

IN THE MATTER OF THE CLAIM	* BEFORE ROBERT B. LEVIN,
OF PAULA CRADDOCK,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF KEITH	*
ERRICHETTO,	* OAH No.: DLR-HIC-02-16-37549
T/A MID-ATLANTIC DESIGN-	* MHIC No.: 15 (05) 51
BUILDERS, LLC,	*
RESPONDENT	*

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On July 23, 2016, Paulette Craddock (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$9,273.06 in alleged actual losses suffered as a result of a home improvement contract with Keith Errichetto, trading as Mid-Atlantic Design-Builders, LLC (Respondent).

I held a hearing on May 18, 2017 at the Office of Administrative Hearings (OAH) – Kensington, 10400 Connecticut Avenue, Suite 208, Kensington, Maryland.¹ Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented herself. Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. After waiting approximately thirty minutes for the Respondent or someone to represent him to appear, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.²

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); 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:

Clmt. Ex. 1 – A binder consisting of the following documents:

- 1A – Claimant’s spreadsheet entitled Midatlantic Builder and Design, undated

¹ The hearing was originally scheduled for April 7, 2017, but was postponed because the Respondent’s Notice of Hearing for that date was incorrectly addressed by the OAH. The hearing was rescheduled for May 18, 2017, and proper notice was mailed to the Respondent and to the Claimant.

² Notice of the May 18, 2017 hearing was mailed to the Respondent at his address of record by certified mail on April 11, 2017, COMAR 09.08.03.03A(2), and was returned unclaimed.

- 1B – Letter from Michelle Escobar to Claimant, September 25, 2014; letter from Ms. Escobar to Claimant, September 12, 2014; Order of MHIC, August 18, 2014; Order of MHIC, July 24, 2014
- 1C – Home Improvement Claim Form, July 20, 2016
- 1D – Proposal from Keith Healy³ to Paula Cravitz [sic], July 2, 2013; Claimant's check payable to Respondent in the amount of \$2,500.00, October 28, 2013; Claimant's check payable to Respondent in the amount of \$2,262.29, December 2, 2013; photograph, March 23, 2017; photograph, August 30, 1913 [sic]; Roofing Estimate and/or Contract, October 20, 2014; Home Projects Visa Credit Card Account Application, October 20, 2014
- 1E – Proposal from Keith Healy to Claimant, December 4, 2013; Claimant's check payable to Respondent in the amount of \$1,688.50, December 11, 2013; Claimant's check payable to Respondent in the amount of \$1,243.11, December 20, 2013; 12 photographs, August 30, 2014; Cumes Builders, Inc. Proposal/Contract, November 12, 2014; Claimant's check payable to Cumes Builders, Inc. in the amount of \$1,267.00; Claimant's check payable to Cumes Builders, Inc. in the amount of \$2,533.00; three photographs, March 23, 2017
- 1F – Job Work Order, May 14, 2014; Claimant's check payable to Respondent in the amount of \$729.30, May 14, 2014; four photographs, March 23, 2017; Shutter Shoppe Fax Cover Sheet, undated, with attached Lowe's Custom Shutter Quotation, May 13, 2015; Lowe's invoice, May 15, 2015; Lowe's Installation Services Customer Contract, May 15, 2015
- 1G - Respondent's Proposal for Office Refurbish/Remodel, January 20, 2014; Respondent's Proposal for Doors, February 6, 2014; Claimant's check payable to Respondent in the amount of \$500.00, February 25, 2014; Claimant's check payable to Respondent in the amount of \$720.00, February 6, 2014; Claimant's check payable to Respondent in the amount of \$1,425.00, January 23, 2014; Claimant's check payable to Respondent in the amount of \$250.00, January 17, 2014; Claimant's check payable to Respondent in the amount of \$985.75, December 20, 2013; Respondent's Proposal for Master Bath Shower Remodel, January 2, 2014; Additional Work Authorization, December 16, 2013; Respondent's Proposal for Basement Remodel, December 11, 2013; Respondent's Proposal for Bath Trim Prime/Paint Semi-Gloss White, January 14, 2014; Twenty photographs, August 30, 2014; Cumes Builders, Inc. Proposal/Contract, January 30, 2015; Claimant's check payable to Cumes Builders, Inc., in the amount of \$890.00, April 1, 2015; Claimant's check payable to Cumes Builders, Inc., in the amount of \$600.00, January 30, 2015; Claimant's check payable to Cumes Builders, Inc., in the amount of \$850.00, December 15, 2013; Twelve photographs, March 23, 2017
- 1H Screenshots of text messages, January 14, 2014-May 29, 2014; Handwritten letter from Respondent to Claimant, undated; Handwritten letter from Respondent to Claimant, undated

³ The Claimant testified that the Respondent sometimes used the name Keith Healy as well as his actual name, Keith Errichetto.

Clmt. Ex. 2 – Respondent’s brochure, undated

Clmt. Ex. 3 – Letter from Lynn Fishman to Respondent, February 19, 2014

Clmt. Ex. 4 – Letter from Aspen Hill Plumbing to Claimant, May 20, 2014, with attached invoices, March 8, 2014 and January 20, 2014

Clmt. Ex. 5 – Job Work Order, December 20, 2013, with attached Sherwin-Williams invoice, December 5, 2013

Clmt. Ex. 6 – Sherwin-Williams paint information sheet, January 2014

Clmt. Ex. 7 – HIC Complaint Form, June 26, 2014

Clmt. Ex. 8 – Claimant’s letter to Michelle Escobar, July 20, 2016

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 – Memorandum to Legal Services from Linda Bailey, May 2, 2017, with attached Notice of Hearing, April 11, 2017; Hearing Order, November 23, 2016; and certified mail envelope marked Unclaimed, May 2, 2017

Fund Ex. 2 – Hearing Order, November 23, 2016

Fund Ex. 3 – HIC License I.D. Registration Inquiry, May 17, 2017

Fund Ex. 4 – Home Improvement Claim Form, July 20, 2016

The Respondent, who was not present and not represented at the hearing, did not offer any exhibits.

Testimony

The Claimant testified on her own behalf.

Neither the Fund nor the Respondent presented any witness testimony.

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 106124.

2) During the period from July 2, 2013 through May 14, 2014, the Respondent entered into the following series of contracts for the remodeling of the Claimant's residence:

Roof

3) On July 2, 2013, the Respondent agreed to perform extensive repairs to the roof of the Claimant's house, at and for the contract price of \$6,662.00, of which the Claimant paid \$4,762.00 in two installments: \$2,500.00 paid by check dated October 28, 2013, and \$2,262.29 paid by check dated December 2, 2013.

4) The Respondent failed to provide any materials or labor in connection with the roof contract.

5) The Claimant paid \$10,100.00 to the Whiting Co. (Whiting) to repair the roof.

6) Whiting provided the Claimant a better roof than called for in the Claimant's contract with the Respondent for the roof. Whiting provided a ten year roof warranty, whereas the Respondent had agreed to provide a one year roof warranty.

7) Of the \$10,100.00 the Claimant paid to Whiting, \$6,662.00 is attributable to Whiting's provision of the roof repairs and materials that the Respondent failed to provide. The balance represents the increased value of the roof and the warranty provided by Whiting as compared with the value of the roof and roof warranty that the Respondent was required to, but failed, to provide.

Hall bathroom

8) On August 1, 2013, the Respondent agreed to remodel the Claimant's hall bathroom, at and for the contract price of \$13,298.95, which the Claimant paid in full.

9) The Respondent failed properly to caulk two seams around the sink.

10) The Claimant's cost to correct the Respondent's work in regard to the hall bathroom is included in the \$2,340.00 she paid to Cumes Builders, Inc. (Cumes) for correction or

completion of the Respondent's work for the hall bathroom and for the other miscellaneous items identified as such in Findings of Fact 15, 18, 21, 24 and 27.

Exterior painting

11) On December 4, 2013, the Respondent agreed to paint the exterior of the Claimant's house, at and for the contract price of \$3,375.00, of which the Claimant paid \$1,688.50.

12) The contract required two coats of paint but the Respondent only applied one third of the first coat.

13) The Claimant paid \$3,800.00 to Cumes to correct and complete the Respondent's exterior painting work.

Carpet removal/baseboards

14) On December 16, 2013, the Respondent agreed to remove carpeting from the house and to paint and install the baseboards, at and for the contract price of \$985.75, which the Claimant paid in full.

15) The Respondent failed to paint and install the baseboards. The Claimant's cost to correct the Respondent's work in regard to the carpet removal and baseboards is included in the \$2,340.00 she paid to Cumes for correction or completion of the carpet removal and baseboard work and for the other miscellaneous items identified as such in Findings of Fact 10, 18, 21, 24 and 27.

Master bathroom

16) On January 2, 2014, the Respondent agreed to remodel the master bathroom, at and for a contract price of \$5,725.95, which the Claimant paid in full.

17) The Respondent failed to caulk around the sink.

18) The Claimant's cost to correct the Respondent's work in regard to the master bathroom is included in the \$2,340.00 she paid to Cumes for miscellaneous corrections of the Respondent's work on the master bathroom and for the other miscellaneous items identified as such in Findings of Fact 10, 15, 21, 24 and 27.

Downstairs bathroom

19) On January 14, 2014, the Respondent agreed to paint and caulk the downstairs bathroom, including painting the window shutter, at and for a contract price of \$575.00, which the Claimant paid in full.

20) The Respondent failed to complete the painting and failed to reinstall the shutter.

21) The Claimant's cost to correct the Respondent's work in regard to the downstairs bathroom is included in the \$2,340.00 she paid to Cumes for correction of the Respondent's work on the downstairs bathroom and for the other miscellaneous items identified as such in Findings of Fact 10, 15, 18, 24 and 27.

Office refurbish/remodel

22) On January 20, 2014, the Respondent agreed to refurbish and remodel the office in the Claimant's house, including painting the walls and installing new ceiling tiles, at and for the contract price of \$4,425.00, which the Claimant paid in full.

23) The Respondent failed to complete the painting around the door, applied only one of two coats of paint to the floor coating, and installed incorrect ceiling tiles.

24) The Claimant's cost to correct the Respondent's work in regard to the office is included in the \$2,340.00 she paid to Cumes for miscellaneous corrections of the Respondent's work on the office and for the other miscellaneous items identified as such in Findings of Fact 10, 15, 18, 21 and 27.

Six Doors

25) On February 6, 2014, the Respondent agreed to hang and install six doors in the Claimant's house, at and for the contract price of \$1,220.00, which the Claimant paid in full.

26) The Respondent left black marks on the door in the master bathroom that he failed to correct. The six doors he installed were narrower than necessary and the areas around the doors required repainting.

27) The Claimant's cost to correct the Respondent's work in regard to the six doors is included in the \$2,340.00 she paid to Cumes for miscellaneous corrections of the Respondent's work on the doors and for the other miscellaneous items identified as such in Findings of Fact 10, 15, 18, 21 and 24.

Louvers

28) On May 14, 2014, the Respondent agreed to install louvers in the Claimant's house, at and for the contract price of \$1,204.30, of which the Claimant paid \$729.30 for the necessary materials.

29) The Respondent failed to provide the required materials.

30) The Claimant paid \$520.63 to Lowe's to obtain the louvers.

31) The Claimant's actual loss is \$10,261.41.

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).⁴ “[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.*

⁴ As noted above, “COMAR” refers to the Code of Maryland Regulations.

Police Dep't, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

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);⁵ *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.

Initially, I conclude that each of the contracts and related accepted proposals between the Claimant and the Respondent are properly viewed collectively as the parties’ single contract for the multi-phase repair and remodeling of the Claimant’s home. The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. The Respondent performed unworkmanlike, inadequate and incomplete home improvements, in that: (a) he failed to provide the materials and labor for the roof repairs; (b) he failed to caulk the seams around the sink in the hall bathroom; (c) he applied only one third of the first of the two required coats of paint on the house’s exterior; (d) he failed to paint and install the baseboards after removing the carpeting; (e) he failed to caulk around the sink in the master bathroom; (f) he failed to complete the painting and failed to reinstall the shutter in the downstairs bathroom; (g) he failed to complete the painting around the office door, applied only one of the required two coats of paint to the office floor coating, and installed incorrect ceiling tiles in the

⁵ Unless otherwise noted, all references to the Business Regulation Article (Bus. Reg.) are to the 2015 Replacement Volume.

office; (h) he improperly installed the six doors; and (i) he failed to provide the louvers required by the parties' contract.

I thus find that the Claimant is eligible for compensation from the Fund.

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.

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).

Application of the COMAR 09.08.03.03B(3)(c) formula is straightforward. The total contract price under the parties' contract is \$37,072.24, comprised of the following: \$6,262.29 for roofing; \$3,375.00 for exterior painting; \$1,204.30 for louvers; \$13,298.95 for remodeling the hall bathroom; \$985.75 for carpet removal; \$5,725.95 for remodeling the master bath; \$1,220.00 for the six doors; \$575.00 for painting the downstairs bath; and \$4,425.00 for remodeling the Claimant's home office, including its ceiling.

The Claimant paid the Respondent a total of \$34,410.73, consisting of the following: \$4,762.29 for the roofing; \$1,688.50 for exterior painting; \$729.30 for louvers; \$13,298.95 for the hall bathroom; \$985.75 for carpet removal/baseboards, \$6,725.94 for the master bathroom;

\$1,220.00 for the six doors; \$575.00 for the downstairs bathroom; and \$4,425.00 for the office remodeling.

The Claimant's total cost to correct the Respondent's inadequate, incomplete and unworkmanlike performance was \$12,922.92. I note that although the Claimant paid \$10,100.00 to Whiting for the roof repair, I agree with Fund counsel's contention that as Whiting provided a better roof and roof warranty than the Respondent was contractually obligated to furnish, the appropriate amount to be allocated for the correction of the Respondent's incomplete performance of the roofing requirement from the Claimant's \$10,100.00 payment to Whiting is the Respondent's own figure of \$6,262.29 for the roofing, as set forth in the Respondent's own roofing proposal.

In addition to this \$6,262.29 portion of the \$10,100.00 paid by the Claimant to Whiting for completion of the roof work that the Respondent failed to perform, the Claimant's total correction/completion payment of \$12,992.92 is made up of: (a) \$3,800.00 paid to Cumes to correct the exterior painting; (b) \$2,340.00 paid to Cumes for correction of the miscellaneous items described in Findings of Fact Nos. 4, 6, 7, 8, 9 and 10; and (c) \$520.63 paid to Lowe's for louvers.

Adding to \$34,410.73 (the total amount the Claimant paid to the Respondent) the sum of \$12,922.92 (the amounts paid by the Claimant to Whiting, Cumes and Lowe's to correct or complete the Respondent's deficient performance) equals \$47,333.65. Subtracting \$37,072.24 (the total contract price) from \$47,333.65 (the sum of the amount the Claimant paid the

Respondent plus the amount paid for correction or completion) yields \$10,261.41, which I find (and agree with Fund counsel) is the amount of the Claimant's actual loss.⁶

I note that the \$10,261.41 actual loss that I have found exceeds by \$988.35 the Claimant's \$9,273.06 demand as listed on her Claim Form. Nevertheless, I will recommend a \$10,261.41 award because, as Fund counsel argued, the Respondent would not be prejudiced by this \$988.35 increase. COMAR 09.08.03.02C(2). The lack of prejudice is manifest: the basis of the Claimant's claim would have been clear to the Respondent from the Claimant's Complaint form, her Claim Form and the documents she submitted pursuant to the MHIC's investigation of this matter. For those reasons, with which I agree, the Fund did not object to the Claimant's amending the amount of her claim at the hearing from \$9,273.06 to \$10,261.41. I will therefore permit the amendment.

Lastly, I also agree with Fund counsel that this Claim is not barred by the applicable three-year statute of limitations. *See* Bus. Reg. § 8-405(g) ("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"). The Claimant filed her Claim on July 23, 2016. The only contract dated prior to July 23, 2013 (*i.e.* three years before the Claim was filed) was the July 2, 2013 roofing contract. Although the Claimant signed the roofing contract on July 2, 2013, she did not give the Respondent her two roofing installment payments until October 28, 2013 and December 2, 2013. Moreover, the Claimant testified that the Respondent asked her to wait until the spring of 2014 for the Respondent to finish the roofing. She reasonably relied on his implied assurance that he would actually perform the roofing work in the spring. Thus, she neither discovered nor, by use of ordinary diligence, should have discovered that the Respondent had

⁶Pursuant to the applicable law, 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) (2015).

abandoned the roofing job until the spring of 2014. Therefore, her Claim was filed within the three-year period of limitations.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss \$10,261.41 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015) COMAR 09.08.03.03B(3).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$10,261.41; 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 ten percent (10%) as set by the Maryland Home Improvement Commission;⁷ and

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

Signature on File

July 20, 2017
Date Decision Issued

Robert B. Levin
Administrative Law Judge

RBL/emh
#168835

⁷ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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