

<p>IN THE MATTER OF THE CLAIM</p> <p>OF WILLIAM L. BRYANT,</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 DANIEL CATLETT,</p> <p>JR., T/A HOMES AMERICA, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE BRIAN ZLOTNICK,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* </p> <p>* OAH No.: DLR-HIC-02-17-06926</p> <p>* MHIC No.: 16 (05) 298</p> <p>* </p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On December 10, 2015, William L. Bryant (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$26,310.00 in alleged actual losses suffered as a result of a home improvement contract with Daniel Catlett, Jr., trading as Homes America, LLC (Respondent).

A hearing was originally held on July 21, 2016, before Administrative Law Judge (ALJ) M. Teresa Garland. At the July 21, 2016 hearing, both the Claimant and the Respondent failed to appear, resulting in ALJ Garland issuing a decision recommending that the Claim be dismissed. The Claimant filed exceptions and the MHIC found that the Claimant established

good cause for his failure to appear for the July 21, 2016 hearing. Accordingly, the MHIC issued a Remand Order on March 6, 2017, remanding the matter to the Office of Administrative Hearings (OAH) to schedule a *de novo* hearing on the merits. Subsequently, I held a hearing on July 5, 2017, at the Prince George's County Office Building in Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented himself. Andrew J. Brouwer, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Respondent failed to appear.

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); Code of Maryland Regulations (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, unless otherwise specified, on the Claimant's behalf:

- CL. 1 - Complaint Form, dated September 1, 2015
- CL. 2 - Letter from Claimant to Respondent, dated August 19, 2015
- CL. 3 - Contract, dated June 1, 2015
- CL. 4 - Copies of checks and check register receipts, dated April 21, 2015, April 23, 2015, May 5, 2015 and May 7, 2015
- CL. 5 - A collection of checks paid to the Claimant from Liberty Mutual Insurance – **NOT ADMITTED**
- CL. 6 - Proposal from Masters Construction Management Services, dated November 30, 2015

I admitted the following exhibits on behalf of the Fund:

- Fund 1 - Remand Order, dated March 6, 2017
- Fund 2 - Hearing Order, dated February 29, 2016
- Fund 3 - OAH Notice of Hearing, dated March 29, 2017
- Fund 4 - Certified Mail Receipt, dated March 29, 2017
- Fund 5 - OAH Notice of Hearing, dated June 22, 2017
- Fund 6 - OAH Notice of Hearing, dated May 10, 2016
- Fund 7 - Letter from MHIC to Respondent, dated December 15, 2015, with attached Claim Form
- Fund 8 - Licensing history of Respondent, printed on June 20, 2017
- Fund 9 - Affidavit of Thomas Marr, dated June 21, 2017, with attached Motor Vehicle Administration printout regarding Respondent's driving record
- Fund 10 - Letter from MHIC, dated June 30, 2017, regarding licensing status of Masters Construction Management Services, LLC.

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

Testimony

The Claimant testified in his own behalf and did not present any witnesses.

Neither the Respondent nor the Fund called 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 matter of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 4532800.
2. The Claimant is the owner of a single-family home located on Walker Mill Road in Capitol Heights, Maryland (Property).
3. On June 1, 2015, the Claimant and the Respondent entered into a contract (Contract) to install siding, a new porch, and a new roof, install new drywall with two fresh coats of paint and install new exterior doors.¹

¹ The Contract was signed by the Respondent on March 20, 2015 and was orally agreed to by the Claimant on March 20, 2015 but it was not signed by the Claimant until June 1, 2015.

4. The Contract included demolition of the existing roof and interior walls in addition to the demolition of the porch.

5. The agreed-upon Contract price was \$22,629.80 and was broken down as follows:

- Siding - \$11,272.16
- Porch - \$1,186.87
- Roof - \$1,901.34
- Interior - \$1,514.74
- Exterior Doors - \$5,971.49
- Fixed fee - \$295.00
- Tax - \$488.20

6. The Claimant paid the Respondent in the following amounts and manner:

4/21/15	\$4,621.21	check
4/23/15	\$4,616.71	check
5/5/15	\$7,115.62	check
5/7/15	\$4,347.80	check
Undated	\$2,000.00	cash

7. The Claimant paid the Respondent a total of \$22,701.34 for the Contract.

8. Work began on April 23, 2015.

9. The Respondent completed work on the roof and finished the siding portion of the Contract with the exception of one missing piece of siding.

10. In June 2015, the Respondent stopped working on the Contract without completing work on the porch and the interior drywall and painting work. The Respondent never installed the exterior doors.

11. The Claimant spoke to the Respondent in July 2015 to inquire about the Contract and the Respondent informed the Claimant the Contract would be completed by July 13, 2015. The Respondent never returned to do any further work on the Contract.

12. In late July 2015, the Claimant received a phone call from Seth Rapoza who informed the Claimant that the Respondent had passed away and that his family chose to close the Respondent's business.

13. On November 30, 2015, the Claimant obtained a proposal from Masters Construction Management Services, LLC (Masters Construction) to perform repairs and complete the Contract.

14. Masters Construction was not licensed by the MHIC during the period of July 1, 1989 to June 30, 2017.

15. The value of the work not performed by the Respondent is as follows:

• Porch -	\$1,186.87
• Interior -	\$1,514.74
• Exterior Doors -	<u>\$5,971.49</u>
Total -	\$8,673.10

DISCUSSION

Notice of Hearing

On March 29, 2017, the OAH mailed a Notice of Hearing for the July 5, 2017 hearing, by certified mail to the Respondent's current Maryland Motor Vehicle Administration address at 2150 Oak Road, Port Republic, Maryland. The Respondent or someone on the Respondent's behalf signed the certified mail receipt on March 31, 2017. There is no evidence the Respondent notified the MHIC or the OAH of a change of address either on or before the March 29, 2017 Notice of Hearing date, or on or before the July 5, 2017 hearing date. The Respondent, or

anyone on his behalf, failed to appear for the hearing. I find the OAH provided the Respondent legally sufficient notice of the hearing. As a result, I proceeded with the hearing in the Respondent's absence. COMAR 28.02.01.23A.

Merits

The Claimant contends that he hired the Respondent to replace his roof, siding and windows, front and back doors and repair interior walls that were damaged due to excessive snow. The Claimant argued that the Respondent installed double pane windows instead of triple pane windows as agreed upon. The Claimant further asserted that the Respondent stopped working on the Contract in June 2015 before completing work on the porch, interior, and installation of the exterior doors.

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 (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);² 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

² Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”

Bus. Reg. § 8-401.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. There are no prima facie impediments barring the Claimant from recovering from the Fund (ownership of more than three homes, being related to the respondent/contractor, refusing to adhere to an arbitration clause in the contract, etc.). Bus. Reg. § 8-405(c) and (f). For the following reasons, I find that the Claimant has proven eligibility for compensation regarding some of his claims.

Siding and Windows

The Claimant conceded at the hearing that the siding work was performed with the exception of a large piece of siding that was missing; however, the Claimant did not produce any evidence, such as photographs of the missing siding or expert testimony regarding the cost to complete the siding work to allow for compensation from the Fund. Accordingly, I find that the Claimant has failed to meet his burden regarding the siding portion of the Contract.

Regarding the windows, the Claimant argued that the Respondent installed the wrong windows; however, the Contract does not contain any language regarding the installation of windows or the costs associated with window installation. Therefore, I find that the Claimant has failed to meet his burden to obtain compensation from the Fund for unworkmanlike or incomplete installation of windows.

Porch

The Claimant argued that the Respondent did not complete work on the porch. There was no evidence to refute the Claimant's claim that the Respondent failed to complete work on the porch in accordance with the Contract. As the Contract provides a value of \$1,186.87 for

completion of the porch, I find that the Claimant has met his burden to establish a claim in that amount from the Fund as that portion of the Contract was not completed.

Roof

The Claimant testified at the hearing that the Respondent completed work on the roof and that it was performed correctly. Thus, I agree with the Fund that the Claimant does not have a claim for any damages related to the cost of the roof repair in the Contract.

Interior

The Claimant asserted that the Respondent did not perform any dry wall or painting work on the interior of his home in accordance with the Contract. As the Contract specified a value of \$1,514.74 for the interior portion of the Contract, I find that the Claimant has met his burden for that cost as that portion of the Contract was not completed.

Exterior Doors

Again, there was no evidence to refute the Claimant's assertion that the Respondent failed to install exterior doors, valued at an amount of \$5,971.49, in accordance with the Contract. Therefore, I find that the Claimant has met his burden to show that the exterior doors portion of the Contract was incomplete.

Masters Contracting Estimate

The Claimant provided an estimate from Masters Contracting to repair, replace and complete the Contract. However, Masters Contracting is not licensed by the MHIC and therefore I will not consider this estimate as an accurate measure to replace and complete the Contract. The burden of proof to establish an actual loss, including the amount of the loss, lies with the Claimant. COMAR 09.08.03.03A(3). Without some proof that Masters Contracting was licensed by the MHIC, I must agree with the Fund that its estimate for any work to complete the Contract cannot be utilized to determine the Claimant's compensation from the Fund. The MHIC policy

is designed to encourage home improvement contractors to be licensed and to discourage homeowners from using unlicensed contractors. The MHIC's policy is reflected in a number of ways. To begin, a homeowner may recover compensation from the Fund for an actual loss resulting from an act or omission by a *licensed* contractor. Bus. Reg. §§ 8-401, 8-405(a). In other words, if the Respondent was not licensed by the MHIC, the Claimant would have been barred from asserting his claim against the Fund. Likewise, if the Respondent was unlicensed when he performed the work, he would have committed a misdemeanor crime and be subject to a fine of \$1,000.00 or imprisonment not exceeding six months or both, for a first offense. Bus. Reg. § 8-601 (Supp. 2016). Additionally, Maryland appellate decisions offer some guidance on the treatment of unlicensed home improvement contractors. Because the Maryland home improvement law was enacted for the protection of the public and mandates a licensing system to encourage contractors to be licensed and to discourage homeowners from using unlicensed home improvement contractors, the courts, as a matter of public policy, will not enforce contracts made by or with unlicensed contractors. *Fosler v. Panoramic Design, Ltd.*, 376 Md. 118 (1997) (homeowner can repudiate a contract made with a consultant if the consultant is performing a home improvement without a license); *Harry Berenter, Inc. v. Berman*, 258 Md. 290 (1970) (unlicensed home improvement contractor cannot enforce a mechanic's lien against a homeowner); *Baltimore Street Builders v. Stewart*, 186 Md. App. 684 (2009) (an unlicensed contractor cannot enforce a home improvement contract with a homeowner). Therefore, in determining an award for the incomplete work performed by the Respondent, I will only use the values assigned to the Contract as those were determined by the Respondent, a licensed contractor.

Amount of Award

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). Taking the value of the work that was not performed by the Respondent as stated in the Contract, I find that 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). Applying this formula and the incomplete work discussed above, I calculate the award as follows:

\$22,701.34	-	Claimant paid under original contract
+	\$1,186.87	- Porch
+	\$1,514.74	- Interior
+	\$5,971.49	- Exterior Doors
=	\$31,374.44	
-	\$22,629.80	- original contract amount
=	\$8,744.64	

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 Claimants to the Respondent.

Bus. Reg. § 8-405(e)(1), (5). Thus, the award is limited to \$20,000.00. However, the award here does not exceed that amount, and therefore the Claimant is entitled to the entire \$8,744.64.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$8,744.64 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)(c).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$8,744.64; 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;³ and

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

Signature on File

September 26, 2017
Date Decision Issued

Brian Zlotnick
Administrative Law Judge

BMZ/emh
170101

³ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

MARYLAND HOME IMPROVEMENT COMMISSION

Joseph Tunney
Panel B

Joseph Tunney

WHEREFORE, this 7th day of December, 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.

PROPOSED ORDER