

IN THE MATTER OF THE CLAIM	* BEFORE SONDRAL. SPENCER,
OF RONALD J. ANSELL,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT COMMISSION	* OAH NO.: DLR-HIC-02-13-27498
GUARANTY FUND	* MHIC NO.: 11 (75) 1110
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF DARREL M.	*
GRANDSTAFF, T/A WARNER HOME	*
HOME IMPROVEMENTS,	*
RESPONDENT	

\* \* \* \* \*

**RECOMMENDED DECISION**

STATEMENT OF THE CASE  
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RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On January 23, 2013, Ronald J. Ansell, (Claimant), filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement for actual losses allegedly suffered as a result of a home improvement contract with Darrel M. Grandstaff, t/a Warner Home Improvements (Respondent).

I held a hearing on June 24, 2014 at the LaPlata Public Library in LaPlata, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2013). Assistant Attorney General

Kris King represented the Fund. The Claimant represented himself. Aaron M. Blank, Esq., represented the Respondent, who was present.

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. 2013), 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:

- Cl. Ex.1 – February 10, 2009 contract between the Claimant and the Respondent
- Cl. Ex. 2 – February 10, 2009 cancelled check between the Claimant and the Respondent
- Cl. Ex. 3 – February 27, 2009 cancelled check between the Claimant and the Respondent
- Cl. Ex. 4 – March 6, 2009 cancelled check between the Claimant and the Respondent
- Cl. Ex. 5 – Proposal and paid-in-full receipt from James C. McClanahan, Siding Contractor
- Cl. Ex. 6 – Receipt from 84 Lumber
- Cl. Ex. 7 – Proposal from P & H Home Improvement

I admitted, unless otherwise noted, the following exhibits on the Respondent's behalf:

- Resp. Ex. 1 – Handwritten list of breakdown of contract items
- Resp. Ex. 2 – Marked: Not Admitted - June 18, 2010 Charles County District Court Order; September 2, 2010 Notice of Bankruptcy Filing and other bankruptcy records

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

Fund Ex. 1 – April 29, 2014 Hearing Notice

Fund Ex. 2 – July 10, 2013 Hearing Order

Fund Ex. 3 – The Respondent's licensing information

Fund Ex. 4 – January 4, 2013 Home Improvement Claim Form

Fund Ex. 5 – February 27, 2012 letter to the Respondent from the MHIC

Fund Ex. 6 – January 19, 2012 letter to the MHIC from the Claimant

Fund Ex. 7 – February 5, 2013 letter to the Respondent from the MHIC

Testimony

The Claimant testified on his own behalf. The Respondent testified on his own behalf.

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.
2. The Claimant and the Respondent entered into a contract to construct a second floor to an existing detached garage which specified the following:
  - Tear off existing roofing and trusses. Also tear off existing siding
  - Fabricate wall and install trusses according to plans to construct second floor
  - Install windows and exterior door as per plans
  - Install CertainTeed MainStreet vinyl siding as per Grandstaff siding package. Also install CertainTeed XT25 shingles as per Grandstaff roofing package
  - Fabricate steps and landing as per plans
  - All exterior to be as per plans
  - Remove all debris from site

3. The total contract price was \$34,200.00. The Claimant paid the Respondent a total of \$30,000.00 (February 10, 2009 - \$10,000.00; February 27, 2009 - \$10,000.00; and March 6, 2009 - \$10,000.00).
4. By February 27, 2009, the Respondent had completed tearing off the existing roofing and trusses, tearing off existing siding, fabricating the walls, installing trusses and installing two doors and sixteen windows.
5. On March 6, 2009, the Claimant gave the Respondent a check for \$10,000.00.
6. The Respondent did not return to the Claimant's residence after March 6, 2009.
7. Two weeks after March 6, 2009, the Claimant located the Respondent. The Respondent advised the Claimant that he did not have any money and had to liquidate.
8. The Respondent did not refund any of the Claimant's money and did not return to complete the contract.
9. At the time the Respondent stopped work, the following items had not been completed:
  - Installation of the remaining windows
  - Installation of vinyl siding
  - Construction of 3x3 foot landing and stairs
10. The Claimant hired an unlicensed contractor to complete the project. The unlicensed contractor performed the following work and was paid \$5,106.00 by the Claimant:
 

• Installed four windows	\$200.00
• Installed siding	\$3,200.00
• Covered soffits and fascia	\$560.00
• Installed new gutters and downspouts	\$378.00
• Removed existing truss debris	\$200.00
• Installed gutter screens	\$148.00
• Installed shutters	\$420.00
11. The unlicensed contractor did not construct a 3x3 foot landing and stairs.
12. The Claimant spent \$722.24 for four windows to complete the project.

## 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. 2013). *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.

The Respondent was a licensed home improvement contractor at the time of this contract and he does not dispute that he failed to complete the contract. The Respondent asserts that the Claimant is not entitled to a Fund award for two reasons, the outcome of a court case filed by the Claimant against the Respondent in District Court, and the contractor, James McClanahan (McClanahan), who completed the work, was not a licensed contractor.

The Claimant acknowledged that McClanahan may not have been a licensed contractor. According to the Claimant, he thought that McClanahan worked for Jim Martin and Sons and that Jim Martin and Sons was licensed. The Claimant requested reimbursement from the Fund in the amount of \$10,202.24 for the amounts paid to McClanahan and the amount needed to complete the stairs and landing.

The Fund argued that the disposition of the claim filed in the District Court claim by the Claimant against the Respondent is not a sufficient basis to dismiss the Fund claim because the court case was dismissed for lack of prosecution. I agree. Since the court case was dismissed for lack of prosecution, a court ruling on the merits does not exist and therefore, does not bar this action. The Fund also argued that the Claimant is not entitled to reimbursement because he did not suffer an actual loss compensable by the Fund.

According to the Fund, the Claimant was aware that McClanahan was not licensed because he (the Claimant) inquired about McClanahan's status and the MHIC advised him that McClanahan was not licensed. Although there is no statutory or regulatory authority that bars recovery from the Fund when the work is performed by an unlicensed contractor, I find that it would be against public policy to allow the work of unlicensed contractors to be the basis of recovery from the Fund. A payment from the Fund to reimburse claimants for the work of unlicensed contractors both encourages claimants to use unlicensed contractors and gives an indirect benefit to contractors who do not pay into the Guaranty Fund.

Although it is clear, and the Respondent does not dispute, that he abandoned the job before it was completed, the Claimant's use of an unlicensed contractor to complete the work precludes his recovery of any monies and mandates the dismissal of his claim.

#### **CONCLUSION OF LAW**

I conclude as a matter of law that the Claimant has not sustained an actual loss compensable by the Fund 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 Claimant's claim against the MHIC Fund be **DISMISSED**; and  
**ORDER** that the records and publications of the Maryland Home Improvement Commission reflect this decision.

**Signature on File**

September 18, 2014  
Date Decision Mailed

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Sondra L. Spencer  
Administrative Law Judge

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