

**IN THE MATTER OF THE CLAIM
OF GAYLE SKEETE,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF
STANFORD WOMACK, SR.
T/A WOMACK CONSTRUCTION,
INC.,
RESPONDENT**

*** BEFORE JAMES T. MURRAY,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-1710620
* MHIC No.: 15 (05) 240
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PROPOSED DECISION

**STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSION OF LAW
RECOMMENDED ORDER**

STATEMENT OF THE CASE

On April 6, 2015, Dr. Gayle Skeete (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$23,850.00 in alleged actual losses suffered as a result of a home improvement contract with Stanford Womack, Sr., trading as Womack Construction, Inc. (Respondent).

I held a hearing on May 31, 2017, at the Office of Administrative Hearings (OAH), 11101 Gilroy Rd., Hunt Valley, MD 21031. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e)

(2015). The Claimant represented herself. Andrew Brouwer, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Respondent was present and represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, 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 & Supp. 2016); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 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 on the Claimant's behalf:

- Claimant Ex. 1 - Check 2751, March 2, 2012
- Claimant Ex. 2 - Color photograph, undated
- Claimant Ex. 3 - Check 2803, June 21, 2012
- Claimant Ex. 5¹ - Contract, June 21, 2012, with attachments
- Claimant Ex. 6 - Court Order in Case No.: 02-C-14-185190; Notice of Record Judgment in Case No.: 02-C-14-185190; and Bankruptcy Discharge Order in Case No.: 15-22401

I admitted the following exhibit on the Respondent's behalf:

- Respondent Ex. 1 - Letter from Alan Hilliard Legum to Dr. Gayle Skeete, November 14, 2013

¹ A packet of documents marked Claimant Ex. 4 for identification was offered by the Claimant, but not admitted because the documents it contained were not relevant.

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Hearing Order, April 10, 2017

Fund Ex. 2 - Notice of Hearing, April 14, 2017

Fund Ex. 3 - Home Improvement Claim Form, received April 6, 2015

Fund Ex. 4 - Licensing records of the Respondent, printed April 27, 2017

Testimony

The Claimant testified in her own behalf.

The Respondent testified in his own behalf.

The Fund presented only argument.

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 96130.

2. On June 21, 2012, the Claimant and the Respondent entered into a contract (Contract) to renovate the Claimant's home at 1469 Chesapeake Avenue, Annapolis, MD 21403.

3. The Contract did not have a start date or completion date, but was to begin in December 2014 or January 2015.

4. The agreed-upon Contract price was \$530,000.00.

5. On March 2, 2012, prior to agreeing to a contract, the Claimant paid the Respondent \$10,000.00 toward the Contract. On June 21, 2012, the same day the Claimant signed the Contract, the Claimant paid the Respondent \$13,850.00 toward the Contract.

Approximately two weeks after signing the Contract, the Claimant told the Respondent that she wanted to rescind the Contract because she wanted a cost contract.²

6. After the Claimant told the Respondent that she wanted to rescind the Contract in favor of a cost basis contract, the Respondent contacted an attorney, who drafted a cost basis contract for him.

7. About three weeks after the Contract was signed, the Respondent met with the Claimant to discuss the cost basis contract, which he presented to the Claimant. Within several days, the Claimant notified the Respondent that she rejected the cost basis contract.

8. Shortly after the Claimant rejected the cost basis contract, the Respondent called the Claimant to inquire about the status of the Contract. The Claimant advised the Respondent that she had hired another contractor to perform the renovation work on her home.

9. After learning that the Claimant was not going to use him to perform the renovation work on her home, the Respondent filed suit against the Claimant and the Claimant counter-sued.

10. On May 28, 2015, the Circuit Court for Anne Arundel County entered an Order against the Respondent for \$23,850.00, not including pre-judgment interest, for violations of the Maryland Consumer Protection Act. That judgment was recorded on June 10, 2015.

11. The Claimant is not a spouse or other immediate relative of the Respondent; an employee, officer, or partner of the Respondent; or an immediate relative of an employee, officer, or partner of the Respondent.

12. The property where the Contract was to be performed is the only residential property the Claimant owns in Maryland and it is her primary residence.

² By "cost basis" contract, the Claimant meant a contract priced based on time plus materials.

13. At all relevant times the Respondent was ready, willing and able to perform the Contract.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of her claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).³ “[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true.” *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

A claimant 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);⁴ *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 not proven eligibility for compensation.

³ A claimant must also prove that at all relevant times: (a) the owner owned fewer than three dwelling places or resides in the home as to which the claim is made; (b) the owner was not an employee, officer or partner of the contractor or the spouse or other immediate relative of the contractor or the contractor's employees, officers or partners; (c) the work at issue did not involve new home construction; (d) the owner did not unreasonably reject the contractor's good faith effort to resolve the claim; (e) there is no pending claim for the same loss in any court of competent jurisdiction and the owner did not recover for the actual loss from any source; and (f) the owner filed the claim with the MHIC within three years of the date the owner knew or with reasonable diligence should have known of the loss or damage. Md. Code Ann., Bus. Reg. §§ 8-405(d), (f), and (g), 8-408(b)(1); *id.* § 8-101(g)(3)(i) (Supp. 2016).

The Claimant provided uncontroverted evidence that she meets all of the above-enumerated requirements, and the Fund did not challenge any of the Claimant's evidence.

⁴ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

The circumstances giving rise to the Claimant's claim has a long and convoluted history. While a brief discussion of the history is necessary to fully understand the circumstances that resulted in the Claimant filing a claim, the historical background is not relevant to whether a payment from the Fund is appropriate based on the claim under consideration.

The Claimant first met the Respondent in 2009 when he was performing renovations on the home of a mutual friend. The Claimant told the Respondent that she was interested in having extensive renovations to her own home and ultimately entered into an agreement with him whereby he would help her negotiate through the Anne Arundel County (County) permitting process, which was complicated because of the nature of the renovations the Respondent planned and the home's proximity to the Chesapeake Bay. During 2009 and 2010, the Respondent provided various services to the Claimant related to helping her obtain a permit for the renovation work she planned. This included putting her in touch with architects and engineers and even excavating under her house so that County Building Inspectors could see that her project was feasible. Some of this work the Respondent performed was pursuant to a contract and some not; the Respondent was paid for these efforts. Finally, in 2010, the Respondent provided the Claimant with a sample contract for the renovations to be performed on her home.

In October 2011, the County issued a building permit for the renovations. At that time, the Respondent approached the Claimant about entering into a contract with him to perform the renovations. The Claimant was ready to begin work but, because of title problems with her home, she was unable to secure a loan necessary to pay for the work. By 2012, the Claimant was ready to proceed with the project but was still unable to secure enough funding. The Respondent told the Claimant that he needed money, so on March 2, 2012, the Claimant gave the Respondent a check for \$10,000.00 toward her deposit for the work that was ultimately to be performed under the Contract.

Finally, on June 21, 2012, the Respondent brought the Claimant the Contract for the work to be performed. Although she had some reservations about the Contract, the Claimant signed it the same day, as did the Respondent. At that time the Claimant paid the Respondent another \$13,850.00. The Contract reflects that the Claimant paid the Respondent \$23,850.00 toward the work under the Contract. The Contract also provides, among other things, that any changes to the Contract had to be in writing. There is no arbitration clause in the Contract.

More than a week after the Contract was ratified, the Claimant called the Respondent about "discrepancies." The Respondent met with the Claimant, who told the Respondent that she disagreed with the Contract and wanted him to enter into a cost basis contract with her instead. The Respondent was unfamiliar with cost based contracts so he contacted an attorney to help him draft a cost basis contract. About a week later, the Respondent met with the Claimant to go over the cost basis contract with her. The Claimant told the Respondent that she was not happy with the cost basis contract that he had presented. A few days later, the Claimant advised the Respondent that she had retained another contractor to do the renovation work on her home.

Subsequently, the Respondent sued the Claimant, who filed a counter-claim based on violations of Maryland's Consumer Protection Law. Ultimately, the Claimant prevailed and obtained a judgment against the Respondent for \$23,850.00. Meanwhile, the Respondent filed for bankruptcy and eventually received a discharge in his bankruptcy case.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. He has since had a discharge in bankruptcy and is no longer licensed. Based on the uncontested facts of this case, the Respondent did not perform an unworkmanlike, inadequate or incomplete home improvement. In fact, he performed no work under the Contract because the Claimant did not want him to perform any work under the Contract.

The Commission may order payment of a claim against the Fund only if the claimant provides the Commission with a certified copy of a final judgment of a court of competent jurisdiction or a final award in arbitration, with all rights of appeal exhausted, in which the court or arbitrator:

- (i) expressly has found on the merits that the claimant is entitled to recover under § 8-405(a) of this subtitle; and
- (ii) has found the value of the actual loss.

Md. Code Ann., Bus. Reg. § 8-409(a)(2).

The Claimant presented a court order and an enrolled judgment that established that a court of competent jurisdiction had issued her a final award of \$23,850.00. However, the court order did not expressly find on the merits that the Claimant is entitled to recover under section 8-405(a) of the Business Regulation Article. In fact, the court order states that the award was made because the Respondent was found to have violated Maryland Consumer Protection Laws.

As pointed out above, under the law governing the Fund, an "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. In this case, the Claimant entered into the Contract with the Respondent and later, for reasons not made clear at the hearing, became dissatisfied with it. She then requested that the Respondent provide her with a new cost-based contract. The Respondent did as requested, but the Claimant rejected that contract as well. The Claimant then informed the Respondent that she had selected another contractor for the renovation work on her home.

A claimant may recover from the Fund for an actual loss that results from an act or omission by a licensed contractor. *See* Md. Code Ann., Bus. Reg. § 8-405(a). The Claimant has not suffered an actual loss that is compensable by the Fund; any loss she suffered was because she prevented the Respondent from performing the Contract. As the Claimant's loss was not the

result of any act or omission by the Respondent, I find that the Claimant is not eligible for compensation from the Fund.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405.

RECOMMENDED ORDER

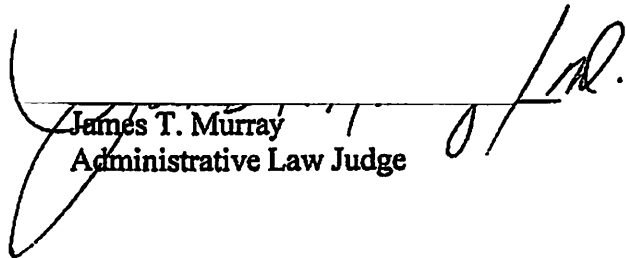
I **RECOMMEND** that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

Signature on File

June 30, 2017
Date Decision Issued


James T. Murray
Administrative Law Judge

JTM/cmjg
168349

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 * **MHIC No.: 15 (05) 240**
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FILE EXHIBIT LIST

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PROPOSED ORDER

WHEREFORE, this 21st day of August, 2017, 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.

Joseph Tunney

***Joseph Tunney
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION