

IN THE MATTER OF THE CLAIM
OF EILEENA M. YORK and THERESA
YORK
CLAIMANTS,
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF LAWRENCE HUFFER,
T/A HUFFER GENERAL
CONSTRUCTION,
RESPONDENT

* BEFORE DAVID HOFSTETTER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-15-11649
* MHIC No.: 12 (05) 755
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PROPOSED DECISION

STATEMENT OF THE CASE
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PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSION OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On December 7, 2011, Eileena M. York and Theresa York¹, (Claimants) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for

¹ The MHIC and Fund documents refer to the Claimant as Eileena M. York. Eileena is Theresa's daughter. Theresa is the owner of the property at issue and Eileena testified that she filed the MHIC Claim Form pursuant to a Power of Attorney she holds. In any event, the Claim Form (GF Ex. 4) gives the Claimant's name as Eileena M. York, but also states, "Theresa York also named." For the purposes of this proceeding I will consider both Eileena and Theresa to be claimants. In this decision, use of the singular term "Claimant" shall refer to Theresa.

reimbursement of alleged actual losses suffered as a result of a home improvement contract with Lawrence Huffer, trading as Huffer General Construction (Respondent).

I held a hearing on December 8, 2015, at Office of Administrative Hearings (OAH) in Kensington, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).² Justin Reiner, Esquire, represented the Claimants. The Respondent represented himself. Hope Sachs, 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 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 any acts or omissions committed by the Respondent?
2. If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

Except as noted, I admitted the following exhibits on the Claimants' behalf³:

- Cl. Ex. 1 Contract, including one attachment, dated December 8, 2008
- Cl. Ex. 3 Estimate from Martinez Flooring, Inc., dated September 30, 2015
- Cl. Ex. 4 Estimate from Roel Ceramic Services, dated October 13, 2015

² Unless otherwise noted, all citations of the Business Regulation Article hereinafter refer to the 2015 Replacement Volume.

³ The exhibits offered by the Claimants were pre-marked by the Claimants and the numerical sequence contains gaps. I have preserved the numbering used by the Claimants as each exhibit was offered.

- Cl. Ex. 5 Evaluation by Ruben Rivera of Respondent's work, dated October 21, 2015
- Cl. Ex. 5A Further Evaluation by Ruben Rivera of Respondent's work, dated October 21, 2005, MARKED FOR IDENTIFICATION ONLY; NOT ADMITTED IN EVIDENCE
- Cl. Ex. 6 Home Inspection report from "The Inspectors," John Martin, Sr., Owner, undated
- Cl. Ex. 8 Letter from Scottsdale Insurance Group to the Claimant, dated April 21, 2011
- Cl. Ex. 9 Maryland Certificate of Automobile Title, dated June 7, 2004, with attachments
- Cl. Ex. 10 Letter from Claimant to Respondent, fax transmission date, January 7, 2011
- Cl. Ex. 11 Letter from Claimant to Respondent, dated June 23, 2009; with certified mail receipt, dated June 24, 2009
- Cl. Ex. 12 Letter from Claimant to Respondent, undated; with certified mail receipt, dated July 1, 2009
- Cl. Ex. 13 Letter from Claimant to Respondent, dated April 20, 2011; with certified mail receipt, dated June 20, 2011
- Cl. Ex. 14 Letter from Claimant to Respondent, dated March 20, 2012
- Cl. Ex. 16 Cancelled check, dated December 6, 2008
- Cl. Ex. 17 Debit record and cancelled cashier's check, dated December 9, 2008
- Cl. Ex. 18 Cancelled check, dated December 13, 2008
- Cl. Ex. 19 Cancelled check, dated December 18, 2008
- Cl. Ex. 20 Debit record and cancelled cashier's check, dated January 9, 2009
- Cl. Ex. 21 Cancelled check, dated January 15, 2009
- Cl. Ex. 22 Cancelled checks, dated January 16, 2009 and February 13, 2009
- Cl. Ex. 23 Report of AHSI, undated
- Cl. Ex. 24 Metropolitan Bath and Tile Job Specifications, undated
- Cl. Ex. 27 Contract between Claimant and W.E.J. Associates, Inc., for basement construction/repair, signed by parties October 1, 2009

- Cl. Ex. 28 Contract between Claimant and W.E.J. Associates, Inc., for laundry room construction/repair, signed by parties April 5, 2011
- Cl. Ex. 29 Eighty-five photographs (numbered 1-85), undated
- Cl. Ex. 30 Bank statement, dated January 22, 2009
- Cl. Ex. 31 Letter from MHIC to Claimant, dated October 5, 2015
- Cl. Ex. 32 Maryland Automobile Title documents, undated; MARKED FOR IDENTIFICATION ONLY; NOT ADMITTED IN EVIDENCE

I admitted the following exhibits on behalf of the Respondent:

- Resp. Ex. 1 Letter from Antietam Claim Service, LLC, to the Claimant, dated June 10, 2011
- Resp. Ex. 2 Letter from Lititz Mutual Insurance Company to the Respondent, dated May 31, 2011

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 Notice of Hearing, dated October 5, 2015; Hearing Order, dated April 2, 2015
- Fund Ex. 2 Licensing history, dated December 2, 2015
- Fund Ex. 3 Letter to the Respondent from MHIC, dated November 23, 2015, with attached amended claim, dated October 5, 2015
- Fund Ex. 4 Home Improvement Claim Form, dated on signature line by Claimant, December 7, 2011; dated by MHIC as received on April 3, 2012

Testimony

The following witnesses testified on behalf of the Claimants:

- Eileena M. York, Claimant, and daughter of Theresa York
- Theresa York, Claimant and mother of Eileena M. York
- Tessa York, daughter of Eileena M. York
- William Johnson, owner of W.E.J. Associates, accepted as an expert in home improvement

The Respondent testified on his own behalf and called no other witnesses.

The Fund called no witnesses.

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 home improvement contractor, licensed by the MHIC.
2. On December 8, 2008, the Claimant and the Respondent entered into a contract (Contract) to remodel her basement. The Contract was signed by Eileena York as power of attorney for Theresa York.
3. The Contract called for extensive remodeling of the Claimant's basement, including a common area, two bedrooms, two bathrooms, and a laundry room.
4. The Contract provided that the Respondent would, among other things: remove existing paneling and install new paneling; remove existing piping and install new PVC pipes, install vapor barriers on exterior walls; frame and install walls and insulation; hang, tape, block, and finish new drywall; trim out doors, windows, and baseboards; re-finish two bathrooms according to customer's design; hang and install cabinets; prepare all floor surfaces and install and grout tile; prime, paint, and caulk entire basement with customer's color choice of Duron products.
5. The Contract provided that the Respondent would provide all equipment and materials, except that the Claimant would provide all cabinets and tops and bathroom fixtures as well as tile, thinset and grout.
6. The Contract price for the services specified was \$19,000.00.
7. Although the Contract called for payment of \$19,000.00, at times the Respondent asked for additional monies beyond the amounts in the agreed payment schedule and the Claimant

complied. As a result, the Claimant paid the Respondent a total of \$21,000.00 for services performed under the Contract.

8. The payments to the Respondent were in the form of a series of checks totaling \$20,000.00 and \$1,000.00 in cash.
9. The Respondent began work on the project shortly after the execution of the Contract in December 2008.
10. Although the construction called for in the Contract was incomplete, the Respondent performed no further work on the project after some date in May or June 2009.
11. After the Respondent abandoned the project, the Claimants made numerous efforts to contact him by telephone and letter, requesting that he complete his obligations under the Contract. At various times in May or June 2009 and, thereafter, the Respondent told the Claimants that he would come back and finish the work, but he never did.
12. The Contract contained a clause requiring arbitration or mediation in the event of a dispute.⁴
13. The Claimants notified the Respondent in writing on three occasions that they were invoking the arbitration clause; the Respondent did not respond to these communications.
14. On August 18, 2015, John Martin, Sr., a licensed Maryland home inspector, inspected the Claimant's basement and prepared a report. At the time of Mr. Martin's inspection, the unsatisfactory conditions he observed were unchanged from the time the Respondent abandoned the project.
15. On October 21, 2015, Ruben Rivera, a home improvement contractor, inspected the Claimant's basement and prepared a report. At the time of Mr. Rivera's inspection, the

⁴ The Contract appears to use these terms interchangeably.

unsatisfactory conditions he observed were unchanged from the time the Respondent abandoned the project.

16. The Respondent's work was unworkmanlike, inadequate, or incomplete in the following respects:

- * door jambs were left unfinished;
- * baseboards were left unfinished;
- * door jambs were left unfinished;
- * exposed pipes were not boxed in;
- * door frame hinge cuts were measured incorrectly and unworkmanlike;
- * thresholds were not installed at room doorways;
- * ceilings were left unfinished; crown molding were uneven due to poor installation;
- * uneven and unfinished tile installation and grouting were in both bathrooms;
- * caulk was not applied completely or properly with bathtub installation;
- * switch plates protruded due to poor ceramic installation;
- * handrail were missing on stairway and unfinished stairway trim;
- * broken tile was used at multiple locations;
- * gaps were between window frame and wall;
- * door stop trim was missing;
- * wall construction was unfinished;
- * required ceiling vent was missing;
- * window trim was poorly cut;
- * double doors hit each other on closing due to poor construction;
- * sink basin and toilet both were loose at base where they attached to floor;

- * no caulk was used at base of toilet;
- * electrical junction box was open and unfinished;
- * refrigerator door will not open because path was blocked by poorly cut and installed baseboard;
- * hollow spaces were below some floor tiles, causing cracking hazard;
- * tile was incorrectly installed, resulting in misaligned tile designs;
- * gaps were between ceiling fan electrical cover plate and ceiling;
- * drywall was unsanded and unpainted in various locations;
- * electrical boxes was improperly installed;
- * nails were not countersunked and filled; and
- * no work was performed in the laundry room.

17. On October 1, 2009, the Claimant contracted with W.E.J. Associates (WEJ), a licensed Maryland home improvement contractor, to perform certain of the work originally called for in the Contract with the Respondent. The work called for in the contract with WEJ, included hanging or re-hanging closet, bathroom, and bedroom doors, completing work in two closets, and correcting dangerous electrical work.

18. The contract price for the October 1, 2009 contract with WEJ was \$1,000.00.

19. WEJ satisfactorily completed the work specified in its contract of October 1, 2009 and the Claimant paid the full contract amount.

20. On April 5, 2011, the Claimant entered into another contract with WEJ to perform certain of the work originally called for in the Contract with the Respondent. The April 5, 2011 contract concerned work in the laundry room which the Respondent had never performed.

21. The contract price for the April 5, 2011 contract was \$5,000.00.

22. WEJ satisfactorily completed the work specified in its contract of April 5, 2011 and the Claimant paid the full contract amount.
23. On October 13, 2015, the Claimant received an estimate from Roel Ceramic Services, Inc., a licensed Maryland home improvement contractor, to perform all the work specified in the Contract with the Respondent, including but not limited to flooring and ceramic work. The estimate included the cost of the removal of the Respondent's unworkmanlike work and the proper completion of the work specified. The cost of the work stated in the estimate was \$31,431.00.
24. On December 30, 2015, the Claimant received an estimate from Martinez Flooring, Inc., a licensed Maryland home improvement contractor for the flooring work specified in the Contract. The estimate included the cost of the removal of the Respondent's work and its replacement with properly installed flooring, including thresholds, tile, and grout. The cost of the work as stated in the estimate was \$20,594.00.
25. As of the date of the hearing in this matter, the Claimants have not entered into a contract with either Roel or Martinez. No further work on the basement, other than that performed by WEJ, has occurred since the Respondent ceased work on 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." Bus. Reg. § 8-405(a). *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." Bus. Reg. § 8-401. 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. The Respondent performed work under the contract but did not complete the work. In addition, the work the Respondent performed was unworkmanlike and inadequate. Prior to discussing the defects in the Respondent's work, I will address a question concerning whether the Claimant's claim was timely filed with the MHIC

Issues concerning the statute of limitations

Bus. Reg. § 8-405(g) provides, "a claim shall be brought against the Fund within 3 years after the claimant discovered, or by use of ordinary diligence, should have discovered the loss or damage."

In this case, the Fund raised for the first time during closing argument the issue of whether the Claimants' claim may not have been timely filed. The Claim Form (Fund Ex. 4) is signed by Eileena York with the date of signature given as "12/7/11." However in the box on the form reserved for MHIC use the "date received" is handwritten as "4/3/12." Just above that, in what appears to be the same handwriting, appears the words "C. Miller." The top of the claim form contains a printed line common to facsimile transmissions showing that the document was indeed faxed on April 3, 2012 from "York." I also note, however, that the form also contains, apparently in Eileena York's handwriting, the statement "filed on 12/7/11, #755-2112." This note would suggest that, at the time of the fax, Ms. York was alerting MHIC staff to the fact that she had filed the claim originally on December 7, 2011. Indeed, that is consistent with her testimony. The Fund did not call "C. Miller" or any other witness to testify as to the date the claim form was received.

The matter is of possible significance because the Contract was signed on December 8, 2008. Thus, a filing on December 7, 2011 would be within three years of the date of the

Contract, but a filing on April 3, 2012 would not. I conclude that the filing was timely, regardless of which date is accepted. The statute of limitations does not run from the date of the contract between a claimant and respondent. As set forth above, it runs from the date of discovery of the alleged defects in a respondent's performance (or in a given case, from the "should have known" date). In this case, the testimony was undisputed that the Respondent did not abandon the project until May or June of 2009. At least until that time, the Claimants reasonably believed that the Respondent would complete the work and do so in a workmanlike way. Thus the earliest conceivable date by which it could be said that the Claimants "knew or should have known" of the problems with the Respondent's work would be May or June of 2009. Either of those dates is less than three years from April 3, 2012 (the date specified in the "Date Received" box) and, therefore, there can be no question that the filing was timely.⁵

Eligibility for compensation from the Fund

As set forth in the findings of fact, above, the Respondent's performance under the Contract was shockingly unsatisfactory. Indeed, there does not appear to be a single area of performance that was adequate. Every aspect of the job, from drywall, to flooring, to bathroom tile, to electrical work, to window installation – all was done in a patently unworkmanlike manner. Indeed, some of the work was of such poor quality that it could be considered comical – such as the refrigerator door which cannot open due to Respondent's poor carpentry work – if the consequences for the Claimants were not so significant.

The testimony of the Claimants' expert, Mr. Johnson, as well as the report of Mr. Martin (Cl. Ex. 6) clearly explained and illustrated (by numerous photographs in the case of the Martin report) the defects in the Respondent's work. In fact, the defects are so egregious that many of

⁵ After reviewing the matter during closing argument, counsel for the Fund concluded that the filing was timely.

them, such as misaligned tiles, missing thresholds, and gaps between window frames and walls, are obvious even to the lay observer.

The Respondent offered little in the way of testimony or defense. He stated, "I believe I completed the work," despite the overwhelming testimonial and photographic evidence to the contrary. He provided no explanation as to why he did not meaningfully respond to the Claimants' requests that he finish the work or to their three written requests that the matter be submitted to arbitration, as provided in the Contract. I therefore conclude that the Respondent's performance under the Contract was unworkmanlike, inadequate, and incomplete and that the Claimants are eligible for compensation from the Fund.⁶

Having found eligibility for compensation I now turn to the amount of the award, if any, to which the Claimant is entitled. 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 provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss 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

⁶ I note that there was a great deal of testimony from both Eileena York and the Respondent concerning an alleged "side deal" regarding a 1989 BMW automobile. Ms. York testified that she owned the BMW and that the Respondent offered to do \$5,000.00 of additional work on the house (beyond that specified in the Contract) if she would transfer ownership of the vehicle to him. She testified that she did transfer title to the Respondent pursuant to such a verbal agreement and that the Respondent registered the car in his name, but that he never did any additional work. The Respondent denied that he ever took possession of the car. None of this is relevant. As the alleged "deal" regarding the BMW is not part of the Contract, it is not an issue before me and I need not decide what happened or did not happen concerning the vehicle and any agreement the parties may have had concerning it.

proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c).

In this case, the Claimant paid WEJ a total of \$6,000.00 to complete some of the work (mostly closets, doors, and laundry room work) which the Respondent botched or ignored. Cl. Exs. 27 and 28. Much work however remains to be done. The estimate from Martinez puts the price of flooring and ceramic work alone at \$20,594.00. Cl. Ex. 3. The estimate from Roel puts the price of fulfilling all aspects of the original Contract (save that already done by WEJ) at \$31,431.00. The Claimants' expert, Mr. Johnson, testified that these prices were reasonable and even "very fair." He explained that the prices are higher than the original Contract price because the Respondent's poor workmanship requires that his work be completely torn out and the job begun from scratch. The Respondent simply did nothing of value on the job. Demolishing the Respondent's work will be time-consuming and costly, adding to the cost to the Claimants. I found Mr. Johnson's expert testimony to be credible based on its consistency and lucidity and his obvious knowledge of home improvement practices and his long experience in the field. I therefore conclude that the Claimant's actual loss is properly calculated based on the payments to WEJ (\$6,000.00) and the estimate from Roel (\$31,431.00) concerning the cost for replacing and correcting the Respondent's work under the contract (with the exception of the work already done by WEJ.) (The Martinez estimate need not be considered because the work it covers is subsumed within the Roel estimate.)

The Claimant's actual loss is calculated under the formula as follows:

Amount paid under original contract	\$21,000.00
Amount paid or to be paid to complete/correct	<u>+\$37,431.00</u>
	\$58,431.00

Original contract price	<u>-\$21,000.00⁷</u>
Actual loss	\$37,431.00

Pursuant to the Business Regulation Article, 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. Bus. Reg. § 8-405 (e)(1), (5). The Claimant paid \$21,000.00 to the Respondent, which is less than her actual loss of \$37,431.00, computed using the formula in COMAR 09.08.03.03(c), as well as greater than the “ceiling” of \$20,000.00. Accordingly, the Claimant is entitled to reimbursement of \$20,000.00. Bus. Reg. § 8-405 (e)(5).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$20,000.00 as a result of the Respondent’s acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

RECOMMENDED ORDER

I **RECOMMEND** 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 (10%) as set by the Maryland Home Improvement Commission;⁸ and

⁷ Although the price specified in the Contract was \$19,000.00, the evidence was undisputed that the Claimant paid the Respondent \$21,000.00 as a result of his demands for additional money. It is thus appropriate to consider the Contract price to have been amended by the parties to \$21,000.00. In any event, the amount of the award from the Fund is unaffected by this revision.

⁸ See Md. Code Ann., Bus. Reg. § 8-410(a) (2015); COMAR 09.08.01.20.

ORDER that the records and publications of the Maryland Home Improvement
Commission reflect this decision.

March 7, 2016
Date Decision Issued

Signature on File

~~David Hofstetter~~
Administrative Law Judge

DH/cj
#159793

PROPOSED ORDER

WHEREFORE, this 13th day of April, 2016, 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.

Jeffrey Ross

***Jeffrey Ross
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION