

IN THE MATTER OF THE CLAIM OF	* BEFORE LATONYA B. DARGAN,
BLANCA RAMOS,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH Case No.: DLR-HIC-02-10-31472
FOR THE ALLEGED ACTS OR	* MHIC Case No.: 08 (90) 1087
OMMISSIONS HARRY GOLDSTEIN,	*
t/a DAY MAR CONTRACTORS	*

* * * * *

RECOMMENDED DECISION

STATEMENT OF THE CASE
ISSUE
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RECOMMENDED ORDER

STATEMENT OF THE CASE

On October 1, 2008, Blanca Ramos (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$1,450.00 for actual losses allegedly suffered as a result of a home improvement contract with Harry Goldstein (Respondent), t/a Day Mar Contractors. On August 25, 2010, the MHIC ordered a hearing to allow the Claimant to prove her claim.

On February 24, 2011,¹ I conducted a hearing at the Office of Administrative

¹ This case was originally scheduled for hearing on January 20, 2011. The hearing convened as scheduled but it was clear that the Claimant required the services of a Spanish interpreter. An attempt to have interpreting services provided telephonically was unsuccessful. I continued the matter to February 24, 2011 and secured the services of an in-person Spanish interpreter.

Hearings (OAH) in Wheaton, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010). The Claimant represented herself. Hope Sachs, Assistant Attorney General, represented the Fund. No one appeared on behalf of the Respondent, who has been deceased since November 10, 2007.²

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010), Code of Maryland Regulations (COMAR) 09.01.03.01–09.01.03.10; 09.08.02.01-09.08.01.02; and 28.02.01.01-28.02.01.27.

ISSUE

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

SUMMARY OF THE EVIDENCE

Exhibits

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

Claimant Ex. 1: June 2, 2007 contract between the Claimant and Respondent

² On January 3, 2011, David Goldstein, who identified himself as the Respondent's son, wrote a letter to the OAH advising that the Respondent was deceased, that Mr. Goldstein would be "presenting evidence in [the Respondent's] behalf" and requesting a postponement of the original January 20, 2011 hearing date. Mr. Goldstein did not provide any documentation demonstrating that he had been appointed either the executor or personal representative of the Respondent's estate, nor did he identify an attorney, licensed to practice in Maryland, appointed to represent the Respondent's estate. Additionally, Mr. Goldstein did not provide any documentation supporting his request for postponement, as required under COMAR 28.02.01.16B. At my direction, the docket clerk advised Mr. Goldstein that he could not represent the Respondent and that any attorney representing the Respondent would only be permitted to do so on behalf of an estate opened on the Respondent's behalf. I further denied Mr. Goldstein's request for postponement. Mr. Goldstein did not contact the OAH again, nor did he appear for the February 24, 2011 hearing. (*See also*, Fund Ex. 3, p. 3.)

Claimant Ex. 2: Cancelled checks to Respondent, dated June 2, 2007 and July 23, 2007

Claimant Ex. 3: October 23, 2008 contract between the Claimant and N.B. Sandoval General Construction

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1: January 21, 2011 Notice of Hearing

Fund Ex. 2: August 25, 2010 Hearing Order

Fund Ex. 3: The Respondent's MHIC licensing and registration information

Fund Ex. 4: MHIC's February 4, 2009 letter to Respondent, with attachments including the January 21, 2009 Claim Form, November 10, 2008 letter to the Respondent and September 2, 2008 Claim Form

No exhibits were submitted on behalf of the Respondent.

Testimony

The Claimant testified on her own behalf and did not present any other witnesses.

The Fund presented argument. No one testified on behalf of the Respondent.

FINDINGS OF FACT

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

1. At all times relevant to this matter, the Respondent was a licensed home improvement contractor under MHIC license number 3254173.
2. On or around June 2, 2007, the Claimant entered into a contract with the Respondent for him to replace all the windows at her residence after one of the windows got broken.
3. The contract price was \$5,600.00. The Claimant paid the Respondent \$2,800.00 at the time she signed the contract on June 2, 2007. The Claimant

made an additional payment in the amount of \$2,300.00 on July 23, 2007, for a total payment to the Respondent under the contract of \$5,100.00.

4. The estimated time of completion of the work under the contract was four weeks, with a start date of June 8, 2007 and an end date of July 3, 2007.
5. The Claimant provided the Respondent with the measurements and specifications for all of the windows to be replaced. The measurements for the replacement of the broken window called for a larger frame and a larger pane of glass than the window's original size.
6. When the Respondent replaced the broken window, he used a frame and glass pane that matched the measurements of the window's original size rather than the larger specifications/measurements of the replacement window the Claimant wanted.
7. When the Claimant advised the Respondent that he installed a replacement window of the wrong size, he declined to rectify the mistake unless the Claimant paid him the remaining \$500.00 balance on the contract. The Claimant advised the Respondent that she was not going to pay the balance due because the Respondent installed a window of incorrect size.
8. The Respondent continued to refuse to replace the smaller window unless the Claimant paid the outstanding balance.
9. The Claimant eventually entered into a contract with N.B. Sandoval General Construction to replace the remaining window on October 23, 2008. The total contract price was \$1,950.00.

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) (2010). *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 (2010). For the following reasons, I find that the Claimant has proven eligibility for compensation.

First, the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. Second, the Claimant paid the Respondent \$5,100.00 under a home improvement contract. Third, the uncontroverted evidence presented by the Claimant demonstrates that the Respondent performed an inadequate home improvement. The Claimant provided specific instructions to the Respondent, including measurements, for the windows to be installed. Despite the Claimant’s instructions, the Respondent installed the wrong-sized window. When the Claimant advised the Respondent of his error, he refused to correct it unless she paid the remaining \$500.00 balance. The Respondent’s position in this regard was unreasonable. When anyone is hired to perform a task under a contract, he is expected to conform the work to the contract specifications. The Respondent failed to conform to the contract in this case when he installed a window of the wrong size. It was inappropriate for him to decline to correct the mistake unless the Claimant paid him first. As a result of the Respondent’s continued refusal to perform in accordance with the contract, the Claimant had to secure the services of a second contractor to do the work.

Having found that the Claimant is eligible for compensation, I now turn to the amount of the award, if any. 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 offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). One of those formulas, as follows, offers an appropriate measurement 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).

Applying the formula set out above, I find that the Claimant sustained an actual loss as follows:

Amount Paid to the Respondent	\$5,100.00
Amount Paid to Correct and Complete Work	<u>+\$1,950.00</u>
	\$7,050.00
Amount of Original Contract	<u>-\$5,600.00</u>
Amount of Actual Loss	\$1,450.00

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Claimant has suffered an actual loss of \$1,450.00 and is entitled to be compensated for the actual loss suffered by her as a result of the acts or omissions of the Respondent. Md. Code Ann., Bus. Reg. §§ 8-401 (2010); COMAR 09.08.03.03B(3)(c)

RECOMMENDED ORDER


I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Claimant be awarded \$1,450.00 from the Maryland Home Improvement Guaranty Fund:

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(a) (2010); and,

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

April 7, 2011
Date Decision Mailed



Latonya B. Dargan
Administrative Law Judge

#121768

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FILE EXHIBIT LIST

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No exhibits were submitted on behalf of the Respondent.

PROPOSED ORDER

WHEREFORE, this 3rd day of June 2011, 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