

IN THE MATTER OF THE CLAIM  
 OF GAIL E. COMBS,  
 CLAIMANT,  
 AGAINST THE MARYLAND HOME  
 IMPROVEMENT GUARANTY FUND  
 FOR THE ALLEGED ACTS OR  
 OMISSIONS OF WILLIAM EDWARD  
 DUGGE,  
 T/A ATLANTIC ONE REMODELING<sup>1</sup>,  
 RESPONDENT

\* BEFORE LORRAINE EBERT FRASER,  
 \* AN ADMINISTRATIVE LAW JUDGE  
 \* OF THE MARYLAND OFFICE  
 \* OF ADMINISTRATIVE HEARINGS  
 \* OAH NO.: DLR-HIC-02-12-18818  
 \* MHIC NO.: 10 (90) 470  
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**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 2, 2010, Gail E. Combs (Claimant), filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$17,023.23 for actual losses allegedly suffered as a result of a home improvement contract with William E. Dugge, t/a Atlantic One (Respondent).

<sup>1</sup> The Respondent listed his trade name with MHIC as Atlantic Home Services; however, on his contract with the Claimant he listed his trade name as Atlantic Home Remodeling. For the purposes of this hearing, they are one and the same.

I held a hearing on August 20, 2012, at the Dorchester County Office Building, 501 Court Lane, Cambridge, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2012). Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented herself. The Respondent failed to appear for the hearing after notice was sent to his address of record.

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 & Supp. 2012), Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; 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:

- Clm. Ex. 1 - Contractor Agreement, dated September 11, 2008
- Clm. Ex. 2 - Complaint, dated September 28, 2009
- Clm. Ex. 3 - Photocopy of front and reverse of checks payable to the Respondent: check 1200 for \$8,795.00, dated October 30, 2008; and check 1232 for \$10,000.00, dated December 20, 2008
- Clm. Ex. 4 - Thirteen color pictures of the Claimant's home, a red trailer and license plate
- Clm. Ex. 5 - Handwritten list - Things I see that still need to be done

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OF GAIL E. COMBS,	* AN ADMINISTRATIVE LAW JUDGE
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AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH NO.: DLR-HIC-02-12-18818
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OMISSIONS OF WILLIAM <sup>M</sup> EDWARD	*
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- Clm. Ex. 6 - Brooks Creek Homes & Remodeling Proposal, dated September 2, 2009; Revised 9/11/09 and Revised 10/9/09
- Clm. Ex. 7 - George E. Jackson Plumbing Invoice, dated August 24, 2009
- Clm. Ex. 8 - Letter to Travers Enterprises, Inc., from the Respondent, dated October 26, 2009, with attached copy of Statement, dated October 25, 2009; and Invoice, dated October 1, 2009
- Clm. Ex. 9 - Letter To Whom It May Concern – Department of Public Works from the Claimant, dated September 16, 2009
- Clm. Ex. 10 - Email to Respondent from the Claimant, dated August 14, 2009
- Clm. Ex. 11 - Rehoboth Beach-Dewey Beach Chamber of Commerce Membership Directory, 2011-2012
- Clm. Ex. 12 - Drawing of the Claimant's house with instructions for work to be done, dated September 4, 2009

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

- Fund Ex. 1 - Four sets of return mailings
- Fund Ex. 2 - The Respondent's licensing information
- Fund Ex. 3 - Affidavit of Lynn-Michelle Escobar, dated June 28, 2012
- Fund Ex. 4 - Home Improvement Claim Form, received April 2, 2010
- Fund Ex. 5 - Letter to the Respondent from John Borz, MHIC, dated April 27, 2010

No exhibits were admitted on the Respondent's behalf.

#### Testimony

The Claimant testified and presented the testimony of Daniel S. Harris, her brother-in-law, and David Fountain Pritchett.

The Fund did not present any witness 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 # 50511. His license expired on January 16, 2009.
2. On September 11, 2008, the Claimant and the Respondent entered into a contract to build a 24' x 16' addition to the Claimant's house. The work was to include: footings, a block foundation, framing the walls and roof, roofing, siding, one interior bedroom door, one door between the existing house and the addition, one exterior door, two bi-fold closet doors for two closets, five windows, insulation, dry wall, electric, plumbing, a tiled bathroom, snap wood laminate flooring, commercial grade carpet, an 8' x 8' deck with a ramp, two outside plugs, and a fan in the bedroom. Also, the Respondent was to install a new storm door and new roof shingles on the existing house. The contract did not state when the work would begin but stated that it would be completed three months after work started.
3. The original agreed upon contract price was \$40,795.00, which includes the price to put new roof shingles on the existing house.
4. On October 30, 2008, the Claimant paid the Respondent \$8,795.00. On December 20, 2008, the Claimant paid the Respondent \$10,000.00.
5. On November 10, 2008, the Respondent began work on the foundation.
6. Between November 26 and December 10, 2008, the Respondent's subcontractor completed the foundation.
7. On January 23, 2009, the Respondent installed the side studs and OSB siding.

8. Sometime in March or April 2009, the Respondent installed the roof trusses, OSB on the roof, and house wrap.
9. On June 16, 2009, the Respondent installed roofing shingles on the front half of the addition but not the back half. He also installed plastic sheeting over the window openings.
10. On July 15, 2009, the Respondent installed studs for the interior walls.
11. On July 27, 2009, the Respondent dug three holes and poured cement into them for the porch landing.
12. During the week of July 27, 2009, the electrical subcontractor installed rough-in electric.
13. On August 3 and 4, 2009, the plumbing subcontractor installed rough-in plumbing.
14. On August 7, 2009, the Respondent framed the porch landing.
15. On August 10, 2009, the Respondent installed OSB and shingles on the porch roof and two rows of shingles on the second half of the addition's roof.
16. On August 13, 2009, the Respondent's wife sent an updated price list of the cost to complete the job, increasing the amount of the original contract, and requested another \$10,000.00.
17. On August 14, 2009, the Claimant refused to pay the Respondent any more money based on lack of work completed by the Respondent and asked him to remove his tools and trailers from her property.
18. The Respondent did not pay the subcontractors he hired to complete the foundation, electrical, and plumbing work.
19. On September 16, 2009, the Claimant contracted with Brooks Creek Homes & Remodeling (Brooks Creek) to complete the addition to her home, with the exception that

the exterior door and 8' x 8' deck with a ramp were removed from the contract. The unpaid invoices from the electrician and plumber were rolled into the Brooks Creek contract and they were paid for their services by Brooks Creek.

20. The agreed upon Books Creek contract price was \$37,023.23.
21. The Claimant's actual loss is \$15,023.23.
22. On June 26, 2012, the OAH mailed notice of the hearing in this matter to the Respondent's address of record: 510 146<sup>th</sup> Street, P.O. Box 4143, Ocean City, Maryland 21842. Notices were mailed via regular and certified mail. The U.S. Postal Service returned the certified mail as unclaimed. The U.S. Postal Service returned the regular mail as not deliverable as addressed, unable to forward.
23. On June 20, 2012, Lynn-Michelle Escobar, MHIC, checked the Maryland Motor Vehicle Administration's drivers' records, which identify the Respondent's address as 510 146<sup>th</sup> Street, P.O. Box 4143, Ocean City, Maryland 21842.

### 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.2012). *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 he entered into the contract with the Claimant.



Second, the Respondent performed an incomplete home improvement. The Respondent began work on the addition to the Claimant's home on November 10, 2008. In the contract, the Respondent stated that the work would be complete in three months. The Claimant provided the dates the Respondent performed work on the addition, as detailed in the findings of fact above. By December 20, 2008, the Claimant had paid the Respondent \$18,795.00 and only the foundation was complete. The Claimant testified she asked the Respondent a number of times when the addition would be complete and he replied variously before Christmas 2008, by Easter 2009, by summer 2009, and by September 1, 2009. By August 2009, the roof and frame were in place and the electrical and plumbing were roughed in. Then, on August 13, 2009, the Respondent's wife sent to the Claimant an updated price list of the cost to complete the job, which increased the amount of the original contract, and requested the Claimant pay another \$10,000.00 for materials. At this point, the Claimant explained that she did not believe the Respondent had performed \$18,795.00 worth of work and she did not believe that the Respondent was ever going to finish the work. As a result, on August 14, 2009, the Claimant told the Respondent to leave the job site.

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). 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 Claimant's actual loss is calculated as follows:

Amount paid under original contract	\$18,795.00
Amount to complete the work	<u>+37,023.23</u>
Original contract price	\$55,818.23
Actual loss	<u>-40,795.00<sup>2</sup></u>
	\$15,023.23

Therefore, I find that the Claimant is entitled to an award of \$15,023.23 to compensate her for her actual loss resulting from the Respondent's failure to complete the addition on her home in a timely manner.

#### CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual, compensable loss of \$15,023.23 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 \$15,023.23; 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

<sup>2</sup> On her Home Improvement Claim Form filed on April 2, 2010, the Claimant forgot to include the price to put new roof shingles on the existing house (\$2,000.00) when she listed the original contract price as \$38,795.00.

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**

November 19, 2012  
Date Decision Mailed

Lorraine Ebert Fraser  
Administrative Law Judge

LEF  
# 137103

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.*

*Joseph Tunney*

*Joseph Tunney  
Panel B*

**MARYLAND HOME IMPROVEMENT COMMISSION**