

**IN THE MATTER OF THE CLAIM
OF KELCEY L. SEEFELDT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR ALLEGED VIOLATIONS OF
JASON TART, t/a
SUNRISE CUSTOM HOMES, INC.**

* **MARYLAND HOME**
* **IMPROVEMENT COMMISSION**
* **MHIC CASE NO. 13 (05) 266**

* * * * *

FINAL ORDER

WHEREFORE, this 25TH day of February, 2015, Panel B of the Maryland

Home Improvement Commission ORDERS that:

**1) The Findings of Fact of the Administrative Law Judge are Amended
as follows:**

**A) Based upon review of the record, the Commission finds that, on or about
January 12, 2011, the parties agreed to an addendum to their contract
incorporating an additional charge of \$2,000.00, which was paid by the
Claimant, to repair the front porch. (Claimant Ex. 7, Tr. at pp: 21-24). The
Commission finds that the Claimant paid the Respondent contractor a total
of \$10,633.00 under the contract.**

**B) Based upon review of the record, the Commission that the fair and
reasonable value of the work performed by the Respondent contractor is
\$3,800.00 (\$2,000.00 for demolition and \$1,800.00 for windows).**

2) The Conclusions of Law of the Administrative Law Judge are Amended as follows:

A) Pursuant to the formula set forth in COMAR 09.08.03.03B(3)(b), the correct calculation of the Claimants's actual loss is as follows:

● Amount paid to Respondent	\$10,633.00
● Less value of work performed	- <u>\$ 3,800.00</u>
● Actual Loss	\$ 6,833.00

3) The Recommended Order of the Administrative Law Judge is Amended as follows:

A) The Claimant is awarded \$6,833.00 from the Home Improvement Guaranty Fund.

4) This Final Order shall become effective thirty (30) days from this date. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.

Joseph Tunney

**Chairperson - Panel B
MARYLAND HOME IMPROVEMENT
COMMISSION**

IN THE MATTER OF THE CLAIM	* BEFORE A. J. NOVOTNY, JR.,
OF KELCEY L. SEEFELDT	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH NO.: DLR-HIC-02-13-27597
FOR THE ALLEGED ACTS OR	* MHIC NO.: 13(05)266
OMISSIONS OF JASON TART,	*
T/A SUNRISE CUSTOM HOMES INC.,	*
RESPONDENT	*

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSION OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On October 26, 2012, Kelcey L. Seefeldt (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$32,523.00 for actual losses allegedly suffered as a result of a home improvement contract with Jason Tart, t/a Sunrise Custom Homes, Inc. (Respondent).¹ On July 18, 2013, the MHIC transmitted the matter to the Office of Administrative Hearings (OAH) to schedule a hearing.

¹ The Claimant initially filed a claim with the Office of the Attorney General (OAG), Consumer Protection Division, seeking arbitration. After the Respondent failed to respond to the OAG's offer of arbitration, the Claimant filed the Fund claim. *See* Md. Code Ann., Bus. Reg. § 8-405(c) (Supp. 2013); Code of Maryland Regulations (COMAR) 09.08.03.02E.

On November 7, 2013, the OAH sent Notice of the Hearing (Notice) to the parties scheduling a hearing on the merits of the claim. The Notices were sent via regular mail and by certified mail, return receipt requested. On November 21, 2013, the Claimant signed the delivery receipt green card acknowledging receipt of the certified mailing. On November 21, 2013, the U.S. Post Office returned the certified mail addressed to the Respondent at his address of record, as "Unclaimed." The regular mail Notices were not returned by postal authorities as undelivered.

I held a hearing on March 5, 2014, at the Harford County Public Library in Bel Air, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2013). The Claimant represented herself. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Respondent failed to appear.

Based upon the record before me, I am satisfied that the OAH properly notified the Respondent of the date, time and location of the scheduled hearing, as well as the issues to be presented.² Accordingly, when the Respondent failed to appear, I convened the hearing in the Respondent's absence. Md. Code Ann., Bus Reg., § 8-312(h); COMAR 09.01.02.07E.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the OAH Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2013), COMAR 09.01.03; 09.08.02; and 28.02.01.

² 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) (Supp. 2013). The statutory provisions governing disciplinary proceedings against MHIC licensees state that notice shall be sent by certified mail "at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission." *Id.* § 8-312(d). The procedures for notice applicable to disciplinary proceedings also apply to claims against the Fund. *Id.* at § 8-407(a) (2010). Under section 8-312 of the Business Regulation article, "[i]f, after due notice, the person against whom the action is contemplated does not appear . . . the Commission may hear and determine the matter." Md. Code Ann., Bus Reg., § 8-312(h) (Supp. 2013).

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 into evidence on the Fund's behalf:

- Fund Ex. 1 Unclaimed Notice of Hearing sent to the Respondent's address of record
- Fund Ex. 2 Affidavit of Thomas Marr, MHIC Investigator, verifying the Respondent's address through Motor Vehicle Administration records
- Fund Ex. 3 Respondent's licensing history, printed March 4, 2014
- Fund Ex. 4 MHIC letter to the Respondent dated November 1, 2012, with attached Fund claim form

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

- Clmt. Ex. 1 Letter from the OAG to the Claimant, dated April 12, 2012
- Clmt. Ex. 2 Original claim form, with attachments, signed August 22, 2012
- Clmt. Ex. 3 MHIC Order letter to the Respondent, dated September 10, 2012
- Clmt. Ex. 4 Claimant's handwritten note and copy of the claim form sent to the OAG, undated
- Clmt. Ex. 5 Copy of check number 1425 (\$3,500.00), dated December 17, 2010
- Clmt. Ex. 6 Copy of check register number 1428, (\$5,133.00), dated January 6, 2011
- Clmt. Ex. 7 Copy of check register number 1430, (\$2,000.00), dated January 12, 2011
- Clmt. Ex. 8 Respondent's proposal (Proposal), dated December 13, 2010, with handwritten notations
- Clmt. Ex. 9 Claimant's handwritten notes to the Respondent, dated March 18, 2011
- Clmt. Ex. 10 One Hour Heating and Air Conditioning Service receipt, dated February 14, 2011

Clmt. Ex. 11 Twenty-seven color photographs of the Claimant's house relating to the Respondent's work

Clmt. Ex. 12 Home Depot truck rental receipt, dated February 9, 2011

Clmt. Ex. 13 Three certified mail envelopes addressed to the Respondent from the Claimant, dated August 24, 2011

Clmt. Ex. 14 Sundance Homes L.L.C. (Sundance) proposal, dated August 26, 2011

Clmt. Ex. 15 Letter of Hutton Builders, Inc. (Hutton), dated May 23, 2011

I admitted no exhibits into evidence on the Respondent's behalf.

Testimony

The Claimant testified on her own behalf and also offered the testimony Lee Hutton, local MHIC licensed contractor (MHIC # 42785), and Phillip Dixon, friend.

The Respondent did not offer any witnesses.

The Fund did not offer 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 4025640, expiring September 6, 2014. (Fund Ex. 3.).

2. On December 13, 2010, the Claimant and the Respondent entered into a contract (the Proposal) wherein the Respondent was to extensively renovate the Claimant's house at 25 Farmdale Road, Earlsville, Maryland. The Proposal included among other things: replacing fourteen double-hung windows; replacing the front and rear doors, rebuilding the bathroom to accommodate a sixty-inch bathtub; building a laundry closet; installing four interior doors and

two closet doors; moving the bathroom and closet doors; repairing the beam in the porch/living area, and installing the customer supplied counter-top. (Clmt. Ex. 8).

3. The Proposal price was \$13,000.00 and the work was to be completed by March 11, 2011. (Clmt. Ex. 8, Testimony of Claimant).

4. The Proposal did not include the costs of permits. The Respondent advised the Claimant that permits were not needed. (Clmt. Ex. 8, Testimony of Claimant, Mr. Dixon).

5. There had been some demolition performed and other contract work by an unidentified contractor prior to the Proposal between the Claimant and the Respondent. Part of the Proposal, such as the beam repair, was to correct the other contractor's work. (Testimony of Claimant and Mr. Hutton).

6. The Claimant paid the Respondent \$3,500.00 on December 17, 2010, and \$5,133.00 on January 6, 2011, for a total of \$8,633.00 under the contract.³ (Clmt. Ex. 5 & 6; testimony of Claimant).

7. The Respondent demolished the bathroom and front room interior walls. He installed twelve of the fourteen replacement windows and then abandoned the project. (Clmt. Ex. 11; testimony of Claimant and Mr. Hutton).

8. Although he performed a rough installation, the Respondent did not finish the installation of the twelve replacement windows. There was no framing or trim installed around the windows. (Clmt. Ex. 11; testimony of Claimant and Mr. Hutton).

³ On January 12, 2011, the Claimant also paid the Respondent \$2,000.00 to "rebuild front porch" due to previously undiscovered weather damage. (Clmt. Ex. 7; testimony of Claimant). This was not included in, or added to the original Proposal.

9. After the Respondent abandoned the project, the Claimant attempted to contact the Respondent numerous times, but he would not respond to messages. The Respondent did not return to complete the job. (Clmt. Ex. 13; testimony of Claimant.).

10. On May 23, 2011, Mr. Hutton inspected the Claimant's property. Mr. Hutton noted the following: the front wall beam did not meet code requirements; there was demolition of one bathroom wall and the front wall; twelve replacement windows were installed along with one front door and one closet door; demolition debris was left on site and the bathroom walls still needed to be demolished. He estimated that the value of the work done as of that date was \$5,000.00. (Testimony of Hutton; Clmt. Ex. 15).

11. On August 26, 2011, the Claimant obtained the Sundance proposal. For a cost of \$36,890.00, the non-itemized proposal included, among other things, the same items that were identified in the Proposal that the Claimant had with the Respondent, which the Respondent did not perform. The Sundance proposal noted that it was necessary to remove and replace five of the windows installed by the Respondent. (Clmt. Ex. 8 & 14).

12. The Sundance proposal also included numerous items that were not included in the Proposal that the Claimant had with the Respondent. These additional items included: obtaining permits, removal of a wooden beam and replacement with a steel beam, building a six-by-six deck and stairs off the back door; installation of a ten-by-six treated deck outside of the patio door and installation of four "Perma Post(s)" under the front porch swing. (Clmt. Ex. 8 & 14).

13. In 2012, the Claimant lost the property through foreclosure. She had not had the home improvements completed under either the Respondent's Proposal or the Sundance proposal. (Testimony of Claimant).

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). “ At a hearing on a claim, the claimant has the burden of proof.” Md. Code Ann., Bus. Reg. § 8-407(e)(1) (2010).

The positions of the parties are as follows. The Claimant argues that the Respondent performed unworkmanlike, inadequate, and incomplete home improvement work and then abandoned the contract. She seeks the costs of completion and repair of the Respondent’s work as evidenced in the Sundance proposal, as well as punitive damages for her pain, suffering and loss of value through the foreclosure. The Claimant also seeks recovery for the cost of providing heat during the construction and for delivery charges for the doors. (Clmt. Ex. 10 & 11).

The Fund’s position is that the Claimant has established a claim for actual losses, but not to the extent that she seeks. The Fund noted that recovery cannot be made for consequential damages, such as pain, suffering, loss of value and heating/delivery charges not included in the Proposal. The Fund also noted that a claim is limited, at most, to the amount paid to the contractor.

There is no dispute that the Respondent was a licensed home improvement contractor at the time that he entered into the December 13, 2010 Proposal and started the work. Additionally, no legal bar exists that would generally prevent the Claimant from receiving compensation from the Fund (such as being related to the Respondent or owning too many houses).

Mr. Hutton, local MHIC licensed contractor, testified credibly about the extent of the home improvement work done as of the time that he made his inspection on May 23, 2011. He gave a reasonable estimate of the value of the work done, including demolition and installations of doors and windows. In Mr. Hutton's opinion, the value of the work done as of his inspection was \$5,000.00. Mr. Hutton candidly admitted that he had not seen the Proposal and that he was only considering the work as being within the scope of the Proposal as he was advised by the Claimant. The Fund did not dispute his opinions.

The photographs corroborate Mr. Hutton's testimony about the work done and the condition of the property. (Clmt. Ex. 11). It is clear when comparing the scope of work identified in the Proposal with the photographs, that the project left by the Respondent was incomplete. (Clmt. Ex. 8; Clmt. Ex. 11). Additionally, it is unrefuted that the Respondent abandoned the project. (Testimony of Claimant; Clmt. Ex. 1, 3, & 6). It is also unrefuted that the Claimant paid the Respondent a total of \$8,633.00 under the Proposal (\$3,500.00 in December 17, 2010, and \$5,133.00 on January 6, 2011, for a total of \$8,633.00). (Testimony of Claimant; Clmt. Ex. 5 & 6). Thus, I conclude that the Claimant has established a valid claim against the Fund. Having found eligibility for compensation, I now turn to the amount of the award, if any.

The Fund may not compensate a claimant for consequential⁴ or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). Although the

⁴ "Consequential damages," which may arise out of the performance of a home improvement contract, are not reimbursable from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(3) (Supp. 2013); COMAR 09.08.03.03B(1)(a). Although neither the statute nor the regulations governing the Fund define "consequential damages," the law provides that an award from the Fund is allowable only to reimburse a homeowner for the cost of "restoration, repair, replacement, or completion" of a substandard or unfinished home improvement job. Md. Code Ann., Bus. Reg. § 8-401. Consequential damages have been often characterized as being the product of special circumstances or an indirect result of some wrong. Consequential damages have been defined as "[s]uch damage, loss or injury as does not flow directly and immediately from the act of the party, but only from some of the consequences or results of such act." *Trimed, Inc. v. Sherwood Medical Co.*, 977 F.2d 885, 893 n.7 (4th Cir, 1992) (citing *Black's Law Dictionary* (6th ed. 1990), at 390). See also, *Black's Law Dictionary* (9th ed. 2009), at 445.

Claimant seeks punitive damages for her pain, suffering, loss of value as well as the cost of providing heat during the construction and for delivery charges, these costs/damages would be consequential damages.

The Sundance proposal cannot aid in the calculation of the Fund claim because it goes far beyond the scope of the original Proposal and it is not itemized so that the cost of similar or redundant work could be broken out of the total cost. Moreover, the Claimant is not relying on the Sundance proposal to complete the work specified by the original Proposal: the house was lost through foreclosure without the work being done. As such, I am considering only the amount that the Claimant paid to the Respondent under the Proposal and the value of the work actually done before the Respondent abandoned the project.

COMAR 09.08.03.03B governs the calculation of awards from the Fund.

MHIC's regulations offer three formulas for measurement of a claimant's actual loss:

B. Measure of Awards from Guaranty Fund.

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

(a) If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract.

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

(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. (Emphasis added)

COMAR 09.08.03.03B(3).

Since the Respondent performed some work, which had a value, before abandoning the project, COMAR 09.08.03.03B(3)(a) does not apply. Similarly, since the Claimant no longer owns the property and she has not presented an appropriate estimate from another contractor (the Sundance proposal) to complete the contract, COMAR 09.08.03.03B(3)(c) does not apply. Although the Claimant is insistent that she is entitled to punitive damages, I conclude that the proper determination of the Claimant's actual loss should be the amount which the Claimant paid to the original contractor less the value of any materials or services provided by the contractor.

COMAR 09.08.03.03B(3)(b).

Using the above formula in COMAR 09.08.03.03B(3)(b), I calculate the Claimant's actual loss as follows:

Amount paid to the Respondent under the Proposal:	\$8,633.00
<i>Minus</i> the value of the work done:	<u>-\$5,000.00</u>
Net actual loss:	\$3,633.00

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. Md. Code Ann., Bus. Reg. §8-405 (e)(1), (5) (Supp. 2013). The Claimant paid the Respondent a total of \$8,633.00. The value of the work done under the contract was \$5,000.00. Thus, the Claimant's actual losses are calculated to be \$3,633.00, which is within the statutory limitation. Md. Code Ann., Bus. Reg. §8-405 (e)(1), (5) (Supp. 2013).

CONCLUSION OF LAW

I conclude that the Claimant has sustained a compensable actual loss of \$3,633.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$3,633.00; 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

May 21, 2014
Date Order Issued

#149208

A. J. Novotny, Jr.
Administrative Law Judge

PROPOSED ORDER

WHEREFORE, this 24th of June 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.

Michael Shilling

*Michael Shilling
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION