

IN THE MATTER OF THE CLAIM	* BEFORE JOHN J. LEIDIG,
OF SEAN FINN,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH No.: DLR-HIC-02-14-44564
FOR THE ALLEGED ACTS OR	* MHIC No.: 13 (05) 1131
OMISSIONS OF	*
SCOTT MARTIN O'NEILL,	*
t/a ON COMMON GROUND,	*
RESPONDENT	*

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On July 19, 2013, Sean Finn (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of alleged actual losses suffered as a result of a home improvement contract with Scott Martin O'Neill, trading as On Common Ground (Respondent). On October 28, 2013, the Claimant amended the amount of his Claim from \$17,423.43 to \$9,500.00.

I held a hearing on April 13, 2015, at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland 21031. Md. Code Ann., Bus. Reg. §§ 8-312(a),

8-407(e) (2015). Joseph I. Tivvis, Esquire, represented the Claimant, who was present. The Respondent failed to appear after proper notice.¹ 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

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 Notice of Hearing, dated March 19, 2015, with Hearing Order attached, dated November 19, 2014
- Fund Ex. 2 MHIC Record for the Respondent, dated April 10, 2015
- Fund Ex. 3 Letter from the Department to the Respondent, dated November 3, 2014, with Claim attached

I admitted the following exhibits on behalf of the Claimant:

- Clmt. Ex. 1 Contract between the Claimant and the Respondent, dated September 10, 2012
- Clmt. Ex. 2 Proposal from Marathon Roofing, dated December 19, 2012

¹ The OAH mailed a notice to the Respondent on March 18, 2015 to his address of record. The certified mail return receipt was thereafter received at the OAH, indicating that the notice was signed by Josie O'Neill on behalf of the Respondent. The notice stated that failure to appear could lead to a decision against the Respondent. The Respondent failed to appear for the hearing or to request a postponement.

- Clmt. Ex. 3 Claimant's receipts from Lowe's, dated November 17 and 18, 2012
- Clmt. Ex. 4 Claimant's receipt from Home Depot, dated November 14, 2012, and Purchase Order from Manuel Toures, undated
- Clmt. Ex. 5 Claimant's receipt from Budeke's Paints, dated January 4, 2013
- Clmt. Ex. 6 Photographs of Claimant's residence, marked A through II

I did not admit any exhibits on behalf of the Respondent.

Testimony

The Claimant and his wife, Jennifer Finn, testified at the hearing.

The Fund did not present any witnesses

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all relevant times, the Respondent was a home improvement contractor licensed by the MHIC. The Respondent's address on record with the MHIC is 2626 Beckleysville Road, Freeland, Maryland 21053.
2. The Claimant owns a house located at 2121 Bluemount Road, Monkton, Maryland.
3. On September 10, 2012, the Claimant and the Respondent entered into a home improvement contract (Contract) to remove the existing roof and install a new roof on the Claimant's house (Work).
4. The Contract price was \$10,800.00 and included labor and materials.
5. On September 30, 2012, the Claimant paid the Respondent \$8,000.00.
6. On October 2, 2012, the Respondent began to perform the Work.
7. At some point during October 2012, the Respondent demanded additional money from the Claimant to continue the Work, and the Claimant paid the Respondent an additional \$1,500.00.

8. As of November 12, 2012, the Respondent had removed the existing roof and started, but had not completed, installing a new roof.

9. The Respondent did not perform any Work after November 12, 2012, and he left the roof in a condition that it was inadequate to keep water out of the house.

10. The Claimant made numerous attempts to contact the Respondent after November 12, 2012 and remained ready and willing to have the Respondent complete the Work. The Respondent, however, never responded to the Claimant and never completed the Work.

11. On December 19, 2012, the Claimant obtained an estimate from Marathon Roofing indicating that it would cost \$22,268.00 to correct and complete the installation of the Claimant's roof. The estimate was reasonable based on the condition in which the Respondent left the roof.

12. As of April 13, 2015, the Work had not been completed.

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) (2015). *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 (2015). For the following reasons, I find that the Claimant has suffered an actual loss and is eligible for compensation from the Fund.

First, the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. (Fund Ex. 2.)

Second, I am persuaded by a preponderance of the evidence that the Respondent failed to fulfill his obligations under the Contract. The Claimant and his wife testified that although the Respondent did start the Work, the Respondent stopped working in early November 2012.

Additionally, despite numerous attempts by the Claimant to contact the Respondent during November and December 2012, the Respondent never returned to complete the Work. In short, the Respondent abandoned the job.

Moreover, the portion of the Work actually performed by the Respondent prior to abandoning the job was inadequate. The Claimant testified credibly that his roof continues to leak to this day, and the Fund did not dispute this point. For these reasons, I conclude that the Claimant has established that he suffered an actual loss by a licensed MHIC contractor.

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 the Claimant is not seeking such damages. COMAR 09.08.03.03B(1). The MHIC regulations offer three formulas to measure a claimant's actual loss. The relevant formula for this case is set forth at COMAR 09.08.03.03B(3)(c), which provides:

(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 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.

The Claimant produced an estimate from Marathon Roofing, an MHIC licensed contractor, who estimated it would cost \$22,268.00 to correct and complete the Work. The Fund argued that there was no live expert testimony to support this estimate; nevertheless, the Fund referenced this estimate in its closing argument as a reasonable way to calculate the Claimant's actual damages in this case. Based on the evidence and arguments presented at the hearing, I conclude that Marathon Roofing adequately estimated the cost to correct and complete the Work.

Consequently, using the formula set forth in COMAR 09.08.03.03B(3)(c), the Claimant's actual loss is \$20,968.00, which is calculated as follows:

\$ 9,500.00	Amount the Claimant paid the Respondent
<u>+\$ 22,268.00</u>	Amount to be paid to other contactors to complete the Work
\$ 31,768.00	Subtotal
<u>-\$ 10,800.00</u>	Original Contract amount
\$ 20,968.00	Claimant's actual loss.

In this case, the Claimant is entitled to recover only a portion of his actual loss from the Fund because the Claimant's maximum recovery 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)(5) (2015). The Claimant paid \$9,500.00 to the Respondent, which is less than his actual loss as computed above using the formula in COMAR 09.08.03.03B(3)(c). Accordingly, the Claimant is entitled to reimbursement from the Fund in the amount of \$9,500.00.

PROPOSED CONCLUSION OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Claimant sustained an actual loss compensable from the Fund in the amount of \$9,500.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 and 8-405 (2015). The Claimant, therefore, is entitled to reimbursement from the Fund in the amount of \$9,500.00.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$9,500.00; 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) (2015); and

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

Signature on File

June 29, 2015
Date Decision Issued

John J. Leidig JL
Administrative Law Judge

JJL/dlm
#156752

PROPOSED ORDER

WHEREFORE, this 14th day of August, 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.

Andrew Snyder

***Andrew Snyder
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION