IN THE MATTER OF THE CLAIM	*	**BEFORE EDWARD J. KELLEY,**
OF WILLIAM DEMEGLIO,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT,	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF JAMMIE	*	
TAVENNER,	*	**OAH No.: LABOR-HIC-02-20-02997**
T/A TIDAL DECK AND DESIGN,	*	**MHIC No.: 19 (90) 963**
LLC,	*	
RESPONDENT	*	

* * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE

On July 25, 2019, William Demeglio (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),[1] for reimbursement of $9,305.00 in actual losses allegedly suffered as a result of a home improvement contract with Jammie Tavenner, trading as Tidal

[1] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

Deck and Design, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).[2] On January 8, 2020, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 10, 2020, the OAH sent the Respondent a notice of hearing to be held at 10:00 a.m. on May 12, 2020 at the OAH office in Rockville, Maryland. The notice was sent by both certified and regular mail to the Respondent's address of record, 1227 R Woods Road, Westminster, Maryland, 21158. The notice that was sent to the Respondent by certified mail was returned by the United States Postal Service as "return to sender, unclaimed, unable to forward."

On May 4, 2020, the OAH sent the Respondent a new notice of hearing to be held at 10:00 a.m. on August 13, 2020 at the OAH office in Rockville, Maryland. The notice was sent by both certified and regular mail to the Respondent's address of record, 1227 R Woods Road, Westminster, Maryland, 21158. The notice that was sent to the Respondent by certified mail was returned by the United States Postal Service as "return to sender, not deliverable as addressed, unable to forward."

On September 22, 2020, the OAH sent the Respondent a new notice of hearing to be held at 9:30 a.m. on December 3, 2020 on the Webex video conferencing platform (Webex). The notice was sent by both certified and regular mail to the Respondent's address of record, 1227 R Woods Road, Westminster, Maryland, 21158. The notice that was sent to the Respondent by certified mail was returned by the United States Postal Service as "forward time expired."

On September 29, 2020, the OAH sent the Respondent another notice of the Webex hearing to be held at 9:30 a.m. on December 3, 2020. The notice was sent by both certified and regular mail to the Respondent's new address of record, 1089 Galahad Drive, Westminster,

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

Maryland, 21157-6163. The notice that was sent to the Respondent by certified mail was returned by the United States Postal Service as "return to sender, unclaimed, unable to forward." The notice that was sent to the Respondent by regular mail was returned by the United States Postal Service as "forward time expired."

On November 17, 2020, the OAH sent the Respondent another notice of the Webex hearing to be held at 9:30 a.m. on December 3, 2020. The notice was sent by both certified and regular mail to the Respondent's address of record, 1089 Galahad Drive, Westminster, Maryland, 21157-6163, as well as a new address provided by the Fund, 1227 Woods Road, #R, Westminster, Maryland, 21158. As of the date of the hearing, the mail was not returned by the United States Postal Service.

On December 3, 2020, at 9:30 a.m., I held the Webex hearing. Shara Hendler, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. The Respondent failed to appear.

At the hearing, the Fund submitted into evidence the Respondent's licensing history which reflected that the hearing notices sent on September 29 and November 17 were mailed to the Respondent's current address on file with the MHIC, 1089 Galahad Drive, Westminster, Maryland, 21157-6163. (Fund Ex. 4.) The Fund also confirmed that the notices were sent to a valid alternate address for the Respondent, 1227 Woods Road, #R, Westminster, Maryland, 21158. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. Code of Maryland Regulations (COMAR) 28.02.01.23A. The Respondent did not notify the OAH or the Fund of any change of address. COMAR 28.02.01.03E; 09.08.01.11. I determined that the Respondent received proper notice of the hearing because the September 29 and November 17 notices sent by first-class mail to the

Respondent's known addresses were not returned to the OAH as undeliverable. After waiting over fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. COMAR 28.02.01.23A.[3]

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 (2014 & Supp. 2020); COMAR 09.01.03; and COMAR 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 the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

Clmt. Ex. 1 - Contract with scope of work, dated August 6, 2017

Clmt. Ex. 2 - Leak Survey prepared by G.T. Starr Construction, dated May 17, 2018

Clmt. Ex. 3 - Email from the Claimant to the Respondent, dated May 18, 2018

Clmt. Ex. 4 - Invoice/Job Cost prepared by G.T. Starr Construction, dated June 1, 2018

Clmt. Ex. 5 - Pictures of project during and after repair, undated

Clmt. Ex. 6 - Email from the Claimant to the Respondent, dated November 6, 2018

[3] After the hearing concluded, the hearing notices sent regular and certified mail to 1089 Galahad Drive, Westminster, Maryland, 21157-6163 were returned as undeliverable by the United States Postal Service to the OAH. The hearing notice sent by regular mail to 1227 Woods Road, #R, Westminster, Maryland, 21158 was not returned by United States Postal Service. For the reasons previously stated, I find that the Respondent received proper notice of the hearing.

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

Fund Ex. 1 - Hearing Order, January 8, 2020

Fund Ex. 2 - Notices of Hearing, dated February 10, 2020, September 29, 2020, and November 17, 2020

Fund Ex. 3 - Letter from MHIC to the Respondent with attached Home Improvement Claim Form, August 1, 2019

Fund Ex. 4 - The Respondent's MHIC licensing history

Testimony

The Claimant testified and did not present other witnesses.

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, the Respondent was a licensed home improvement contractor under MHIC license number 01-107733.

2. At all times relevant, the Claimant owned the property at 102 Piping Rock Drive, Silver Spring, Maryland.

3. On August 6, 2017, the Claimant and the Respondent executed a contract for installation of a deck and a screened-in porch (Contract).

4. The original agreed-upon Contract price was $25,500.00.

5. The Contract provided the following payment schedule: "20% due at contract (5050.00)[;] 20% due when permit is issued (5300.00)[;] 20% due when faming [sic] complete (5050.00)[;] 20% due when flooring complete[;] 20% due at completion." (Clmt. Ex 1.)

6. The parties orally modified the original contract to include upgraded shingles at a cost to the Claimant of $500.00, making the total contract price $26,000.00.

7. The Respondent began work on the project in September 2017.

8. The last day the Respondent performed any work on the project was in November 2017.

9. The Claimant paid the Respondent $26,000.00 pursuant to the payment schedule set forth in the Contract, as modified; $500.00 was added to the last payment to cover the Contract modification.

10. The Respondent tied the roof of the new screened-in porch into the roof of the main home.

11. In May 2018, the Claimant observed water on the interior dry wall of the main home and the inside of the porch room.

12. On May 17, 2018, G.T. Starr Construction prepared a leak survey that identified several problems with the porch roof that individually or collectively caused the leaking.

13. On May 18, 2018, the Claimant sent the Respondent an email, informing the Respondent of the results of the leak survey and requesting the Respondent's response.

14. The Respondent did not respond to the Claimant's email.

15. After sending the email on May 18, 2018, the Claimant sent the Respondent text messages regarding the leak and the results of the leak survey.

16. Shortly thereafter, the Respondent texted the Claimant one time to say that he would come to the property to evaluate the leak, but he never did and then the Respondent stopped communicating with the Claimant.

17. The Claimant contracted with G.T. Construction to repair the leaking porch roof for $9,305.00.

18. Following the completion of the work by G.T. Construction, the porch roof stopped leaking.

19. All the work performed by G.T. Construction was in the scope of work of the Contract.

20. On November 6, 2018, the Claimant sent the Respondent an email asking the Respondent to refund $9,305.00 of the Contract price to cover the cost of the porch roof repair, and the Respondent did not respond to this email.

DISCUSSION

Legal Framework

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); 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 Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d 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." Bus. Reg. § 8-405(a); *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.

Positions of the Parties

The Claimant argued that the Respondent performed an unworkmanlike, inadequate, and incomplete home improvement by constructing the porch roof deficiently such that it leaked water into the main home and the porch room. The Fund agreed. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent Performed an Unworkmanlike, Inadequate, and Incomplete Home Improvement

The undisputed evidence shows that the Respondent performed an unworkmanlike, inadequate, and incomplete home improvement. The Claimant testified credibly and cogently about all facets of the project, and his testimony was fortified by the documents I admitted into evidence on his behalf. The Contract required the Respondent to construct a completed and functional screened-in porch in exchange for $26,000.00. The Claimant fulfilled his obligation by paying the Respondent the full contract price pursuant to the payment schedule. The Respondent did not fulfill his obligation to provide a completed and functional screened-in porch.

The Claimant testified that the project purportedly was completed by the Respondent in November 2017. The Claimant first learned the porch roof was leaking in May 2018 when he observed water stains in the drywall of the main home and in the porch room. After observing the leaking, the Claimant asked another licensed contractor, G.T. Starr Construction, to assess the roof and report on its condition. After G.T. Starr provided its report confirming the leak and identifying potential causes, the Claimant contacted the Respondent to discuss the situation, but the Respondent did not return to the site to evaluate the leak as promised and stopped communicating with the Claimant altogether. The Respondent's disregard and inaction forced

the Claimant to hire G.T. Construction to repair the defective roof to prevent further damage to the porch and the main home.

The Claimant's unrefuted testimony and exhibits prove the Respondent's faulty workmanship caused the porch roof to leak. The testimony and pictures depict incomplete and inferior work that resulted in the porch roof leaking. Despite being given an opportunity to do so, the Respondent made no effort to remedy the deficiency. Based on these facts, I conclude that the Respondent performed unworkmanlike, inadequate, and incomplete home improvements. I thus find that the Claimant is eligible for compensation from the Fund.

Calculation of Compensation

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent performed some work under the Contract, and the Claimant retained another contractor to complete and remedy that work. Accordingly, the following formula appropriately measures 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. 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).

Here, the Claimant paid the Respondent $26,000.00 of the original Contract price. The Claimant then obtained a reasonable estimate to remedy and complete the project for $9,305.00. Thus, the Claimant's actual loss is the $26,000.00 added to the $9,305.00, minus the original contract price, $26,000.00, which equals $9,305.00.

The Business Regulation Article caps a claimant's recovery at $20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss, $9,305.00, is less than the $26,000.00 paid to the Respondent and less than $20,000.00. Therefore, the Claimant is entitled to recover his actual loss of $9,305.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $9,305.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover $9,305.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2015); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $9,305.00; 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;[4] and

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

February 24, 2021
Date Decision Issued

Edward J. Kelley
Administrative Law Judge

EJK/kdp
#190608

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

PROPOSED ORDER

WHEREFORE, this 9th day of June, 2021, 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.

Lauren Lake

Lauren Lake
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION