

IN THE MATTER OF THE CLAIM	* BEFORE ZUBERI BAKARI WILLIAMS,
OF KIMBERLY A. MOZINGO,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH NO.: DLR-HIC-02-13-40117
FOR THE ALLEGED ACTS OR	* MHIC NO.: 11 (05) 563
OMISSIONS OF RICKEY HEISTON	*
T/A MORGAN ASHLEIGH CUSTOM	*
BUILDERS, LLC,	*

**RESPONDENT**

\* \* \* \* \*

**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 December 18, 2012, Kimberly A. Mozingo, filed a claim with the Maryland Home Improvement Commission (MHIC or Commission) Guaranty Fund (Fund) for reimbursement of \$27,325.00 for actual losses allegedly suffered as a result of a home improvement contract with Rickey Heiston t/a Morgan Ashleigh Custom Builders, LLC (Respondent) to remodel two bathrooms and finish her basement.

I held a hearing on July 31, 2014, at the Charlotte Hall Public Library in Charlotte Hall, 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 did not appear.

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 govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2014), 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 Department's behalf:

- Fund Ex. #1 - Hearing Notices, dated April 30, 2014
- Fund Ex. #2 - Hearing Order, dated October 1, 2013
- Fund Ex. #3 - MHIC Licensee History
- Fund Ex. #4 - Original HIC Claim, dated December 18, 2012
- Fund Ex. #5 - Letter from MHIC re: Claim, dated January 24, 2013
- Fund Ex. #6 - Contractor Response to Claim  
(Admitted for Notice Purposes Only)

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

- Claim. Ex. #1 - Timeline of Repairs
- Claim. Ex. #2 - Design/Budget Agreement, March 6, 2010
- Claim. Ex. #3 - Home Improvement Contract, dated April 12, 2010
- Claim. Ex. #4 - Five Checks Provided to Respondent
- Claim. Ex. #5 - Stop Work Order, dated July 27, 2010
- Claim. Ex. #6 - Check for \$5,300.00 to M&M Masonry, dated January 18, 2011
- Claim. Ex. #7 - Check for \$875.00 to Country Custom Tiles, dated December 15, 2015
- Claim. Ex. #8 - Email from Bruce Barger re: Home Visits, dated April 26, 2011
- Claim. Ex. #9 - Email from Patrick Parsons, Charles County Government Home Improvement Commission, dated April 26, 2011
- Claim. Ex. #10 - Mediation Request and Agreement
- Claim. Ex. #11 - Emails from Steve Mattingly to Claimant re: Pricing
- Claim. Ex. #12 - Invoices for Payment to Patuxent Renovations, stamped paid on September 14, 2011
- Claim. Ex. #13 - Letter to MHIC from Claimant, dated December 17, 2012
- Claim. Ex. #14 - Floor Plan Diagram

The Respondent did not submit any exhibits.

### Testimony

The Claimant testified and presented the testimony of Steve Mattingly, who I qualified as an expert in home improvement construction.

The Fund did not present any witnesses.

The Respondent did not appear and 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 under MHIC license number #05-125898. He held the MHIC license for Morgan Ashleigh Custom Builders, LLC.
2. At all times relevant to this matter, the Claimant lived in a house located at 15185 Oaks Road, Charlotte Hall, Maryland 20622.
3. On or about March 6, 2010, the Claimant and the Respondent entered into a design/budget agreement (Design Agreement). The Claimant sought to remodel two bathrooms and her basement, which had recently flooded.
4. The total price of the Design Agreement was \$2,500.00.
5. On March 6, 2010, the Claimant paid the Respondent \$1,500.00 as a down payment under the Design Agreement.
6. On March 30, 2010, the Claimant paid the Respondent an additional \$500.00 under the Design Agreement.
7. On April 12, 2010, the Claimant and the Respondent entered into a Home Improvement Contract (Contract), based on the plans derived from the Design Agreement. The Contract concerned the remodeling of the two bathrooms and finishing the basement.
8. As part of the Contract, the Respondent was responsible for obtaining all necessary permits from the Charles County Department of Planning Growth Management, providing labor and materials, installing electrical and lighting components, HVAC installation, and demolition/clean-up.

9. The Contract's original price was \$32,000.00. The Claimant received a \$2,500.00 credit for the amount she paid under the Design Agreement. The remaining Contract price was \$29,500.00.

10. On April 12, 2010, the Claimant paid the Respondent \$15,500.00, which constituted a \$500.00 remaining balance owed under the Design Agreement and a \$15,000.00 down payment for the Respondent to start the home improvement work under the Contract.

11. On May 11, 2010, the Claimant paid the Respondent \$2,500.00.

12. On June 30, 2010, the Claimant paid the Respondent \$3,500.00.

13. The Claimant paid the Respondent a total of \$25,500.00.

#### Incomplete Work

14. The work under the Contract began on April 26, 2010. It was to be completed on or about May 31, 2010.

15. In May 2010, a few weeks after demolition began, the Respondent's workers stopped showing up at the Claimant's house to do work. The Claimant became concerned and contacted the Respondent. On May 27, 2010, the Claimant emailed the Respondent and complained that she had not seen any workers at her house "in over a week." The Respondent replied that he would send workers, but never did so.

16. Between August 11, 2010 and October 18, 2010, the Claimant emailed and telephoned the Respondent at least ten times, inquiring about the status of the project and complaining about the absence of the workers. The Respondent replied on three occasions that he would send workers, but never did so.

17. On October 26, 2010, the Respondent emailed the Claimant to inform her he was not coming back to finish the construction project at her house. The Respondent removed his trailer from her yard and his workers removed their tools from the house.

18. The construction project was never completed by the Respondent.

19. The Respondent did not refund any of the Claimant's money.

#### No Building Permit

20. On July 27, 2010, the Claimant received a stop work order from the Charles County Department of Planning and Growth. The citation stated that the Claimant had failed to obtain a building permit before making a "Residential Alteration (Remodel of Basement)"

21. The Respondent failed to obtain a building permit before beginning home improvement work of the basement.

#### Shoddy Workmanship

22. The Respondent did not clean up or dispose of the mess left by the demolition of the basement and bathrooms.

23. The Respondent left exposed electrical wires in the basement.

24. The Respondent wired the house in violation of current code requirements. The Respondent also placed both low and high voltage wires next to each other and ran them through the same holes in the wall.

#### Remedial Contractors

25. The Claimant hired M&M Masonry to complete the work in the master bathroom pursuant to the original plans under the Design Agreement. The Claimant paid M&M Masonry \$5,300.00.

26. M&M Masonry subcontracted with Country Custom Tile to help complete work in the master bathroom. The Claimant paid M&M Masonry \$875.00.

27. The Claimant hired Patuxent Renovations, Inc. (Patuxent) to complete work in the hall bathroom and basement pursuant to the original Design Agreement. The entire basement

had to be re-done and there were several electrical fixes to errors made by the Respondent. The Claimant paid Patuxent \$30,343.00.

30. The Claimant's actual loss is \$30,018.00.

### DISCUSSION

#### A. The Respondent's Failure to Appear

Section 8-312(a) of the Business Regulation Article provides that the Commission shall give the person against whom the action is contemplated an opportunity for a hearing. Md. Code Ann., Bus. Reg. § 8-312(a) (2010). On April 30, 2014, the OAH sent each party a notice stating that a hearing on the merits of the case was to be held on July 31, 2014 at 10:00 am at the Charlotte Hall Public Library, 37600 New Market Road, Charlotte Hall, MD 20622.

On July 31, 2014, I convened the hearing at the Charlotte Hall Public Library. The Claimant appeared and the HIC Fund's Attorney Kris King appeared as well. Both parties were ready to proceed. However, the Respondent failed to appear. The case file shows that mail was returned to the clerk's office as undeliverable. The hearing notice was sent to the Respondent's address of record. However, Mr. King adduced a letter from the Respondent stating that he knew about this matter. *See* Fund Ex. #6 (admitted for notice purposes only).

Under Md. Code Ann., Bus. Reg. § 8-312(h) (2010), "[i]f, after due notice, the person against whom the action is contemplated does not appear . . . the Commission may hear and determine the matter."

Based upon the record before me, I am satisfied that the Respondent was properly notified of the date, time, and location of the scheduled hearing in this matter. The hearing was convened as scheduled on July 31, 2014, at which time neither the Respondent nor anyone authorized to represent him appeared, therefore, the hearing proceeded in the Respondent's absence. The Respondent simply failed to appear.

**B. Substantive Matter**

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 unworkmanlike and incomplete home improvement and abandoned the project. As stated above, the Respondent performed very little work to the Claimant’s bathrooms other than demolition. Specifically, the Respondent’s work was to begin April 26, 2010. By May 2010, just a few weeks after demolition began, the Respondent’s workers stopped showing up at the Claimant’s house to do work. The Claimant called to complain but the Respondent never sent anyone to complete the work. Instead, on October 26, 2010, the Respondent told the Claimant that he would not finish the project. The Respondent removed his trailer from her yard and his workers removed their tools from the house. The Claimant’s house was left in shambles. Her entire family had to share one bathroom because the Respondent left the other one demolished, the basement was not usable, there were exposed electrical wires everywhere, and debris from the demolition was strewn about the house. The Claimant adduced photos to corroborate her testimony. The photos were graphic and compelling. They showed a complete mess left by the Respondent with obvious incomplete sections of the bathrooms and basement. Based on this evidence, it clear that the Respondent’s work was incomplete and that he abandoned the project.



Additionally, there were multiple code and safety violations in the basement. The Claimant's expert witness, Steve Mattingly, testified that after an inspection, he noticed the following in the basement:

- There were non-treated plates at the bottom of wall framing
- High and low voltage wires were run through the same holes
- The wires were pulled through holes that were too small and were chaffed. That could cause an electrical arc leading to a fire.
- Fiberglass installed around the stove/fireplace was not safe

I found Mr. Mattingly's testimony credible and reliable because it was detailed, bolstered by photos, and not contradicted. I am persuaded and find that the Respondent's work was unworkmanlike.

#### Award Amount

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:

(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 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).

Here, the Claimant paid the Respondent a total of \$25,500.00 to remodel her bathrooms and finish her basement. As stated above, the Respondent's work to the basement was

unworkmanlike and had to be redone to meet code. Additionally, as stated above, the Claimant had to pay contractors to complete the abandoned work to the bathrooms and basement.

As such, I find the Claimant is entitled to the following:

Amount Paid Under Original Contract	\$25,500.00
M&M Masonry (Master Bathroom)	\$5,300.00
Country Custom Tile (Master Bathroom)	\$875.00
Patuxent Renovations	<u>\$30,343.00</u>
	\$63,018.00
Contract Price	- <u>\$32,000.00</u>
Actual Loss	\$30,018.00

### CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$30,018.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010). However, the maximum amount recoverable from the Fund is \$20,000.00. Md. Code Ann., Bus. Reg. § 8-405(e)(1) (2010). I find that the Claimant is entitled to the full recoverable 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 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.

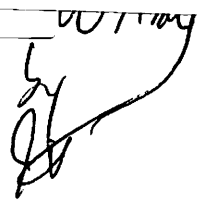
**Signature on File**

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October 29, 2014

Date Decision Issued

Zuberi Bakari Williams  
Administrative Law Judge



ZW/emh  
#152532

PROPOSED ORDER

*WHEREFORE, this 20th day of January 2015, 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.*

*J. Jean White*

*I. Jean White`*

*Panel B*

**MARYLAND HOME IMPROVEMENT COMMISSION**