

<p>IN THE MATTER OF THE CLAIM</p> <p>OF VERMINA C. WILLIAMS,</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 MAURICIO A.</p> <p>MATAMOROS, t/a MATAMOROS</p> <p>CONTRACTOR,</p> <p>RESPONDENT</p>	<p>* BEFORE DAVID HOFSTETTER,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH NO.: DLR-HIC-02-13-11683</p> <p>* MHIC NO.: 11(05)550</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>
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RECOMMENDED DECISION

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ISSUE
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RECOMMENDED ORDER

STATEMENT OF THE CASE

On October 5, 2012, Vermina C. Williams (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 Mauricio A. Matamoros, t/a Matamoros Contractors (Respondent):

I conducted a hearing on August 12, 2013 at Wheaton South, 11002 Viers Mill Road, Wheaton, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312 and 8-407 (2010). Susan Magazine,

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

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, 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 & 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

The Claimant offered the following exhibits, which were admitted into evidence:

- Cl. Ex. #1- Dwelling Addition Contract, dated January 25, 2010
- Cl. Ex. #2- Contract, dated March 12, 2010

- Cl. Ex. #3- Copies of three cancelled checks: March 12, 2010; April 7, 2010; April 30, 2010
- Cl. Ex. #4- Letter from Attorney Susan Magazine to Ricardo Barriga and the Respondent, dated August 27, 2010
- Cl. Ex. #5- Handwritten document titled "Work to Be Completed," dated December 14, 2010
- Cl. Ex. #6- Proposal from Cool Breeze Heating & Air Conditioning (Cool Breeze); Statement from Cool Breeze, marked "Paid in Full," dated October 11, 2011; City of Rockville Mechanical Permit, dated September 29, 2011

- Cl. Ex. #7- Report of BE Structural, P.C., dated August 10, 2012
- Cl. Ex. #8- Letter from Jared Savelson to "Whom It May Concern," dated July 6, 2012
- Cl. Ex. #9- Proposal from Kadi General Contractors, undated
- Cl. Ex. #10- Claimant's bank statements, dated May 3 – June 1, 2010 and July 2 – August 1, 2010

The Fund offered the following exhibits, which were admitted into evidence:

- Fund Ex. #1- Notice of Hearing, dated April 17, 2013
- Fund Ex. #2- Notice of Hearing, Corrected Copy, dated May 28, 2012
- Fund Ex. #3- Hearing Order, dated March 11, 2013; Home Improvement Claim Form, dated October 5, 2012
- Fund Ex. #4- Licensing History of Respondent, dated June 27, 2013
- Fund Ex. #5- Letter from MHIC to the Claimant, dated March 18, 2013

The Respondent offered no exhibits for admission into evidence.

Testimony

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

The Fund did not call any witnesses.

FINDINGS OF FACT

After considering the evidence presented, 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 home improvement contractor licensed by the MHIC.
2. On or about March 12, 2010, the Respondent and the Claimant entered into a contract (Contract) for certain home improvement work. The Contract provided that the

- Respondent would construct a two-story addition to the rear of the Claimant's home, including all plumbing, electrical and heating, ventilating and air conditioning (HVAC)
3. The total Contract price was \$54,300.00.
 4. The Claimant paid \$45,000.00 to the Respondent for work to be performed under the Contract.
 5. The Contract provided that all work on the project would be completed by May 29, 2010.
 6. The Respondent began work on the project on or about March 13, 2010.
 7. On numerous occasions during the course of the work, the Claimant informed the Respondent of various problems with the work, including cracks in the walls, water damage from the new roof not being properly installed, and the failure of the floors of the new and old house to meet evenly. The Respondent repeatedly told the Claimant that any problems would be corrected.
 8. By May 29, 2010, the project was not close to completion but the Claimant agreed to permit the Respondent to continue to work on the project based on the Respondent's assurances that the project would be satisfactorily completed in the near future.
 9. Sometime in or around August 2010, the Respondent ceased most work on the project.

The Claimant repeatedly called the Respondent in an effort to get him to complete the project, but received no satisfactory response.

10. On August 27, 2010, the Claimant's attorney wrote to the Respondent and advised him that unless he completed work by September 15, 2012, the Claimant would terminate the Contract and take legal action against the Respondent. The Respondent did not respond to the letter.

11. In the fall of 2010, the Claimant repeatedly asked the Respondent to return and complete the work, but he did not do so.
12. On December 14, 2010, the Respondent and the Claimant met at the Claimant's home. The Claimant presented the Respondent with a "punch list" and asked him to agree to complete the items on the list. The Respondent refused to agree to do so and did not perform any further work under the Contract.
13. The Respondent's work was inadequate, incomplete, or unworkmanlike in the following ways¹:
 - * The addition is separating from the original house on the first level.
 - * Concrete steps to the first level of the addition are not compliant with the building code because the risers are the wrong height.
 - * The existing electrical panel is overloaded due to new demands from the addition. An upgraded panel should have been installed.
 - * Existing plumbing was not upgraded to accommodate new fixtures in the addition.
 - * Loose, uncapped wires were left hanging from electrical boxes in the addition.
 - * Neither the first or second levels of the addition align properly with the original home, creating significant "step-ups" between the two portions of the home.
 - * The second level floor of the addition has significant movement due to a lack of proper structural support.

 - * Drywall throughout the addition was not installed properly, resulting in nail pops and bowing.
 - * Tile work in the second floor shower was installed incorrectly, leaving sharp edges. In addition, grout in the second floor shower was painted over, contrary to workmanlike practice.
 - * Bath fixtures and lights throughout the addition were not installed properly resulting in gaps and poor alignment.
 - * Newly-installed windows do not have child-safe sashes and are not code-compliant.

¹ The items listed in this finding of fact are not intended to be exhaustive.

* The concrete block foundation was installed incorrectly, providing insufficient structural support and permitting leakage.

* Roof sheathing was not continuous at roof angle changes, exposing the roofing felt and/or shingles from the interior of the attic space.

* The roof leaks, resulting in water damage throughout the addition.

* No vapor barrier was installed in the crawl space.

* Only two downspouts were installed on the addition and were improperly placed. A minimum of four downspouts are necessary to properly remove rain from the roof of the addition.

* The rear yard slopes toward the addition. A French drain or swale must be installed to divert water from the addition.

* The installed HVAC system is inadequate for the addition and requires additional duct work, which was not installed.

* Various items in the Contract were not provided by the Respondent, including a pantry in the kitchen and three decorative interior columns.

14. The Claimant hired the structural engineering firm of BE Structural, P.C., (BES) to evaluate the Respondent's work. On June 11, 2012, a site inspection was conducted on behalf of BES by Robert Mason, Professional Engineer.
 15. BES estimated that the cost to correct and complete the Respondent's work was \$77,500.00.
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16. On or about July 6, 2012, the addition was inspected by Jared Savelson of J. Savelson Construction, LLC (Savelson), an MHIC-licensed contractor.
17. Savelson estimated that the cost to complete and correct the Respondent's work would be approximately \$75,000.00 to \$100,000.00 dollars.
18. The Claimant suffered an actual loss in excess of \$20,000.00 as a result of the Respondent's acts or omissions.

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). Md. Code Ann., Bus. Reg. § 8-405(e)(1) (2010) provides that the Commission may not award from the Fund “more than \$20,000 to one claimant for the acts or omissions of one contractor.” For the following reasons, I find that the Claimants have established their eligibility for compensation.

In this case, the parties entered into a contract for extensive home improvement work, specifically, the construction of a new two-story addition to the home. As set forth in the findings of fact, in almost every imaginable particular, the Licensee’s work was defective. The roof was constructed improperly and leaks; the new construction and existing house do not align properly²; the second floor is unstable due to insufficient structural support; electrical work and plumbing was improperly done; drywalling was unworkmanlike; the HVAC system is faulty; windows are not child-safe, and the construction work is deficient in numerous other ways. In sum, the Respondent simply abandoned the job at some point in the summer of 2010 and rebuffed all entreaties from the Claimant (and her attorney) to honor his commitments under the Contract. The Respondent was left with an uninhabitable structure and without the funds to complete the job.

² The Claimant testified that the “step-up” between the two parts is as high as one to two feet. Even if this is an exaggeration, the Respondent did not dispute that the addition was improperly constructed so as to leave a sizable difference in elevation between the two parts of the house.

The Respondent does not deny that the job was left incomplete, but denies that certain defects were his responsibility (as opposed to being the fault of subcontractors) and contends that the Claimant's descriptions of various problems are exaggerated. The Respondent's testimony was brief and generally non-specific and for these reasons, I do not find his testimony to be credible.

After the Respondent's abandonment of the job, the Claimant hired an engineering firm, BES, to inspect the property and make recommendations. On June 11, 2012, Bruce Ensor, P.E., visited the property and thereafter wrote an extensive report, detailing the problems with the Respondent's work. (Cl. Ex. 6.) He estimated that the cost to correct and complete the Respondent's work was \$77,500.00. At the hearing, the Respondent did not dispute this figure.

The Claimant also arranged for an inspection and estimate from Savelson, an MHIC-licensed contractor. Savelson estimated that the cost to correct and complete would be in the area of \$75,000.00 to \$100,000.00. (Cl. Ex. 7.) Again, the Respondent did not dispute Savelson's cost estimate. Both BES and Savelson opined that all or most of the work done by the Respondent cannot be merely repaired, but must be demolished and the project started from scratch.

Having found that the Claimant is eligible 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, and no such damages or costs are sought here. 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)(a), (b) and (c). One of those formulas, as follows, provides a basis for determining an award in this case:

the Fund for the acts or omissions of one contractor is \$20,000.00. Md. Code Ann., Bus. Reg. § 8-405(e) (1) (2010). The Claimant, therefore, is entitled to reimbursement from the Fund in the amount of \$20,000.00.

RECOMMENDED ORDER

I **PROPOSE** that the Maryland Home Improvement Commission:

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

November 8, 2013
Date Decision Issued

David Hofstetter *KAC*
Administrative Law Judge

DH/da
#145789

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).

In determining the cost to pay another contractor to correct and complete the Respondent's work, the BES estimate and the Savelson estimate are similar. BES estimates \$77,500.00 and Savelson estimates \$75,000.00 to \$100,000.00. Because BES is not a contractor and, therefore, is not seeking to perform the work itself, I will consider its estimate to be the most reliable.³

Applying the formula set forth above, and utilizing the BES estimate, I find that the Claimant sustained an actual loss as follows:

Amount Paid to Respondent		\$45,000.00
Cost to Correct	+	<u>77,500.00</u>
		122,500.00
Amount of Original Contract	-	<u>54,300.00</u>
<u>Actual Loss</u>		<u>\$ 68,200.00</u>

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant has sustained an actual loss in excess of \$20,000.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010). I further conclude, as a matter of law, that the maximum amount which a claimant can receive for a claim against

³ Due to the \$20,000.00 statutory cap, the practical effect would be the same regardless of which estimate is used.

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FILE EXHIBIT LIST

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The Respondent offered no exhibits for admission into evidence.

PROPOSED ORDER

WHEREFORE, this 6th day of January 2014, 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