

IN THE MATTER OF THE CLAIM	* BEFORE MICHAEL W. BURNS,
OF VICKIE AYER,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH No.: DLR-HIC-02-13-08976
FOR THE ALLEGED ACTS OR	* MHIC No.: 10 (75) 736
OMISSIONS OF EDDY REQUILMAN	*
JR., T/A EDDY REQUILMAN AND/OR	*
COMPETITIVE COST	*
CONSTRUCTION,	*
RESPONDENT	*

* * * * *

RECOMMENDED DECISION

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STATEMENT OF THE CASE

On April 15, 2011, Vickie Ayer (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$21,600.00 for actual losses allegedly suffered as a result of a home improvement contract with Eddy Requilman, Jr., t/a Eddy Requilman and/or Competitive Cost Construction (Respondent).

I conducted a hearing at 10:00 AM on July 16, 2013 at the Largo Government Center, 9201 Basil Court, Room #102, Largo, Maryland 20774. The Claimant appeared and was represented by Cynthia Goode Works, Esquire. Matthew A. Lawrence, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), appeared and represented the Fund. The Respondent did not appear.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of DLLR, and the Rules of Procedure of the Office of Administrative Hearings (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 Replacement Volume & Supp. 2012); Code of Maryland Regulations (COMAR) 09.01.03.01; 09.08.02.01; and 28.02.01.

ISSUES

Did the Claimant sustain an actual loss compensable by the Fund as a result of the acts or omissions of the Respondent? If so, what is the amount of the loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

- Cl. Ex. 1 Contract, dated June 9, 2009,¹ eight pages
- Cl. Ex. 2 Receipt, dated July 27, 2008, with attached Extra Work Order, dated July 27, 2008, 2 pages
- Cl. Ex. 3 Photocopies of four checks, front and back, 4 pages
- Cl. Ex. 4 Prince George's County Permit, issuance date August 21, 2008
- Cl. Ex. 6² Letter from Claimant to Respondent, dated August 10, 2011, 3 pages

¹ The year is listed on the document as "2009" in error. The correct year should be "2008."

² There is no Claimant's Exhibit number 5. The Claimant offered her exhibits in a pre-marked fashion, and presented them out of numerical order, during the hearing and did not offer an Exhibit number 5 as evidence.

- Cl. Ex. 7 Estimate letter from Stephen Kaufman, Spielbichler Construction, Inc., to Claimant, dated March 9, 2011, 3 pages
- Cl. Ex. 8 Photocopies of 13 photographs taken by Stephen Kaufman of Claimant's property, taken February or March, 2011
- Cl. Ex. 9 Letter from Claimant to Respondent, undated, with mailing receipts
- Cl. Ex. 10 19 photographs (A-S) of Claimant's property

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

- GF. Ex. 1 DLLR Licensing Information for the Respondent, License # 01 93819, printed July 15, 2013, 2 pages
- GF. Ex. 2 Memorandum from Sandra Sykes, Docket Specialist, OAH, to Legal Services, dated April 11, 2013, with attachments, 5 pages
- GF. Ex. 3 Affidavit of Thomas Marr, Investigator, MHIC, dated May 2, 2013, 2 pages
- GF. Ex. 4 Maryland Department of Assessment and Taxation, Real Property Data Search, Print-out, dated July 15, 2013
- GF. Ex. 5 Home Improvement Claim Form, date received April 15, 2011

Because the Respondent did not appear at this hearing, no exhibits were offered or admitted on his behalf..

Testimony

The Claimant testified on her own behalf and offered the testimony of the following individuals:

- 1) Stephen Kaufman, Spielbichler Construction, Inc., who was accepted as an expert in home improvement and construction;
- 2) Keith Ayer, the Claimant's son.

The Fund did not present any witnesses.

The Respondent failed to appear and no witnesses appeared on his 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 registration number 01 93819. (GF Ex. 1.)
2. The Respondent's MHIC license expired on or about October 5, 2011. (GF Ex. 1.)
3. The Claimant and her husband planned on having home improvement work performed at their residential property located at 5005 Muskogee Road, College Park, Maryland 20740 (the Property) which was to begin in March of 2008.
4. The Claimant's husband died in January of 2008.
5. The Claimant decided, after her husband died, that she still wanted to have the home improvement work they had considered as a couple performed at the property. The home improvement work was to include major home improvement renovations to the Property including: substantial renovations involving the basement and the main floor of the Property, as well as the construction of an addition to the Property (the Project).
6. At some point in time in 2008 the Claimant came into contact with the Respondent regarding the Project.
7. Respondent provided the Claimant with a Proposal (Proposal or Contract) for the proposed Project dated June 9, 2009.³ Cl. Ex. 1.
8. The Proposal provided for home improvement work to be performed on the Property's existing basement and main floor and for the construction of a 17 X 20 foot addition to the home. Cl. Ex. 1.
9. The total price of the Proposal was \$75,000.00. Cl. Ex. 1.

³ See footnote number 1.

10. The Proposal was submitted by the Respondent to the Claimant on June 9, 2008, and was accepted by the Claimant on that same day. Cl. Ex. 1.
11. The Contract provided that the “project should take approximately 30 to 45 days from start to completion.” Cl. Ex. 1.
12. The Contract provided that the Respondent would “complete the specified work in a substantial and workmanlike manner.”
13. The Contract provided that in the event of a dispute between the parties “regarding satisfaction of workmanship, materials, and/or other, both parties agree to bind themselves over to arbitration.” Cl. Exs. 1 and 2.
14. Work on the Project commenced approximately one to two weeks after June 9, 2008.
15. The Claimant made four payments by way of various checks to the Respondent:
 - 1) Check #173; dated June 17, 2008; amount = \$5,000.00
 - 2) Check # 1008345; dated June 17, 2008; amount = \$10,000.00
 - 3) Check #1009635; dated July 10, 2008; amount = \$20,000.00
 - 4) Check #136; dated August 11, 2008; amount = \$10,600.00Cl. Ex. 3.
16. The Claimant made two payments by way of cash to the Respondent pursuant to an Extra Work Order (Cl. Ex. 2). The first payment was for \$1,800.00 in cash on July 28, 2008. Cl. Ex. 2. The second payment was for \$1,700.00 in cash and was made subsequent to July 28, 2008. These two cash payments were presented to the Respondent by the Claimant’s son Keith Ayer.
17. The Respondent was initially present at the Property supervising the work being performed.

18. As work on the Project progressed, the Claimant became dissatisfied with the progress and quality of the work being performed.
19. The Claimant spoke to the Respondent in person and by way of telephone expressing her concerns as to the delays in the progress of the work and the poor quality of the work being performed under the Contract. The Claimant also left telephone messages for the Respondent.
20. Keith Ayer was a resident at the Property and also spoke to the Respondent regarding the poor quality of the work performed at the Property.
21. The Respondent eventually stopped coming to the Property while the work continued.
22. At some point in time the Respondent stopped working at the Property.
23. The property was inspected by Stephen Kaufman of Spielbichler Construction, Inc. (Spielbichler) in March of 2011 at the Claimant's request.
24. The purpose of the Spielbichler inspection was to examine the work performed by the Respondent in the basement area of the Property, calculate an estimate of the cost and value of the work performed by the Respondent, and estimate the cost to renovate and correct the work performed by the Respondent.
25. The findings of the inspection were summarized in a report by Mr. Kaufman dated March 9, 2011 (the Report). Cl. Ex. 7.
26. The work performed by the Respondent in the basement area, valued according to industry standards, was \$2,500.00. Cl. Ex. 7.
27. The labor cost to repair and correct the previous work done by the Respondent in the basement area was a minimum of \$35,000.00. Cl. Ex. 7.

28. It was not possible to estimate the cost for materials to repair and correct the previous work done by the Respondent until demolition work had been started at which time “the actual amount of materials needed to affect the repairs” could be determined.
29. The work required to “renovate and correct the deficiencies left by” the Respondent in the basement area includes the following:
- 1) Provide all necessary permitting as required by the State of Maryland and Prince George’s County Maryland;
 - 2) All demolition will be provided as well as the removal of all debris;
 - 3) Provide egress point as required by code;
 - 4) Correct stairway entering basement from 1st floor supports, size and bulkhead;
 - 5) Correct handrail on stairway;
 - 6) Insulate exterior walls with a minimum of R13;
 - 7) Correct all related electrical issues;
 - 8) Correct all related plumbing issues;
 - 9) Correct ventilation issues such as replacement of solid doors with louvered doors and correct trim;
 - 10) “There may be other issues caused by the previous contractor that once the walls are opened and the framing is accessible able [sic] that we will address.”

Cl. Ex. 7.

30. The Claimant paid the Respondent a total of \$49,100.00.
31. The Claimant received no refund in any amount from the Respondent.

32. The Claimant attempted to resolve her dispute with the Respondent regarding this matter. Specifically, the Claimant offered to meet with the Respondent in August, 2011, in arbitration, to discuss the possible settlement of the matter. Cl. Ex. 6.
33. The Respondent did not respond to the Claimant's offer to arbitrate and/or otherwise resolve this matter.
34. The Claimant's actual loss is \$46,600.00.

DISCUSSION

Applicable Law

In 1985, the Maryland General Assembly enacted legislation that first established the Fund. By this means, the legislature sought to create a readily available pool of money from which homeowners could seek relief for losses sustained at the hands of incompetent or unscrupulous home improvement contractors. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411 (2010 & Supp. 2012).⁴ Under this statutory scheme, licensed contractors are assessed for the monies that subsidize the Fund. When the Fund pays money to a homeowner as a result of the faulty performance of a home improvement contractor, the responsible contractor is obligated to reimburse the Fund. Md. Code Ann., Bus. Reg. § 8-410. The MHIC may suspend the license of any such contractor until the Fund is reimbursed. Md. Code Ann., Bus. Reg. § 8-411. Homeowners who are victimized by the actions of licensed contractors may recover their "actual losses" from this pool of money, subject to a \$20,000.00 limitation on the claim of any one aggrieved homeowner because of the work of any one contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(1) (Supp. 2012).

⁴ Unless otherwise noted, all references to the Annotated Code of Maryland, Business Regulation Article are to the version published in the 2010 Replacement Volume.

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).

The terms “unworkmanlike, inadequate, and incomplete” home improvement are not defined by relevant statute, regulation, or case law. Therefore, those words are given their “ordinary and common meaning within the context in which they are used.” *Chaney Enters. Ltd. P’ship v. Windsor*, 158 Md. App. 1, 25 (2004) (*quoting Polomski v. Mayor and City Council of Baltimore*, 344 Md. 70, 75 (1996)). “Workmanlike” is defined as “characterized by the skill and efficiency typical of a good workman.” Merriam-Webster’s Collegiate Dictionary 1443 (11th ed. 2006); *see also Webster’s II New Riverside University Dictionary* 1328 (1994) (“Typical of or befitting a skilled workman or craftsman.”). Therefore, unworkmanlike means not characterized by the skill and efficiency typical of a good workman.

“Inadequate” means “not adequate.” *Id.* at 627. “Adequate” means “sufficient for a specific requirement.” *Id.* at 15; *see also Webster’s New Riverside University Dictionary* 78 (1994) (“Able to satisfy a requirement.”). Therefore, inadequate means not sufficient for a particular purpose or not able to satisfy a requirement.

“Incomplete” means “not concluded” or “unfinished.” Webster’s New World Dictionary 711 (1986). “Complete” means “lacking no component part; full; whole; entire;” “brought to a conclusion; ended; finished.” *Id.* At 290. Therefore, incomplete means not having all the component parts, not brought to a conclusion or unfinished.

In addition, a remedial statute, like the one here, is “construed liberally in favor of the claimants.” *Lark v. Montgomery Hospice, Inc.*, 414 Md. 215, 228 (2010).

The Claimant has the burden of proof. Md. Code Ann., Bus. Reg. § 8-407(e); COMAR 09.08.03.03A(3). The burden is by a preponderance of the evidence. Md. Code Ann., State Gov’t § 10-217 (2009). For the following reasons, I find that the Claimant has proven eligibility for compensation.

Notice to the Respondent

As noted in the Statement of the Case, the Respondent did not appear for the hearing on the scheduled hearing date. On March 20, 2013, the OAH mailed notice of a hearing (Notice) noting that a hearing was scheduled for July 16, 2013 at 10:00 AM to the Respondent by certified and regular mail to the Respondent’s last home and trade address of record with the MHIC: 1130 Flag Harbor Boulevard, St. Leonard, Maryland 20685. GF Ex. 2. The Notice advised the Respondent of the time, place and date of the hearing. The notice sent by certified mail was returned to the OAH as “RETURN TO SENDER UNCLAIMED UNABLE TO FORWARD.” There is no indication that the notice sent via first-class mail was returned by the U.S. Postal Service as undeliverable and it is, therefore, presumed to have been received. The Fund presented documentation at the hearing to show that the Respondent is still listed by the Maryland Department of Assessments and Taxation (MDAT) as the owner of the above-referenced Flag Harbor Boulevard property in St. Leonard, Maryland. GF Ex. 4. The Fund also presented the Affidavit of Thomas Marr, an Investigator with the MHIC, which stated that the Motor Vehicle Administration record he accessed showed the Respondent’s address to be the Flag Harbor Boulevard address as of May 2, 2013. GF Ex. 3.

The record reflects that the Fund met the notification requirements for the hearing when the notices were sent to the Respondent at his last address of record. Md. Code Ann., State Gov't §§ 10-208, 10-209 (2010); Md. Code Ann., Bus Reg. § 8-312 (d), (h) (Supp. 2012); COMAR 09.01.02.07E. "If, after due notice, the person against whom the action is contemplated does not appear, nevertheless the Commission may hear and determine the matter." Md. Code Ann., Bus. Reg. § 8-312(h) (Supp. 2012). When the Respondent failed to appear at the hearing and no one appeared on his behalf by approximately 10:20 a.m., I proceeded in the Respondent's absence. COMAR 28.02.01.23. The Respondent did not appear at any point during the hearing.

Analysis

The Fund presented conclusive evidence that the Respondent was, at all relevant times, a licensed home improvement contractor and there is no dispute that the Respondent held a valid contractor's license during all relevant times as well. There is also no dispute that the Claimant is an owner and that there is no procedural impediment barring her from recovering from the Fund (too many homes owned, a family relationship to the Respondent, etc.). Md. Code Ann., Bus. Reg. § 8-405(f) (Supp. 2012).

The Claimant has shown by a preponderance of the evidence that the Respondent failed to perform his obligations under the home improvement contract. The evidence is overwhelming that the Respondent performed unworkmanlike, inadequate and incomplete home improvement work on the Claimant's residence in College Park, Maryland and eventually abandoned the contract without completing the agreed-upon home improvement work.

The Claimant testified that she and her husband were planning on doing home improvement work at their home in College Park, Maryland but that her husband died in January

of 2008. The Claimant decided to continue with the home improvement project. She came into contact with the Respondent. Discussions ensued regarding the Project, and the Respondent furnished a Proposal for the work, which was to include renovations to the basement and the main floor of the Property, as well as the construction of a 17 X 20 foot addition to the Property. The total price was to be \$75,000.00. The Claimant stated that she and the Respondent agreed to the proposed home improvement work by way of a Contract which was agreed to on June 9, 2008⁵. The Claimant also said that an Extra Work Order was later agreed to by the parties involving an upstairs bathroom for an agreed-upon price of \$3,500.00. The Claimant stated that the Respondent was paid for the Extra Work Order by way of two cash payments – one in the amount of \$1,800.00 on July 28, 2008 and another in the amount of \$1,700.00 at a later date. She produced a receipt to substantiate that the \$1,800.00 payment had been made (Cl. Ex. 2).

The Claimant emphasized that the work was to be completed within 30-45 days from the start date, which was “exactly why I hired him.” The project was started within one to two weeks of the Contract signing and at first there were no issues with the work performed. The Claimant stated that during this period of time the Respondent was at the Property supervising the work. The Respondent, however, stopped coming to the site and the work went “downhill” according to the Claimant. The Claimant said that she spoke to the Respondent, both in person and by telephone, to express her displeasure with the work performed and the progress of the work. According to the Claimant, the Respondent assured her that he would take care of any problems. The Claimant noted that she “trusted” the Respondent to do so.

⁵ The year is listed on the document as “2009” in error. The correct year should be “2008.” See Footnote Number 1.

It was the Claimant's continued testimony, however, that the quality and speed of the work did not improve. The Claimant utilized a number of photographs (Cl. Ex. 10) to illustrate the poor quality of the work performed, which included: failing to properly install plumbing and fixtures in the upstairs bathroom; improperly installed molding; poorly and improperly installed electrical work, wiring and fixtures in the basement; numerous holes and poorly patched holes in the bathroom and basement areas; and, poorly and improperly installed plumbing in the basement. She also noted that trash was left on the lawn of the property, including: boxes, lumber, sawdust, cigarette butts, and soda cans. Eventually, the Respondent simply stopped working at the Property and abandoned the project.

The Claimant said that she had tried to resolve the matter by way of arbitration with the Respondent, but that the Respondent had not responded to her offer to do so. She had what she described as "no success resolving" this matter. The Claimant also presented copies of checks to prove that she had paid the Respondent a total of \$45,600.00 by way of four payments in addition to the \$3,500.00 paid in cash. The Claimant also claimed that she had paid the Respondent \$360.00 in cash to obtain a permit, but she produced no other evidence to verify that this payment occurred.

The Claimant presented as an honest and credible witness. Her testimony was clear, unembellished and to the point. Her descriptions of the unworkmanlike and inadequate work performed by the Respondent, which were illustrated by the photographs she referenced during her testimony, were very clear and factual – her presentation left me with no doubt regarding the woefully unworkmanlike and inadequate work performed by the Respondent in this matter. Her demeanor was appropriate – she presented her evidence calmly and factually. The Claimant was an earnest and persuasive witness.

The Claimant's son, Keith Ayer, also testified. He said that he had been a resident of the Property during the construction work and that he had also complained to the Respondent regarding the quality and workmanship of the home improvement work performed by the Respondent. Mr. Ayer specifically described poor tile work in the bathroom, drywall falling off the walls, uneven trim, poorly installed wiring, a leaking toilet, sinks in the basement without running water, no insulation installed in the basement and an unfinished linen closet. Mr. Ayer also confirmed the circumstances of the Extra Work Order and stated that he paid the Respondent in cash pursuant to the work order in amounts of \$1,800.00 and \$1,700.00.

Mr. Ayer's brief testimony was consistent with that of the Claimant and was clear and factually based. His presentation was direct and open – I found no reason to doubt anything he said. He provided factual support for the Claimant's testimony and her case.

Stephen Kaufman from Spielbichler also testified. He was offered and accepted as an expert in home improvement and construction. Mr. Kaufman has thirteen years of experience in these fields, including electrical and HVAC work. His experience includes both commercial and residential work. He estimated that he has been involved in over one hundred home improvement projects similar to the one at issue in this case. Cost estimation was a major function of his position with Spielbichler. He is currently retired.

Mr. Kaufman said that he had prepared the inspection Report produced by Spielbichler at the Claimant's request (Cl. Ex. 7). He visited the Property and examined the work performed by the Respondent. He summarized the work performed by the Respondent as "unworkmanlike" in the basement area and described it in clear detail, utilizing copies of photographs he had taken at the Property (Cl. Ex. 8) to explain that conclusion. He noted that much of the work performed by the Respondent was not completed pursuant to code requirements, noting items such as: exposed wiring

being installed improperly in a gas meter closet; a cluster of wiring in the basement “unlike anything I’ve ever seen before”; wiring run through ductwork; improper installation of wiring near stairs; coiled wires; uncapped live wires; and an improperly uncovered electrical box. Mr. Kaufman described other unworkmanlike and inadequate work he personally observed at the property, including: improper, unlouvered doors which prevented required air movement and circulation in the basement; an unsecured stair railing; an incorrectly installed sump pump with no backflow preventer; and a window, which was the sole point of egress to the basement in the event of an emergency, which was too small and violated code requirements. He also stated that a project of this scope would normally have wiring and HVAC permits but that no permit was visible at the Property and his research revealed that no permits had been “pulled” for the project.

Mr. Kaufman explained his findings regarding the value of the work actually performed and the cost to correct and repair that work. He explained that the value of the work performed, had it been to industry standards, would have been \$20,000.00. The work as actually performed was, however, so unacceptable and improper that the actual value of the work performed was \$2,500.00, which was for cosmetic work such as painting, drywall and plastering. It was his evaluation that it would cost at least \$35,000.00 to do remediation on the basement but that this amount reflected only the cost of the labor because it would be impossible to know the material costs involved until demolition work commenced and the extent of the work required to correct and repair became clearer. It was his estimate that the total cost for remediation of the work performed by the Respondent - in the basement area alone - could be as high as \$60,000.00. He testified that he had not seen the previous Contract between the Claimant and the Respondent and that the Contract had no bearing on his estimate. He concluded his direct testimony by noting that the work performed by the Respondent was “absolutely below industry standards.”

Mr. Kaufman's testimony was extremely credible and powerful. He explained his experience and expertise well and his descriptions of what he observed were very clear and detailed. Using the pictures he had taken at the Property, he clearly illustrated factual items he had observed and explained why each item depicted was unworkmanlike, inadequate or incomplete. His explanations were simple, direct and factual – Mr. Kaufman was a remarkably clear and knowledgeable witness. His explanation of the Report he had prepared at the Claimant's request was also clear and factual – I found his conclusions regarding the value of the work performed by the Claimant and the cost to repair and correct that work to be based on sound facts and reasoning. There was no evidence whatsoever that Mr. Kaufman was giving anything other than his honest evaluation and conclusions of what he had personally observed. Mr. Kaufman was a knowledgeable, credible and very persuasive witness for the Claimant.

In summary, the Claimant proved that she contracted with the Respondent to do home improvement work at her home and that the Respondent simply stopped working on the project after completing some of the work. The Claimant proved that the work actually performed by the Respondent was remarkably unworkmanlike and inadequate – and, as regards the wiring and the basement window – potentially very dangerous to the Property's inhabitants. The Claimant proved the value of the work performed by the Respondent to have been \$2,500.00 and proved that the costs to repair and correct the work actually performed by the Respondent under the contract for the basement area alone was a minimum of \$35,000.00. The amounts paid to the Respondent by the Claimant were, with the exception of the claim for \$360.00, proven by clear and persuasive evidence. The costs of the repair and replacement of the work performed by the Respondent were also conclusively proven by the Claimant and clearly arose from the unworkmanlike, inadequate, and incomplete home improvement work of the Respondent.

The Claimant, and her witnesses, testified and presented documentation establishing the Contract terms, her payments to the Respondent, the Respondent's failure to complete the agreed-upon work in a timely and workmanlike manner, the value of the work performed by the Respondent, and the cost to repair and complete the work of the Respondent. The Respondent failed to appear for the hearing and therefore offered no evidence to place any of the Claimant's evidence in dispute. The Fund's representative acknowledged that the evidence clearly established the Claimant's entitlement to an award from the Fund under COMAR 09.08.03.03B(3). The Claimant has proved her eligibility for compensation.

Recommended Award

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). Because of the Respondent's "misconduct" described above, the Claimant has established an entitlement to reimbursement on his claim against the Fund. COMAR 09.08.03.03B(2); Md. Code Ann., Bus. Reg. § 8-401. MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3) sets forth the following formulas for determining an "actual loss:"

(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 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.

The Respondent did perform some work under the contract. Therefore, COMAR 09.08.03.03B(3)(a) is not applicable to this case. The Claimant is not soliciting another contractor to complete the contract and, therefore, COMAR 09.08.03.03B(3)(c) is not applicable here. The Fund recommends, and I concur, that the formula found at COMAR 09.08.03.03B(3)(b) offers the correct measurement in this case. COMAR 09.08.03.03B(3)(b) provides that 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. That is the situation herein.

The Claimant provided evidence regarding her actual loss. The Claimant proved that she paid the Respondent \$45,600.00 by way of four checks written between June 17, 2008 and August 11, 2008. I also find that the Claimant has proven that she paid \$3,500.00 in cash to the Respondent pursuant to the Extra Work Order dated July 27, 2008. The Extra Work Order itself memorializes the cash payment of \$1,800.00 made to the Respondent, as also testified to by both the Claimant and her son. The testimony of both the Claimant and her son as to the subsequent payment of cash in the amount of \$1,700.00 is also consistent with other evidence and was credible in and of itself. I find the first cash payment in the amount of \$1,800.00 and the second cash payment in the amount of \$1,700.00 were made by the Claimant to the Respondent as

alleged and both have been proven – for a total of \$3,500.00 - for purposes of determining the Claimant's actual loss.

The Claimant seeks to amend her initial claim amount to reflect the \$3,500.00 in cash payments proven to have been made by the Claimant to the Respondent. COMAR 09.08.03.02C states:

C. Amending of Claims. Once a verified claim has been filed with the Commission, the claimant may not amend the claim unless the claimant can establish to the satisfaction of the Commission that either the:

- (1) Claimant did not know and could not have reasonably ascertained the facts on which the proposed amendment is based at the time the claim was filed; or
- (2) Claimant's proposed amendment would not prejudice the contractor whose conduct gave rise to the claim.

The Claimant should have known and could have reasonably ascertained the facts involved in the two cash payments totaling \$3,500.00 and this is not, therefore, a basis for permitting her to amend her claim. As to prejudice to the Respondent, however, the Claimant, by her own admission, simply failed to remember having made these two cash payments to the Respondent until after she filed her claim. Such an explanation is rational and credible. The Claimant did prove that she made these payments, one of which for \$1,800.00 is memorialized on the Extra Work Order (Cl. Ex. 2) by the Respondent himself. The Respondent clearly received these two payments and was and is aware that the payments were made. I find that the Respondent would not be prejudiced by the Claimant amending the claim to reflect payments which the Respondent actually received and which clearly would have been reflected in the original claim had the Claimant not failed to remember them at the time of her filing of that claim. I will permit the claim filed with the MHIC to be amended to add in the \$3,500.00 cash payments made by the Claimant to the Respondent. The amount on line six of the Home Improvement Claim Form

should reflect this addition and the new “Amount paid to or on behalf of the contractor (Respondent)” should total \$45,600.00 plus \$3,500.00 for a total of \$49,100.00.

The Claimant also claims to have made a cash payment in the amount of \$360.00 to the Respondent to pay for a required permit. The Claimant could remember few details regarding this alleged payment, and there is no receipt or any other evidence to cooperate that the payment occurred. Based on the evidence presented, I cannot find that the \$360.00 payment was made by the Claimant to the Respondent as alleged and I will not include that amount in the calculation of the actual loss suffered by the Claimant herein.

Finally, the evidence was also clear that the value of the materials and services provided by the Respondent was \$2,500.00.

In summary, the Claimant made payments totaling \$49,100.00 (\$45,600.00 in checks and \$3,500.00 in cash) to the Respondent and received \$2,500.00 in value for the materials and services provided by the Respondent. Applying the formula previously found to be applicable to the facts in this case, the Claimant’s actual loss is, therefore, calculated as follows:

Amount Claimant paid under the contract	=	\$49,100.00
Minus the value of materials and services provided by the Respondent	=	<u>\$2,500.00</u>
Total Actual Loss found	=	\$46,600.00

The Claimant has, therefore, demonstrated an “actual loss” of \$46,600.00. Md. Code Ann., Bus. Reg. § 8-401. The Fund may not, however, award more than \$20,000.00 to one claimant for acts or omissions of one contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(1). The Claimant, therefore, is entitled to reimbursement from the Fund in the amount of \$20,000.00.

The Fund's representative also recommended that the actual loss of the Claimant be found to be limited to a reimbursement in the amount of \$20,000.00 from the Fund.

Based upon my calculations and for the reasons outlined above, I recommend a finding of an actual loss in the amount of \$46,600.00. I concur with the Fund's representative, however, that the Claimant is entitled to compensation under the law in the amount of \$20,000.00.⁶

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that:

- 1) the Claimant has sustained an actual loss of \$46,600.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010); COMAR 09.08.03.03B(3)(b).
- 2) The Claimant is entitled to the maximum award from the Fund, \$20,000.00. Md. Code Ann., Bus. Reg. § 8-405 (e)(1) (Supp. 2012).

RECOMMENDED ORDER

On the basis of the foregoing Findings of Fact and Conclusions of Law, it is **RECOMMENDED** that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; and

⁶ As I have noted, the governing statute provides that the "Commission may not award . . . more than \$20,000.00 to one claimant for acts or omissions of one contractor . . ." The Commission's regulations provide that it may not award more than \$15,000.00 in such circumstances. *Compare* Md. Code Ann., Bus. Reg. § 8-405(e)(1)(Supp. 2012) with COMAR 09.08.03.03D(2)(a). The difference between these two enactments constitutes a conflict, as a result of which I am bound to follow the statute. *Thanner Enterprises v. Balt. Cnty.*, 414 Md. 265, 276 (2010).

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.

Signature on File

October 3, 2013
Date Decision Mailed

Michael W. Burns
Administrative Law Judge

MWB/tc
144914

<p>IN THE MATTER OF THE CLAIM</p> <p>OF VICKIE AYER,</p> <p>CLAIMANT,</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF EDDY REQUILMAN</p> <p>JR., T/A EDDY REQUILMAN AND/OR</p> <p>COMPETITIVE COST</p> <p>CONSTRUCTION,</p> <p>RESPONDENT</p>	<p>* BEFORE MICHAEL W. BURNS,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH No.: DLR-HIC-02-13-08976</p> <p>* MHIC No.: 10 (75) 736</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>
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FILE EXHIBIT LIST

Exhibits

I admitted the following exhibits on the Claimant’s behalf:

- Cl.Ex. 1 Contract, dated June 9, 2009⁷, 8 pages
- Cl. Ex. 2 Receipt, dated July 27, 2008, with attached Extra Work Order, dated July 27, 2008, 2 pages
- Cl. Ex. 3 Photocopies of Four checks, front and back, 4 pages
- Cl. Ex. 4 Prince George’s County Permit, issuance date August 21, 2008
- Cl. Ex. 6⁸ Letter from Claimant to Respondent, dated August 10, 2011, 3 pages

⁷ The year is listed as “2009” in error. The correct year should be “2008.”

⁸ There is no Claimant’s Exhibit number 5. The Claimant offered her exhibits in a pre-marked fashion, and out of numerical order, during the hearing and did not offer an Exhibit number 5 as evidence.

- Cl. Ex. 7 Estimate letter from Stephen Kaufman, Spielbichler Construction, Inc., to Claimant, dated March 9, 2011, 3 pages
- Cl. Ex. 8 Photocopies of 13 Photographs taken by Stephen Kaufman of Claimant's property, taken February or March, 2011
- Cl. Ex. 9 Letter from Claimant to Respondent, undated, with mailing receipts
- Cl. Ex. 10 19 photographs (A-S) of Claimant's property

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

- GF. Ex. 1 DLLR Licensing Information for the Respondent, License # 01 93819, printed July 15, 2013, 2 pages
- GF. Ex. 2 Memorandum from Sandra Sykes, Docket Specialist, OAH, to Legal Services, dated April 11, 2013, with attachments, 5 pages
- GF. Ex. 3 Affidavit of Thomas Marr, Investigator, MHIC, dated May 2, 2013, 2 pages
- GF. Ex. 4 Maryland Department of Assessment and Taxation, Real Property Data Search, Print-out, dated July 15, 2013
- GF. Ex. 5 Home Improvement Claim Form, date received April 15, 2011

Because the Respondent did not appear, no exhibits were offered or admitted on his behalf.

PROPOSED ORDER

WHEREFORE, this 11th day of December 2013, Panel B of the Maryland Home Improvement Commission approves the Recommended Decision 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.

W. Bruce Quackenbush, Jr.

*W. Bruce Quackenbush, Jr.
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION