

IN THE MATTER OF THE CLAIM	* BEFORE JOHN J. LEIDIG,
OF PAUL PAVIK,	* 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 DOMENICO	*
PARRAVANO,	* OAH No.: DLR-HIC-02-16-30809
T/A DOMENICO PARRAVANO &	* MHIC No.: 16 (05) 1276
SONS, INC.,	*
RESPONDENT	*

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On August 1, 2016, Paul Pavik (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$5,000.00 in alleged actual losses suffered as a result of a home improvement contract with Domenico Parravano, trading as Domenico Parravano & Sons, Inc. (Respondent).¹

¹ The Respondent also trades under the names Domenico Inc. and Parravano Construction. See Fund Ex.3.

I held a hearing on January 20, 2017 at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented himself. Eric B. London, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. After waiting more than twenty minutes for the Respondent or someone representing 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 OAH Rules of Procedure 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 - Contract between the Claimant and the Respondent, September 21, 2015
- Clmt. Ex. 2 - Check #98 signed by the Claimant payable to the Respondent in the amount of \$5,000.00, October 2, 2015
- Clmt. Ex. 3 - Photograph of sample overhang, undated

² Notice of the hearing was mailed to the Respondent at the address of record by certified mail on October 16, 2016, COMAR 09.08.03.03A(2), and was returned unclaimed. On the same day, a notice was sent to the Respondent by regular mail; that notice was not returned as undeliverable.

- Clmt. Ex. 4 - Photograph of concrete slab³ and footers poured by the Respondent, undated
- Clmt. Ex. 5 - Photograph of sledgehammer embedded in concrete footer, undated
- Clmt. Ex. 6 - Photograph of concrete footer poured by the Respondent, undated
- Clmt. Ex. 7 - Photograph of concrete footer poured by the Respondent, undated
- Clmt. Ex. 8 - Letter from the Claimant to the Respondent, March 28, 2016
- Clmt. Ex. 9 - Layoff Sheet from Prestige Home Solutions to the Claimant, July 27, 2016

I did not admit any exhibits on the Respondent's behalf.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - Hearing Notice issued by OAH, October 13, 2016
- Fund Ex. 2 - Hearing Order signed by Joseph Tunney, HIC Chairman, September 26, 2016
- Fund Ex. 3 - DLLR MHIC Licensing History for the Respondent, December 6, 2016
- Fund Ex. 4 - Home Improvement Claim Form signed by the Claimant, August 1, 2016
- Fund Ex. 5 - Letter from Joseph Tunney, HIC Chairman, to the Respondent, August 3, 2016

Testimony

The Claimant testified in his own behalf.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all relevant times, the Respondent was a licensed home improvement contractor under MHIC license number 01-8990.
2. On September 21, 2015, the Claimant and the Respondent entered into a contract (Contract) to construct a new wooden overhang extending from the back of the Claimant's house.

³ The concrete slab was not part of the contract at issue in this case. The Respondent had previously poured the concrete slab as part of another job, and the Claimant was satisfied with it.

3. The Contract states that the overhang will measure twenty-eight feet by fourteen feet and be supported by posts on concrete footers.
4. The Contract states that the approximate completion date of the work is October 2015.
5. The agreed-upon Contract price was \$15,000.00.
6. On October 2, 2015, the Claimant paid the Respondent \$5,000.00.
7. The Respondent did not start the work during October 2015.
8. After repeated calls from the Claimant, the Respondent finally started the work in January 2016.
9. The Respondent poured four concrete footers to support posts for the overhang.
10. The footers poured by the Respondent were not adequate for the job, and the Respondent left a sledgehammer embedded in one of the footers.
11. To proceed with the construction of the overhang, the footers poured by the Respondent will have to be demolished and re-poured.
12. As installed by the Respondent, the footers are of no value.
13. Between January and August 2016, the Claimant provided the Respondent numerous opportunities to correct and complete the work promised under the Contract.
14. On or about March 28, 2016, the Claimant hand-delivered a letter to the Respondent seeking an update on the job. The Respondent failed to respond to the letter, and he made no attempt to correct and complete the work.
15. Sometime during the summer of 2016, the Respondent telephoned the Claimant and suggested the parties meet at the Respondent's office. The Claimant was in Georgia and therefore unable to meet at the time and place suggested by the Respondent. The Claimant told

this to the Respondent and was willing to meet with the Respondent when he returned to Maryland, but the parties never met.

16. Thereafter, the Claimant again tried to have the Respondent fix and complete the job, but the Respondent did not respond and made no attempt to correct or complete the work.

17. The Claimant is not related to or employed by the Respondent.

18. The Claimant resides in the home that is the subject of the Contract.

19. The Claimant does not own more than three residences or dwelling places.

20. The Claimant's actual loss is \$5,000.00.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of his Claim by a preponderance of the evidence. 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 (3rd 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);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."

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

Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation from the Fund:

The Fund showed that the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. Fund Ex. 3. The Fund also demonstrated that the Claimant is not excluded from recovery under section 8-405(f), which provides as follows:

(f) (1) A claim against the Fund based on the act or omission of a particular contractor may not be made by:

- (i) a spouse or other immediate relative of the contractor;
- (ii) an employee, officer, or partner of the contractor; or
- (iii) an immediate relative of an employee, officer, or partner of the contractor;

(2) An owner may make a claim against the Fund only if the owner:

- (i) resides in the home as to which the claim is made; or
- (ii) does not own more than three residences or dwelling places.

In particular, the Fund elicited testimony from the Claimant demonstrating that the Claimant is not related to or employed by the Respondent, the Claimant resides in the home that is the subject of the Contract, and the Claimant does not own more than three residences or dwelling places.

In addition, the Claimant's testimony, coupled with pictures of the jobsite, clearly demonstrate that the Respondent performed unworkmanlike, inadequate and incomplete work. The Respondent failed to start the project in October 2015 as scheduled, and he never completed construction of the overhang. His sloppiness is epitomized by the sledgehammer he left embedded in a poured concrete footer. Clmt. Ex. 5. A licensed contractor, Prestige Home Solutions (MHIC #95413), reviewed the Respondent's work in July 2016 and determined that the concrete footers (the only work actually performed by the Respondent) would have to be demolished and replaced. Clmt. Ex. 9. I have been provided no reason to doubt the veracity of this opinion.

Section 8-405(d) of the Business Regulation Article provides that "[t]he Commission may deny a claim if the Commission finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim." In this case, however, there is no evidence that the Claimant rejected good faith efforts by the Respondent to address the deficiencies in the work. Although the Claimant frankly admitted that the Respondent did call him once about the project during the summer of 2016, the Claimant did not reject the Respondent's offer; rather, the Claimant told the Respondent that the parties could meet when the Claimant returned to Maryland from Georgia. The record also shows that, thereafter, the Claimant made efforts to contact the Respondent but the Respondent failed to respond and never finished the job. For all of these reasons, I conclude 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 is not soliciting another contractor to complete the contract, the claimant's actual loss shall 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). Pursuant 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).

I agree with the professional opinion of Prestige Home Solutions that the work performed by the Respondent was of no value to the Claimant because it would have to be ripped up and

redone. Even without the opinion from Prestige Home Solutions, the Claimant's evidence persuaded me that the work performed by the Respondent was so unworkmanlike that it was of no value. Accordingly, the Claimant's actual loss is \$5,000.00, which is the amount the Claimant paid to the Respondent. COMAR 09.08.03.03B(3)(b).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$5,000.00 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)(b).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,000.00; 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 Commission;⁵ and

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

Signature on File

April 6, 2017
Date Decision Issued

John J. Leidig
Administrative Law Judge

JJL/dlm
#166302

⁵ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 8th day of June, 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.

Robert Altieri

***Robert Altieri
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION