

<p>IN THE MATTER OF THE CLAIM</p> <p>OF CHRISTOPHER ALLEN,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF LYNN GUIFFRE,</p> <p>T/A CREATIVE SURROUNDINGS,</p> <p>LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE JOY L. PHILLIPS,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: DLR-HIC-02-19-03994</p> <p>* MHIC No.: 16 (75) 1448</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On July 17, 2018, Christopher Allen (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$3,974.00 in actual losses allegedly suffered as a result of a home improvement contract with Lynn Guiffre, trading as Creative Surroundings, LLC (Respondent).

I held a hearing on May 14, 2019 at the Prince George's County Government Center in Largo, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015).¹ The Claimant represented himself. Shara Hendler, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. Neither the Respondent nor the Respondent's representative appeared after fifteen minutes; I proceeded with the hearing in the Respondent's absence. Code of Maryland Regulations (COMAR) 28.02.01.23A.²

The contested case provisions of the Administrative Procedure Act (APA), the Department's hearing regulations, and the Rules of Procedure of the Office of Administrative Hearings 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 unless otherwise noted:

- Clmt. Ex. 1 - Home Improvement Claim Form, July 1, 2018; Complaint Form, June 17, 2016; Letter from HIC to the Respondent, July 8, 2016; Letter from HIC to the Claimant, July 29, 2016; Letter from HIC to the Claimant, October 19, 2016
- Clmt. Ex. 2 - The Claimant's Explanation Sheet, undated
- Clmt. Ex. 3 - Proposal from the Respondent, March 6, 2015, signed March 13, 2015

¹ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Volume of the Maryland Annotated Code.

² The Office of Administrative Hearings (OAH) mailed a notice of hearing to the Respondent at her address of record by regular and certified mail on March 13, 2019. COMAR 09.08.03.03A(2). The notice sent by certified mail was unclaimed. The notice sent by regular mail was not returned as undeliverable. 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 notices the OAH sent to the Respondent were proper and proceeded to hear the matter.

- Clmt. Ex. 4 - Email from the Respondent, May 22, 2015, and permitted plans, May 14, 2015
- Clmt. Ex. 5 - Permits, May 19, 2015, June 29, 2015; Correction Order, June 11, 2015; Permit Status Tracking, printed July 31, 2015
- Clmt. Ex. 6 - Payment Schedule Memo, four invoices, and emails, May 22, 2015 and July 29, 2015
- Clmt. Ex. 7 - Three photographs, taken May 18, 2015
- Clmt. Ex. 8 - Three photographs, taken May 21, 2015
- Clmt. Ex. 9 - Three photographs, taken June 2, 2015
- Clmt. Ex. 10 - Letter from the Claimant's attorney to the Respondent, August 5, 2015; email from the Claimant to his attorney, August 4, 2015
- Clmt. Ex. 11 - Eleven photographs, taken August 1, 2015
- Clmt. Ex. 12 - The Claimant's list of unfinished work, with four quotes from other companies, August 18, 2015, November 5, 2015, August 17, 2015, and August 26, 2015
- Clmt. Ex. 13 - NOT ADMITTED
- Clmt. Ex. 14 - Estimate of cost to demolish porch, May 30, 2018
- Clmt. Ex. 15 - Six photographs, taken May 13, 2019

I admitted no exhibits on the Respondent's behalf.

I admitted the following exhibits on behalf of the Fund:

- GF Ex. 1 - Hearing Order, February 4, 2019
- GF Ex. 2 - Notice of Hearing, March 13, 2019
- GF Ex. 3 - Home Improvement Claim Form, July 1, 2018, received by the Fund July 17, 2018
- GF Ex. 4 - Licensing Information, printed May 8, 2019

Testimony

The Claimant testified in his own behalf.

The Respondent presented no testimony.

The Fund presented no testimony.

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 103025. The license expired on March 4, 2017.

2. On March 13, 2015, the Claimant and the Respondent³ entered into a contract for a new porch, steps, retaining wall, and walkway. Specifically, the contract called for the Respondent to:

- demolish the Claimant's existing front porch, remove all materials, and haul debris away
- excavate a new footer for the porch and pour concrete for footer
- frame the new porch and install concrete blocks
- install stone veneer on all exposed block
- install flagstone on all flat surfaces
- demolish the front walkway, remove all materials, and haul debris away
- excavate and build a new walkway using concrete and stone
- demolish front steps and retaining wall, remove all materials, and haul debris away
- build new steps out of concrete and all steps with stone or flagstone

3. The work was projected to take six weeks to complete. It was to be finished before a family wedding at the Claimant's home.

4. The contract price was \$23,326.00⁴ and was to be paid in three installments.

5. The Claimant paid the Respondent \$7,800.00 as a deposit on March 13, 2015.

6. On May 22, 2015, the Respondent emailed the Claimant with a copy of what he called "permitted plans."

³ The Respondent is married to Bryan Guiffre, who was the face of the company and conducted all of the interactions with the Claimant. Because Mr. Guiffre was acting in the Respondent's stead, I have referred to his actions as the Respondent's throughout the Decision.

⁴ The Claimant dropped the additional thirteen cents during the hearing and I have done the same.

7. On May 22, 2015, the Respondent presented the Claimant with a change order, adding \$5,000.00⁵ to the contract price for a change of rock style. The Claimant made this payment, along with the second installment payment of \$7,800.00.

8. On May 22, 2015, the Respondent also presented the Claimant with a change order, adding \$2,300.00 for a change to the footer construction. The Claimant did not make this payment.

9. The Respondent did not obtain proper permits for the projects.⁶ When the Claimant realized proper permits had not been pulled, he obtained permits for the project on June 29, 2015.

10. The Respondent did not demolish the front porch, as required under the contract. Instead, she filled in gaps in the wooden structure with concrete and cement blocks.

11. The Respondent piled the debris from the steps and walkway on the front parking pad and yard instead of hauling it away, as contracted.

12. The Respondent worked sporadically into July 2015. On July 21, 2015, the Respondent demanded the third draw and threatened to quit the job if not paid. On or near the same date, the Respondent removed all tools from the job site. On July 30, 2015, the Claimant paid the Respondent \$2,500.00 at the behest of the Respondent, who said it was needed to make payroll.

13. The Respondent never returned to the Claimant's home after July 30, 2015 despite the Claimant's attempts to reach him. The yard was full of debris. The steps were not

⁵ This amount, added to the contract price of \$23,326.00, is later referred to as the amended contract amount.

⁶ Claimant's Exhibit 5 revealed that a permit was applied for on May 28, 2015, but "abandoned." The Claimant testified he was told there was no valid permit. He was also told the plans would not support the permit that was requested.

close to finished. The stone to be installed had been dumped on the ground. The dirt was not filled in behind the retaining wall. The railings were not installed.

14. On August 5, 2015, the Claimant's attorney notified the Respondent the contract was terminated and they were no longer permitted to enter the property.

15. The Claimant obtained four estimates from other contractors to repair and complete the work covered by the contract with the Respondent. Ultimately, the Claimant hired J.C.H Contracting/Design (J.C.H.).⁷ J.C.H. finished the front steps, installed the railing, completed the concrete work, removed all debris, cleaned up the yard, and completed the permit process. The contract price was \$9,275.00.

16. The work was completed by December 11, 2015.

17. On July 17, 2018, the Claimant filed a Claim against the Fund for \$3,974.00.

DISCUSSION

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); 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); *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

⁷ The license for J.C.H. expired in 2009. This is addressed in the Discussion.

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.

The Respondent was a licensed home improvement contractor at the time she entered into the contract with the Claimant. The Claimant and the Respondent entered into a straightforward contract in which the Respondent agreed to remove and replace a porch and steps, install stone on the porch, steps, and walkway, and build a large retaining wall. The Respondent would remove all of the debris created by the demolition and would obtain permits for the work. The work did not begin immediately, even though the Claimant paid an initial deposit. Over two months after that deposit was accepted, the Respondent presented the Claimant with “permitted plans,” when, in fact, no permit had been obtained. At the same time, May 22, 2015, the Respondent forced the Claimant to agree to a change order for different stone, even though no work had even begun. Additionally, the Respondent asked the Claimant to pay for a larger footer for the porch, allegedly because the county officials required it. (Clmt. Ex. 2.)

As the Respondent demolished the porch and existing sidewalk, she left the debris on the parking pad and yard, contrary to the contract, which called for it to be removed. This left the Claimant’s front yard unsightly and unusable for months. In July 2015, the Respondent removed her tools and threatened to abandon the job unless the Claimant paid her the balance owed under the contract. Although the Claimant did not pay the entire balance, he did pay an additional \$2,500.00 requested by the Respondent in order to make payroll. The Respondent abandoned the job anyway. After failing to reach the Respondent several times, the Claimant had his attorney notify the Respondent the contract was terminated and she was not permitted to return to the property.

The Claimant obtained four estimates from competitors to complete the work and clean up the area. The estimates ranged from \$6,100.00 to \$9,275.00. (Clmt. Ex. 12.) The Claimant chose contractor J.C.H. to do the work. The Fund pointed out that J.C.H. was not licensed in 2015, but did not object to the evidence of the work completed by that contractor. J.C.H. completed the work, cleaned up the yard, obtained the proper permits, and left the Claimant satisfied with his front porch and yard. Accordingly, I accepted that evidence and included the amount paid to J.C.H in my calculations below.

The evidence supports a finding that the Respondent performed unworkmanlike, inadequate or incomplete home improvements and the Respondent has failed to refute the evidence. 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).

In this case, the Respondent performed some work under the contract, and the Claimant hired another contractor to complete the contracted 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).

Using this formula, the Claimant's actual loss would be calculated as follows:

Deposit paid 3/13/15	\$7,800.00
2 nd installment paid 5/22/15	\$7,800.00
Change order amount paid 5/22/15	\$5,000.00
Additional payment paid 7/30/15	<u>\$2,500.00</u>
Total paid to Respondent:	\$23,100.00
Plus amount paid to J.C.H	<u>\$9,275.00</u>
Total paid for project:	\$32,375.00
Minus amended contract amount:	<u>\$28,326.00</u>
Actual loss:	\$4,049.00

Under this calculation, the Claimant's actual loss exceeds the amount requested in the Claim. The Fund suggested an alternative method for calculating the Claimant's compensable loss. Under this alternative, one would add the costs of demolishing the front porch, which the contract called for, but was not done by the Respondent. To prove the value of this job alone, the Claimant produced an estimate from another contractor in the amount of \$1,800.00. (Clmt. Ex. 14.) The Fund suggested that amount could be added to the Claimant's compensable loss, bringing it to \$5,849.00 (\$4,049.00 + \$1,800.00). However, the Fund noted that this amount so far exceeds the amount the Claimant requested in the Claim, that it would probably be unfair to the Respondent due to lack of notice. The Respondent had been notified only of the amount in

the Claimant's Claim, \$3,974.00. Although the \$4,049.00 amount calculated above as the Claimant's actual loss also exceeds the claim amount (by \$75.00), the Fund argued that it was not so excessive as to represent a denial of due process to the Respondent.

I conclude that the Claimant is limited to recovering \$3,974.00, the amount he requested in the Claim, because he never amended the Claim and it is the only amount of which the Respondent was notified. The APA provides that "[a]n agency shall give reasonable notice of the agency's action." Md. Code Ann., State Gov't § 10-207 (2014). The Court of Appeals has often reiterated that "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Barrie-Peter Pan Sch., Inc. v. Cudmore*, 261 Md. 408, 420-21 (1971) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950)). See also COMAR 09.08.03.02C(2). The law offers no guidance as to how much over the claimed amount would not violate basic principles of due process. Accordingly, I conclude the Claimant is limited to the amount he included in the original Claim.

PROPOSED CONCLUSION OF LAW

I conclude the Claimant has sustained an actual loss of \$3,974.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(2) and (3)(c); COMAR 09.08.03.02C(2); *Barrie-Peter Pan Sch., Inc. v. Cudmore*, 261 Md. 408, 420-21 (1971) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950)).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$3,974.00; 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;⁸ and

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

Signature on File

July 10, 2019
Date Decision Issued

Joy L. Phillips
Administrative Law Judge

JLP/dlm
#179932

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

PROPOSED ORDER

WHEREFORE, this 8th day of August, 2019, 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.

J. Jean White

***L. Jean White
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION