

**IN THE MATTER OF THE CLAIM \* BEFORE LOUIS N. HURWITZ,**  
**OF LYNN BOYER AND EDWARD \* AN ADMINISTRATIVE LAW JUDGE**  
**BARTYNSKI AGAINST THE \* OF THE MARYLAND OFFICE**  
**MARYLAND HOME \* OF ADMINISTRATIVE HEARINGS**  
**IMPROVEMENT GUARANTY FUND \* OAH NO.: DLR-HIC-02-10-35737**  
**FOR THE ALLEGED ACTS AND \* MHIC NO.: 09 (05) 1005**  
**OMISSIONS OF ROBERT GILLIAM, \***  
**T/A RL CONSTRUCTION, LLC \***

\* \* \* \* \*

**RECOMMENDED DECISION**

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

**STATEMENT OF THE CASE**

On or about February 27, 2009, Lynn Boyer and Edward Bartynski (Claimants) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$13,027.66 for actual losses suffered as a result of home improvement work performed in an unworkmanlike, inadequate or incomplete manner by Robert Gilliam, t/a RL Construction, LLC (Respondent).

I conducted a hearing in this matter on April 28, 2011 at the Hunt Valley, Maryland headquarters of the Office of Administrative Hearings (OAH). Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2) (2010). Peter Martin, Assistant Attorney General, represented the Fund.

The Claimants appeared at the hearing and were represented by Douglas Seitz, Esq. The Respondent, after receiving due notice of the hearing, did not appear.

Procedure in this case is governed by the provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation (DLLR), and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010); Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02 and 09.08.03; COMAR 28.02.01.

### **ISSUES**

Did the Claimants sustain an actual loss compensable by the Fund as a result of the acts or omissions of the Respondent and, if so, what should be the monetary award?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

The Claimants submitted the following exhibits, which were admitted into evidence:

- |       |   |
|-------|---|
| CL #1 | Estimate/Contract from RL Construction, LLC, dated June 11, 2008  |
| CL #2 | Cancelled check, dated July 2, 2008   |
| CL #3 | Bankruptcy Court Order Determining Debt Non-Dischargeable and Granting Further Relief, filed March 30, 2009 |
| CL #4 | Circuit Court for Harford County Order and Assessment of Damages, dated February 12, 2010                   |
| CL #5 | Bankruptcy Court Order Determining Debt to be Non-Dischargeable, filed February 3, 2010                     |
| CL #6 | Bankruptcy Court Final Money Judgment, filed February 3, 2010   |

The Respondent did not submit any exhibits for inclusion into evidence.

The Fund submitted the following exhibits, which were admitted into evidence:

- GF #1 Four Notices of Hearing, dated January 25, 2011; four Hearing Orders, dated September 17, 2010; and four envelopes returned by the United States Postal Service (USPS) as undeliverable
- GF #2 Notice of Hearing, dated March 16, 2011, and envelope returned by the USPS as undeliverable
- GF #3 Respondent's MHIC Licensing History, dated April 15, 2011
- GF #4 Affidavit of Michelle Escobar, dated March 22, 2011
- GF #5 Respondent's MHIC registration information, dated April 14, 2011
- GF #6 MHIC letter to the Respondent, dated March 3, 2009, with attached Home Improvement Claim Form, received by DLLR on February 27, 2009

#### Testimony

Claimants Boyer and Bartynski each testified on their own behalf. No witnesses appeared on behalf of the Respondent or the Fund.

#### **FINDINGS OF FACT**

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

1. The Respondent was licensed by the MHIC as a contractor at all times relevant to this case. His MHIC license expired on October 25, 2009, and was not renewed.
2. On or about July 2, 2008, the Claimants entered into a contract with the Respondent to construct a one-story thirty-foot by twenty-four-foot addition to the Claimants' residence, located at 7413 Bayfront Road, Baltimore, Maryland 21219.
3. The parties agreed that the work would be completed for \$39,083.00. The contract called for a completion date within thirty days of a yet-to-be determined start date.
4. On July 2, 2008, the Claimants issued a check to the Respondent in the amount of \$13,027.66. The Respondent cashed the check.

5. The Respondent did not contact the Claimants about starting the project. The Claimants became concerned and made inquiry to the Respondent about the commencement of the job. The Respondent responded by stating that he was in the process of obtaining permits for the project.
6. No permits were ever obtained for the project.
7. The Respondent never returned to the Claimants' residence to perform the work contemplated by the contract.
8. In October 2008, the Respondent filed for Chapter 7 bankruptcy. During the bankruptcy proceedings, the Respondent admitted that he ceased doing business as RL Construction, LLC, in June 2008.
9. The Claimants attended at least one meeting of the Respondent's creditors in U.S. Bankruptcy Court.
10. The Respondent has not returned any of the funds the Claimants paid to him.
11. On or about February 27, 2009, the Claimants filed a Fund claim in the amount of \$13,027.66, alleging that the Respondent had abandoned the project without performing any of the work for which he was contracted.

### DISCUSSION

#### I. Respondent's Failure to Appear

The OAH initially mailed notice of the hearing, dated January 25, 2011, to the Respondent by certified and regular mail to the Respondent's Chapel Road business address in Perry Hall, Maryland, on file with the MHIC. The OAH also mailed notice of the hearing, dated January 25, 2011, to the Respondent by certified and regular mail to the Respondent's Forge Avenue home address in Perry Hall, Maryland, on file with the MHIC.

The certified mail to the Chapel Road address was returned by the USPS as undeliverable while the first class mail to the same address was returned as undeliverable, marked "temporarily away, unable to forward." The certified mail to the Forge Road address was also returned by the USPS as undeliverable, marked "not deliverable as addressed, unable to forward." The first class mail to the Forge Avenue address was returned as undeliverable, marked "unable to forward." Also handwritten on the first class envelope is the notation "no longer resides at this address."

On March 14, 2011, the OAH sent new notices to a Troon Circle address in Mt. Airy, Maryland, obtained by the MHIC as the Respondent's most recent address with the Maryland Motor Vehicle Administration (MVA). The notice sent by certified mail to the Mt. Airy address was returned by the USPS as "unclaimed, unable to forward." The notice sent by first class mail to the same address was not returned as undeliverable. All of the OAH notices advised the Respondent of the time, place and date of the hearing.

The Respondent has had an MHIC license at all times relevant to the filing of the claim and his license remained in effect until March 18, 2009, when the MHIC suspended it on an emergency basis. The Respondent's MHIC license expired in October 25, 2009 and was not renewed.

I find that the Respondent received due notice, via first class mail, to appear at the hearing but failed to appear, and therefore, the hearing proceeded in the Respondent's absence. Md. Code Ann., Bus. Reg. § 8-312(h) (2010).

## II. The Merits of the Case

Section 8-405 of the Business Regulation Article provides that an owner may recover compensation of 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 (2010). Section 8-401 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).

COMAR 09.08.03.03B governs the calculation of awards from the Fund:

**B. Measure of Awards from Guaranty Fund.**

(1) The Commission may not award from the Fund any amount for:

- (a) Consequential or punitive damages;
- (b) Personal injury;
- (c) Attorney’s fees;
- (d) Court costs; or
- (e) Interest.

(2) The Fund may only compensate claimants for actual losses they incurred as a result of misconduct by a licensed contractor.

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

(a) If the contractor abandoned the contract without doing any work, the claimant’s actual loss shall be the amount which the claimant paid to the contractor under the contract.

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant’s actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

(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.

On or about July 2, 2008, the Claimants entered into a contract with the Respondent to perform certain home improvement work, in the amount of \$39,083.00, at the Claimants' property. The contract called for the Respondent to demolish the existing in-law quarters at the residence and to rebuild the structure.

The agreement between the parties called for the Claimants to make three payments, the first in the amount of \$13,027.66 and the last two in the amount of \$13,027.67. The last payment was to have been made at the time of completion. On July 2, 2008, the Claimants paid the Respondent a deposit of \$13,027.66.

The licensed home improvement contractor's actions in this case represent some of the more egregious and untrustworthy acts that can be undertaken by a home improvement contractor. The Respondent accepted a \$13,027.66 deposit from the Claimants, yet he performed no work under the contract. There was even information presented from one of the Respondent's hearings in Bankruptcy Court indicating that he ceased doing business as RL Construction, LLC, the month before he entered into the above-referenced agreement but, nevertheless, accepted a deposit from the Claimants.

The Respondent did not appear in response to the Notice of Hearing to contest the Claimants' version of events or to assert that he attempted to do any work on the project. The Claimants' testimony and documentary evidence remain unrefuted on the issues before me.

I find, from the documents presented, that the Respondent was licensed at the time of the Claimants' loss. The burden of proof in this case rests with the Claimants to establish, by a preponderance of the evidence, that they should be reimbursed for actual losses suffered as a result of misconduct by a licensed contractor. Md. Code Ann., Bus. Reg. § 8-407(e)(1) (2010) and Md. Code Ann., State Gov't. § 10-217 (2009).

The evidence before me supports a finding that the work undertaken by the Respondent was abandoned. The evidence shows that the Respondent performed no work under the contract.

This is a case where the Claimants paid the Respondent \$13,027.66 out of the total contract price of \$39,083.00, but the Respondent performed none of the work contemplated by the agreement. The Claimants presented a canceled check to document that they paid the Respondent a total of \$13,027.66. The Respondent did not return any monies paid by the Claimant.

Therefore, the proper formula to use is the one that addresses the fact that the Respondent abandoned the contract without doing any work. The Claimant's actual loss shall be the amount he paid to the contractor, which is \$13,027.66. COMAR 09.08.03.03B(3)(a).

In summary, I find that the Claimants' testimony and documentary evidence support a finding that they suffered an actual, measurable loss as a result of the Respondent's incomplete home improvement within the definition found in section 8-401 of the Business Regulation Article. The Claimant established that the Respondent performed no work pursuant to the contract.

#### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant has sustained an actual loss compensable by the MHIC Fund as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 and 8-405 (2010) and COMAR 09.08.03.03B(3)(a).



**RECOMMENDED ORDER**

I **RECOMMEND** that the MHIC:

**ORDER**, that the Claimants be awarded \$13,027.66 from the MHIC Fund; and

**ORDER**, that the Respondent, Robert Gilliam, t/a RL Construction, LLC, be ineligible for an MHIC license until the Respondent reimburses the 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 (2010); and

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

July 8, 2011  
Date Decision Mailed



Louis N. Hurwitz  
Administrative Law Judge

LNH/kkc  
#123344

**IN THE MATTER OF THE CLAIM \* BEFORE LOUIS N. HURWITZ,**  
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**EXHIBIT LIST**

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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 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.*

*Joseph Tunney*

*Joseph Tunney  
Panel B*

*MARYLAND HOME IMPROVEMENT COMMISSION*