

IN THE MATTER OF THE CLAIM
OF NAYYAR IQBAL,

* BEFORE WILLIS GUNTHER BAKER,
* AN ADMINISTRATIVE LAW JUDGE

CLAIMANT

* OF THE MARYLAND OFFICE

AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND

* OF ADMINISTRATIVE HEARINGS

FOR THE ALLEGED ACTS OR
OMISSIONS OF LYNN GUIFFRE

*

T/A CREATIVE SURROUNDINGS,
LLC,

* OAH No.: DLR-HIC-02-18-16789

* MHIC No.: 16 (05) 1164

RESPONDENT

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On October 25, 2016, Nayyar Iqbal (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$11,160.00 in actual losses allegedly suffered as a result of a home improvement contract with Lynn Guiffre, trading as Creative Surroundings, LLC (Respondent).¹

I held a hearing on August 15, 2018 at The Office of Administrative Hearings (OAH) in Kensington, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented

¹ While all of the Claimant's interactions were with Bryan Guiffre, not Lynn Guiffre, I find there is substantial evidence in the record that Bryan Guiffre was acting on behalf of Creative Surroundings, LLC, so references to "Respondent" include actions of Bryan Guiffre.

himself. Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. After waiting fifteen minutes for the Respondent or the Respondent's representative 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 Office of Administrative Hearings (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); 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 - December 21, 2015 Proposal from the Respondent to the Claimant, with attached business card of Bryan Guiffre
- Clmt. Ex. 2 - Copy of December 24, 2015 check for \$5,000.00 from the Claimant to the Respondent
- Clmt. Ex. 3 - Copy of January 6, 2016 check for \$4,160.00 from the Claimant to the Respondent
- Clmt. Ex. 4 - Ten photographs of the Claimant's yard taken after the Respondent stopped work, but before repairs made, January 2016

² Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on July 6, 2018, COMAR 09.08.03.03A(2) and to two other alternative addresses, and a signed certified mail receipt was returned to the OAH on July 11, 2018 from the alternative Dalton Drive address. The Fund submitted additional evidence of address verifications for the Respondent. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Respondent had received proper notice, and proceeded to hear the captioned matter.

Clmt. Ex. 5 - Text messages between the Claimant and Respondent from January 15, 2016 to May 3, 2016

Clmt. Ex. 6 - Timeline created by the Claimant

Clmt. Ex. 7 - August 1, 2016 Invoice to Claimant from Natural Landscaping for completion of project

Clmt. Ex. 8 - Three photographs of completed project

Clmt. Ex. 9 - Copies of 3 checks from the Claimant to Natural Landscaping: July 22, 2016 for \$10,000, July 27, 2016 for \$5,000, and August 2, 2016 for \$3,000

Clmt. Ex. 10 - November 8, 2016 American Express Statement of the Claimant

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - July 6, 2018 Hearing Notice, with signed certified mail receipt

Fund Ex. 2 - July 25, 2018 memo from OAH to DLLR indicating the May 30, 2018 Hearing Notice certified mailings to the Respondent had been returned as unclaimed, attaching ~~the mailings~~

Fund Ex. 3 - May 14, 2018 DLLR Hearing Order

Fund Ex. 4 - MHIC Licensing Records of Respondent

Fund Ex. 5 - State Department of Assessments and Taxation (SDAT) Real Property Search for Respondent's address

Fund Ex. 6 - August 14, 2018 Affidavit of Keyonna Penick

Fund Ex. 7 - October 25, 2016 MHIC Claim Form

Fund Ex. 8 - November 28, 2016 Notice from MHIC to Respondent of Claim

Fund Ex. 9 - MHIC Licensing Records of Natural Landscaping

The Respondent did not submit any exhibits.

Testimony

The Claimant testified and presented the testimony of Ashok Mannan, his neighbor. The Fund did not present any witnesses. The Respondent was not present and did not present any witnesses.

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, Lynn Guiffre, trading as Creative Surroundings, LLC, (Respondent) was a licensed home improvement contractor with MHIC.
2. Bryan Guiffre, whose business card identified him as "President/Owner" of "Creative Surroundings," was acting on behalf of the Respondent at all times involving the Claimant's project and was the Claimant's contact throughout the process.
3. On or about December 21, 2015, the Claimant and the Respondent entered into a contract to remove and replace an existing retaining wall, install a new concrete patio, and install vinyl fencing. The contract did not have a stated begin or completion date, but the Respondent told the Claimant the job would take approximately ten days and would be completed by the end of the first week of January 2016.
4. The agreed-upon contract price was \$13,880.22.
5. On December 24, 2015, the Claimant paid the Respondent \$5,000.00. On January 6, 2016, the Claimant paid the Respondent \$4,160.00. The Claimant paid the Respondent a total of \$9,160.00 under the contract.
6. At the end of December 2015 and beginning of January 2016, the Respondent began work at the Claimant's property, removing the old retaining wall and beginning a new retaining wall. The Respondent worked three or four days, then never returned to do any more work. The Respondent also brought some demolition materials of broken concrete and wood from the Claimant's neighbor's yard and dumped it in the Claimant's yard.
7. On January 15, 2016, the Claimant began sending the Respondent text messages and phone calls asking about when they would return to finish the project. Over the course of

the next few months, the Respondent indicated that bad weather, back-ordered supplies, and worker shortages prevented him from returning to do any work.

8. The Respondent partially but improperly completed a portion of the Claimant's retaining wall. The Respondent did not do any patio or fence work contained in the contract.

9. On March 9, 2016, the Respondent notified the Claimant that they would not be returning and if the Claimant filed an MHIC claim, the Respondent would file for bankruptcy.

10. In July 2016, the Claimant entered a contract with Natural Landscaping to correct and complete the work the Respondent abandoned. The Claimant paid Natural Landscaping \$15,800 for the completed work.

11. On October 25, 2016, the Claimant filed a Complaint with MHIC.

12. The Claimant's actual loss is \$11,079.78. The Claimant only paid the Respondent \$9,160.00. Recovery is capped at \$9,160.00.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1) (2015); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(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)).

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)³; see also COMAR 09.08.03.03B(2) ("actual losses . . . incurred as a result of misconduct by a

³ Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

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. However, the award cannot exceed the actual amount paid by or on behalf of the claimant to the contractor. COMAR 09.08.03.03B(4). For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time it entered into the contract with the Claimant. The Respondent performed unworkmanlike, inadequate or incomplete home improvements. The Respondent was hired to complete a new retaining wall, a concrete patio and vinyl fencing at the Claimant’s property and the entire job was to take approximately ten days. According to the Claimant’s testimony, the Respondent worked for three or four days, then abandoned the project. To make matters worse, the Respondent, who was also doing work at the home of the Claimant’s neighbor, Ashok Mannan, took many wheelbarrows full of broken up sidewalk from Mr. Mannan’s house and dumped them in the Claimant’s yard and never cleaned it up.

The Claimant tried for several months to get the Respondent to return and complete the job, but was given the run around until the Claimant filed a complaint with MHIC in March 2016.⁴ The Claimant was perfectly justified in seeking another contractor to complete the Respondent’s abandoned project. Claimant hired Natural Landscaping, a MHIC licensed contractor, to complete the incomplete work left by the Respondent and paid it \$15,800.00.⁵

The Respondent performed only minimal demolition and partial construction of a retaining wall on the Claimant’s property, and performed none of the patio or fence work. The

⁴ It appears that the Claimant filed an amended Complaint on October 25, 2016, after the repairs were made. (Fund Ex. 7).

⁵ The Claimant hired Natural Landscaping to perform other work, unrelated to the contract with the Respondent, for which they were paid additional sums. The August 1, 2016 Invoice (Clmt. Ex. 7), relates only to the items that Natural Landscaping performed to repair and complete the Respondent’s work.

part of the retaining wall that was constructed was done improperly and needed to be bolstered by the construction performed by Natural Landscaping. Therefore, the work performed by the Respondent was of no value to the Claimant. I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. COMAR 09.08.03.03B(3).

If the Respondent abandoned the contract without doing any work, the Claimant's actual loss would be the amount which the claimant paid to the contractor under the contract. COMAR 09.08.03.03B(3)(a). If the Respondent performed some work under the contract and the Claimant did not solicit other contractors to complete or remedy that work, the Claimant's actual loss would 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). Neither of these apply to this case.

In this case, the Respondent performed some work under the contract, and the Claimant retained another contractor to remedy and complete that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

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).

The Claimant's actual loss is determined as follows:

Amount Paid to Respondent		\$ 9,160.00
+ Amount Paid to Natural Landscaping		<u>\$15,800.00</u>
	=	\$24,960.00
Original Contract Price	-	<u>\$13,880.22</u>
Actual Loss		\$11,079.78

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor, and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is less than \$20,000.00, but more than the amount paid to the Respondent. Therefore, the Claimant's recovery is limited to the amount paid to the Respondent, \$9,160.00. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$9,160.00 as a result of the Respondent's acts or omissions, recoverable from the Fund. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015) COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$9,160.00; 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 ten percent (10%) as set by the Maryland Home Improvement Commission⁶; and

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

Signature on File

October 24, 2018
Date Decision Issued

Willis Gunther Baker
Administrative Law Judge

WGB/cj
#175815

⁶ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



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PROPOSED ORDER

WHEREFORE, this 20th day of November, 2018, 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.

Jeffrey Ross

***Jeffrey Ross
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION