

IN THE MATTER OF THE CLAIM * BEFORE THOMAS G. WELSHKO,
 OF FRANK AND DONNA WEIDNER,¹ * AN ADMINISTRATIVE LAW JUDGE
 CLAIMANTS * OF THE MARYLAND OFFICE
 AGAINST THE MARYLAND HOME * OF ADMINISTRATIVE HEARINGS
 IMPROVEMENT GUARANTY FUND *
 FOR THE ALLEGED ACTS OR *
 OMISSIONS OF HARIYE GUR, *
 T/A HAINES REMODELING, L.L.C. * GAH No.: DLR-HIC-02-15-28569
 RESPONDENT * MHIC No.: 14 (90) 905

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On May 25, 2014, Frank and Donna Weidner (Claimants), filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC or Commission) Guaranty Fund (Fund) for reimbursement of \$2,000.00 in alleged actual losses suffered as a result of a home improvement contract with Hariye Gur, t/a Haines Remodeling, L.L.C. (Respondent).

I held a hearing on January 15, 2016 at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).² The Claimants

¹ In some documents, the Claimants' name is spelled "Wiedner." Weidner is correct.
² Unless otherwise noted, all citations of the Business Regulation Article hereinafter refer to the 2015 Replacement Volume.

represented themselves. The Respondent failed to appear after the OAH sent notice of the hearing to her address of record, and no other authorized person appeared on her behalf. Assistant Attorney General Kris King, Department of Labor, Licensing and Regulation (Department), represented the Fund.

Mr. King offered documentation to show that the Respondent had been properly notified of the hearing. On October 16, 2015, the OAH sent the notice of the hearing by first class and certified mail to the Respondent's Bel Air, Maryland address on file with the Commission. The notice advised the Respondent of the time, place, and date of the hearing. The U.S. Postal Service returned the certified mailing to the OAH with the notation "Return to Sender – Unclaimed – Unable to Forward." There is no evidence that the first-class mailing was returned. An inquiry by the MHIC revealed that the Respondent had a new address in Aberdeen, Maryland. (The MHIC found that address through the Maryland Motor Vehicle Administration.) The MHIC did not forward this new address to the OAH. Nevertheless, because the OAH sent the Notice by U.S. Mail to the Respondent's address on file with the MHIC, based on the Court of Appeals' holding in *Golden Sands Club Condominium, Inc. v. Waller*, 313 Md. 484, 503-04 (1988), I conclude that OAH's notice to the Respondent was reasonable and adequate under section 8-312(d) of the Business Regulation Article and section 10-209(c) of the State Government Article. Therefore, I directed that the hearing proceed in the Respondent's absence.

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 (2014), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 28.02.01.

ISSUES

1. Did the Claimants sustain an actual loss compensable by the Fund as a result of any acts or omissions committed by the Respondent?
2. If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted nine exhibits on behalf of the Claimants, no exhibits on behalf of the Respondent and seven exhibits on behalf of the Fund.

I have attached a complete Exhibit List as an Appendix.

Testimony

Donna Weidner testified for the Claimants; as she was the Claimants' only witness, I will refer to Ms. Weidner from this point forward as the "the Claimant." Neither the Respondent nor the Fund presented 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 license number 4474274 (Registration No. 01-10205). (Fund Ex. 2.)
2. In March 2013, the Claimants went to Lowe's Home Improvement Co. (Lowe's) to buy materials in anticipation of making significant renovations to their Timonium, Maryland home. Although the Claimants were purchasing the materials themselves, they needed a contractor to install those materials. (Test. Cl.)

3. A Lowe's employee, Brad Upton, recommended Robert Haines as a person capable of doing that work. Mr. Haines, although not the Licensee, was a principal in the Respondent's company. (Test. Cl.)

4. On March 6, 2013, the Claimants and the Respondent entered into a contract for the Respondent to install the materials that the Claimants purchased for their home renovation (Contract). The Respondent agreed to perform work that included renovations to the existing deck, screened porch, kitchen, bathroom and sunroom pursuant to the Contract. Window installation was also a significant part of the Contract. (Test. Cl.; Cl. Exs. 1 and 2.)

5. The final Contract price was \$32,230.00. (Test. Cl.; Cl. Exs. 2 and 3.)

6. The Claimants paid the full contract price to the Respondent by means of five installments. They paid those installments as follows:

Payments Made by the Claimants

Date	Check No.	Amount
03/18/2013	1543	\$7,786.00
03/26/2013	6074	\$7,786.00
04/04/2013	1549	\$8,267.00
06/19/2013	1563	\$8,000.00
07/10/2013	1571	\$481.00

(Cl. Ex. 3.)

7. Only \$4,225.00 of the \$32,230.00 contract involved the sunroom renovation.

(Test. Cl.; Cl. Ex. 2.)

8. The sunroom portion of the Contract required the Respondent to perform the following work:

- Remove and dispose of windows, framing, trim, ceiling cover, and all associated waste.
- Insulate ceiling and underneath of windows.
- Install wainscoting and crown molding to the ceiling.
- Enlarge all window opening[s] to 20" above the floor.
- Install all posts, interior trim and sills.
- Install vinyl moldings to all associated exterior openings.
- Install new entry door.
- Materials and labor (windows and door) not included.

(Cl. Ex. 2.)

9. Robert Haines and his helper, Kenny, completed the Contract in June 2013. (Test. Cl.; Cl. Ex. 6.)

10. Sometime after July 10, 2013, the Timonium area experienced a heavy rainstorm. After that storm, all of the carpeting in front of the new door to the sunroom became wet. Water soaked the carpet three feet beyond the doorway. Storms have persistently caused water entry in this fashion in the sunroom since the Respondent completed the work. (Test. Cl.)

11. After the first storm, the Claimants called Mr. Haines to complain about the water infiltration problem. When they first reached him, Mr. Haines indicated that he would come back and "fix everything." He failed to return. (Test. Cl.)

12. After August 2013, the Claimants attempted to reach the Respondent, but had no success in reaching her for the remainder of the year. (Test. Cl.)

13. In October 2013, the Claimants made contact with Mr. Haines through Lowe's. In response to the Claimants' complaints, Mr. Haines told them that he could do nothing, because the Haines Remodeling, L.L.C. "was Heidi's company." (Test. Cl.)

14. In the late fall and winter of 2013 and during subsequent falls and winters, the sunroom became too cold for the Claimants to use, because of drafts coming in from openings in the front door frame and the bottom of the newly installed windows in the rear of the sunroom. (Test. Cl.; Cl. Exs. 4E and 4F.)

15. The Respondent had not caulked the windows in the sunroom. (Test. Cl.)

16. In March 2014, the Claimants made contact with the Respondent by telephone. In response to their complaints, the Respondent informed the Claimants that she was "broke." She accused Mr. Haines of pilfering equipment and materials from her home improvement company, making it impossible for her to perform any home improvement work, including repair work. (Test. Cl.; Cl. Ex. 9; Fund Ex. 6.)

17. In 2014, the Claimants caulked the windows in the sunroom and installed foam underneath them as temporary measures to stop the cold air infiltration during the fall and winter seasons. These measures were only marginally successful in stopping the draftiness. (Test. Cl.)

18. Poor siding installation also resulted in cold air infiltrating into the sunroom during cold weather. (Test. Cl.; Cl. Ex. 7.)

19. On May 26, 2014, the Claimants obtained a \$2,000.00 estimate from American Energy Solutions, Inc. (AES) to correct the leaking door in the sunroom and the improperly installed siding on the sunroom. (Test. Cl.; Cl. Ex. 7.)

20. The AES estimate included the following work:

- take off all existing siding on addition, approximately 180 sq. ft. (\$500.00);
- install new Tyvek (\$500.00);
- put existing siding back in place (\$500.00); and
- caulk addition [i.e., sunroom] properly, to include siding, windows and doors to prevent further leakage (\$500.00).

(Cl. Ex. 7.)

21. In 2015, the Claimants contacted Lowe's and told the Lowe's representative that they spoke with about their experience with the Respondent, whom Lowe's employee, Brad Upton, had recommended. Lowe's agreed to replace the windows in the sunroom and to caulk them; Lowe's also agreed to reimburse the Claimants for the cost of the caulk that they used previously. Lowe's performed this work and paid for the caulk as promised. (Test. Cl.)

22. The Claimants' actual loss is \$2,000.00. (Test. Cl.; Cl. Ex. 7.)

DISCUSSION

In this case, the Claimants have the burden of proving the validity of their claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3). "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true." *Coleman v. Anne Arundel Cty. Police Dep't.*, 369 Md. 108, 125, n. 16 (2002), quoting Maryland Pattern Jury Instructions 1:7 (3rd. ed. 2000).

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). *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. For the following reasons, I find that the Claimants have proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time she entered into the contract with the Claimants. There are no preliminary impediments preventing the Claimants from recovering from the Fund (the Claimants are not related to the Respondent or any of her employees, they are not employed by her, they have not obtained a judgment against her, etc.). Md. Code Ann., Bus. Reg. § 8-405(f)(1). The home improvement work at issue concerned the Claimants’ primary residence. Md. Code Ann., Bus. Reg. § 8-405(f)(2).

I conclude that the Respondent performed an unworkmanlike, inadequate and incomplete home improvement. The work that she and, her partner, Mr. Haines, performed pursuant to the March 6, 2013 Contract was substandard.

I base my conclusions on the undisputed testimony of the Claimant and an analysis of the Claimants’ exhibits. According to the Claimant, she and her husband entered into a contract with the Respondent to have significant renovations done at their Timonium, Maryland home. Those renovations included major work on their existing sunroom. The Contract called for the Claimants to furnish the materials and the Respondent to furnish the labor. The total Contract price was \$32,230.00. The sunroom portion of that amount was \$4,225.00.

The Respondent began the contracted work in March 2013 and completed it in June 2013. The Claimants demonstrated that they paid the Respondent in full through five installments as of July 10, 2013. The Claimant testified that she and her husband were initially satisfied with the Respondent's work. Nevertheless, when a rainstorm came through the Timonium area shortly after the Respondent completed the work, the carpeting adjacent to the new sunroom door became soaked. Water infiltration extended three feet into the room. The Claimants called Mr. Haines on behalf of the Respondent, who promised to make repairs to the doorway. He did not. Then, in the fall of 2013, the Claimants began noticing cold air coming through gaps in the windows that the Respondent installed in the sunroom. The Claimant testified that the drafts coming through the windows made the sunroom unusable during cold weather. In March 2014, the Claimants reached the Respondent, who told them that she was "broke" and that her company was no longer in business. The Respondent was discharged from Chapter 7 Bankruptcy in March 2015.

The Claimant explained that she and her husband tried some "jerry-rigged" solutions to the water and air infiltration problems, without success. They caulked the windows and placed foam underneath them, but this was only marginally successful in stopping the draftiness.

It is obvious that the Respondent poorly installed the windows, new door and siding in the sunroom, rendering it unusable in cold weather and subjecting the new door to unwarranted water infiltration throughout the year. Poor installation techniques and lack of caulking were the most likely cause of these deficiencies. Therefore, the Claimants have shown that they are eligible for compensation from the Fund.

Having found the Claimants eligible for compensation, I now turn to the amount of the award, if any, to which the Claimants are 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:

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).

The Claimants sought estimates from two contractors to repair the poor, inadequate and incomplete work performed by the Respondent. The first estimate, from C.L. McCoy Framing Co., Inc. (McCoy), was for \$720.00, and called for McCoy to remove the back door to the sunroom, remove siding (as needed), install flashing, replace J-channel, re-flash the opening and reinstall the back door. The second estimate from AES, was for \$2,000.00, and called for that contractor to take off all existing siding on the sunroom, install new Tyvek, reinstall the removed siding, and, to prevent further leakage caulk the sunroom's siding, windows and door properly. The Claimants contended that the more extensive work proposed by AES was necessary to remedy the water and air leakage problems in the sunroom. The Fund agreed. I agree as well.

The Claimant further testified that in 2015, she and her husband contacted Lowe's, the store where they originally learned about the Respondent through one of its representatives. They told the Lowe's employee that they spoke with about the problems in the sunroom. In response to the Claimants' communication, Lowe's sent one of its employees to replace windows and caulk around the windows in the sunroom. Again, the Claimant testified that window replacement and caulking in this matter was only a temporary and imperfect solution to the problems they were experiencing in the sunroom. I concur with the Claimants that the work proposed by AES must be done to correct the Respondent's poor workmanship, notwithstanding the window replacement and caulking work done by Lowe's.

I have performed the following calculations to compute the Claimants' actual loss:

\$4,225.00 ³	Amount paid by the Claimants to or in behalf of the Respondent
<u>+2,000.00</u>	Reasonable cost of repair and completion
\$6,225.00	
<u>- 4,225.00</u>	Original contract price
\$2,000.00	Actual loss by the Claimants

Accordingly, the Claimants are entitled to reimbursement of \$2,000.00. Md. Code Ann., Bus. Reg. § 8-405(a); COMAR 09.08.03.03B(3)(c).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of \$2,000.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

³ I could have used the full contract price of \$32,230.00, but chose to use the isolated price for the renovation of the sunroom for the sake of clarity. The Claimant's complaint involved only the sunroom renovation. No other aspect of the March 6, 2013 Contract was involved.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimants \$2,000.00; 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 (10%) as set by the Maryland Home Improvement Commission;⁴ and

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

March 23, 2016
Date Decision Issued

|
Signature on File

Thomas G. Welshko
Administrative Law Judge

TGW/sw
#160708

⁴ See Md. Code Ann., Bus. Reg. § 8-410(a) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 16th day of May, 2016, 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
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION