

IN THE MATTER OF THE CLAIM	* BEFORE HARRIET C. HELFAND,
OF BARBARA & ROBERT	* AN ADMINISTRATIVE LAW JUDGE
ANGELINO,	* OF THE MARYLAND OFFICE
CLAIMANTS	* OF ADMINISTRATIVE HEARINGS
AGAINST THE MARYLAND HOME	*
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF HAROLD	* OAH No.: DLR-HIC-02-15-25792
WOODYARD,	* MHIC No.: 15 (90) 564
T/A ALWAYS BASEMENTS,	*
RESPONDENT	*

* * * * *

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 May 6, 2015, Barbara Angelino (Claimant)¹ filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$2,610.00 in alleged actual losses suffered as a result of a home improvement contract with Harold Woodyard, t/a Always Basements (Respondent).

¹ Only Barbara Angelino appeared for the hearing; however, the Complaint Form filed with the MHIC named both Barbara and Robert Angelino as Claimants. When the MHIC transmitted the case to the Office of Administrative Hearings (OAH) on July 31, 2015, it listed the Claimants as Barbara and Robert Angelino.

I held a hearing on November 4, 2015, at the office of the OAH located in Kensington, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).² The Claimant was present, and represented the Claimants. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

A Notice of Hearing (Notice) was sent to the Respondent at his last address of record with the Department. The Notice was returned to OAH as “return to sender/unclaimed/unable to forward.” At the hearing, the Claimant stated that she had heard that the Respondent was deceased. The Respondent’s licensing information, submitted by the Fund, indicates that the MHIC received the Respondent’s death certificate on December 10, 2014, and terminated his license as of that date.³ Acknowledging this information, I went forward and conducted the hearing.

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 (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 Claimants 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?

² Unless otherwise noted, all citations of the Business Regulation Article hereinafter refer to the 2015 Replacement Volume.

³ At the time of the Claimants’ contract with the Respondent, the Respondent’s active MHIC license, issued July 31, 2014, was to be in effect until May 14, 2016.

SUMMARY OF THE EVIDENCE

Exhibits

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

- Cl. #1 Complaint Form, with narrative, undated
- Cl. #2 Home Improvement Claim Form, dated April 13, 2015
- Cl. #3 Contract, dated October 8, 2012
- Cl. #4 Emails between the Claimant and Respondent, dated November 19, 20, and 21, 2012
- Cl. #5 Emails between the Claimant and Respondent, dated January 2 and 4, 2013
- Cl. #6 Emails between the Claimant and Respondent, dated April 8 and 9, 2013
- Cl. #7 Emails between Claimant and Respondent, dated April 22, 2013
- Cl. #8 Emails between Claimant and Respondent, dated May 19, 20, and 24, 2013
- Cl. #9 Emails between Claimant and Respondent, dated June 18 and 20, 2013
- Cl. #10 Emails between Claimant and Respondent, dated July 5, 2013
- Cl. #11 Email from Claimant to Respondent, dated July 9, 2013
- Cl. #12 Emails between Claimant and Respondent, dated November 23, 2013; January 2, 3, 5, and 7, 2014
- Cl. #13 Emails between Claimant and Respondent, dated February 28, 2014
- Cl. #14 Email from Claimant to Respondent, dated March 30, 2014
- Cl. #15 Emails between Claimant and Respondent, dated April 13 and 14, 2014
- Cl. #16 Email from Respondent to Claimant, dated April 24, 2014
- Cl. #17 Email from Claimant to Respondent, dated June 16, 2014
- Cl. #18 Email from Respondent to Claimant, dated June 30, 2014
- Cl. #19 Email from Claimant to Respondent, dated July 3, 2014

- Cl. #20 Emails between Claimant and Respondent, dated July 8 and August 12 and 13, 2014
- Cl. #21 Emails between Claimant and Respondent, dated September 24 and 25, 2014
- Cl. #22 Scope of Work and Invoice from Ruhl Floors, dated September 18, 2014; Check #137, for \$4,481.00, dated September 19, 2014
- Cl. #23 Scope of Work from Classic Floors, dated February 2, 2015
- Cl. #24 Piece of Claimants' step

I admitted the following exhibits on behalf of the Fund:

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- GF #1 Notice of Hearing, dated September 3, 2015; Hearing Order, dated July 29, 2015
- GF #2 Respondent's Licensing Records
- GF #3 Letter from MHIC to Respondent, dated May 6, 2015; MHIC Claim Form, dated April 13, 2015, received May 6, 2015; Letter from Claimants to MHIC, dated April 13, 2015; Scope of Work from Classic Floors, dated February 2, 2015; Letter from Ruhl Floors to the Claimants, dated September 18, 2014

No exhibits were offered on behalf of the Respondent.

Testimony

The Claimant testified on behalf of the Claimants.

The Fund did not present any witnesses.

No one testified or appeared on behalf of the Respondent.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence: At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 4581184.

1. On October 8, 2012, the Claimants and the Respondent entered into a contract (Contract) to renovate the basement in the Claimants' home in Boyds, Maryland.⁴ The Contract provided that the work was anticipated to take no more than three and one-half calendar weeks, material deliveries permitting. The agreed-upon contract price was \$27,995.00.⁵

2. Due to several setbacks, such as water flooding into the basement, the original completion time was delayed.

3. One of the items in the Contract was the installation of red oak engineered wood flooring.

4. On January 7, 2013, the Claimant and the Respondent entered into a Change Order that included the installation of new basement stair treads on the existing stair system, for a total cost of \$1,655.00. The Change Order included the following:

- Installation of all new basement stair treads on existing stair system. Treads are to be red oak and stained to closely match the new engineered wood flooring being installed in the basement. Risers and side carriage trim are to be reused and painted white. Handrail to receive no work. (Cost: \$1,215.00)
- Installation of wood trimmed surround for structural column located near foot of basement stair system. Column to be constructed of thin gage plywood with plinth matching base molding and crown trim at top. Column to receive a prime and two coats of white paint. (Cost: \$210.00)
- Rehang 1st floor front entrance storm door so it does not bind at its latch. Main door to receive new weatherstripping and sill threshold. Concrete sill to receive waterproofing prior to installation of threshold. (Cost: \$230.00)

5. The Claimant paid for the Change Order in full on January 22, 2013. The Respondent completed the installation of the stairs shortly thereafter.

⁴ The general scope of the Contract was extensive, and included wall framing, cabinets, drywall, doors, and painting. The thrust of the Claimants' claim, however, is the construction of the steps leading from the main level of the residence to the basement. Because of this, I need not detail the other portions of the Contract or the Respondent's work on the other items in the Contract and will concentrate on the substance of the claim.

⁵ The Claimants paid the Contract in full by February 14, 2013.

6. Not long after the installation of the stairs, the Claimants noticed that the Respondent left glue residue on two steps. The Respondent removed the glue and applied a finish that was different in appearance from that used on the other steps.

7. At this time, the Claimants also heard cracking sounds when they used the stairs and observed wood splitting on at least six treads of the stairs. The Respondent replaced the treads and unevenly stained them, creating a patchwork appearance on the stairs. After trying to correct the stair issues, by September 2014, the Respondent ultimately decided not to try and devise any other solutions to the problems with the stairs.

8. The Claimants wanted to correct the appearance and condition of the stairs, and consulted with Ruhl Flooring (Ruhl), who submitted a written evaluation and estimate to refinish the treads with a consistent finish.

9. In September 2014, the Claimants engaged Ruhl to refinish the basement stairs.⁶ On or about September 18, 2014, Ruhl refinished the stairs. While sanding the treads, Ruhl found one tread to be defective, and replaced it. Additionally, while sanding, Ruhl discovered that the top layer of the stairs was a red oak veneer of only a few hundredths of an inch thick, and not solid red oak, as the Claimants had expected. The sanding required to remove the existing finish and stain went through the thin layer and exposed different wood below. Ruhl also reported to the Claimants that the steps could not be resanded, and that if they became damaged or worn, they would have to be replaced.

10. The cost of refinishing the stair treads and replacing the step was \$701.00. The Claimant paid Ruhl for the entirety of its work, including the stairs, on September 19, 2014.

11. Even after Ruhl refinished the treads, the stairs continued to crack and split.

⁶ Ruhl also performed other floor work on the first level of the Claimants' home; however, the work on the stairs was distinguished in the scope of work as a separate item.

12. On February 2, 2015, the Claimants obtained an estimate from Classic Floors (Classic) to demolish the existing treads, to supply and install thirteen white oak treads, and to have the new treads sanded and coated with several coats of stain to match the existing flooring. The cost for Classic to perform the work is \$2,610.00.

DISCUSSION

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Bus. Reg. § 8-405(a). *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 Claimants have proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimants. There are no *prima facie* statutory impediments barring the Claimants from recovering compensation from the Fund (being related to the Respondent, recovering damages from the Respondent in a court proceeding, owning more than three houses, etc.). Md. Code Ann., Bus. Reg. § 8-405(f)(1) and (2) (2015).

The Respondent performed unworkmanlike, inadequate or incomplete home improvements. The stairs he constructed leading to the Claimants’ basement were defective, unsightly, and ultimately need to be replaced.

The Claimant offered that she liked the Respondent and believes that he did not intend to produce unworkmanlike stairs, but that he may have undertaken a project that exceeded his expertise. She was particularly disappointed that the stairs were not constructed of the material she intended, solid red oak, and that the ultimate result consisted of stairs that were unevenly stained and prone to cracking and splitting. In support of the claim, the Claimant produced a

piece of wood from the step that had been replaced. (Cl. #24) The step clearly displayed substantial splitting and was not constructed of solid wood, as the Claimants had been led to expect.

Additionally, I find that the Claimants gave the Respondent ample opportunities to correct the defective stairs, and after multiple attempts, the parties determined that these efforts were unavailing. In the meanwhile, the Claimants were left with defective steps, which will further deteriorate and require replacement.

I thus find that the Claimants are 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).

In this matter, the Respondent constructed a set of stairs leading to the Claimants' basement that were constructed of a substandard material than contemplated, resulting in splitting, cracking, and deterioration. Additionally, the stain applied to the treads by the Respondent to give the appearance of red oak, was uneven and unsightly. The stairs are clearly

deficient and need to be replaced. In order to do so, the Claimants have secured the estimate from Classic to rebuild the stairs, with the material initially requested.

The formula, therefore, demonstrates the Claimants' actual loss as follows:

Amount Paid to Respondent	\$1,215.00 ⁷
Amount Required for Repair	+ 2,610.00
Total	\$3,825.00
Original Contract Price	- 1,215.00
Actual Loss	\$2,610.00

However, although the calculated actual loss includes the entirety of the estimate for replacing the stairs by Classic, recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimants to the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(1) and (5) (2015). The Claimants paid \$1,215.00 to the Respondent for the construction of the stairs, which is less than their actual loss computed using the formula noted in COMAR 09.08.03.03(c). Hence, the Claimants are entitled to reimbursement in the amount of \$1,215.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2015).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained a compensable loss \$1,215.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401; 8-405 (2015).

RECOMMENDED ORDER⁸

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$1,215.00 and

⁷ This is the amount of the Contract specifically attributed to the stairs. This figure will also be considered as the original contract price.

⁸ Because the Respondent is deceased, and there is apparently no surviving business entity, I have not included the standard recommendation concerning a respondent's ineligibility for a MHIC license until the Guaranty Fund is reimbursed with interest, as required by law. Md. Code Ann., Bus. Reg. § 8-411(a) (2015).

ORDER that the records and publications of the Maryland Home Improvement

Commission reflect this decision.

Signature on File

December 17, 2015
Date Decision Issued

Harriet C. Helfand
Administrative Law Judge

HCH/sw
159123

PROPOSED ORDER

WHEREFORE, this 2nd day of February, 2016, 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