

IN THE MATTER OF THE CLAIM \* BEFORE JAMES W. POWER,  
OF EDWARD AND KATHLEEN \* AN ADMINISTRATIVE LAW JUDGE  
LENAHAN AGAINST THE \* OF THE MARYLAND OFFICE  
MARYLAND HOME \* OF ADMINISTRATIVE HEARINGS  
IMPROVEMENT GUARANTY FUND \* OAH NO.: DLR-HIC-02-09-08534  
FOR THE VIOLATIONS OF BRIAN \* MHIC NO.: 05 (05) 2498  
MIDDLETON, T/A TRIPLE M HOME \*  
IMPROVEMENT, INC. \*

\* \* \* \* \*

**RECOMMENDED DECISION**

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**STATEMENT OF THE CASE**

On April 4, 2008, Edward and Kathleen Lenahan (Claimants) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$12,330.00 for actual losses suffered as a result of the acts or omissions made by Brian Middleton, t/a Triple M Home Improvement (Respondent).

I conducted a hearing on August 11, 2009 at the Harford County Public Library in Bel Air, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2) (2004). Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR),

represented the MHIC Fund. The Claimants were present and represented themselves. The Respondent did not appear for the hearing after being duly notified of the hearing.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations of DLLR, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009); Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 09.08.03; COMAR 28.02.01.

### **ISSUES**

1. Did the Claimants sustain an actual loss compensable by the Fund as a result of the acts or omissions of the Respondent; and if so,
2. What is the amount of that loss?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

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

Fund Ex. #1	Certified Mail Notice of Hearing with attachments
Fund Ex. #2	Notice of Hearing
Fund Ex. #3	Notice of Hearing, Returned Mail
Fund Ex. #4	Licensing History
Fund Ex. #5	Driving Record
Fund Ex. #6	Claim Form
Fund Ex. #7	Letter from HIC

The Claimants submitted the following exhibits:

Cl. Ex. #1	Contract
Cl. Ex. #2	Letter to Respondent
Cl. Ex. #3	Inspection Report
Cl. Ex. #4	Proposal from Kongcrete Construction
Cl. Ex. #5	Permit Inspection
Cl. Ex. #6	Receipt for Permit
Cl. Ex. #7	Certificate of Occupancy
Cl. Ex. #8	Receipt for Anchor Contracting
Cl. Ex. #9	Contract with County Fireplace
Cl. Ex. #10	Proposal from WR Contracting

Cl. Ex. #11      Receipts from Home Depot  
Cl. Ed. #12A-B   Photographs  
Cl. Ex. #13      Blueprints

Testimony

The Claimant, Kathleen Lenahan, testified on her own behalf.

The Fund did not present any witnesses.

**FINDINGS OF FACT**

I find the following 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 license number 122480.
2.      On October 19, 2004, the Claimant and the Respondent entered into a contract for the Respondent to remove an existing room and screened in porch, construct a new room, move an existing water line, install a hearth and fireplace, and remove all debris. All work was to be done in accordance with architect's plans, for which the Claimants paid \$525.00. This amount was not included in the contract.
3.      The contract price was \$38,500.00.
4.      The Claimants paid the Respondent \$12,833.33 at the time the contract was signed.
5.      On December 16, 2004 the Respondent poured the concrete pad for the addition. On January 3, 2005, the Respondent told the Claimants he would need the second installment in order to purchase wood. The Respondent told the Claimants the wood would be delivered on January 18, 2005. The wood was not delivered until February 8, 2005.
6.      From February 8 to February 12, 2005, the Respondent framed and built the roof. On February 23, 2005 the frame inspection failed, because items were not done. On March 3, 2005 the frame passed inspection.

7. On March 8 and 9, 2005 an insulation inspection was done and the insulation failed. On March 10, 2005 the insulation passed inspection.

8. On February 25, 2005 the Claimants paid the Respondent one half of the final installment.

9. The Respondent told the Claimant he was going to Florida but would arrange to have the work done. The Respondent moved to Florida and did not finish the job.

10. The Respondent failed to grade the soil away from the addition.

11. The Respondent failed to insulate the doors, caulk the J channels and install splash blocks on the rain gutters. He also failed to caulk the board between the existing house and addition, allowing rain to leak into the residence. He failed to install the flooring.

The French door installed by the Respondent leaks.

12. The concrete pad is cracked and crumbling.

13. The Respondent hired an electrician to install a subpanel and wiring. The person he hired was not properly licensed to perform this particular work, which failed inspection three times and had to be redone by a licensed electrician.

14. The Claimants have incurred the following expenses in connection with finishing and repairing the Respondent's work:

WR Contracting	\$11,601.00	(drywall, screen and interior work)
Concrete	2,400.00	(concrete pad)
Anchor Contracting	1,000.00	(for stone hearth)
Bel Air Road Supply	450.54	(supplies for hearth)
County Fireplace	1,060.78	(materials for fireplace)
Fireplace Installation	525.00	(labor for fireplace installation)
Home Depot	2,024.37	(closet and door molding)
Door frame	872.55	(not done by Respondent)

Closet molding	171.05	(not done by Respondent)
Closet door	209.75	(not done by Respondent)
Fines and Permits	100.00	(fine incurred by Respondent)
Total	\$20,061.96	

15. The Claimant paid the Respondent a total of \$32,100.00.

16. The Claimants originally filed a claim in April 2005, but were never notified by the HIC of its status. They refiled the claim again in 2008.

17. The Respondent was notified of the charges and the hearing date by regular and certified mail, sent to his address of record with the HIC and the Motor Vehicle Administration. He failed to appear for the hearing on August 11, 2009.

### DISCUSSION

Maryland law provides that an owner may recover compensation from the Guaranty 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. 2009). Section 8-401 of the Business Regulation article defines “actual loss” as “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 (2004). The burden of proof to establish the unworkmanlike or inadequate home improvement and any actual loss suffered is on the Claimant. Md. Code Ann., Bus. Reg. § 8-407(e)(1) (Supp. 2009).

The Respondent was hired to remove an existing room with a screen porch and construct a new room. The work was in accordance with plans purchased by the Claimants. The Respondent was also to construct a new hearth and install a fireplace with a steel flue.

The Respondent did some of the work, although it was constantly delayed. Some of the work also failed inspection, although it eventually passed inspection.

The Claimants discovered one day that the Respondent was leaving for Florida. They learned this from a neighbor, who informed them that the Respondent was actually moving to Florida permanently. Although the Respondent informed the Claimant he would have someone finish the work, much of the job was not done.

Grading and debris removal was never done. The flooring was also not done. The molding, caulking and splash blocks were not done. There was also problems with the electrical work, which was not done by a qualified electrician. The fireplace and hearth were not finished. The Respondent also had a permit violation requiring the Claimants to pay a \$100.00 fine. Since the Claimants could not finish the work without the permit, I conclude that this cost does represent a legitimate expense incurred from the Respondent's failure to finish the job.

The evidence establishes that the Respondent abandoned the job and the Claimant is entitled to an award from the Fund.

**B. Measure of Awards from Guaranty Fund.**

(1) The Commission may not award from the Fund any amount for:

- (a) Consequential or punitive damages;
- (b) Personal injury;
- (c) Attorney's fees;
- (d) Court costs; or
- (e) Interest.

...

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

...

(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.

Effective October 1, 2008, Md. Code Ann., Bus. Reg. § 8-405(e)(1) (Supp. 2009) raised the limit of recovery from the Fund from \$15,000.00 to \$20,000.00. Section 2 in Chapter 272 of the bill that raised the recovery limit to \$20,000.00 stated the following, "[T]his Act shall be construed to apply to any claim pending before the Maryland Home Improvement Commission for which the Commission has not issued a final decision prior to the effective date of this Act." The Commission has not rendered a final decision in this case and October 1, 2008 has passed.

The Claimants submitted receipts for all the work which had to be done or replaced. While some of the items are not explicitly mentioned in the contract, they are all included in the blueprints which were incorporated by reference into the contract.

Applying paragraph (c) from the above section yields the following result:

Amount paid under the contract	\$32,100.00
Amount needed to finish	<u>\$20,061.96</u>
	\$52,161.96
Minus the contract price	<u>\$38,500.00</u>
	\$13,661.96

While this amount exceeds the amount requested on the claim form, there is no prejudice to the Respondent, who did not appear for the hearing. The final award represents the actual cost to finish the job and the Claimants are entitled to this amount, notwithstanding the claim form.

#### **CONCLUSIONS OF LAW**

For the reasons discussed above, I conclude that the Claimants have established by a preponderance of the evidence that the Respondent failed to complete a home improvement contract, and that the Claimants suffered an actual loss compensable by the Guaranty Fund. Md.

Code Ann., Bus. Reg. §§ 8-401, 8-405(e)(1) and 8-407(e)(1) (2004 & Supp. 2009).

**RECOMMENDED ORDER**

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

**ORDER** that the Claimant be awarded \$13,661.96 from the Maryland Home Improvement Guaranty Fund; and

**ORDER** that the Respondent be 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 Commission, Md. Code Ann., Bus. Reg. § 8-411 (2004); and

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

September 29, 2009  
Date Decision Mailed



James W. Power  
Administrative Law Judge

JWP  
#1071964



PROPOSED ORDER

*WHEREFORE, this 29th day of October 2009, 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.*

*J. Jean White*

*I. Jean White  
Panel B*

**MARYLAND HOME IMPROVEMENT COMMISSION**