GF Ex. 3 Real Property Search, dated July 7, 2014, for the Respondent
- GF Ex. 4 Licensing History for the Respondent, dated July 8, 2014
- GF Ex. 5 Hearing Order, dated January 29, 2014
- GF Ex. 6 Home Improvement Claim Form, dated April 13, 2013
- GF Ex. 7 Letter from MHIC to the Respondent
- GF Ex. 8 Photos, numbered 17 – 71

#### Testimony

The Claimant testified in her own behalf and presented the testimony of Steve Horodyski, who was recognized as an expert in the area of home inspection and in repair estimates; Richard DeJohn; and Stephen Hudak.

The Fund presented no 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 01-84673. That license was suspended on January 11, 2013.
2. In 2009, the Claimant moved into a two-story house.

3. On March 5, 2010, the Claimant and the Respondent entered into a contract calling for the Respondent to perform substantial renovation work on the Claimant's house. The contract price was \$81,000.00 and called for the Respondent to:

- raise the second story roof, creating squared off, eight-foot ceilings in the bedrooms on the second level
- modify or build exterior walls
- install a flooring system
- wrap the exterior of the home with 50-year Adventa siding
- install a double hung window
- install a 30" outward swinging door
- build a 10 x 41 concrete porch with roof and columns
- build and complete four bathrooms, with electricity, plumbing and HVAC
- install seamless gutters and new roofing

4. A number of contract addenda were agreed to by the parties, providing that the Respondent would also:

- remove and replace a side deck with a concrete pad and cover with a roof (March 11, 2010; price \$5,600.00)
- install a new 1" water line (March 11, 2010; price \$3,400.00)
- demolish the basement, remove insulation, treat for mold and install drywall; demolish and remove concrete around exterior walls, dig out to the foundation, and replace with new drainage system (March 31, 2010; price \$8,500.00)
- remove and replace exterior plywood (June 30, 2010; price \$4,000.00)

- cut hole in block for doors and windows in basement, add concrete pad and picture window in basement (July 9, 2010; price \$6,000.00)
- reinstall windows in basement, which were broken when installed earlier; demolish front wall and rebuild; replace floor joist on first floor; add one wall in office (July 23, 2010; price \$3,500.00)

5. On or about July 28, 2010, the Respondent made a verbal agreement to install a stamped concrete pad for the front porch and move kitchen cabinets and eliminate a dividing wall. The amount for this verbal addendum was \$10,000.00.

6. With the addenda, the total contract price was \$122,000.00.

7. The contract provided that work would begin on March 15, 2010 and would be completed by June 1, 2010, weather permitting. The only completion date included in the addenda was in the last one, providing an approximate completion date of July 24, 2010.

8. The Claimant paid the Respondent a total of \$103,500.00, as follows:

- March 5, 2010           \$27,000.00
- March 11, 2010         \$9,000.00
- March 31, 2010         \$6,000.00
- March 31, 2010         \$5,000.00
- June 3, 2010            \$15,000.00
- June 30, 2010          \$24,000.00
- July 9, 2010            \$4,000.00
- July 23, 2010          \$3,500.00
- July 28, 2010          \$10,000.00

9. The Respondent did not complete the work called for by the contract, but abandoned the job sometime in September 2010. Prior to abandoning the job, he did or failed to do the following work on the Claimant's home:

- The roof was removed in preparation for the new, raised roof to be installed. A tarp was laid over the house, and a rainstorm caused water to run into the house. The ceiling of the first floor was damaged, as were other parts of the first floor. The roof was later finished by the Respondent, but the water damage was not repaired.
- Siding was put up on the outside of the house, covering places where windows were supposed to be installed. The Respondent did not pay the workers who installed the siding.
- The furnace was vented into the second floor instead of to the outside, causing gas to be vented into the house.
- The roof and siding of the front porch were only partially completed. The sheeting was not properly nailed on the porch roof.
- The Respondent failed to remove and replace the side deck and cover it with a roof.
- He failed to install a new 1" water line.
- He framed in the rooms on the second floor, but installed no insulation or drywall. He installed only a subfloor on the second level, not the agreed upon finished floor. No plumbing was installed for the second floor bathrooms.
- He demolished the basement and installed a new drainage system, but failed to treat the basement for mold.

- Electric was roughed in on the second floor, but the Respondent did not pay the electrician.
- He failed to cut a hole in the basement wall for the French door and two windows.
- He failed to replace floor joists in the first floor.
- He built, but did not finish the wall in the office.
- No gutters or downspouts were installed.
- He failed to obtain permits for his work or have the work inspected.

10. The Claimant called the Respondent numerous times after he abandoned the job at the end of September 2010, and called the Respondent's attorney. Meetings were scheduled, but the Respondent failed to appear at those meetings.

11. The Claimant took over the renovation job as the contractor and hired an inspector and engineer to review the Respondent's work. She also hired an electrician, HVAC installer, plumber and other workers to repair and complete the Respondent's work. The Claimant made the following payments to repair and complete the Respondent's work or to buy items required to finish the work:

August 10, 2010	Electrical work	\$7,500.00
August 21, 2010	Siding purchase	\$2,951.00
September 19, 2010	Family room repairs	\$2,310.00
December 6, 2010	Repaired open gas vent	\$668.00
March 5, 2011	Windows added where siding had covered up window space	\$727.90
April 11, 2011 and July 31, 2012	Plumbing installation	\$8,808.00
April 30, 2011	HVAC	\$8,241.00
August 23, 2010	Concrete patio	\$16,885.00
September 13, 2011 and August 23, 2012	Drywall	\$5,905.00
	Ceiling fans replaced that were damaged by the Respondent	\$308.00
	Seven front porch posts	\$1,126.00
	Shingles for porch roof	\$250.00
	Insulation between floors	\$478.00

	French door	\$1,001.00
	Flooring	\$998.55
	Paint, trim, materials	\$2,950.77
	Outward swinging door on side	\$325.33
	Total:	\$61,433.55

12. At some time after the Respondent abandoned the contract, the Claimant sued him in the Circuit Court for Anne Arundel County. The Respondent filed for bankruptcy in February 2011, and the Claimant's case was dismissed.

13. The Claimant's actual loss is \$42,933.55.

### 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. 2014). *See also* COMAR 09.08.03.03B(2) ("actual losses . . . incurred as a result of misconduct by a licensed contractor"). 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). For the following reasons, I find that the Claimant has proven eligibility for compensation.

First, there was no disagreement that the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant on June 5, 2010. There is also no dispute that the Claimant is a home owner and that there is no impediment barring her from recovering from the Fund (too many homes owned, a family relationship to the Respondent, *etc.*) Md. Code Ann., Bus. Reg. § 8-405(f) (Supp. 2014).

Second, I find that the Respondent performed unworkmanlike, inadequate or incomplete home improvements. After the Respondent abandoned the Claimant's job, the Claimant hired an



inspector who, after inspecting the property on November 19, 2010, provided her with a complete report on the status of the work. Steve Horodyski's report corroborates the Claimant's testimony that the Respondent simply left the job unfinished. The second floor of the house was left with rooms that were only framed in, with no insulation, no drywall, no finished electrical work, no flooring other than the subflooring and no plumbing for the bathrooms. An HVAC vent was cut off on the second floor, causing gas to vent directly into the house. A rainstorm had caused water damage on the first floor of the house after the Respondent had removed the roof, and the Respondent failed to repair that damage. On the outdoor porches, either no work or partial work had been done, leaving the Claimant to install concrete porches, finish the siding and windows, and complete the porch roofs. She had to pay workers who should have been paid by the Respondent and buy construction items that should have been purchased by the Respondent. She obtained permits for the work, which the Respondent had neglected to do.

The Claimant called Stephen Hudak to testify. He is a friend who was present when the contract was signed and then assisted the Claimant in making repairs or hiring sub-contractors after the Respondent abandoned the job. He also corroborated her testimony that the second floor was left unfinished. He testified that he had to move a lower wall because the overhang exceeded code. He also completed some of the roofing work for the Claimant.

Finally, Richard DeJohn, an electrician who did the electrical work on the Claimant's house, testified that the Respondent told him he would be paid directly by the Claimant, even though his costs were included in the contract. As it turned out, the Claimant did pay him directly, once the Respondent abandoned the job.

The Claimant's evidence supports her claim that the Respondent performed unworkmanlike, inadequate and incomplete home improvements on her property. I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation, I now turn to the amount of the award, if any, to which the Claimant is entitled. 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 provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss in this case.

(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...

COMAR 09.08.03.03B(3).

Using the above formula, I agree with the Fund's following computation of the Claimant's actual loss:

Amount paid to the Respondent:	\$103,500.00
Plus amount estimated to complete/repair:	<u>\$ 61,433.55</u>
<b>Total:</b>	<b><u>\$164,933.55</u></b>
Minus Contract price	<u>\$122,000.00</u>
<b>Actual Loss:</b>	<b>\$ 42,933.55</b>

Pursuant to the Business Regulation Article, 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. Md. Code Ann., Bus. Reg. §8-405 (e)(1), (5) (Supp. 2014). Because the Claimant

paid the Respondent more than the statutory maximum, she is eligible for reimbursement from the fund in the lesser amount of \$20,000.00.

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss in excess of \$20,000.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 (2010), 8-405 (Supp. 2014).

**PROPOSED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; 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 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**

September 23, 2014  
Date Decision Issued

Joy D. Phillips  
Administrative Law Judge

JLP/dm  
Doc. # 151776



DEPARTMENT OF LABOR, LICENSING AND REGULATION

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
MARYLAND HOME IMPROVEMENT COMMISSION  
500 N. Calvert Street, Room 306  
Baltimore, MD 21202-3651

PROPOSED ORDER

*WHEREFORE, this 10th of October 2014, Panel B of the Maryland Home Improvement Commission approves the Recommended Decision 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.*

*Andrew Snyder*

*Andrew Snyder  
Panel B*

**MARYLAND HOME IMPROVEMENT COMMISSION**

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