

IN THE MATTER OF THE CLAIM	* BEFORE ZUBERI BAKARI WILLIAMS,
OF MICHAEL E. CROSS,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH NO.: DLR-HIC-02-14-13087
FOR THE ALLEGED ACTS OR	* MHIC NO.: 13 (05) 640
OMISSIONS OF JENNIFER MARTIN	*
AND BRIAN MARTIN ¹	*
T/A ENERGY CONSERVATION	*
REMODELER, LLC,	*
RESPONDENTS	*

* * * * *

RECOMMENDED DECISION

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STATEMENT OF THE CASE

On November 21, 2013, Michael E. Cross (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC or Commission) Guaranty Fund (Fund) for reimbursement of \$17,250.00 for actual losses allegedly suffered as a result of a home improvement contract with Jennifer Martin and Brian Martin t/a Energy Conservation Remodeler, LLC (Respondents) to build a back yard patio.

¹ It appears that Jennifer Martin is the only person listed under the MHIC license. However, this claim was brought against both Jennifer and Brian Martin. As such, for consistency with the existing record, I have kept both as Respondents.

I held a hearing on September 16, 2014, at the Prince George's County Office Building in Largo, 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 appeared and was represented by Jeffery B. Schultz, Esquire. 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 (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 the Claimant sustained an actual loss compensable by the Fund, what is the amount of the loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

- Fund Ex. #1 - Notice of Hearing and Notices of Undeliverable Mail
- Fund Ex. #2 - Hearing Order, dated March 31, 2014
- Fund Ex. #3 - Licensing Information for Jennifer Martin
- Fund Ex. #4 - HIC Claim Form
- Fund Ex. #5 - Letter to Jennifer Martin from DLLR re: Complaint, dated December 4, 2013

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

- Claimant Ex. #1 - Contract between Claimant and Respondents, dated June 28, 2010

- Claimant Ex. #2 - Drawing of Back Yard Patio Design
- Claimant Ex. #3 - Certificate of Liability Insurance for \$1,000,000.00, dated July 16, 2010
- Claimant Ex. #4 - Copies of Checks from Chevy Chase Bank
- Claimant Ex. #5(a) - Approved Permits, stamped by Maryland National Capital Park and Planning Commission
 - #5(b) - Drawing of Back Yard Patio Design, submitted with Permit
 - #5(c) - Drawing of Back Yard Patio Wall Design, submitted with Permit
- Claimant Ex. #6 - Copy of Permit
- Claimant Ex. #7 - Photos of Workers and Excavation of Back Yard
- Claimant Ex. #8 - Copy of Check from Chevy Chase Bank, dated August 28, 2010
- Claimant Ex. #9 - Photos of Rock and Gravel Delivered to the Property
- Claimant Ex. #10 - Copy of Check from Chevy Chase Bank, dated September 3, 2010
- Claimant Ex. #11 - Photos of Improperly Placed Brick on Patio Wall
- Claimant Ex. #12 - Building Inspection Notice
- Claimant Ex. #13 - Photos of Completed Back Yard Patio
- Claimant Ex. #14 - Patio Expense Excel Worksheet
- Claimant Ex. #15 (a) – (i) - Invoices From Leisure Specialties
- Claimant Ex. #16 (a) – (d) - Payments to Leisure Specialties
- Claimant Ex. #17 - Summary of Invoices and Payments to Leisure Specialties
- Claimant Ex. #18 (a) – (e) - Invoices and Payments
- Claimant Ex. #19 - (a) Contract between Claimant and Antonio Mendez
(b) and (c) - Checks to Antonio Mendez
- Claimant Ex. #20 - (a) Contract between Claimant and Ivan Reyes
(b) - (e) – checks to Ivan Reyes
- Claimant Ex. #21 - Summary of Reimbursement from Respondent
- Claimant Ex. #22 - Estimate from Windows Plus, LLC, dated October 24, 2013

Claimant Ex. #23 - Estimate from Eastern Grounds Landscaping,
dated October 1, 2013

Claimant Ex. #24 - Estimate from Life Time Pavers, dated September 23, 2013

Claimant Ex. #25 - Claim Calculations

The Respondents did not submit any exhibits.

Testimony

The Claimant testified on his own behalf.

The Fund did not present any witnesses.

The Respondents 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 Jennifer Martin was a licensed home improvement contractor under MHIC license number #05-128123. She held the MHIC license for Energy Conservation Remodeler, LLC, a company she ran with her husband Brian Martin.
2. At all times relevant to this matter, the Claimant lived in a house located at 14809 Dolphin Way, Bowie, Maryland 20721.
3. The Claimant wanted to build a brick patio in his back yard. He researched and interviewed several home improvement contractors, including the Respondents.
4. On or about June 28, 2012, the Claimant and the Respondents entered into a contract to build a back yard brick patio at the Claimant's house. Under the contract, the Respondents promised to complete all aspects of the entire project, including obtaining all permits, landscaping, installing windows/doors on the house leading to the patio, laying brick, paving, constructing steps, and installing railing.
5. The total contract price was \$27,000.00.

6. On July 14, 2010, the Claimant paid the Respondents \$9,000.00 to begin the project.
7. On or about July 14, 2010, the Respondents started the construction project by excavating the ground near the back door of the Claimant's house.
8. On August 26, 2010, the Claimant paid the Respondents \$7,000.00.
9. Around that same time, raw materials – paving rocks and bricks – were delivered to the Claimant's house.
10. On September 8, 2010, the Claimant paid the Respondent \$2,000.00.
11. Around that same time, construction of the initial patio base began.
12. The Respondents secured the building permits at a cost of \$1,200.00.
13. In early September, work by the Respondents became problematic. Specifically, the laborers sent by the Respondent started failing to show up, working for only a few hours, and leaving early. The laborers told the Claimant they had not been paid by the Respondents for weeks and were frustrated and upset. The laborers eventually stopped showing up and work on the project halted.
14. Also in early September, the Claimant was contacted by the raw materials supplier who claimed he had not been paid by the Respondents and refused to deliver any additional materials until he was paid.
15. The Claimant confronted the Respondents about these matters. Respondent Brian Martin claimed he was having personal problems and would resolve the issues, but never did so.
16. In mid-September, the Claimant became fed-up and convened a meeting between the laborers and the Respondents. At that meeting, the Respondents agreed to pay the laborers; however, by late September they still failed to do so.

17. The Claimant contacted the Respondents several times to complain about the workers situation and their failure to pay the raw materials supplier. The Respondents said they would solve the problems, but never did so.

18. The Claimant requested a refund of the \$18,000.00 he paid to the Respondents. The Respondents refused and instead gave him a refund of \$2,600.00. After several weeks, the Respondents stop responding to the Claimant's attempts to reach them.

19. By late September, the Claimant decided to assume the management of the project. He spoke with the laborers' foreman and agreed to pay them directly. Additionally, he saw the laborers were not laying the brick pursuant to the manufacturer's specifications. He showed them an instructional video regarding the proper way to lay the brick. He paid the laborers \$4,160.00.

20. The Claimant contacted the raw materials supplier, Leisure Specialties, and paid it directly for the materials. Specifically, he paid Leisure Specialties \$16,377.14 for materials. Claimant's Exs. #15 - 17.

21. The Claimant also purchased \$1,762.65 in additional materials as follows:

Ernest Maier, Inc. - \$1,543.60 (Accent Lights on November 18, 2010)
Ernest Maier, Inc. - \$41.47 (Tennyson Brownstone on January 8, 2011)
Home Depot - \$68.58 (Construction Adhesive on October 21, 2010)
Home Depot - \$73.98 (Landscape Lighting Cable on October 30, 2010)
Costco - \$35.02 (Vinyl Siding)

22. The Claimant contacted several subcontractors in order to complete the project.

23. On November 19, 2010, the Claimant entered into a contract with Antonio Mendez for the construction and installation of patio stair rails. The contract amount was \$1,400.00. The Claimant paid the entire amount and the work was completed. Claimant's Ex. #19(a).

24. On September 23, 2013, the Claimant received an estimate from Life Time Pavers for design and permitting for an interlocking paver patio, walls, and steps. The estimate cost was \$750.00.

25. On October 1, 2013, the Claimant received an estimate from Eastern Grounds Landscaping for designing all hardscapes including patio, walls, steps, etc. The estimate cost was \$1,425.00. This work was not completed.

26. On October 24, 2013, the Claimant received an estimate from Windows Plus, LLC, for installation of the double door leading from the back of the house out to the patio. The estimate cost was \$3,350.00. This work was not completed.

27. All of the work completed by other contractors, estimates obtained, and the additional expenditures by the Claimant were necessary to complete the work described under the original contract.

30. The Claimant's actual loss is \$15,674.79.

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 June 9, 2014, the OAH sent each party a notice stating that a hearing on the merits of the case was to be held on September 16, 2014, at 10:00 a.m. at the Prince George's County Office Building, 1400 McCormick Drive, Largo, MD 20774.

On September 16, 2014, I convened the hearing at that location. The Claimant and counsel appeared as well as the Fund's Attorney Kris King. Both parties were ready to proceed. However, the Respondents failed to appear. The case file shows that mail was returned to the clerk's office as undeliverable.

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 Respondents were properly notified of the date, time, and location of the scheduled hearing in this matter. Specifically, I find it is reasonable to conclude that the Respondents received proper notice in this matter for two reasons. First, the hearing notice was sent to the Respondents’ business address of record which was same address to which the Fund sent the MHIC’s order that was not returned as undeliverable. Second, Assistant Attorney General King called the Respondent Jennifer Martin’s current telephone number and left a voicemail stating the time, location, and issues of the hearing. He also asked her to call him and provided his contact information. Ms. Martin never returned his phone call or otherwise contacted his office. I find the Respondents were aware of, or should have been aware of, this hearing. The hearing was convened as scheduled on September 16, 2014, at which time neither the Respondents nor anyone authorized to represent them appeared, therefore, the hearing proceeded in the Respondents’ absence.

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 Respondents were licensed home improvement contractors at the time he entered into the contract with the Claimant.

Second, the Respondents abandoned the project. As stated above, the Respondents performed very little work by late September – two months after the start of the project. The Respondents failed to pay the bricklayers and they stopped showing up for work. The Respondents failed to pay the raw materials supplier, Leisure Specialties, and it refused to deliver additional materials after construction had already begun. The project came to a screeching halt because of the Respondents' inaction.

The Claimant contacted the Respondents many times in order to resolve these issues; however, they failed to do so. When the Claimant asked for a refund of the \$18,000.00 he had paid under the contract, the Respondents only refunded \$2,600.00 of his money. The Respondents ceased responding.

I found the Claimant's testimony credible for two reasons. First, it was consistent with detailed spreadsheets, cancelled checks, other financial documentation. The documentary evidence in this case was comprehensive and compelling. Second, the Claimant's testimony was unrebutted.

I am persuaded and find that the Respondents abandoned the project by late September of 2010.

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). This formula 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 Respondents a total of \$18,000.00 build a brick patio in his back yard. As stated above, the Respondents abandoned the project. Additionally, as stated above, the Claimant had to pay contractors to complete the abandoned work, including paying the brick laborers and raw materials supplier.

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

Amount Paid Under Original Contract		\$18,000.00
Leisure Specialties (raw materials supplier)		\$16,377.14
Ernest Maier, Inc. (Accent Lights)		\$1,543.60
Ernest Maier, Inc. (Tennyson Brownstone)		\$41.47
Home Depot (Construction Adhesive)		\$68.58
Home Depot (Landscape Lighting Cable)		\$73.98
Costco (Vinyl Siding)		\$35.02
Paid to Brick Laborers		\$4,160.00
Antonio Mendez (Stair Railing)	+	<u>\$1,400.00</u>
		\$41,699.79
 Work Still To Be Completed		
Eastern Grounds Landscaping		\$1,425.00
Windows Plus LLC	+	<u>\$3,350.00</u>
		\$46,474.79
 Refund from Respondents		\$2,600.00
Value of Permitting Services	-	<u>\$1,200.00</u>
		\$42,674.79
 Contract Price	-	<u>\$27,000.00</u>
Actual Loss		\$15,674.79

CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$15,674.79 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010). This amount is under the maximum amount recoverable from the Fund – \$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 \$15,674.79.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$15,674.79; and

ORDER that the Respondents are 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

December 15, 2014
Date Decision Issued

Zuberi Bakari Williams
Administrative Law Judge

ZW/emh
#153487

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