

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF PEYAPONG PATANAPHAN,</b></p> <p><b>CLAIMANT,</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF BRUCE MATHESON,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE MARY R. CRAIG,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>* OAH NO.: DLR-HIC-02-12-40196</b></p> <p><b>* MHIC NO.: 11(05)1197</b></p> <p><b>*</b></p> <p><b>*</b></p>
--	---

\* \* \* \* \*

**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 September 16, 2011, Peyapong Patanaphan, (Claimant), filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$22,975.00 for actual losses allegedly suffered as a result of a home improvement contract with Bruce Matheson (Respondent). The MHIC forwarded the case to the Office of Administrative Hearings (OAH) for a hearing, where it was received on October 9, 2012.

I held a hearing on June 12, 2013 at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2012). Hope Sachs, Assistant Attorney General,

Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented himself. The Respondent failed to appear.

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 OAH 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 Fund's behalf:

- |            |   |
|------------|---|
| Fund Ex. 1 | Notice of hearing, January 18, 2013, with enclosed Hearing Order, October 2, 2012, and return receipts for service of the same, signed by the Claimant and the Respondent |
| Fund Ex. 2 | MHIC licensing history regarding Respondent   |
| Fund Ex. 3 | Letter from MHIC to Respondent, September 29, 2011, enclosing complaint   |

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

- |              |  |
|--------------|--|
| Cl. Ex. 1    | Contract between Claimant and Respondent, March 11, 2010   |
| Cl. Ex. 2    | Estimates from B&J Contractors, Inc., April 2, 2012, Thermo Sash, January 3, 2012, Handwritten estimate, June 10, 2013 |
| Cl. Ex. 3A-C | Photographs of the rear of 701 S. Conkling Street, Baltimore, MD 21224   |

Cl. Ex. 4 List of the payments Claimant made to Respondent, cancelled checks from Claimant to Respondent, March 11, 2010, April 6, 2010, August 5, 2010, September 9, 2010, October 5, 2010, October 21, 2010, November 16, 2010, November 30, 2010, December 2, 2010, December 7, 2010, December 14, 2010, January 13, 2011, January 18, 2011, January 27, 2011

The Respondent offered no exhibits for admission into evidence.

Testimony

The Claimant testified and presented the testimony of Antonios Mihail Hatzidakis.

The Fund presented no testimony.

**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 # 82371.
2. On January 18, 2013, the OAH mailed the Respondent notice of the June 12, 2013 hearing. The Respondent received the hearing notice on January 19, 2013.
3. On March 11, 2010, the Claimant and the Respondent entered into a written contract (Contract) to perform the following improvements/repairs to the Claimant's property at 701 S. Conkling Street, Baltimore, Maryland, 21224:
  - a. remove and replace seventeen windows on the first and second floors;
  - b. remove and dispose of seventeen old windows;
  - c. install, insulate, cap and caulk the new windows; and
  - d. remove all construction debris.
4. The Contract specified that work would begin in approximately two to three weeks. No completion date was set forth in the Contract.
5. The original agreed upon contract price was \$6,172.00.

6. After the Contract was signed by the parties, the Respondent requested that the Claimant pay him an additional \$350.00 to dispose of the old windows because they contained lead paint. The Claimant verbally agreed to do so.
7. The Claimant paid the Respondent a total of \$6,522.00 in two payments as follows:
  - a. \$2,811.00 on March 11, 2010; and
  - b. \$3,711.00 on April 6, 2010.
8. The Respondent only replaced four of the agreed seventeen windows, and he did not install those four windows correctly. After the Claimant paid the second installment, the Respondent failed and refused to complete the job. The Respondent did not perform any work under the Contract after February 24, 2011.
9. The Claimant paid Antonios Mihail Hatzidakis a total of \$2,800.00 to complete the work that the Respondent agreed to perform under the Contract. Mr. Hatzidakis removed the windows that the Respondent had improperly installed, replaced them properly, and installed the rest of the windows properly.
10. The Claimant's actual loss is \$2,800.00.

### 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 partial 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 incomplete home improvement. The Respondent agreed to remove and replace seventeen windows, but he only removed and replaced four. The Respondent abandoned the job after the Claimant paid him in full.

The Claimant testified that he entered into additional verbal contracts with the Respondent: one on August 5, 2010 to repair the back area of the second floor of the property; and another on an unspecified date to remove the existing bathroom and kitchen, replace them, and install a new furnace at the property. The Claim filed by the Claimant with the MHIC stated that these additional contracts were amendments to the agreement. He placed the contract price of the second and third contracts at \$20,000.00.

However, the Claimant did not have anything in writing signed by the parties to memorialize the scope of work agreed to by the parties or any of the other terms of the alleged contract modifications. Equally problematic for the Claimant is the lack of specificity of the amount the Claimant agreed to pay the Respondent for the work to be performed. The Claimant testified that he and the Respondent did not agree to a price for the additional work; he just paid whatever the Respondent asked him as the work progressed.

As an applicant for a Fund award, the Claimant is the moving party and has the burden of proof by a preponderance of the evidence to demonstrate each and every element of his claim. Md. Code Ann., State Gov't § 10-217 (2009); *see Schaffer v. Weast*, 546 U.S. 49, 56 (2005).

The Claimant and the Respondent entered into a written contract for the replacement of seventeen windows. The written document specified the work to be performed and the amount the Claimant agreed to pay the Respondent. The Claimant testified credibly and concisely that,

in addition, he verbally agreed to pay the Respondent an additional \$350.00 to properly dispose of the old windows because they contained lead paint. I found the Claimant's testimony on this point about a verbal amendment sufficiently convincing that I have included the verbally agreed \$350.00 as part of the contract between the parties (Contract).

With respect to other allegedly agreed verbal contracts, I reach a different conclusion. The Claimant described generally the other work that he thought the Respondent was going to perform at the property, including repairs to a bathroom, kitchen, and the furnace. However, I am not convinced that the Claimant and the Respondent had a sufficient meeting of the minds that their verbal discussions about work (other than the windows) amounted to an enforceable contract as to the work to be performed or the agreed price. I, therefore, conclude that the Claimant failed to prove the remaining alleged verbal agreements. I conclude that the Claimant proved that he is entitled to an award from the Fund only for the Respondent's failure to perform the Contract. The rest of the amounts the Claimant sought to recover are not supported by the credible evidence.

Having found eligibility for compensation as to the Contract, 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 as follows:

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 formula applied to the facts of this case yields the following calculation:

Amount the Claimant paid the Respondent under the Contract	\$6,522.00
Amount the Claimant paid to complete the work	<u>\$2,800.00</u>
Total	\$9,322.00
Less Contract price	<u>\$6,522.00</u>
Award amount	\$2,800.00

I conclude that Claimant is entitled to reimbursement in the amount of \$2,800.00 from the Fund.

#### **CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual, compensable loss of \$2,800.00 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 \$2,800.00; 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 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**

August 27, 2013  
Date Decision Mailed

Mary R. Craig  
Administrative Law Judge

MRC/rbs  
# 144588



<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF PEYAPONG PATANAPHAN,</b></p> <p><b>CLAIMANT,</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF BRUCE MATHESON,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE MARY R. CRAIG,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>* OAH NO.: DLR-HIC-02-12-40196</b></p> <p><b>* MHIC NO.: 11(05)1197</b></p> <p><b>*</b></p> <p><b>*</b></p>
--	---

\* \* \* \* \*

**FILE EXHIBIT LIST**

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

- Fund Ex. 1            Notice of hearing, January 18, 2013, with enclosed Hearing Order, October 2, 2012, and return receipts for service of the same, signed by the Claimant and the Respondent
  
- Fund Ex. 2            MHIC licensing history regarding Respondent
  
- Fund Ex. 3            Letter from MHIC to Respondent, September 29, 2011, enclosing complaint

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

- Cl. Ex. 1            Contract between Claimant and Respondent, March 11, 2010
  
- Cl. Ex. 2            Estimates from B&J Contractors, Inc., April 2, 2012, Thermo Sash, January 3, 2012, Handwritten estimate, June 10, 2013
  
- Cl. Ex. 3A-C        Photographs of the rear of 701 S. Conkling Street, Baltimore, MD 21224
  
- Cl. Ex. 4            List of the payments Claimant made to Respondent, cancelled checks from Claimant to Respondent, March 11, 2010, April 6, 2010, August 5, 2010, September 9, 2010, October 5, 2010, October 21, 2010, November 16, 2010, November 30, 2010, December 2, 2010, December 7, 2010, December 14, 2010, January 13, 2011, January 18, 2011, January 27, 2011

The Respondent offered no exhibits for admission into evidence.

PROPOSED ORDER

*WHEREFORE, this 20th day of November 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.*

*Joseph Tunney*

Joseph Tunney  
Panel B

MARYLAND HOME IMPROVEMENT COMMISSION