

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF VAN G. McCOY,</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 MAHADI</b></p> <p><b>STEPHENS, T/A IMPERIAL BATH</b></p> <p><b>AND IMPROVEMENT,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE RICHARD O'CONNOR,</b></p> <p><b>* ADMINISTRATIVE LAW JUDGE,</b></p> <p><b>* THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>* OAH No.: DLR-HIC-02-14-19375</b></p> <p><b>* MHIC No.: 12 (90) 704</b></p> <p><b>*</b></p>
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**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
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PROPOSED CONCLUSION OF LAW  
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**STATEMENT OF THE CASE**

On March 23, 2014, Van G. McCoy (Claimant), filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$5,114.48 in alleged actual losses suffered as a result of a home improvement contract with Mahadi Stephens, trading as Imperial Bath and Improvement (Respondent).

I held a hearing on November 6, 2014 at the Prince George's County Office Complex in Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2010 and Supp. 2014).

Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant appeared without representation. The Respondent did not appear for the hearing after receiving proper notice.

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 (2014), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 28.02.01.

### **ISSUES**

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

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

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

- Cl. Ex. 1. Contract with the Respondent, March 23, 2011.
- Cl. Ex. 2. Check to the Respondent for \$1,910.00, March 23, 2011.
- Cl. Ex. 3. Check to the Respondent for \$7,549.20, June 7, 2011.
- Cl. Ex. 4. Receipt from The Home Depot, May 24, 2011.
- Cl. Ex. 5. Invoice from Morris Tile – Tuxedo, April 1, 2011.
- Cl. Ex. 6. Complaint to the MHIC, November 15, 2011.
- Cl. Ex. 7. Contract with House Calls, September 18, 2012.
- Cl. Ex. 8. Check to House Calls for \$2,000.00, September 18, 2012.
- Cl. Ex. 9. Check to House Calls for \$3,114.48, September 24, 2012.

Cl. Ex. 10. Invoice from Kent Island Abbey Floor Covering, Inc., September 19, 2012.

Cl. Ex. 11. Master Bath Remodel Assessment by Ron Bunch, Jr. of House Calls, September 25, 2012.

Cl. Ex. 12-24. Nineteen annotated photographs of the Respondent's faulty work and repairs made by House Calls, taken in September 2012.

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

GF Ex. 1. Notice of Hearing, September 23, 2014; Hearing Order, May 29, 2014.

GF Ex. 2. The Respondent's licensing history with the MHIC, November 5, 2014.

GF Ex. 3. Letter to the Respondent from the MHIC, April 1, 2014; Home Improvement Claim Form, March 23, 2014.

### Testimony

The Claimant testified in support of his claim. No other testimony was offered.

### **PROPOSED 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 01-96189.

2. On March 23, 2011, the Claimant and the Respondent entered into a contract to remodel the Claimant's master bathroom, including a new tub liner and tub faucet; new wall tile and backing; new tile floor; new vanity, sinks and faucets; new toilet; new towel racks, toilet paper holder, mirrors, cabinets, and lights; and all plumbing and electrical work necessary to complete the remodel.

3. The contract called for the Claimant to provide the tile for the bathroom walls and floor; the Respondent was to furnish all other materials.

4. The contract price was \$9,550.00.

5. The Claimant paid the Respondent \$9,439.20 under the contract.<sup>1</sup>
6. The Respondent used plastic instead of copper pipe to the bathtub faucet and installed a valve that leaked, causing damage to the laundry room ceiling below and ruining the new floor.
7. The Respondent used toxic glue on the plumbing supply lines to the shower faucet. This plumbing had to be replaced with new pipe and the correct glue.
8. The Respondent installed a faulty plastic valve to one of the sinks, causing a leak.
9. The Respondent installed drain lines from the sinks that were not up to code and had to be replaced.
10. When the Claimant noticed that the grout and tile bathroom floor were coming up, he contacted the Respondent with his complaints.
11. The Respondent did some repairs, but the leaks persisted, including a leak in the laundry room ceiling, and the Claimant complained again.
12. The Respondent sent Herman Guzman, the project manager, to address the Claimant's complaints. Mr. Guzman assured the Claimant that the problems would be fixed, but no one ever returned to the home to do the work.
13. In September, October, and November 2011, the Claimant called the Respondent at least eleven times to try to have the Respondent fix the leaks and other problems. Except for one occasion, no one answered the telephone at the Respondent's business or returned the Claimant's calls.

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<sup>1</sup> The Claimant testified that the difference from the contract price arose because he bought a toilet seat, soap dishes and a towel bar himself rather than have the Respondent furnish them as called for in the contract. The cost of those items was \$92.90 (Cl. Ex. 4 and 5), so the evidence does not provide a full explanation of the difference.

14. In November 2011, the Claimant reached Mr. Guzman, who told the Claimant that management had instructed him not to return the Claimant's calls.

15. The Claimant engaged House Calls to re-do the plumbing, tile, and flooring at a cost of \$5,114.48.

16. On September 23, 2014, the OAH sent a Notice of Hearing to the Respondent at his address of record on file with the MHIC, by both certified and first-class mail.

17. Someone at the Respondent's address signed for the certified copy of the Notice of Hearing on September 24, 2014. The copy sent by first-class mail was not returned undelivered.

18. The Respondent is currently licensed by the MHIC and has not changed his business address.

### **DISCUSSION**

Section 8-312 of the Business Regulation Article, entitled "Hearings," states, in pertinent part, as follows:

(a) Except as otherwise provided in § 10-226 of the State Government Article, before the Commission takes any final action under § 8-311 of this subtitle, or if requested under § 8-620(c) of this title, it shall give the person against whom the action is contemplated an opportunity for a hearing before the Commission or, as provided under § 8-313 of this subtitle, a hearing board.

(b) The Commission shall give notice and hold the hearing in accordance with Title 10, Subtitle 2 of the State Government Article.

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(d) The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission.

....

(h) 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 (Supp. 2014).

Although the above statute applies to disciplinary hearings against licensees, the MHIC uses the same procedures for hearings involving claims against the Fund, such as this case. These procedures ensure, as much as possible, that a contractor against whom a claim is filed is made aware of the date, time, and place of the hearing.

The notice in this case went to the Respondent's address on record with the MHIC, in accordance with section 8-312(d), above. The Respondent is still licensed by the MHIC, so he is required to keep the agency informed of any changes to his address. Md. Code Ann., Bus. Reg. § 8-309 (2010). Someone at the Respondent's address signed for the certified copy of the notice, and the copy sent by first-class mail was not returned to the OAH. Additionally, at the hearing, the MHIC had information that the Respondent had indicated that he knew about the hearing and would not be attending. From all this information, I concluded that the Respondent received proper notice of the hearing and chose not to attend. Therefore, the hearing proceeded in the Respondent's absence. Md. Code Ann., Bus. Reg. § 8-312(h) (Supp. 2014).

Moving to the merits of the claim, 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. 2014). *See also* COMAR 09.08.03.03B(2) ("actual losses . . . incurred as a result of misconduct by a licensed contractor"). 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 he entered into the contract with the Claimant, and performed unworkmanlike and inadequate home

improvements in remodeling the Claimant's bathroom. The Claimant's testimony, documents, and photographs established beyond any doubt that the Respondent's work was inadequate.

The Respondent completed work on the bathroom in a timely fashion, but by May 2011 the Claimant noticed that the grout in the floor was disintegrating and the tiles coming loose. The Respondent returned to job, repaired the floor, and supposedly fixed the leak that was causing these problems. The repair was not effective, however, because by September 2011 the Claimant's floor was again deteriorating, and water had leaked through the ceiling of the laundry room below. The Respondent, through Mr. Guzman, the project manager, promised to make further repairs, but proceeded to ignore all the Claimant's efforts to have him return to the job site.

Eventually, the Claimant hired House Calls in September 2012 to repair the Respondent's faulty work. House Calls found that several pieces of the Respondent's plumbing work had been done incorrectly. The Respondent used plastic pipe instead of copper to the bathtub faucet, and installed a leaking plastic valve there. This incorrect installation was the major source of the leak that caused so much damage. House Calls had to take up all the flooring and tile in the bathroom, install the plumbing correctly, and re-lay the floor and tile.

House Calls also discovered that the Respondent used toxic glue to join pipes providing water to the shower. This glue, which is purple, is for use only on drain lines. House Calls removed the improperly glued pipes and replaced them with new pipes, which were joined using the proper yellow glue. Additionally, House Calls re-routed one of the sink drains, which had been improperly tied into another drain in violation of the building code.

The contracts with both the Respondent and with House Calls called for the Claimant to provide tile and flooring, which he did. The contracts are equivalent and can be easily compared,

showing that the Claimant paid House Calls \$5,114.48 to repair and replace the Respondent's inadequate work. Based on the evidence, I find that the Claimant is eligible for compensation from the Fund.

Turning to the amount of the award to which the Claimant is entitled, the Fund may not compensate him for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). The MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). One of those formulas offers an appropriate measurement to determine the amount of actual loss 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.

COMAR 09.08.03.03B(3)(c).

The calculations under the above regulation are as follows:

\$9,532.10 paid to or on behalf of the Respondent<sup>2</sup>; plus:  
+5,114.48 paid to House Calls to repair the Respondent's poor work; equals:  
\$14,646.58 minus:  
-9,550.00 the original contract price; equals:  
\$5,096.58 actual loss.

The Business Regulation Article provides that the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Md. Code Ann., Bus. Reg. § 8-405 (e)(1) and (5) (Supp. 2014). The above actual loss does not exceed either of those limits. Accordingly, the Claimant is entitled to reimbursement from the Fund in the amount of \$5,096.58.

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<sup>2</sup> This amount includes the \$92.90 that the Claimant spent for materials that the Respondent was obliged to furnish.



**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$5,096.58 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 and 8-405 (2010 & Supp. 2014).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,096.58; and

**ORDER** that the Respondent is ineligible for a Maryland Home Improvement Commission license until he reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of at least ten percent (10%) 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**

January 20, 2015  
Date Decision issued



Richard O'Connor  
Administrative Law Judge



# 154051

**PROPOSED ORDER**

***WHEREFORE, this 2nd day of March 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.***

***Marilyn Jumalon***

***Marilyn Jumalon  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**