

IN THE MATTER OF THE CLAIM
OF SALLY ALDRIDGE,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF GENE K.

* BEFORE SUSAN A. SINROD,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
*
* OAH No.: DLR-HIC-02-14-22394
* MHIC No.: 14 (90)790

MAZZATENTA, T/A MAZZATENTA
CONSTRUCTION CO., INC.

RESPONDENT

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On May 5, 2014, Sally Aldridge (Claimant), filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$59,439.00 in alleged actual losses suffered as a result of a home improvement contract (Contract) with Gene Mazzatenta, t/a Mazzatenta Construction Co., Inc. (Respondent).

I conducted a hearing on October 8, 2014 at the Talbot County Public Library, 100, W. Dover Street, Easton, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2010 and Supp. 2014). Eric B. London, Assistant Attorney General, Department of Labor, Licensing and

Regulation (Department), represented the Fund. The Claimant represented herself. The Respondent did not appear at the hearing after proper notice was sent to his address of record.

The Notice of Hearing (Notice) was sent to the parties via certified mail, return receipt requested on July 30, 2014. On September 2, 2014, the OAH received the certified mail return receipt card and envelope that was sent to the Respondent, which was returned by the United States Postal Service with the notation, "unclaimed, unable to forward." Accordingly, because the Notice was sent to the Respondent's address of record, I found that the Respondent received proper notice of the hearing, and he failed to appear. As a result, I conducted the hearing in the Respondent's absence. Md. Code Ann., Bus. Reg. § 8-312(h); Md. Code Ann., State Gov't II § 10-209 (2014); and, Code of Maryland Regulation (COMAR) 09.01.02.07.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the Office of Administrative Hearings (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (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

The Claimant submitted the following exhibits, which were admitted into evidence:

- Cl. Ex. #1- Contract between the Claimant and the Respondent, dated October 16, 2012
- Cl. Ex. #2- Copies of three checks issued by the Claimant to the Respondent, dated October 21, 2012, August 15, 2013, and September 25, 2013
- Cl. Ex. #3- Emails between the Claimant and the Respondent, of multiple dates

- Cl. Ex. #4- Estimate from Chance and Associates, dated December 23, 2013
- Cl. Ex. #5- Contract between the Claimant and Melvin Custom Carpentry, dated January 17, 2014
- Cl. Ex. #6- List of additional expenses paid, undated
- Cl. Ex. #7- Pictures of the exterior of the Claimant's home, taken in December 2013 and January 2014
- Cl. Ex. #8- Pictures of the interior of the Claimant's home, after work was completed, undated

The Fund submitted the following exhibits, which were admitted into evidence:

- Fund Ex. #1- Notice of Hearing, dated July 30, 2014, with Hearing Order, dated June 20, 2014 and envelope returned as "unclaimed, unable to forward." attached
- Fund Ex. #2- Respondent's licensing history, dated August 21, 2014
- Fund Ex. #3- Home Improvement Claim Form, received May 5, 2014
- Fund Ex. #4- Letter from the HIC to the Respondent, dated May 9, 2014

No exhibits were admitted on behalf of the Respondent.

Testimony

The Claimant testified on her own behalf.

No witnesses testified on behalf of the Respondent.

The Fund did not present the testimony of any witnesses.

PROPOSED FINDINGS OF FACT

After considering the evidence presented, I find the following facts by a preponderance of the evidence:

1. At all times relevant to this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 01-43418.
2. On October 16, 2012, the Claimant and the Respondent entered into a contract to build an addition onto the Claimant's home. Pursuant to the contract, the Respondent was to

pour the foundation for a new bedroom and bathroom, install drywall, shingles on the roof, siding and exterior trim, windows, a sliding glass door, interior trim and doors, complete rough in and finish electrical work, plumbing and duct work for heating and air conditioning (HVAC). The Claimant was required to provide the labor and fixtures for the electric and plumbing, door knobs, cabinet and bath hardware, tile, hardwood flooring, a bathroom vanity, shower glass and exterior sliding glass or French door.

3. The original agreed-upon contract price was \$25,900.00.

4. On October 21, 2012, the Claimant paid the Respondent \$8,633.00.

5. The Respondent began the work in April 2013. The Respondent and one or two other workers dug holes for footers, removed siding, existing windows and doors and removed shingles from the roof. After the completion of that initial work, the Claimant's home was open and exposed to the elements, despite a tarp over the roof and some boards and paper covering the window openings. Rain frequently leaked into the interior of the Claimant's home.

6. Following the initial work that the Respondent began in April 2013, the Respondent did not return to work on the Claimant's addition in the spring of 2013. The Claimant attempted to contact the Respondent by email on May 10, 2013 and June 20, 2013. The Respondent did not respond to the Claimant's emails.

7. At some point in August 2013, the Respondent asked the Claimant for an early draw of \$5,000.00, which was not due to be paid until after the framing was complete and after installation of the windows. After the Respondent promised that he would be working on the project beginning the following week, the Claimant gave the Respondent a check for \$5,000.00 on August 15, 2013.

8. The Respondent did not return to the project the following week as promised. The Claimant emailed the Respondent on August 26, 2013, August 30, 2013 and September 15, 2013 asking when he would return.

9. On September 25, 2013, the Respondent asked the Claimant for another early draw to pay for the windows and doors. The Claimant gave the Respondent a check for \$5,000.00 on that date, and the Respondent placed a notation on the Contract that the money given to him on that date was for the windows and the doors.

10. After approximately three weeks, a contractor came to the Claimant's home to pour concrete for the footers and the floors. Other than that, the Respondent had performed very little work and the Claimant continued to send emails to the Respondent and leave voicemail messages asking for progress to be made on the addition to her home.

11. In November 2013, after rain had been leaking into the Claimant's home due to a recessed area in the concrete pad, a worker came to the Claimant's home to put a tarp on the Claimant's roof. The leaking that occurred as a result of the inadequate concrete pad caused warping in the floor and trim of the Claimant's existing bathroom, and caused mold to form on the interior walls.

12. The Respondent never returned to finish the Claimant's addition.

13. In January 2014, the Respondent filed bankruptcy.

14. On January 17, 2014, the Claimant signed a contract with Melvin Custom Carpentry (Melvin) to complete the project. The agreed contract price was \$26,141.99, and the scope of work was the same scope of work that was contained in the Contract.

15. The Claimant paid the following additional expenses to complete the project, all of which were part of the original cost of the Contract:

\$2,050.00-	HVAC
\$141.36-	Emergency repair due to pump house exposure ¹
\$1,000.00-	Plumbing
\$500.00-	HVAC
\$450.00-	Repair to ceiling to make door size correct
\$86.00-	Additional plumbing permit
\$468.00-	Cost to vent dryer
\$1,731.00-	Patio door and hardware
\$725.00-	Trench well pipe
\$3,500.00-	Electric
\$594.65-	Well line placement
TOTAL:	\$11,246.01

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).

The Claimant testified and explained the timing of the minimal work that the Respondent completed, and her attempts to reach him and achieve the completion of the addition on her

¹ As explained below, I find that this expense was for a consequential damage, not compensable by the Fund.

home. More than one year after the Claimant executed the Contract, the only work that the Respondent had completed was demolition of the windows and siding where the addition was to be built, a rough-in of plumbing and an inadequate concrete pad which caused leaking, warping and mold in the Claimant's home. The Respondent never returned to the project. The Claimant made numerous attempts to contact him and ask him to finish the project, and she even gave him \$10,000.00 in early draws in the hope that he would finally complete the work that the Contract required of him. In total, she paid him \$18,633.00.

The Fund agreed that the Claimant incurred an actual loss as a result of the incomplete and inadequate work of the Respondent, who was licensed with the MHIC at all times relevant to this matter. I agree with the parties and conclude that the Claimant is entitled to compensation from the Fund.

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). COMAR 09.08.03.03B(3)(c) provides the formulas for calculating an award from the Fund. The following formula offers an appropriate measurement of the Claimant's actual loss:

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)(c).

The Contract and the contract with Melvin contained the same scope of work. The expenses that the Claimant incurred outside of the contract with Melvin was for work that was included in the cost of the Contract, with the exception of \$141.36, the cost to repair plumbing

that occurred because the Respondent left the pump house exposed, which is a consequential damage and not compensable by the Fund. Cl. Ex. #6.

The Claimant paid \$18,633.00 to the Respondent. She is required to pay \$26,141.99 to Melvin to complete the project. The contract with Melvin is for the same scope of work as that in the Contract. The Claimant has paid \$11,284.65 (her outside expenses minus the \$141.36 mentioned above) in additional expenses that were also part of the scope of work of the Contract. Adding those amounts together according to the above formula totals \$56,059.64. After subtracting \$25,900.00, the original amount of the Contract, the Claimant's actual loss is \$30,159.64.

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). Therefore, the Claimant is entitled to reimbursement from the Fund in the amount of \$18,633.00, the amount that she actually paid to the Respondent.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss \$18,633.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 (2010), 8-405 (Supp. 2014).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$18,633.00; 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 (10%) 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

December 22, 2014
Date Decision Issued

Susan A. Sinrod
Administrative Law Judge

SAS/cj
#153429

PROPOSED ORDER

WHEREFORE, this 2nd day of March 2015, 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