

CLAIM OF KEVIN & SUSAN  
THORNTON AGAINST THE  
MARYLAND HOME IMPROVEMENT  
GUARANTY FUND,  
REGARDING THE ALLEGED ACTS  
AND OMISSIONS OF LEO T. BARTNIK,  
JR. T/A VIET VET, INC.,  
  
THE LICENSEE

\* BEFORE MARLEEN B. MILLER,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\*  
\* OAH NO.: DLR-IIIC-02-08-41238  
\* MHIC NO.: 06 ~~(75)~~ 2981  
\* *05*  
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\* \* \* \* \*

**RECOMMENDED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On June 13, 2008, Kevin and Susan Thornton (the Claimants) filed a claim (the Claim) with the Maryland Home Improvement Commission (the MHIC or the Commission) Guaranty Fund (the Fund) for reimbursement of the actual losses they allegedly suffered as a result of the acts and omissions of Leo T. Bartnik, Jr. t/a Viet Vet, Inc. (the Licensee). After investigation, the Commission issued an October 23, 2008 Hearing Order and forwarded the case to the Office of Administrative Hearings (OAH) on October 29, 2008.

On August 10, 2009, I conducted a hearing on the Claim at the Carroll County Health Department in Westminster, Maryland, pursuant to the Maryland Annotated Code's Business

Regulation Article<sup>1</sup> § 8-407(a) (incorporating the hearing provisions of Business Regulation Article § 8-312). Assistant Attorney General Kris King appeared on the Fund's behalf, and the Claimants and the Licensee represented themselves.

The contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009); the Commission's Hearing Regulations, COMAR 09.01.03, 09.08.02.01 and 09.08.03; and OAH's Rules of Procedure, COMAR 28.02.01, govern procedure in this case.

### **ISSUES**

Did the Claimants sustain an actual loss as a result of the Licensee's acts or omissions and, if so, what amount are the Claimants entitled to recover from the Fund?

### **SUMMARY OF THE EVIDENCE<sup>2</sup>**

#### **Exhibits**

The Claimants submitted the following documents, which I admitted into evidence as the exhibits numbered below:

1. The Claimants' plans from the internet, printed 6/27/05
2. Proposal/Contract from the Licensee, signed as accepted by the Claimants on 6/22/05
3. Draw schedule and add-on payments
4. Carroll County citation of disapproval for permit #05-2089 form, dated 7/13/05
5. The Claimants' explanation of their Claim, dated 6/13/08

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<sup>1</sup> Throughout this Recommended Decision, the 2004 Replacement Volume and the 2009 Supplement to the Maryland Annotated Code's Business Regulation Article will be collectively referred to as the Business Regulation Article.

<sup>2</sup> On August 19, 2009, I received additional documentation from the Licensee, with no indication that copies had been forwarded to the Claimants or the Fund, as required under COMAR 28.02.01.09E. Because the Licensee violated this regulation and neither requested nor received my permission at the hearing to submit additional documentation after I closed the record on August 10, 2009, I did not admit any of those documents into evidence nor did I consider them in making my decision in this case.

6. Photos A thru I of the Licensee's work
7. Copies of checks paid by the Claimants to CRS Construction
8. Letter from Carroll County Government, Bureau of Permits and Inspections, dated 2/9/06
9. Handwritten agreement, signed by the Licensee and Claimants and dated 8/16/05
10. CRS Construction Invoice ##1034 & 1041, dated 3/17/06 & 3/31/06

The Licensee submitted the following documents, which I admitted into evidence as the exhibits numbered below:

1. The Claimants' plans from the internet, with handwritten notes
2. Hand drawing of side, front, and rear of garage
3. The Licensee's Job Invoice, undated
4. Handwritten note to the Licensee's workers
5. Letter to the County Permit Office from the Licensee, dated 1/29/06
6. The Licensee's Job Work Order, dated 11/15/05
7. Diagram with measurements

The Fund submitted the following documents, which I admitted into evidence as the exhibits numbered below:

1. Notice of Hearing, dated 3/23/09, Hearing Order, date 10/23/08, and OAH Memorandum regarding unclaimed certified mail, dated 4/14/09
2. The Licensee's Licensing History
3. Home Improvement Claim Form, dated 6/13/08
4. Copy of letter from the Commission to the Licensee, dated 6/23/08

### Testimony

The Claimants and the Licensee testified on their own behalves. The Licensee presented the testimony of two employees, Dennis Bartnik and Brandon Clayton. The Fund presented no witnesses.

### **FINDINGS OF FACT**

I find the following facts by a preponderance of the evidence:

1. At all relevant times, the Licensee was a licensed home improvement contractor/salesman, License # 01-6205.
2. Having seen other work that the Licensee had performed, the Claimants arranged to meet with him to discuss the construction of a two-car garage (the Work) adjacent to the Claimants' property, located at 2671 Burk Drive in Finksburg, Maryland (the Property).
3. At the Claimants' meeting with the Licensee, they showed him plans that they had found on the internet, which they proposed to purchase for the Work. The Licensee assured the Claimants that purchasing the plans would not be necessary, stating that he had similar plans he could use.
4. On June 22, 2005, the Claimants entered into a contract (the Contract) for the Work, at a total Contract price of \$42,800.00.
5. The Licensee began the Work sometime between July 2 and 13, 2005, and assured the Claimants that it would be completed within six to eight weeks.
6. On August 16, 2005, the Claimants and the Licensee entered into a handwritten addendum to the Contract, confirming a verbal agreement for the Licensee to install a dormer window, allowing the Claimants to employ an outside contractor to install the garage doors, and increasing the Contract price to \$51,800.00.

7. The Licensee performed the Work only sporadically.

8. In or around December of 2005, the Claimants left a complimentary note with brownies for the Licensee's employees, hoping to encourage them to return more regularly and to complete the Work.

9. Because the Licensee left the Work undone for an extensive period, the Carroll County permit expired due to inactivity.

10. The Licensee reestablished the permit for the Work, but it was not until eight months after execution of the Contract that the Property was ready for the County's framing inspection.

11. In January of 2006, the County conducted a framing inspection, which revealed that the Licensee needed to make the following corrections/additions to obtain County approval:

- The Licensee needed to extend plywood two feet above the splice near the six inch knee wall (from the bottom of the header across).
- The Licensee needed to install a similar extension at the back exterior, using a four inch plywood sheet for continuous extension.
- The Licensee needed to add studs under the 2x4s next to stairs, directly under the joists.
- The Licensee was required to install solid blocking under the header for the stairs.
- The Licensee was required to install 2 sheetrock (fireproof) walls in the breezeway.
- The Licensee was required to install a cut in the studs under the window on the second floor to install wiring.
- The header on the second floor above the large window was noted as "questionable," and the Licensee was required to install the header above the window and reengineer the dormer.

- The Licensee had to move the front window to install the header. The window was approximately four feet off the floor and had to be lowered to install the header to support the ridge pole.
- The Licensee had to replace the stair boards, which had become dilapidated, cracked and unsafe due to inactivity and exposure to weather.
- The Licensee needed to install rim joists on the back of the floor joists exposed by the stairs.
- The Licensee was required to install wall plates on the second floor corner splices where the walls came together.

12. Additionally, the inspector revealed to the Claimants that the Licensee had failed to submit to the County any plans for the Work.

13. The Licensee asked for additional money from the Claimants, not due under the Contract; however because the Claimants were unhappy with the Work, they were unwilling to pay anything more to the Licensee until deficiencies were repaired.

14. The Licensee refused to make the corrections/additions required by the County inspector, and, on January 29, 2006, requested that the County take his name off the permit.

15. On February 7, 2006, the County issued a stop work order.

16. When the Claimants advised the Licensee that they would hire someone else if he did not make the required corrections/additions, he continued to refuse.

17. The Claimants paid the Licensee a total of \$48,800.00 for the Work.

18. The Claimants hired a replacement contractor, CRS, to repair/replace the Licensee's Work.

19. The Claimants received a use and occupancy permit from the County after CRS completed the Work satisfactorily, at a cost of \$10,779.00.<sup>3</sup>

20. On June 13, 2008, the Claimants filed their Claim against the Fund.

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<sup>3</sup> The Claimants paid the replacement contractor, CRS, a total of \$11,229.00, \$520.00 of which was for work not included in the Claimants Contract with the Licensee.

21. The Licensee filed a civil action against the Claimants to recover the balance due under the Contract and addendum, but the case was dismissed because the Licensee failed to pursue it.

### **DISCUSSION**

Pursuant to Business Regulation Article §§ 8-405(a) and 8-407(e)(1), to recover compensation from the Fund, the Claimants must prove, by a preponderance of the evidence, that they incurred an actual loss, which resulted from a licensed contractor's acts or omissions. Business Regulation Article § 8-401 defines an "actual loss" as "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement."

The Claimants testified and provided documentation establishing the Contract terms, the results of the Licensee's unworkmanlike construction, and the specific amounts that the Claimants paid to the Licensee and the replacement contractor. Moreover, they provided information regarding the deficiencies noted by the County and set forth in my factual findings.

The Licensee and his employees unsuccessfully attempted to convince me that some changes requested by the Claimants and their supposedly unreasonable refusal to respond to his monetary demands somehow excuse his failure to correct deficiencies and to complete the Work in a timely fashion. In particular, the Licensee referred to the Claimants' dissatisfaction with his placement of an eyebrow window in a position that blocked the view from that window. I do not consider the Claimants concerns in that regard unreasonable, and I am unconvinced that the Licensee was entitled to the additional money he requested from the Claimants before he would repair or complete the Work.

The Licensee would have me believe that the Claimants' complimentary note proves that

there were no problems with the Work. As Mrs. Thornton credibly testified, she left the note and brownies for the Licensee's employees, hoping she could encourage them to come back, more regularly, and finish the Work. She made perfect sense when she stated that "you get more flies with honey than with vinegar."<sup>4</sup>

I agree with the Fund's representative that the Claimants have proved their entitlement to an award from the Fund. COMAR 09.08.03.03B(3)(c), provides, in pertinent part, as follows:

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

.....  
(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.

Using the above formula, I calculate the Claimants' actual loss as follows:

\$ 48,800.00	Amount the Claimants paid the Licensee
+ 10,779.00	Amount required to repair/replace the Licensee's Work
\$ 59,579.00	Total amounts paid by the Claimants
<u>-51,800.00</u>	Contract price
\$ 7,779.00	The Claimant's actual loss

**CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimants have proven, by a preponderance of the evidence, that they incurred an actual

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<sup>4</sup> The Licensee also called the Claimants "ridiculous" for failing to understand, without being told, that without drywall and electrical, they could not obtain a use and occupancy permit. The Licensee stated, "I don't tell [them] to take a bath once a week either." The Licensee's sarcasm was neither appreciated nor relevant.



loss entitling them to an award of \$7,779.00 from the Fund. Business Regulation Article §§ 8-401, 405(a), 407(e)(1); COMAR 09.08.03.03B(3)(c).


**RECOMMENDED ORDER**

Upon due consideration, I **RECOMMEND** that the **MHIC ORDER** as follows:

1. The Claimants, Kevin and Susan Thornton, be awarded \$7,779.00 from the Maryland Home Improvement Guaranty Fund, for the actual losses they sustained as a result of the Licensee's unworkmanlike home improvement work;
3. The Licensee, Leo T. Bartnik, Jr./a Viet Vet, Inc., be ineligible for an MHIC license, under Business Regulation Article § 8-411(a), until the Fund is reimbursed for the full amount of the award paid pursuant to its Order, plus annual interest of at least ten percent (10%); and
4. The records and publications of the MHIC reflect this decision.

November 9, 2009  
Date Decision Mailed

MBM/rhs  
# 109320

  
Marleen B. Miller  
Administrative Law Judge

CLAIM OF KEVIN & SUSAN	* BEFORE MARLEEN B. MILLER,
THORNTON AGAINST THE	* AN ADMINISTRATIVE LAW JUDGE
MARYLAND HOME IMPROVEMENT	* OF THE MARYLAND OFFICE
GUARANTY FUND,	* OF ADMINISTRATIVE HEARINGS
REGARDING THE ALLEGED ACTS	*
AND OMISSIONS OF LEO T. BARTNIK,	* OAH NO.: DLR-HIC-02-08-41238
JR. T/A VIET VET, INC.,	* MHIC NO.: 06 (75) 2981
	*
THE LICENSEE	*

\* \* \* \* \*

**FILE EXHIBIT LIST**

The Claimant's Exhibits

1. The Claimants' plans from the internet, printed 6/27/05
2. Proposal/Contract from the Licensee, signed as accepted by the Claimants on 6/22/05
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5. Letter to the County Permit Office from the Licensee, dated 1/29/06
6. The Licensee's Job Work Order, dated 11/15/05
7. Diagram with measurements

The Fund's Exhibits

1. March 23, 2009 Notice of Hearing, October 23, 2008 Hearing Order, and OAH Memorandum regarding unclaimed certified mail, dated 4/14/09
2. The Licensee's Licensing History
3. Home Improvement Claim Form, dated 6/13/08
4. Copy of letter from the Commission to the Licensee, dated 6/23/08

PROPOSED ORDER

*WHEREFORE, this 1st day of February 2010, 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**

<p><b>The Maryland Home          Improvement Commission</b></p>	<p>* * * * *</p>	<p><b>BEFORE THE          MARYLAND HOME IMPROVEMENT          COMMISSION</b></p>
<p>v. <b>Leo Theodore Bartnik, Jr.          t/a Viet Vet, Inc.</b>          (Contractor)</p>	<p>* *</p>	<p><b>MHIC No.: 06 (05) 2981</b></p>
<p>and the Claim of  <b>Kevin &amp; Susan Thornton</b>          (Claimant)</p>	<p>*</p>	

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**FINAL ORDER**

**WHEREFORE, this June 29, 2010, Panel B of the Maryland Home Improvement Commission ORDERS that:**

- 1. The Findings of Fact set forth in the Proposed Order dated February 1, 2010 are AFFIRMED.**
- 2. The Conclusions of Law set forth in the Proposed Order dated February 1, 2010 are AFFIRMED.**
- 3. The Proposed Order dated February 1, 2010 is AFFIRMED.**
- 4. This Final Order shall become effective thirty (30) days from this date. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.**

*Joseph Tunney*  
 Joseph Tunney, Chairperson  
 PANEL B

**MARYLAND HOME IMPROVEMENT COMMISSION**