

The Maryland Home
Improvement Commission

v. Leo Theodore Bartnik, Jr.
t/a Viet Vet, Inc.

(Contractor)

and the Claim of

Thomas Dedeo

(Claimant)

* BEFORE THE
* MARYLAND HOME IMPROVEMENT
* COMMISSION

* MHIC No.: 08 (90) 475

*

*

FINAL ORDER

WHEREFORE, this August 2, 2010, Panel B of the Maryland Home Improvement
Commission **ORDERS** that:

1. **The Findings of Fact set forth in the Proposed Order dated March 16, 2010 are AFFIRMED.**
2. **The Conclusions of Law set forth in the Proposed Order dated March 16, 2010 are AFFIRMED.**
3. **The Proposed Order dated March 16, 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.**

Joseph Tunney

Joseph Tunney, Chairperson
PANEL B

MARYLAND HOME IMPROVEMENT COMMISSION

IN THE MATTER OF THE CLAIM OF * BEFORE JUDITH JACOBSON,
THOMAS DEDEA * 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-02-09-09634
OMISSIONS OF LEO T. BARTNIK, JR., * MHIC NO.: 08 (05) 475
T/A VIET VET, INC. *

* * * * *

RECOMMENDED DECISION

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ISSUE
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DISCUSSION
CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On March 24, 2008, Thomas Dedeo (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$19,985.00 for actual losses allegedly suffered as a result of a home improvement contract with Leo T. Bartnik, t/a Viet Vet, Inc. (Respondent).

I held a hearing on December 10, 2009 at the Office of Administrative Hearings, (OAH) Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2)(i) (Supp. 2009). The Claimant appeared and represented himself. Kris King, Assistant Attorney General, represented the Fund. The Respondent failed to appear.

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), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02.01; and 28.02.01.

The OAH sent notice of the hearing to the Respondent at his address of record with the MHIC, by regular and certified mail. The postal service did not return the regular mail copy of the notice as undeliverable. The Respondent did not claim the certified mail copy of the notice. I ruled that the hearing would proceed in the Respondent's absence. Md. Code Ann., State Gov't § 10-209 (2009); COMAR 09.01.02.07B, COMAR 09.01.02.09.

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. Ex. # 1 - Complaint Form, dated August 22, 2007; Proposal from the Respondent, dated September 5, 2006; Contract with the Respondent, dated September 28, 2006; Contract with the Respondent, dated November 9, 2006; Copies of Checks, dated September 12, 2006, September 18, 2006, September 29, 2006, October 5, 2006, October 17, 2006, November 14, 2006; Summary of Payments; Summary of Work and Payments; Copies of five photographs (full page size)
- Cl. Ex. # 2 - Claim Form, dated March 18, 2008; Letter from the Claimant to the MHIC, dated March 18, 2008; Proposal from the Respondent, dated September 5, 2006; Contract with the Respondent, dated September 28, 2006; Contract with the Respondent, dated November 9, 2006; Proposal from Grandview Custom Builders, Ltd., dated March 6, 2008
- Cl. Ex. # 3 - Copies of five photographs (half page size)

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

Fund Ex. # 1 - Memorandum from Sandra Sykes to Legal Services, dated September 8, 2009; Notice of Hearing, dated August 13, 2009, with attachments; Hearing Order, dated March 13, 2009; Envelope with certified mail information

Fund Ex. # 2 - Licensing Information, dated December 8, 2009

Fund Ex. # 3 - Assessments and Taxation Information, dated December 8, 2009

Fund Ex. # 4 - Claim Form, received March 24, 2008; Letter from the Claimant to the MHIC, dated March 18, 2008

Fund Ex. # 5 - Letter from John Borz to the Respondent, dated March 28, 2008

No exhibits were submitted on the Respondent's behalf.

Testimony

The Claimant testified on his own behalf, and presented testimony from Hal Miller. Mr. Miller was accepted as an expert in construction. The Fund did not present any testimony. No testimony was presented on the Respondent's behalf.

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 3312453.
2. On September 5, 2006, the Claimant and the Respondent entered into a contract in which the Respondent agreed to remove the Claimant's existing upper deck and build a replacement deck on the existing frame, adding one joist, two stringers, and a hand rail. The Claimant agreed to pay \$12,160.00 on this contract.
3. The Respondent began work on the contract on September 6, 2006.

4. On September 28, 2006, the Claimant and the Respondent entered into an additional contract in which the Respondent agreed to remove the existing deck rail and install a new rail, and to install a composite band board cover. The price on this contract was \$11,390.00.
5. On November 9, 2006, the Claimant and the Respondent entered into a third contract in which the Respondent agreed to rebuild the side deck, rebuild the upper deck stairs, remove a rotted joist and install a new joist, and remove and rebuild two sets of steps. The price on this contract was \$9,755.00.
6. The Claimant and his wife paid the Respondent a total of \$32,145.00.
7. The Respondent essentially completed the work on all three contracts.
8. The Respondent's work was unworkmanlike, as follows:
 - o The stair rails were unsafe because the posts were cut too short to reach the joists, and they were bolted with only one bolt when two bolts were needed.
 - o Some material was popping loose because it was nailed with finish nails instead of stainless steel screws.
 - o The stair carriages were not attached properly. The 4 x 4 posts were not set in concrete as needed. The stairs bounced and could collapse.
 - o There were holes in the deck from patches in the decking, which should have been installed end to end.
9. The reasonable cost to repair the Respondent's work is \$15,000.00.
10. The Claimant intends to have another contractor do the work necessary to repair the Respondent's work.

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. 2009). *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 Claimant has proven eligibility for compensation.

The Respondent and the Claimant entered into three contracts in 2006, for the rebuilding of two decks on the Claimant’s house. The Respondent was a licensed home improvement contractor at the time of the three contracts. The Respondent essentially completed the work on the three contracts.

The evidence showed that the Respondent’s work was an unworkmanlike home improvement. The Claimant presented testimony from Hal Miller, associated with Grandview Custom Builders, Ltd. Mr. Miller was accepted as an expert in the field of construction. Mr. Miller stated that he inspected the Respondent’s work at the Claimant’s home and it was his opinion that the Respondent’s work was unworkmanlike, for the following reasons. The stair rails were unsafe because the posts were cut too short to reach the joists, and they were bolted with only one bolt when two bolts were needed. Some material was popping loose because it was nailed with finish nails instead of stainless steel screws. The stair carriages were not attached properly. The 4 x 4 posts were not set in concrete as needed. The stairs bounced and could collapse. There were holes in the deck from patches in the decking, which should have been installed end to end.

I found Mr. Miller’s testimony to be credible evidence on the workmanship of the Respondent’s work under the contracts. Mr. Miller was thorough and clear, and his explanations were consistent and coherent. The Fund’s representative acknowledged that Mr. Miller’s opinion was credible evidence. The Respondent, having failed to appear, did not dispute this opinion. I conclude that the Respondent’s work was an unworkmanlike home improvement.

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). The Claimant intends to have Mr. Miller do the necessary work to repair the Respondent's work. The appropriate formula is as follows, in pertinent part:

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).

The Claimant and his wife paid a total of \$32,145.00 to the Respondent under the three original contracts. (Cl. Ex. # 1). Mr. Miller testified credibly that the amount necessary to repair the Respondent's poor work was \$15,000.00. This testimony was consistent with a proposal prepared by Mr. Miller in 2008. (Cl. Ex. # 2). The Fund's representative acknowledged that Mr. Miller's estimate was credible evidence. The Respondent, having failed to appear, did not dispute this opinion.

The original contract price from the three contracts was \$33,305.00. (Cl. Ex. # 1, Cl. Ex. # 2). The mathematical result is an actual loss of \$13,840.00. I find that this figure is the amount the Claimant should receive from the Fund.

CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$13,840.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2004).

RECOMMENDED ORDER


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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$13,840.00; 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 (2004); and

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

January 19, 2010
Date decision mailed



Judith Jacobson
Administrative Law Judge

JI
110719

IN THE MATTER OF THE CLAIM OF	*	BEFORE JUDITH JACOBSON,
THOMAS DEDEA	*	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-02-09-09634
OMISSIONS OF LEO T. BARTNIK, JR.,	*	MHIC NO.: 08 (05) 475
T/A VIET VET, INC.	*	

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FILE EXHIBIT LIST

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dated March 18, 2008

Fund Ex. # 5 - Letter from John Borz to the Respondent, dated March 28, 2008

No exhibits were submitted on the Respondent's behalf.

PROPOSED ORDER

WHEREFORE, this 16th day of March 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.

Marilyn Jumalon

*Marilyn Jumalon
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION