

The Maryland Home
 Improvement Commission

v. Teremun A. Salmon
 t/a Solo Designs, Inc.
 (Contractor)
 and the Claim of
 Victoria Adams
 (Claimant)

* BEFORE THE
 * MARYLAND HOME IMPROVEMENT
 * COMMISSION
 *
 * MIIC No.: 08 (05) 1920
 *
 *

FINAL ORDER

WHEREFORE, this February 23, 2011, Panel B of the Maryland Home

Improvement Commission **ORDERS** that:

1. The Findings of Fact set forth in the Proposed Order dated October 5, 2010 are **AFFIRMED**.
2. The Conclusions of Law set forth in the Proposed Order dated October 5, 2010 are **AFFIRMED**.
3. The Proposed Order dated October 5, 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.

I. Jean White
 I. Jean White, Chairperson
 PANEL B

MARYLAND HOME IMPROVEMENT COMMISSION

IN THE MATTER OF THE CLAIM OF	* BEFORE NICOLE PASTORE KLEIN,
VICTORIA A. ADAMS	* ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* MARYLAND OFFICE OF
AGAINST THE MARYLAND HOME	* ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND,	*
FOR THE ALLEGED ACTS OR	*
OMMISSIONS OF TEREMUN A.	* OAH NO. DLR-HIC-02-09-38829
SALMON, v/a SOLO DESIGNS, INC.	* MHIC NO. 08 (05) 1920

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RECOMMENDED DECISION

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

On July 22, 2008, Victoria A. Adams (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement for actual losses against Teremun A. Salmon, v/a Solo Designs, Inc. (Respondent).

On October 5, 2009, the Department of Labor, Licensing and Regulation (DLLR) transmitted the case to the Office of Administrative Hearings (OAH) for a hearing. On October 30, 2009, the OAH sent a Notice of Hearing to all parties scheduling the hearing for March 5, 2010. On February 26, 2010, approximately one week prior to the hearing, the Respondent retained legal counsel and requested a postponement of the hearing. The DLLR did not object

and the OAH granted the postponement. On March 29, 2010, the OAH sent a new Notice of Hearing to all parties rescheduling the hearing for May 21, 2010. On May 20, 2010, the day prior to the rescheduled hearing, the Respondent's legal counsel notified the OAH that they had just received word from the Respondent that he would be unable to attend the hearing due to an unexplained out-of-town emergency (in Houston). In light of this, coupled with the Respondent's failure to cooperate in preparing for the hearing and non-payment of legal fees, costs and expenses in the matter, counsel withdrew his appearance in the case. However, the Respondent's counsel requested a postponement of the rescheduled hearing to allow time for the Respondent to retain new counsel or represent himself in the matter. Later that day, about fifteen minutes before OAH close of business, the OAH received a facsimile from a Dr. Michelle Johnson, requesting that the Respondent be "excused . . . from his court obligation due to an unforeseen medical emergency regarding his wife." Dr. Johnson's medical practice is in Maryland and her facsimile made no mention of the Houston emergency and/or whether that emergency related to the Respondent's wife.

On May 21, 2010, I held a hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2) (2010). Kris King, Assistant Attorney General, DLLR, represented the Fund. The Claimant was present and was represented by P. Elizabeth Pirsch, Esquire, who formally entered her appearance that day. After waiting fifteen minutes, at which time the Respondent failed to appear for the hearing, I presented the May 20, 2010 correspondence from Respondent's former legal counsel and Dr. Johnson to Mr. King and Ms. Pirsch for their review and response. Both the Claimant and the Fund objected to the Respondent's second postponement request in this matter as they had witnesses present and also had not heard from the Respondent prior. Because of the objections raised, the nearly eight

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months the Respondent had to prepare for this case since the date the OAH sent the original Notice of Hearing, the Respondent's postponement requests made both times at the eleventh hour and the inconsistency in the reasons pertaining to the Respondent's emergency, which were without explanation, I found that good cause was not established to warrant a third delay in hearing this case. I, therefore, ruled that the hearing would proceed in the Respondent's absence. Md. Code Ann., Bus. Reg. § 8-312(h) (2010).

The provisions of the Administrative Procedure Act, the procedural regulations of the DLLR, 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); Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; 09.08.03; and 28.02.01.

ISSUE

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

SUMMARY OF THE EVIDENCE

Exhibits

The Claimant offered the following exhibits, which I admitted into evidence:

- Cl. Ex. 1 February 20, 2007 Correspondence from Farmers New Century Insurance Company (Farmers) to Claimant, including Specification Sheet
- Cl. Ex. 2 October 25, 2007 Contract between Claimant and Respondent
- Cl. Ex. 3 October 31, 2007 through March 6, 2008 Payment Receipts from Claimant to Respondent, totaling \$59,200.00
- Cl. Ex. 4 February 20, 2008 Prince George's County Permit
- Cl. Ex. 5 February 20 through 26, 2008 Prince George's County Inspections Report
- Cl. Ex. 6 April 21, 2008 Correspondence from Prince George's County Permit Supervisor to Respondent, copied to Claimant

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- Cl. Ex. 7 March 8, 2008 Correspondence from Claimant to Respondent
 - Cl. Ex. 8 December 10, 2008 MHIC Inspection Report of Respondent's work by Frank J. Kaiss, Sr., Frank J. Kaiss & Associates
 - Cl. Ex. 9 Undated Photographs (15 in total) taken by Claimant of Respondent's work
 - Cl. Ex. 10 July 5, 2009 Contract between Claimant and Dennis J. Goodson

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

- Fund Ex. 1 March 29, 2010 Rescheduled Notice of Hearing, sent via certified mail, received March 31, 2010 by Respondent
- Fund Ex. 2 September 30, 2009 MHIC Hearing Order
- Fund Ex. 3 MHIC Licensing History of Respondent
- Fund Ex. 4 July 22, 2008 MHIC Claim Form
- Fund Ex. 5 July 25, 2008 Letter from the MHIC to Respondent, copied to Claimant
- Fund Ex. 6 August 14, 2008 Letter from the MHIC Investigator to Respondent, copied to Claimant, with attached letters regarding arbitration
- Fund Ex. 7 February 16, 2007 Farmers New Century Insurance Company Scope of Work regarding Claimant's property
- Fund Ex. 8 Undated Photographs (20 in total) taken by Frank J. Kaiss of Respondent's work, as referenced in December 10, 2008 MHIC Inspection Report (Cl. Ex. 8)

The Respondent failed to appear for the hearing and, therefore, offered no exhibits for admission into evidence.

Testimony

The Claimant testified and also called MHIC Inspector Frank J. Kaiss, Sr., Frank J. Kaiss & Associates; and Dennis J. Goodson, general contractor, to testify on her behalf. The Fund did not call any witnesses to testify.

FINDINGS OF FACT

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

1. The Respondent was licensed as a home improvement contractor with the MHIC at all times relevant to this matter.¹ Fund Ex. 3.
2. On October 25, 2007, the Claimant contracted with the Respondent to perform a full fire restoration at the Claimant's residence located at 9000 Ardmore Road in Springdale, Maryland. Cl. Exs. 2 and 7.
3. The scope of work encompassed, but was not limited to, demolition, cleaning, carpentry, insulation, drywall, painting, wood flooring, vinyl flooring, framing, doors, windows, ceilings, kitchen cabinets and appliances, electrical work, heating, air conditioning, plumbing, roofing and flashing of all affected fire and smoke damage areas, all of which was pursuant to Farmers Specification Sheet (Cl. Ex. 1). Cl. Exs. 2 and 8.
4. The total contract price was \$95,346.24. Cl. Exs. 2 and 8.
5. From October 31, 2007 through March 6, 2008, the Claimant paid the Respondent \$59,200.00, consisting of four cashier's checks and two personal checks, for work performed and to be performed under the contract. Cl. Exs. 3, 7 and 8.
6. Pursuant to the contract, the Respondent was to begin work on or about November 7, 2007, and complete work on or about January 10, 2008. Cl. Ex. 2. It was imperative to the Claimant that work be performed as scheduled because Farmers provided housing rental payments for only one year from the date the fire damaged occurred. As the fire damage occurred on February 8, 2007, the Claimant would not have insurance-provided housing coverage after February 7, 2008. *See* Cl.

¹ The Respondent's MHIC license #72300 is current through November 26, 2010.

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Ex. 7.

7. The Respondent began the work as scheduled and, initially, was very diligent, working long hours to complete demolition of the project. Sometime in December 2007, the Claimant started to question the Respondent as to his ability to finish the work as contracted since she noticed a lack of progress after demolition was completed.
8. The Respondent continued to assure the Claimant that he would complete the work but it would not be in accordance with the approximate contracted-for completion date nor would it be within her one year insurance-provided rental payment period. *See Cl. Ex. 7.*
9. In addition to various email, telephonic and in-person communications with the Respondent and/or his representatives, the Claimant wrote the Respondent a letter, on March 8, 2008, detailing the lack of progress thus far, the payments she made in accordance with and beyond the contract specification schedule and the financial repercussions she suffered as a result of the incomplete work to date. She drafted a schedule of work yet to be performed demanding completion dates as well as requesting copies of invoices from contractors and subcontractors for work completed and to be completed. *Cl. Ex. 7.*
10. Throughout March and April 2008, the Claimant and the Respondent did engage in further communications, however, the Respondent continued to miss promised deadlines, portions of the restoration that were completed failed inspection (*Cl. Ex. 5*) and the Claimant discovered that the Respondent had requested, on March 28, 2008, that his construction permit for the Claimant's residence be cancelled (*Cl.*

Ex. 8). Cl. Ex. 7.

11. As a result, on May 1, 2008, the Claimant drafted the Respondent a letter noting that she considered the Respondent to be in breach of their contract and, accordingly, was invoking her right to arbitration. Cl. Ex. 7.
12. After the Respondent failed to address the Claimant's invocation of arbitration, on July 22, 2008, the Claimant filed a claim with the MHIC Fund. Fund Ex. 4.
13. On December 10, 2008, the MHIC—through Frank J. Kaiss, Sr., of Frank J. Kaiss & Associates—inspected the Respondent's work performed under the contract with the Claimant, which included Farmers Specification Sheet. Mr. Kaiss made a written report of his findings and attached twenty photographs, among other items, regarding the same. Mr. Kaiss concluded that the Respondent's "work performed under the contract d[id] not meet the standards of the trade" and that "the construction work performed on this project [wa]s approximately 45% complete." Mr. Kaiss estimated that the "fair cost estimate for correcting defects and completing the contract . . ." would be \$54,507.03. Cl. Ex. 8.
14. The Claimant sought another contractor to complete the Respondent's contract. The Claimant hired Dennis J. Goodson, MHIC license #96050, to complete the Respondent's contract and to correct the unworkmanlike work performed by the Respondent.
15. Mr. Goodson performed work on the Claimant's residence pursuant to Farmers Specification Sheet, for which the Claimant paid Mr. Goodson \$44,835.00. The Claimant was very satisfied with Mr. Goodson's work.
16. The Respondent never completed the project. The Claimant gave the Respondent

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numerous opportunities to finish the project but the Respondent chose not to do so. Cl. Ex. 7. The Respondent left at least half of the job unfinished (as only the framing work was completed), which rendered the entire residence uninhabitable. See Cl. Exs. 7-9.

17. In terms of the work that the Respondent did complete, substantial portions were done in an unworkmanlike manner. Cl. Ex. 8.
18. The Respondent failed to pull the necessary work permits when required to do so, cancelled a necessary work permit in order to complete the job and failed numerous inspections. Cl. Exs. 4-7.
19. The Claimant suffered an actual loss of \$8,688.76.

DISCUSSION

For the following reasons, I find that the Claimant has established that the Respondent performed unworkmanlike work and abandoned the home improvement contract and, as a result of these actions, the Claimant has suffered an actual loss. Maryland law provides that an owner may recover compensation up to \$20,000.00 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) and (e) (2010). The relevant statute 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 (2010). The burden of proof to establish the incomplete or inadequate home improvement and any actual loss suffered is on the Claimant. Md. Code Ann., Bus. Reg. § 8-407(e)(1) (2010).

Here, the Claimant testified and provided documentation establishing the contract terms, the Respondent's non-performance after partially completing the work, the Respondent's

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unworkmanlike work and the specific amounts that the Claimant paid to the Respondent for the entire project. The MHIC inspector and the Claimant's contractor essentially replicated the Claimant's testimony as to the Respondent's partial completion of the work and the Respondent's unworkmanlike work, bolstering the credibility of the Claimant's testimony. The Claimant also established, through documentation and witness testimony, that the cost to complete and correct the Respondent's contract and work was reasonable. The Respondent did not appear at the hearing and, therefore, did not dispute any of the Claimant's evidence.

As to whether or not the Claimant should be entitled to recovery from the Fund, the Fund agreed with the Claimant that she was entitled to recovery. The Fund further argued: that the Claimant satisfied the statutory requirements necessary; that there was no question the Respondent's work was not only unworkmanlike but that he failed to complete the job; that the Claimant gave the Respondent ample opportunities to continue work on the project, all without success; and, that there was an actual loss—again—none of which the Respondent disputed.² However, the Fund disagreed with the Claimant as to the total amount of recovery the Claimant is entitled to recover from the Respondent's acts and omissions.

The Claimant testified and presented documentation, via her contract and evidence of payment, that she hired Mr. Goodson to complete the Respondent's contract and that the cost to complete it totaled \$44,835.00. Mr. Goodson testified to the same. The Claimant presented further evidence, through the MHIC-sanctioned inspection as well as Mr. Kaiss' testimony, establishing that the cost to complete the contract could have been as high as \$54,507.03. Accordingly, the Claimant requested a recovery from the Fund in the amount of \$16,250.29—the

² Although there was some mention in testimony and in documentation that the Respondent had filed a civil court action against the Claimant under the subject contract, because the Respondent failed to appear for the instant hearing, any allegations made via the civil court dispute are not being considered here.

amount she overpaid to the Respondent pursuant to Mr. Kaiss' estimate.³

In recommending its suggested award from the Fund, the Fund contended that a claimant is entitled only to the *actual amount she paid* to correct any unworkmanlike and inadequate work and/or to complete a home improvement contract. Accordingly, the Fund maintained that because the Claimant hired Mr. Goodson to complete the incomplete and unworkmanlike work of the Respondent, the Claimant is entitled to receive an award from the Fund relating to any money paid to him specifically, i.e., \$44,835.00. In that regard, the Fund argued that the Claimant is precluded from Fund recovery based solely upon the MHIC's investigator's inspection of the Respondent's work and his resulting report, i.e., \$54,507.03, as that figure was merely a projected estimate.

The Claimant did not counter the Fund's recommended award of recovery from the Fund.

Based on COMAR 09.08.03.03B(3)(c) and the analysis that follows, I agree with the Fund that a claimant should only be reimbursed from the Fund for any monies *actually paid* to a contractor to correct and complete the unworkmanlike and/or incomplete work and; therefore, not reimbursed from the Fund based upon an estimate which was not utilized. In the case *sub judice*, I recognize that the Claimant presented reliable evidence from a long-standing MHIC-licensed contractor that she was entitled to reimbursement from the Fund. Additionally, I recognize that even with the intent of the law, it is impossible for the MHIC, after it makes its determination that a claimant is entitled to recovery, to monitor exactly how a claimant spends the award, *i.e.*, a claimant could elect not to proceed with the home improvement or utilize a different company other than that which provided estimates to establish entitlement to an award. The Claimant, however, *did not* proceed to have the work corrected and completed according to

³ During the hearing, the Claimant retracted the amount requested and other amounts noted on her July 22, 2008 MHIC Claim Form (Fund. Ex. 4) stating that at the time she filled out that form, she did not entirely understand the information requested.

the MHC Inspection Report by Mr. Kaiss; rather, she ultimately *hired* Mr. Goodson, who performed the work for approximately \$10,000.00 less than Mr. Kaiss projected it may cost. COMAR 09.08.03.03B(3)(c).

Accordingly, with respect to determining the amount of the award owed to the Claimant, COMAR 09.08.03.03B(3)(c), provides:

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.*

(Emphasis added.) Thus, pursuant to COMAR 09.08.03.03B(3)(c), the appropriate measure to calculate the Claimant's recovery from the Fund is:

Amount paid to the Respondent	\$ 59,200.00
Cost to correct/complete the work	<u>+\$ 44,835.00</u>
Total	\$104,035.00
Amount of original contract	<u>-\$ 95,346.24</u>
Actual Loss	\$ 8,688.76

Applying the formula, it is apparent that the Claimant is entitled to an award from the Fund in the amount of \$8,688.76. Md. Code Ann., Bus. Reg. § 8-405(e)(1) (2010).

CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss in the amount of \$8,688.76 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-405(a) (2010).

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RECOMMENDED ORDER

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

ORDER that the Claimant be awarded \$8,688.76 from the Maryland Home Improvement Commission 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(a) (2010); and

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

July 30, 2010
Date Decision Mailed



Nicole Pastore Klein
Administrative Law Judge

NPK
#115625

Cl. Ex. 10 July 5, 2009 Contract between Claimant and Dennis J. Goodson

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

- Fund Ex. 1 March 29, 2010 Rescheduled Notice of Hearing, sent via certified mail, received March 31, 2010 by Respondent
- Fund Ex. 2 September 30, 2009 MHIC Hearing Order
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The Respondent failed to appear for the hearing and, therefore, offered no exhibits for admission into evidence.

PROPOSED ORDER

WHEREFORE, this 5th day of October 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.

James Chiracol

*James Chiracol
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION