

<p>IN THE MATTER OF THE CLAIM OF GEORGE DESIMONE, CLAIMANT AGAINST THE MARYLAND HOME IMPROVEMENT COMMISSION FOR THE ALLEGED ACTS OR OMISSIONS OF ROBERT CHAREST, CONTRACTOR, D/B/A HONEY DO SERVICES, INC.</p>	<p>* BEFORE LATONYA B. DARGAN, * AN ADMINISTRATIVE LAW JUDGE * OF THE MARYLAND OFFICE * OF ADMINISTRATIVE HEARINGS * OAH Case No.: DLR-HIC-02-10-13026 * MHIC Case No.: 08 (90) 2427 * *</p>
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RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On July 27, 2009, George Desimone (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement in the amount of \$13,227.50¹ for actual losses allegedly suffered as a result of a home improvement contract with Robert Charest (Respondent), d b/a Honey Do Services, Inc.

On June 9, 2010, I conducted 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. Hope Sachs, Assistant Attorney General for the Department of Labor,

¹ The claim amount has been revised for reasons articulated in the Discussion section below.

Licensing and Regulation, represented the Fund. The Respondent failed to appear after proper notice of the hearing was sent to his last known address of record with the MIHC.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 Office of Administrative Hearings 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, 09.08.02.01, and 28.02.01.

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:

- Clmt. #1: July 27, 2009 Claim Form, with attachment
- Clmt. #2: March 13, 2007 Proposal and Contract, with attached cancelled checks
- Clmt. #3: Manufacturer's Specifications for NatureWood preserved wood products
- Clmt. #4: The Claimant's January 12, 2009 letter to the Respondent
- Clmt. #5: Exterior photographs
- Clmt. #6: Close-up photographs
- Clmt. #7: Additional close-up photographs
- Clmt. #8: November 13, 2008 estimate from Pierce Home Building

² The Respondent was served with the hearing notice via both certified and regular first-class mail. The certified mail receipt was signed on April 20, 2010 and received at the Office of Administrative Hearings on April 21, 2010. The regular mail copy of the hearing notice was not returned to the Office of Administrative Hearings by the United States Postal Service as undeliverable.

- Clmt. #9: The Respondent's April 5, 2010 letter to the Claimant
- Clmt. #10: The Claimant's April 5, 2010 letter to the Respondent
- Clmt. #11: May 8, 2010 estimate from Talbot Builders, LLC
- Clmt. #12: June 3, 2010 proposal and estimate from Brooks Creek Homes & Remodeling, MHIC No. 87326

I admitted the following exhibits on behalf of the Fund:

- Fund #1: April 16, 2010 Notice of Hearing
- Fund #2: April 8, 2010 Hearing Order
- Fund #3: Licensing and address information for the Respondent
- Fund #4: John Borz's August 4, 2009 letter to the Respondent, with attachment

No exhibits were submitted on behalf of the Respondent.

Testimony

The Claimant testified on his own behalf and did not present any other witnesses. The Fund presented argument only.

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 licensed as a home improvement contract with MHIC under license number 3285043. (Fund #3.)
2. On March 13, 2007, the Claimant and the Respondent entered into a home improvement contract for the Respondent to build a screened-in porch at the Claimant's residence, located at 7427 Kevin Avenue in Easton, Maryland. (Clmt. #2, p. 1.)
3. As part of the construction of the porch, the Respondent was to install maintenance-free white aluminum as a covering for the support posts and all other wall framing

material. (Clmt. #2, p. 1.) The support posts themselves and wall framing material were composed of preserved wood products from NatureWood Products. The manufacturer's specifications for NatureWood materials recommend against using aluminum material in direct contact with NatureWood treated wood. Under the specifications, it is recommended that a spacer material or other type of physical barrier, measuring at least 1.4 inches, be placed between the aluminum and the NatureWood product. (Clmt. #3.)

4. The original contract price was \$18,901.00. As a result of a subsequent change order, an additional \$2,706.00 was added to the contract price, for a total of \$21,607.00. (Clmt. #2, p. 4.)
5. The Claimant paid the Respondent \$21,607.00. (Clmt. #2, p. 5.)
6. The construction of the porch commenced in March 2007 and was completed on July 27, 2007. (T.³ Claimant.)
7. When the Respondent constructed the porch, he did not place any kind of barrier or spacer materials between the wood framing and the aluminum covering. (T. Claimant.)
8. Starting in September 2007, the aluminum covering on the porch began deteriorating. The deterioration continued throughout the remainder of 2007 and into the winter and spring of 2008. (T. Claimant; Clmt. #1, p. 2.)
9. In May 2008, the Claimant attempted to contact the Respondent to advise him of the problem and ascertain the Respondent's willingness to repair the damage. The Claimant left multiple messages for the Respondent on his home and cellular telephones, but the Respondent did not return his calls until sometime in December

³ The abbreviation "T" stands for testimony.

2008. When the Respondent finally contacted the Claimant in December 2008, he indicated that he was willing to repair the damage to the porch in the spring of 2009. (T. Claimant.)

