

IN THE MATTER OF THE CLAIM OF	*	BEFORE ANN C. KEHINDE,
THOMAS SADLER	*	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-02-09-42921
OMISSIONS OF MENG KIM, u/a C.K.	*	MHIC NO.: 08(05)784
CONSTRUCTION COMPANY,	*	
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 July 4, 2008, Thomas Sadler (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$6,041.25 for actual losses allegedly suffered as a result of a home improvement contract with Meng Kim, u/a C.K. Construction Company (Respondent).

I held a hearing on July 2, 2010 at the Carroll County Health Department, 290 South Center Street, Westminster, MD 21158. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010). Gina Serra, Assistant Attorney General, Department of Labor, Licensing and Regulation

(Department), represented the Fund. The Claimant represented himself. The Respondent represented herself.<sup>1</sup>

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, 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:

1. Contract between C.K Construction Co. and Respondent, dated June 9, 2007
2. Invoice from Luke Steckel, dated October 13, 2007
3. Invoice from J & J Concrete Construction, dated October 4, 2007
4. Contract from Surface Tech, Inc., dated October 31, 2007
5. Copy of checks made payable to C.K. Construction Co. and endorsed

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

1. Notice of Hearing, dated April 15, 2010
2. MHIC Hearing Order, dated September 16, 2009
3. Respondent's Licensing History
4. Home Improvement Claim Form, dated July 2, 2008

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<sup>1</sup> Susan Hahn, a Korean language interpreter with LionBridge, provided interpretation services for the Respondent.

5. Letters from MHIC to Respondent, dated August 5, 2008 and June 12, 2008

The Respondent did not offer any documents into evidence.

#### Testimony

The Claimant testified and did not present any other witnesses.

The Respondent testified and did not present any other witness.

The Fund did not present 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 3629634.
2. The Respondent took the test to become a licensed home improvement contractor and her name is on the records of the MHIC as the licensed contractor trading as CK Construction, Co. The Respondent's husband entered into contracts with homeowners and performed the work on the contracts.
3. The Claimant is a heating, ventilation and air condition (HVAC) contractor; his company is called Comfort Temp HVAC. In June 2007, the Claimant wanted a detached garage built at his residence so that he could have a place to fabricate sheet metal for his jobs.
4. The Claimant knew the Respondent and her husband prior to June 2007. He did some HVAC jobs for the Respondent's husband and did the HVAC work on the Respondent's residence.
5. On June 9, 2007, the Claimant and the Respondent's husband, on behalf of the Respondent's company, entered into a contract to construct a garage on the Claimant's property. The detached garage was to be 30 feet wide, 40 feet deep and to have a 10 foot

high ceiling. The cost of the garage was \$32,000 with half of the total price to be paid as a down payment and the remaining half to be paid after the garage was completed.

6. On June 9, 2007, the Claimant paid the Respondent \$16,000. The check was deposited into the Respondent's business account.
7. The Respondent's husband began work on the garage. He excavated the area for the garage, constructed the sides, installed the trusses and installed approximately ninety percent of the plywood on the roof.
8. The Respondent's husband asked the Claimant for another check. The Claimant gave the Respondent's husband a second check in the amount of \$6,400 on or about August 31, 2007.
9. The Respondent's husband did not do any further work on the garage. The Respondent's husband said he was having problems with his wife and had to go to Texas for a few weeks. He told the Claimant he would call him when he got back.
10. The Claimant spoke with the Respondent two times by telephone. She told the Claimant that her husband would finish the job.
11. The Respondent's husband never returned to finish the garage. No one on behalf of the Respondent or the Respondent's company returned to finish the garage.
12. In October 2007, the Claimant hired Luke Steckel to finish the framing of the garage, install the windows, siding, and shingles. The Claimant paid Luke Steckel \$8,205.00 to complete the work that was left incomplete by the Respondent.

13. In October 2007, the Claimant hired J & J Concrete Construction to lay a stone base for the concrete floor of the garage. J & J Concrete Construction then poured a six-inch concrete slab as specified in the original contract. The Claimant paid J & J Concrete Construction \$4,356.25 to complete the work that was left incomplete by the Respondent.
14. After the concrete slab was poured, the Claimant hired Surface Tech, Inc., to prepare the concrete to make it useable as a shop floor. The Claimant paid Surface Tech, Inc. \$2,700.00 to complete the work that was left incomplete by the Respondent.
15. The Claimant's actual loss is \$5,661.25.

#### 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 the Claimant entered into the contract with the Respondent's husband. Although the Respondent testified that her name was not on the contract and that her husband controlled the business without allowing her to become involved in any aspect of it, she acknowledged that she took the licensing test and knew that her husband was entering into contracts on behalf of the company. It is extremely unfortunate that the Respondent's husband abandoned the Claimant's project and

has failed to meet his business and family obligations. However, as the licensed contractor, the Respondent is responsible for the incomplete home improvement.

Second, the Respondent performed an incomplete home improvement. There is no dispute that after receiving the second payment, the Respondent's husband did not perform any further work on the project and has never returned to complete the project despite the Claimant's requests for him to do so.

Having found eligibility 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). The Claimant presented documentation, in the form of cancelled checks, showing that he paid the Respondent \$22,400.00. (Claimant's Ex. 5). He also presented documentation of the expenses he incurred in hiring contractors to finish the project. He testified without contradiction that the scope of the work performed by Luke Steckel, J & J Concrete and Surface Tech, Inc., was within the scope of work that was contemplated in the original contract he had with the Respondent.

The attorney for the GF questioned the Claimant about the work in the Surface Tech, Inc., contract (Claimant's Ex. 4). The Claimant conceded that the original contract did not specify how the surface of the concrete floor was to be finished, but he testified that the Respondent's husband knew that the purpose of the garage was for him to fabricate sheet metal and that the Respondent's husband knew that the floor had to be finished in such a way that the Claimant would be able to wipe up the floor after working. I found the Claimant to be a credible witness. He testified in a very straightforward manner and he appeared genuinely sympathetic to the Respondent's situation. He had worked with the Respondent's husband in the past and

therefore, I find it believable that the parties did not specify everything in the original contract because they both understood how the Claimant was planning to use the garage.

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 above formula to the facts of this case results in the following calculations:

Amount paid to Respondent	22,400.00
Amount paid to Luke Steckel	8,205.00
Amount paid to J & J Concrete	4,356.25
<u>Amount paid to Surface Tech. Inc.</u>	<u>2,700.00</u>
Total	37,661.25
Minus original contract price	32,000.00
<b>Actual loss</b>	<b>5,661.25</b>

#### **CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual loss of \$5,661.25 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,661.25; 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.

September 29, 2010  
Date decision mailed



Ann C. Kehinde  
Administrative Law Judge

ack  
# 117069



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**FILE EXHIBIT LIST**

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The Respondent did not offer any documents into evidence.

PROPOSED ORDER

*WHEREFORE, this 26th 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**