

IN THE MATTER OF THE CLAIM	* BEFORE MARY SHOCK,
OF STEPHEN D. LANGHOFF,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH No: DLR-HIC-02-10-43932
FOR THE ALLEGED ACTS OR	* MHIC No: 08(05) 1164
OMISSIONS OF MICHAEL SAVOSIK	*
T/A CARPENTERS INK, INC.	*
RESPONDENT	*

* * * * *

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 October 7, 2009, Stephen D. Langhoff (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$28,467.64 for actual losses allegedly suffered as a result of a home improvement contract with Michael Savosik, trading as Carpenters Ink, Inc. (Respondent).

On May 31, 2011, I held a hearing at the Office of Administrative Hearings in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010). The Claimant represented

himself. The Respondent represented himself. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

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 Office of Administrative Hearings 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; 09.08.02.01; and 28.02.01.01.

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:

- CL #1 Contract, February 14, 2007
- CL #2 Letter from Claimant to Respondent, October 15, 2007
- CL #3 Letter from Claimant to Respondent, October 18, 2007
- CL #4 Letter from Claimant to Respondent, October 19, 2007
- CL #5 Letter from Respondent to Claimant, October 25, 2007
- CL# 6 Letter from Claimant to Respondent, October 26, 2007
- CL #7 Letter from Claimant to Respondent, November 20, 2007
- CL #8 Twenty-one photographs of Claimant's residence, May 24, 2011
- CL #9 J. Frank Dooley, Co., Inc., Invoice, April 30, 2008, and letter dated March 27, 2008
- CL#10 Signature Remodeling, Invoices, January 7, 2008, January 16, 2008, and January 19, 2008
- CL #11 The Home Depot, Invoices/Receipts, September 28, 2007 and November 7, 2007
- CL# 12 Signature Remodeling, Invoice, December 17, 2007
- CL# 13 Signature Remodeling, Revised Proposal, February 23, 2008
- CL #14 Mirror Crafters, Inc., Invoice, November 28, 2007
- CL #15 Micah Cane, Invoice, February 8, 2009
- CL# 16 Charles Kidwell Furniture Repair, undated
- CL #17 BGE, Extension/Relocation Contract, June 21, 2007

- CL #18 Respondent Invoice, undated
- CL #19 Claimant's list of extras, undated
- CL #20 Photocopies of checks from Claimant to Respondent, February 22, 2007, March 8, 2007, May 2, 2007, May 5, 2007, May 30, 2007, June 14, 2007, July 2, 2007, July 26, 2007, August 24, 2007, and September 25, 2007
- CL #21 Claimant's list of costs, undated
- CL #22 ProSource of Baltimore, Invoice, July 9, 2007
- CL #23 ProSource of Baltimore, Invoice, May 11, 2007 and May 31, 2007
- CL #24 ProSource of Baltimore, Invoice, May 30, 2007
- CL #25 Letter from Greentree Landscaping, Inc., to Claimant, December 18, 2007
- CL #26 Greentree Landscaping, Inc., Invoice, January 14, 2008
- CL #27 Greentree Landscaping, Inc., Invoice, December 3, 2007 and June 25, 2008
- CL #28 All About Waterproofing, Inc., Contract, October 1, 2008
- CL #29 State Farm Insurance, Claim Estimate, May 4, 2007

I admitted the following exhibit on the Respondent's behalf:

- RSP #1 Letter from Respondent to MHIC, November 16, 2009

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

- FUND #1 Notice of Hearing, March 1, 2011
- FUND #2 MHIC, Respondent's Licensing History, May 18, 2011
- FUND #3 Hearing Order, December 2, 2010
- FUND #4 Home Improvement Claim Form, October 7, 2009

Testimony

The Claimant testified and presented the testimony of the following:

1. Allen Dekozlowski, Greentree Landscaping, Inc.
2. Herbert Dripps, Glen Arm Building Company
3. Anne Langhoff

The Respondent testified on his own behalf.

The Fund did not call any 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 #3648482. (FUND #2).

2. On February 22, 2007, the Claimant and the Respondent entered into a contract. Under the contract, the Respondent was to construct a one floor addition to the rear of the Claimant's house, performing both exterior and interior work including excavation, concrete, cement, windows, siding, trim, drywall, painting, electrical installation, oak flooring, carpeting, installation of bath fixtures, cabinetry, countertops, tiles, faucets, and lighting. The contract stated that work would begin on March 1, 2007 and would be completed by July 1, 2007. (CL #1).

3. The original agreed upon contract price was \$175,200.00. (CL #1)

4. The Claimant paid the Respondent as follows (CL #20):

February 22, 2007	\$ 10,000.00
March 8, 2007	20,000.00
March 30, 2007	30,000.00
May 2, 2007	15,000.00
May 5, 2007	12,500.00
June 14, 2007	15,000.00
July 2, 2007	15,000.00
July 26, 2007	30,000.00
August 24, 2007	15,000.00
September 25, 2007	<u>6,211.65</u>
Total	\$168,711.65

5. The Respondent began excavating the foundation for the addition on or about April 15, 2007. While excavating, the Respondent broke a water line flooding the basement of the existing home. The Claimant's homeowner's insurance carrier paid \$12,890.10 for the loss. (CL #29).

The Respondent performed a portion of the work required to repair the basement and the Claimant performed some of the work. (CL #29). The Respondent took the check from the insurance carrier and agreed to pay the Claimant for the costs he had paid to repair the basement. He failed to pay the Claimant.

6. The Respondent completed most of the work on the addition by July 1, 2007, but the job was not complete.

7. In September 2007, the Respondent gave the Claimant an invoice for a list of extra work he had completed totaling \$13,781.65. (CL #18). The Respondent and the Claimant did not have any written change orders. The Claimant rejected four items, requested verification for other items, and paid the Respondent \$6,211.65, which was \$11,211.65 less \$5,000.00 for one-half the insurance money the Respondent owed him. (CL #20).

8. Beginning in September 2007, the Respondent's workers failed to appear consistently to complete the work on the addition. On October 5, 2007, the Respondent had the workers' spot-a-pot removed.

9. The Claimant and Respondent discussed the work by telephone. On October 15, 2007 and October 18, 2007, the Claimant sent the Respondent a list of the work that still needed to be completed. (CL #2 and #3).

10. On October 19, 2007 and October 26, 2007, the Claimant sent the Respondent letters about the work. By letters dated October 25, 2007 and November 20, 2007, the Respondent replied. (CL #4 and #5).

11. In October 2007, the Respondent had not completed the following work (CL #2 and #3):

- a. Exterior
 - porch screening
 - porch door
 - garden fabric under porch
 - winter covering for screens
 - door to and from living room
 - steps down from the living room with railing
 - clean up
 - seeding or sod where items stored or trucks driven
 - grading
- b. Interior - Bathroom
 - bathtub molding

- knobs on linen closet
- install vanity and shelves
- install towel bar and grab bar
- hang mirror
- c. Interior – Library
 - grill under steps replaced and painted
 - two outlet covers
 - screens for three windows
 - install doors above wet bar
 - reinstall motion detector
 - replace light switch
- d. Interior – Hallway
 - install wainscoting
 - paint nail holes on chair rail
 - install lock on door from library to hallway
 - install mirrors on doors
 - fill holes in hallway floor
- e. Interior – Bedroom
 - repair squeaky floor
 - install door stops
 - repair window

12. After construction, the basement in the addition began leaking. The Claimant hired Greentree Landscaping, Inc., to inspect and evaluate the leaking. Rather than break up the concrete in the new addition, the Claimant decided to extend the drains and gutters and grade the soil away from the addition. (CL #25).

13. When the drains, gutters and grading failed correct the problem, the Claimant hired All About Waterproofing, Inc., to break up the concrete in the basement, inspect the pipe and install a valve on the existing pipe. That measure corrected the leaking in the addition.

14. The Claimant paid the follow amounts to complete the contract:

- Greentree, remove soil and grade lawn (CL #27)	\$ 5,501.00
- Greentree, downspouts, tree removal (CL #26)	3,505.00
- Greentree, drains (CL #26)	2,200.00
- Greentree, restore lawn	3,540.00
- All About Waterproofing, install basement pipe (CL #28)	1,800.00
- Signature Remodeling, masonry for sliding door (CL #10)	968.56
- Signature Remodeling, install door (CL #10)	1,597.34
- Signature Remodeling, prepare for door installation (CL #10)	1,341.09

- Signature Remodeling, install floor registers (CL #12)	250.00
- Signature Remodeling, install molding on bathtub (CL #13)	890.00
- Home Depot, door (CL #11)	1,862.65
- J. Frank Dooley, Inc, screened porch (CL #9)	5,685.00
- ProSource, hardwood flooring (CL #22)	702.24
- Micah Cane, install television cabinet (CL #15)	<u>380.00</u>
- Total	\$30,222.88

15. The Claimant's actual loss is:

Paid to the Respondent	\$168,711.65
Cost to complete	<u>30,222.88</u>
Total	\$198,934.53
Less original contract price	<u>175,200.00</u>
Actual loss	\$ 23,734.53

DISCUSSION

A homeowner 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. 2010). 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). Recovery from the Fund is limited to \$20,000.00 for one claimant. Md. Code Ann., Bus. Reg. § 8-405(e)(1). Additionally, the Fund may not compensate a claimant for attorneys' fees, consequential damages, court costs, interest, personal injury or punitive damages. Md. Code Ann., Bus. Reg. § 8-405(e)(3). For the reasons discussed below, 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 Respondent performed an incomplete home improvement. The Respondent contends that he would have completed the work had the Claimant been patient and given him more time; he was experiencing some financial difficulties and was unable to pay a full crew to

complete the job in the timeframe promised. The Claimant stated that after the Respondent had the spot-a-pot removed, he knew the Respondent would not be sending workers to complete the job. By October 2007, the Respondent was three months late completing the work. The Claimant was not required to give the Respondent more time. Thus, I find that the Respondent performed an incomplete home improvement.

The Claimant documented the following costs:

- Greentree, remove soil and grade lawn (CL #27)	\$ 5,501.00
- Greentree, downspouts, tree removal (CL #26)	3,505.00
- Greentree, drains (CL #26)	2,200.00
- Greentree, restore lawn	3,540.00
- All About Waterproofing, install basement pipe (CL #28)	1,800.00
- Signature Remodeling, masonry for sliding door (CL #10)	968.56
- Signature Remodeling, install door (CL #10)	1,597.34
- Signature Remodeling, prepare for door installation (CL #10)	1,341.09
- Signature Remodeling, install floor registers (CL #12)	250.00
- Signature Remodeling, install molding on bathtub (CL #13)	890.00
- Home Depot, door (CL #11)	1,862.65
- J. Frank Dooley, Inc, screened porch (CL #9)	5,685.00
- ProSource, hardwood flooring (CL #22)	702.24
- Micah Cane, install television cabinet (CL #15)	<u>380.00</u>
- Total	\$30,222.88

Both the Respondent and the Fund, while they agreed that the basement of the addition leaked, argued against recovery of a portion of Greentree's work. They maintained that because Greentree's measures to stop the leaking in the basement failed to stop the leak, the Claimant should not recover for the cost to install drains, downspouts, and grading and lawn repair for a total of \$11,206.00. (CL #26 and #27). I disagree and find that recovery is proper for Greentree's costs for the reasons explained below.

The Claimant testified that he wanted to try to solve the leaking in the basement of the addition by other means than breaking up the concrete foundation. He spoke with Greentree's owner, Allen Dekozlowski, who believed a dirt pile left from construction could be causing the

leak. Greentree removed the dirt, but the basement still leaked. Then the Claimant and Mr. Dekozlowski decided to extend the gutters and the drains, but those measures also failed to solve the problem. The Claimant then contacted All About Waterproofing and that contractor found that the Respondent had installed an eighteen foot perforated pipe on a twenty-seven foot wall and capped it, causing the leak. All About Waterproofing repaired the problem for \$1,800.00. (CL #28).

Mr. Dekozlowski testified that the grade around the whole addition was sloping toward the house and water was puddling at the foundation. He recommended that the Claimant re-grade the area to have water flow away from the foundation. He stated that he and the Claimant intended to perform the minimum work required to correct the leaking. Although I have considered that Mr. Dekozlowski may want to justify his bills, I found his testimony straightforward; he stood by his advice and I found him credible. Although Greentree's measures ended up costing more than the work done by All About Waterproofing, I found the Claimant's decisions reasonable; one would want to try measures that do not involve tearing out part of the foundation first. Thus, I find that the costs the Claimant incurred for Greentree to attempt to diagnose and correct the leaking basement is properly considered in this case.

On the reasonableness of Greentree's the bills, the Respondent argued that the Claimant failed to present a picture of the pile of dirt Greentree hauled away to support the bill. He also testified that he had already reseeded and hayed half the lawn. Other than his argument and testimony about reseeding the lawn, the Respondent failed to present any evidence to refute the Claimant's evidence. On the other hand, the Claimant and Mr. Dekozlowski testified about the dirt pile remaining on the property, the Claimant's letter to the Respondent dated October 15, 2007, notes the dirt pile and seeding that the Respondent had not completed, (CL #2), and

Greentree's written report dated December 18, 2007, documents the lawn work that had not been completed. (CL #25). While the costs of Greentree's bills were high, there is no evidence in the record, for example, another landscaper's opinion of the costs, on which I can base a finding that those costs were unreasonable. Therefore, I find that the Claimant's evidence demonstrates that the money he paid to Greentree is part the loss he suffered a result of the Respondent failure to complete the home improvement.

With regard to Signature Remodeling's work, the Claimant stated that the bathtub molding was not included in the contract, it was supposed to be tile; the Claimant's wife requested the wood molding because the base of the bathtub was rounded. Also, the Respondent testified that the existing window between the living room and porch was eight feet wide, so Signature Remodeling should not have had to perform such extensive work, including masonry work, to install the sliding door. First, I note that the Respondent failed to address a difference in the price between tile and wood to complete the bathtub in his list of extras when he had the opportunity. (CL #18). Thus, I accept as reasonable the cost of \$890.00 to install the bathtub molding, which the Respondent failed to complete. (CL #13). Also, other than the Respondent's contention that it should not have required much work to install the sliding door, there is no evidence that the Claimant did not contract with Signature Remodeling in good faith to perform the work the Respondent failed to complete. Thus, again, I accept as reasonable Signature Remodeling's bills. (CL #10).

Addressing the framed television cabinet over the fireplace, the Respondent testified that the Claimant's wife noticed space on either side of the flue and asked for recessed doors. The Respondent agreed to perform the work as documented in his list of extras where he charged the Claimant \$350.00 for that work. (CL #18). When he failed to complete that item, the Claimant

hired Micah Cane to do the job for \$380.00, an amount very close to the Respondent's charge to perform the work. (CL #15). Thus, that cost is properly part of the Claimant's losses.

The Respondent also stated that while mirrors on the French doors were part of the contract, beveled mirrors were not, and he should not be responsible for \$450.00 for that work. (CL #14). The Claimant failed to respond to this argument and I have no evidence of the cost difference between beveled mirrors and the mirrors called for in the contract. Thus, I have excluded that bill from the Claimant's losses.

The Claimant testified that the roof was not properly installed; the rubber roofing material was cut too short. The Respondent admitted that the roof was cut short, but stated that he would have fixed the problem. The Claimant failed to present a bill from Reliable Roofing for the \$2,900.00 included on his list for roof repair. (CL #21). Thus, I will not include that cost in the calculation of the Claimant's actual losses.

Of the costs listed on his outline, (CL #21), the Claimant also failed to document the costs for delivery of the sliding door, the window screens and extension of a gutter. Additionally, I cannot tell from the contract whether the Respondent was required to relocate the wiring and air conditioning unit. (CL #17). Therefore, I have excluded the BGE bill for that work. Also, the invoices for carpeting are dated May 14, 2007, May 30, 2007 and May 31, 2007. (CL #23 and #24). I cannot tell if that carpeting was for damage in the existing home due to the broken pipe or drain, or if it was carpeting the Respondent was required to purchase and failed to buy. Because the evidence is unclear on that point, I have not considered those bills.

Finally, as stated above, the Fund may not compensate a claimant for consequential damages, such as damages for the flooding in the basement of the original house. COMAR

09.08.03.03B(1). Thus, I have excluded those costs, as well as the bill from Charles Kidwell in the amount of \$70.00, to repair a dented night table. (CL #16).

Having found eligibility for compensation, I now turn to the amount of the award, if any. 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." COMAR 09.08.03.03B(3)(c). I calculate the Claimant's actual loss as follows:

Paid to the Respondent	\$168,711.65
Cost to complete	<u>30,222.88</u>
Total	\$198,934.53
Less original contract price	<u>175,200.00</u>
Actual loss	\$ 23,734.53

Because, as stated above, recovery from the Fund is limited to \$20,000.00, I will recommend that amount.

CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$23,734.53 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401.

RECOMMENDED ORDER


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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; 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 at least ten percent as set by the Maryland Home Improvement 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.

July 21, 2011
Date Decision Mailed


Mary Shock
Administrative Law Judge

MKS/kkc
#123750

<p>IN THE MATTER OF THE CLAIM</p> <p>OF STEPHEN D. LANGHOFF,</p> <p style="padding-left: 40px;">CLAIMANT,</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF MICHAEL SAVOSIK</p> <p>T/A CARPENTERS INK, INC.</p> <p style="padding-left: 40px;">RESPONDENT</p>	<p>* BEFORE MARY SHOCK,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH No: DLR-HIC-02-10-43932</p> <p>* MHIC No: 08(05) 1164</p> <p>*</p> <p>*</p> <p>*</p>
---	---

* * * * *

FILE EXHIBIT LIST

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

- CL #1 Contract, February 14, 2007
- CL #2 Letter from Claimant to Respondent, October 15, 2007
- CL #3 Letter from Claimant to Respondent, October 18, 2007
- CL #4 Letter from Claimant to Respondent, October 19, 2007
- CL #5 Letter from Respondent to Claimant, October 25, 2007
- CL# 6 Letter from Claimant to Respondent, October 26, 2007
- CL #7 Letter from Claimant to Respondent, November 20, 2007
- CL #8 Twenty-one photographs of Claimant's residence, May 24, 2011
- CL #9 J. Frank Dooley, Co., Inc., Invoice, April 30, 2008, and letter dated March 27, 2008
- CL#10 Signature Remodeling. Invoice, January 7, 2008, January 16, 2008, and January 19, 2008
- CL #11 The Home Depot, Invoices/Receipts, September 28, 2007 and November 7, 2007
- CL# 12 Signature Remodeling. Invoice, December 17, 2007
- CL# 13 Signature Remodeling, Revised Proposal, February 23, 2008
- CL #14 Mirror Crafters, Inc., Invoice, November 28, 2007
- CL #15 Micah Cane. Invoice, February 8, 2009
- CL# 16 Charles Kidwell Furniture Repair, undated
- CL #17 BGE, Extension/Relocation Contract, June 21, 2007
- CL #18 Respondent Invoice, undated
- CL #19 Claimant's list of extras, undated

- CL #20 Photocopies of checks from Claimant to Respondent, February 22, 2007, March 8, 2007, May 2, 2007, May 5, 2007, May 30, 2007, June 14, 2007, July 2, 2007, July 26, 2007, August 24, 2007, and September 25, 2007
- CL #21 Claimant's list of costs, undated
- CL #22 ProSource of Baltimore, Invoice, July 9, 2007
- CL #23 ProSource of Baltimore, Invoice, May 11, 2007 and May 31, 2001
- CL #24 ProSource of Baltimore, Invoice, May 30, 2007
- CL #25 Letter from Greentree Landscaping, Inc., to Claimant, December 18, 2007
- CL #26 Greentree Landscaping, Inc., Invoice, January 14, 2008
- CL #27 Greentree Landscaping, Inc., Invoice, December 3, 2007 and June 25, 2008
- CL #28 All About Waterproofing, Inc., Contract, October 1, 2008
- CL #29 State Farm Insurance, Claim Estimate, May 4, 2007

I admitted the following exhibit on the Respondent's behalf:

- RSP #1 Letter from Respondent to MHIC, November 16, 2009

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

- FUND #1 Notice of Hearing, March 1, 2011
- FUND #2 MHIC, Respondent's Licensing History, May 18, 2011
- FUND #3 Hearing Order, December 2, 2010
- FUND #4 Home Improvement Claim Form, October 7, 2009

PROPOSED ORDER

WHEREFORE, this 7th day of September 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 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.

Joseph Tunney

*Joseph Tunney
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION