

IN THE MATTER OF THE CLAIM	* BEFORE BRIAN ZLOTNICK,
OF NORRIS BELCHER, JR.,	* ADMINISTRATIVE LAW JUDGE,
CLAIMANT,	* THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH NO.: DLR-HIC-02-12-18849
FOR THE ALLEGED ACTS OR	* MHIC NO.: 09 (75) 1630
OMISSIONS OF THOMAS MURRAY,	*
T/A THOMAS B. MURRAY, LLC,	*
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 April 4, 2011, Norris E. Belcher, Jr. (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$26,928.00 for losses allegedly suffered as a result of a home improvement contract with Thomas Murray, trading as Thomas B. Murray, LLC (Respondent). On April 25, 2012, the MHIC approved the claim for a formal hearing.

I conducted a hearing on September 6, 2012, at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010). Kris

King, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the Fund. The Claimant represented himself. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the DLLR, 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 & Supp. 2012); Code of Maryland Regulations (COMAR) 09.01.03.01, 09.08.02.01, and 28.02.01.01.

ISSUE

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

SUMMARY OF THE EVIDENCE

Exhibits

Unless otherwise noted, I admitted the following exhibits on the Claimants' behalf:

1. June 4, 2008 contract (Contract)
2. Cost breakdown of master bathroom
3. Check in the amount of \$38,182.00, dated June 14, 2008
4. Check in the amount of \$19,091.25, dated July 8, 2008
5. Building permits
6. Notice from Carroll County Building Inspector, dated April 16, 2009
7. Five photographs of wood flooring
8. Undated note written by the Claimant
9. Photograph of wood flooring in the kitchen
10. Photograph of existing wood flooring damaged by Respondent – **NOT ADMITTED INTO EVIDENCE**
11. Check in the amount of \$2,557.88, dated November 10, 2008
12. Invoice, dated November 5, 2008
13. Six photographs of drywall on main floor
14. Proposal from P& E Construction, dated December 2, 2010
15. Estimate from Bromwell's Plumbing, dated August 10, 2010
16. Photograph of first floor ceiling
17. Photograph of dining room ceiling
18. Photograph of bookshelves
19. Photograph of bathroom wall
20. Photograph of electrical outlet in master bathroom
21. Photograph of soaking tub in master bathroom

22. Check in the amount of \$17,940.00, dated July 23, 2008
23. Check in the amount of \$3,000.00, dated November 26, 2008
24. Check in the amount of \$1,000.00, dated February 2, 2009
25. Photograph of master bathroom wall
26. Photograph of attic vents
27. Photograph of the roof of the addition
28. Notes from the Claimant to the Respondent
29. Note from the Claimant to the Respondent
30. Proposal from Monroe Home Improvement, dated January 7, 2010
31. Estimate from T.M. Watts, dated March 16, 2010

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

1. Notice of Hearing, dated July 2, 2012
2. DLLR transmittal; Hearing Order, dated February 25, 2012
3. The Respondent's licensing history with the MHIC, dated September 5, 2012
4. Home Improvement Claim Form, dated April 4, 2012
5. Letter from the MHIC to the Respondent, dated April 22, 2011

The Respondent did not submit any documents into evidence.

Testimony

Ms. Belcher testified in support of the claim. The Respondent testified on his own behalf. The Fund presented no testimony.

STIPULATION

1. The Claimant paid the Respondent \$81,751.63, which represented payment in full.

FINDINGS OF FACT

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

1. At all relevant times, the Respondent was a licensed home improvement contractor under MHIC license number 01-3545526. His current license expires on April 1, 2013.
2. On June 4, 2008, the Claimant and the Respondent entered into a Contract to construct a 500 square foot addition (family room) and to perform other renovations and improvements to the Claimant's home, to include a total kitchen remodel, installation of 950 square feet of

hardwood flooring on the first floor, installation of shelving in the master bedroom closet and a renovation of the master bathroom.

3. The original contract price was \$76,365.00, but after additions which included the replacement of paneling in the first floor living room with drywall and paint, adding a door for a second floor bedroom, adding a stone retaining wall, and the cost of materials purchased by the Claimant, the final contract price was \$81,751.63.

4. The work began on or about June 14, 2008, which included the demolition of the existing master bathroom and the commencement of the work on the addition. The Respondent completed work on the contract in November 2008 and returned to make various repairs to his work through January 2009. The final payment on the contract was made in February 2009.

5. The Respondent's work on the contract was substandard in the following manner:

- Paneling on installed kitchen cabinets was warped
- Hardwood flooring installed by the Respondent contained short planks, gaps and buckled (Claim Ex. # 7)
- Master bathroom sinks do not drain properly – drain vents need to be added
- Master bathroom shower does not drain properly – drain vents need to be added
- Soaking tub in master bathroom was not installed properly – it does not sit properly on bathroom floor (Claim Ex. # 21)
- Drywall work and painting performed by the Respondent (Claim Ex. #s 13, 16, 17, 19 and 25)
- French doors in the addition did not function properly – need to be replaced

6. After the Claimant made his final payment to the Respondent in February 2009, the Respondent believed that the Claimant was satisfied with his work on the contract and that the contract was finished. The Claimant had left a lengthy list of issues that needed to be resolved

with the contract on the kitchen counter prior to February 2009. Those issues were not resolved by the Respondent. The Respondent did not return to the Claimant's home to work on the contract after February 2009.

7. According to the Respondent, it would cost \$15,400.00 in labor and materials to remedy the deficiencies in his work on the contract as listed above.

8. On April 1, 2011, the Claimant submitted a claim with MHIC.

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.

Ms. Belcher testified with consistent recollections about the period of time beginning with her first contact with the Respondent and proceeding through different stages of the work, concluding with her final payment to the Respondent in February 2009. I found her particularly credible as she maintained notes that were created contemporaneously with her experiences during the renovation project. She made excellent eye contact while testifying and spoke in measured tones with conviction. Ms. Belcher described poor workmanship with the installation of the hardwood floors which she indicated contained short planks and were buckling. She supported her testimony with photographs. In addition to problems with the floor installation, Ms. Belcher presented credible testimony supported by photographs of the improper setting of the soaking tub in the master bathroom as it was not set level with the bathroom floor.

Furthermore, Ms. Belcher testified and showed photographs of substandard dry wall and painting

performed by the Respondent. She also testified about the drainage issues associated with the plumbing work performed by the Respondent in the master bathroom.

The Respondent testified that he was denied an opportunity to repair the issues raised by the Claimant and therefore the Claimant should be barred from a recovery from the Guaranty fund in accordance with §8-405 (d) of the Business Regulation Article of the Maryland Annotated Code. He stated that he replaced flooring and that he could re-sand and re-finish the hardwood floors he installed. The Respondent further argued that the Claimant should not receive reimbursement from the Fund because when he received the Claimant's final payment in February 2009, he believed that the Claimant was satisfied with his work.

I disagree with the Respondent's assertion that he was denied an opportunity to repair the work on the contract. The list of items that needed to be repaired, which the Claimant left in the home for the Respondent to review, were extensive and were well beyond what the Respondent characterized as a "punch out list." Yet, the Respondent simply assumed that his job was done when the Claimant made the final payment on the contract in February 2009. Additionally, the Respondent conceded that there was no reason to dispute any of the deficiencies described by the Claimant during the hearing.

As reflected in the Findings of Fact, I find that the hardwood flooring, the kitchen cabinets, the soaking tub, master bathroom plumbing, dry wall work and painting of those walls, and the French doors for the addition were improperly installed.

The Claimant presented several proposals from various contractors to fix the inadequate work performed by the Respondent, but those proposals were unreliable due to their inclusion of additional work beyond the contract and also repairs for consequential damages that are not subject to a guarantee fund award. Therefore, I found the Respondent's testimony regarding the

estimated costs for the repair of the issues cited by the Claimant as the most accurate measure of those costs.

Having found eligibility for compensation, I now turn to the amount of the award. 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).

The calculation is as follows:

Amount paid under the original contract:	\$81,751.63
Amount paid to repair inadequate work:	<u>+15,400.00</u>
	\$ 97,151.63
Less the original contract price:	<u>-81,751.63</u>
Actual loss:	\$15,400.00

Therefore, I find that the Claimant is entitled to an award of \$15,400.00 to compensate him for his actual loss resulting from the Respondent's unworkmanlike completion of the addition and bathroom renovation to his home.

CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual, compensable loss of \$15,400.00 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 \$15,400.00; 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 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.

Signature on File

December 5, 2012
Date Decision mailed

Brian Zlotnick
Administrative Law Judge

BMZ/emh
#139080

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FILE EXHIBIT LIST

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PROPOSED ORDER

WHEREFORE, this 20th day of February 2013, 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.

J. Jean White

I. Jean White
Panel B

MARYLAND HOME IMPROVEMENT COMMISSION