

**The Maryland Home
Improvement Commission**

* **BEFORE THE**
* **MARYLAND HOME IMPROVEMENT**
* **COMMISSION**

v. Larry Adkins
t/a Kitchen's By Larry
(Contractor)
and the Claim of
Tobias & Tonya Grant
(Claimant)

* **MHIC No.: 07 (90) 1409**

*

*

FINAL ORDER

WHEREFORE, this December 2, 2009, Panel B of the Maryland Home

Improvement Commission ORDERS that:

- 1. The Findings of Fact set forth in the Proposed Order dated July 21, 2009 are AFFIRMED.**
- 2. The Conclusions of Law set forth in the Proposed Order dated July 21, 2009 are AFFIRMED.**
- 3. The Proposed Order dated July 21, 2009 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.**

James Chiracol
James Chiracol, Chairperson
PANEL B

MARYLAND HOME IMPROVEMENT COMMISSION



IN THE MATTER OF THE CLAIM OF	* BEFORE JEROME WOODS, II.
TONYA & TOBIAS GRANT	* AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND HOME	* OF THE MARYLAND OFFICE
IMPROVEMENT GUARANTY FUND	* OF ADMINISTRATIVE HEARINGS
FOR THE ALLEGED ACTS OR	* OAH NO.: DLR-HIC-02-08-38072
OMISSIONS OF LARRY ADKINS, <i>u/a</i>	* MHIC NO.: 07 (90) 1409
KITCHEN'S BY LARRY	*

* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On November 29, 2007 Tonya and Tobias Grant (Claimants) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$8,250.00 for actual losses allegedly suffered as a result of home improvement work performed by Larry Adkins, *u/a* Kitchen's By Larry (Respondent).

I held a hearing on April 7, 2009, at the LaPlata Public Library, 2 Garrett Avenue, LaPlata, Maryland 20646. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2)(i) (2004 & Supp. 2008). Chris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimants and Respondent represented themselves.

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 (2004 & Supp. 2008); Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02.01, and COMAR 28.02.01.

ISSUE

Did the Claimants sustain an actual loss compensable by the Fund as a result of the acts or omissions of the Respondent?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimants' behalf:

- Cl. 1 Contract, dated March 26, 2005
- Cl. 2 Claimant's cancelled check #1606, dated March 26, 2005, for \$6,250.00
- Cl. 3 Contract termination proposal, undated
- Cl. 4 Invoice, dated September 3, 2005
- Cl. 5 Claimant's cancelled check #1623, dated September 3, 2005, for \$9,000.00.
- Cl. 6 Jameson Construction invoice, dated November 22, 2005
- Cl. 7 Home Depot receipt, dated November 29, 2005

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

- Fund 1 Notice of Hearing, dated December 11, 2008
- Fund 2 Hearing Order, dated September 4, 2008
- Fund 3 Registration for Respondent, dated April 1, 2009
- Fund 4 Home Improvement Claim Form, dated November 28, 2007
- Fund 5 Letter from the Department to the Claimants, dated December 21, 2008

The Respondent did not offer any exhibits for admission into evidence.

Testimony

Tobias Grant testified on behalf of the Claimants. The Fund presented no witnesses and the Respondent did not testify or present witnesses.

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 01-87043.
2. The Respondent's home improvement license expires December 31, 2009.
3. On March 26, 2005, the Claimant and the Respondent entered into a contract to renovate the unfinished basement at the Claimants' residence in Waldorf, Maryland.
4. The original agreed-upon contract price was \$17,500.00. The contract did not indicate that the Respondent was to pay for permits.
5. The Respondent was to perform the following:
 - a. install bath fixtures (toilet, tub, vanity, mirror, bath fan, light);
 - b. install recessed lighting;
 - c. install ceramic tile for tub and floor;
 - d. install "L" shaped drinking bar, five feet by four feet;
 - e. install additional sink, countertop, three cabinets and faucet;
 - f. install commercial grade Berber carpet;
 - g. install doors with locks;
 - h. install electrical wiring including Heating, Ventilation, Air Conditioning (HVAC); and

- i. paint baseboards and trim.

Although not specifically stated in the contract, the Respondent was to install framing and dry wall for the basement.

6. The parties agreed that the payment schedule would be divided into three payments. First payment - \$6,250.00, second payment - \$6,250.00 and third payment - \$4,500.00. There was no schedule for when the additional \$500.00 was to be paid.

7. On March 26, 2005, the Claimants paid the Respondent \$6,250.00.

8. The Respondent began working on the project on or about March 26, 2005.

9. The Respondent began the work by installing framing for the basement area and installing the HVAC system.

10. Subsequent to the installation of HVAC system and framing, the Respondent informed the Claimants that he needed someone from the state of Nebraska to assist him with installation of the electrical wiring.

11. The Claimants informed the Respondent that they only wanted licensed Maryland contractors performing work on the basement project regarding installation of the HVAC system, plumbing and electrical wiring.

12. The Respondent attempted to find a licensed Maryland contractor to perform the electrical work but was unsuccessful.

13. The Claimants recommended a Maryland contractor that they previously worked with on an unrelated project. That person contracted with the Respondent to perform the work on the basement project.

14. Subsequent to the installation of the electrical wiring, the Respondent was

dissatisfied that the Claimants only wanted licensed Maryland contractors performing work on the basement project regarding the HVAC system, plumbing and electrical wiring. As a result, he sought to be released from his obligation to fulfill the terms of the contract.

15. In response to the Respondent's request, the Claimants drafted a proposal for Contract Termination. In that proposal, the Claimants indicated that the Respondent installed the HVAC system, duct work, electrical wiring and framing. The following defects existed as a result of the Respondent's work:

- a. nails "nailed" partially through wood;
- b. partial wall by stairs not steady;
- c. HVAC and windows not framed;
- d. bathroom door improper size; and
- e. electrical wiring not fully completed.

In addition to the defects, the Claimants observed that trash, debris and equipment remained on the work site

16. The Claimants requested that the Respondent be responsible for all costs incurred for the repair of completed work that may not meet regulatory code requirements. They also requested that the Respondent refund \$1,500.00 from the original \$6,250.00 installment and refund any costs incurred for any expenses to correct work performed by the Respondent or allow the Respondent to make repairs to any work that did not meet code standards at the Respondent's expense. If the Respondent agreed to these terms, the original contract would be terminated.

17. The Respondent did not agree to the terms, did not want to compromise and

wanted to be released from the original contract. He abandoned the unfinished job prior to June 2005.

18. In June 2005, the Claimants hired A & A Remodeling to repair the defective work performed by the Respondent and to finish the project according to the Claimant's contract with the Respondent. This did not include construction of the bar or installation of the Berber carpet. The total price of the new contract was \$10,500.00. The Claimant paid A & A Remodeling \$10,500.00.

19. A & A Remodeling performed uncompleted work that the Respondent did not perform and corrected the Respondent's work. Specifically, they corrected installed framing to comply with building codes; hung, taped, finished drywall; installed bathroom fixtures; and painted.

20. On November 22, 2005, the Claimants contracted with Jameson Construction (Jameson) to construct the bar. The amount paid to complete the bar that should have been constructed by the Respondent, was \$830.00.

21. On November 29, 2005, the Claimants contracted with Home Depot to install the carpet, for \$1,298.28.

22. The Claimant's actual loss is \$1,378.28.

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. 2008). *See also* COMAR 09.08.03.03B(2). 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 (2004). For the following reasons, I find that the Claimants have proven eligibility for compensation.

In this case, the Respondent was a licensed home improvement contractor at the time he and the Claimants entered into the contract. Additionally, the Respondent performed unworkmanlike, inadequate and incomplete home improvement services. The Respondent agreed to renovate the basement at the Claimant's residence. He failed to do the work as he agreed, and performed inadequate work with regard to the work he completed. Mr. Grant testified credibly and provided detailed documents to support the claim. The Respondent appeared for the hearing, did not testify and did not present any witnesses on his behalf. He simply argued that he performed \$6,250.00 worth of work in accordance with the contract. I do not agree as his work had to be corrected in order for the basement to meet code requirements, and he abandoned the job. Mr. Grant's testimony and documents overwhelmingly proved the Claimants' case.

Having proven eligibility for compensation, I now turn to the amount of the award. A claimant may not be compensated for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). Unless a claim requires a unique measurement, actual loss is measured by one of the formulas set forth in COMAR 09.08.03.03B(3). In this case, I used the option in COMAR 09.08.03.03B(3)(c), which provides 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.

The Claimants proved that the Respondent did some work on the project, albeit of poor quality, and then abandoned the job, leaving them to pay other contractors to correct the deficiencies and finish the work. I calculate the actual loss as follows:

Amount paid to Respondent	\$6,250.00
Amount paid to A & A remodeling	\$10,500.00
Amount paid to Home Depot	\$1,298.28
Amount paid to Jameson	<u>\$830.00</u>
Total paid by Claimant	\$18,878.28
Less Contract price	<u>\$17,500.00</u>
Actual loss	\$1,378.28

I recommend that the Claimants recover the \$1,378.28 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(c)(1) (2004). The Fund agrees that this amount should be paid to the Claimants.

I do not agree with the Claimants that they should be reimbursed for amounts paid for permits. The original contract did not indicate that the Respondent was responsible for paying for permits.

CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual loss of \$1,378.28 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(c)(1) (2004).

RECOMMENDED ORDER

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


ORDER that the Claimants be awarded \$1,378.28 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 as set by the Commission, Md. Code Ann., Bus. Reg. § 8-411 (2004 & Supp. 2008); and

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

June 29, 2009
Date Decision Mailed

JW/rbs
#106355



Jerome Woods, II
Administrative Law Judge

IN THE MATTER OF THE CLAIM OF	* BEFORE JEROME WOODS, II,
TONYA & TOBIAS GRANT	* AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND HOME	* OF THE MARYLAND OFFICE
IMPROVEMENT GUARANTY FUND	* OF ADMINISTRATIVE HEARINGS
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The Respondent **did not** offer any exhibits for admission into evidence.

PROPOSED ORDER

WHEREFORE, this 21st day of July 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 und/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.

Andrew Snyder

Andrew Snyder

Panel B

MARYLAND HOME IMPROVEMENT COMMISSION