10. By letter dated January 12, 2009, the Claimant accepted the Respondent's verbal offer to repair the porch, and indicated that he wanted the repair completed as soon as possible. (Clmt. #4.)
11. The Respondent did not respond to the Claimant's January 12, 2009 letter for several months. While the Claimant waited to hear from the Respondent, he obtained three different estimates for the cost of repairs from Pierce Home Builders, Talbot Builders, LLC, and Brooks Creek Homes & Remodeling (Brooks Creek).
12. Of the three prospective replacement contractors the Claimant contacted, only Brooks Creek is licensed by MHIC.⁴ Brooks Creek estimated the cost of repairs to be \$6,494.00. (Clmt. #12.)
13. The Respondent did not contact the Claimant again until March 29, 2010, at which time he came to the Claimant's property to inspect the damage. The Respondent prepared a written proposal for making the repairs to the Claimant on April 5, 2010. In the proposal, the Respondent apologized "for the defects that occupied [sic] with using the wrong materials, and, more importantly, for the delay in making the necessary repairs." The Respondent further indicated his intention to have all repair work completed by July 5, 2010. (Clmt. #9.)
14. By letter dated April 5, 2010, the Claimant accepted the Respondent's written proposal, but asked for written confirmation that (1) the repairs would be done

⁴ Brooks Creek's MHIC number is 87326.

without further charge to the Claimant, and (2) the Respondent would use proper materials in making the repairs. (Clmt. #10.)

15. The Respondent never responded to the Claimant's April 5, 2010 letter, and he did not return any of the Claimant's further phone calls.

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.

The Respondent was a licensed home improvement contractor at the time he and the Claimant entered into the contract. The Claimant paid the Respondent \$21,607.00 to perform the work under the contract. The Respondent performed an inadequate home improvement. The evidence demonstrates that the Respondent constructed the porch in a manner that was inconsistent with and contraindicated by the manufacturer's specifications for the materials he used. The Claimant testified that prior to the commencement of construction, he and the Respondent had a conversation about the use of aluminum siding/covering with NatureWood products. Specifically, the Claimant indicated to the Respondent that one of his neighbors had problems when aluminum covering was placed directly over the wood infrastructure of an addition to the neighbor's property. Despite the Claimant's concern and despite the clear instructions directly from the manufacturer, the Respondent inadequately constructed the porch. The resulting deterioration is clearly evident from photographs. (*See generally*, Clmt. ##5-7.) Significantly, the Respondent acknowledged that the deterioration was due to his use of the wrong materials.

It must be noted that the Claimant gave the Respondent several opportunities to correct the problem and the Respondent was largely unresponsive. Even when the Respondent finally did contact the Claimant in December 2008 and again in March 2010, he did not actually follow through with the promises he made to the Claimant to make the necessary repairs. Instead, the Claimant was left with no alternative but to seek out the services of a different contractor.

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	\$21,607.00
Amount Paid to Correct and Complete Work	<u>+\$ 6,494.00⁵</u>
	\$28,101.00
Amount of Original Contract	<u>-S21,607.00</u>
Amount of Loss	\$ 6,494.00

⁵ As Brooks Creek was the only replacement contractor contacted by the Claimant that was also licensed by MHIC, I have used its estimate to determine the cost of repairs.

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 \$6,494.00 and is entitled to be compensated for the actual loss suffered by him as a result of the acts or omissions of the Respondent. Md. Code Ann., Bus. Reg. §§ 8-401 and 8-405 (2010); COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

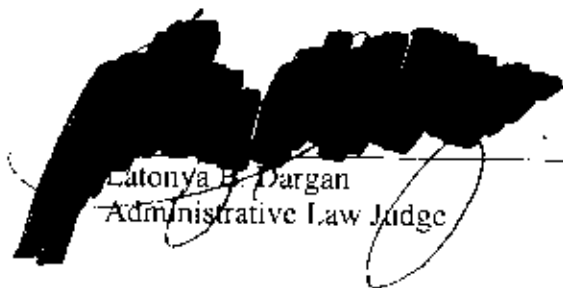
I **RECOMMEND** that the Maryland Home Improvement Commission:

ORDER that the Claimant be awarded \$6,494.00 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.

September 7, 2010
Date Decision Mailed



Latonya E. Dargan
Administrative Law Judge

#116518

<p>IN THE MATTER OF THE CLAIM OF</p> <p>GEORGE DESIMONE,</p> <p>CLAIMANT</p> <p>AGAINST THE MARLAND HOME</p> <p>IMPROVEMENT COMMISSION FOR</p> <p>THE ALLEGED ACTS OR</p> <p>OMMISSIONS OF ROBERT</p> <p>CHAREST, CONTRACTOR,</p> <p>D/B/A HONEY DO SERVICES, INC.</p>	<p>* BEFORE LATONYA B. DARGAN,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH Case No.: DLR-HIC-02-10-13026</p> <p>* MHIC Case No.: 08 (90) 2427</p> <p>*</p> <p>*</p>
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FILE EXHIBIT LIST

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No exhibits were submitted on behalf of the Respondent.

PROPOSED ORDER

WHEREFORE, this 27th 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.

Rossana Marsh

*Rossana Marsh
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION