

<p>IN THE MATTER OF THE CLAIM</p> <p>OF GARY & MARIA CRAWFORD,</p> <p>CLAIMANTS</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF GREGORY WHITE,</p> <p>T/A THE VERDE GROUP, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE WILLIAM F. BURNHAM,</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>* OAH No.: DLR-HIC-02-18-30840</p> <p>* MHIC No.: 16 (90) 481</p>
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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On May 3, 2018, Gary and Maria Crawford (Claimants) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$4,500.00 in actual losses allegedly suffered as a result of a home improvement contract with Gregory White, trading as The Verde Group, LLC (Respondent).¹ Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).² On October 1, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

¹ The Respondent was also listed as t/a On the Level, but all records in this file reference The Verde Group, LLC. The Fund did not explain why the case was transmitted to the Office of Administrative Hearings with On the Level as the trade name for the Respondent.

² Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

I held a hearing on February 5, 2019, at the OAH in Hunt Valley, Maryland. Bus. Reg. § 8-407(e). Eric B. London, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. Maria Crawford represented the Claimants (Claimant or Claimants collectively), and Gary Crawford did not attend the hearing. The Respondent represented himself.

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. 2018); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

ISSUES

1. Did the Claimants 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 the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted a binder of documents as Clmts.' Ex. 1 on the Claimants' behalf with the following contents:³

- A – Contract, July 20, 2015 and PNC Bank receipt for \$4,000.00 check to payee, Gregory J. White on behalf of the Verde Group, July 21, 2015
- B – Copy of check payable to Gregory White in the amount of \$2,000.00, posted September 30, 2015
- C – Photograph of bathtub repair, undated
- D – Invoice from Premier Finishes, Inc. for \$150.00 repair of bath tub crack, October 14, 2015

³ There are unmarked documents in the binder that were not offered, or not accepted as duplicative.

- E – Letter from Claimants to the Respondent and copies of UPS labels, October 6, 2015
- F – Letter from MHIC to the Claimants, November 9, 2015
- G – Letter and Order from MHIC to the Respondent, October 15, 2015
- H – Estimate from Allpower Construction, November 15, 2015⁴
- I – Photo of the bathroom wall and bathtub, undated
- J – Photo of the bathroom wall, undated
- K – Photo of the bathroom, undated
- L – Photo of the bathroom toilet, access panel, and tile, undated
- M – Photo of the bathroom, February 4, 2019
- N – Photo of the bathroom wall, February 4, 2019
- O – Photo of the bathroom, February 4, 2019
- P – Photo of the bathroom, February 4, 2019

I admitted the following documents on behalf of the Respondent:

- R Ex. 1 – Photograph of tools and building supplies, undated
- R Ex. 2 – Letter from MHIC to the Respondent, August 20, 2018

I admitted the following exhibits on behalf of the Fund:

- GF Ex. 1 – Notice of Hearing (Notice), December 4, 2018
- GF Ex. 2 – Hearing Order, September 25, 2018
- GF Ex. 3 – Respondent’s License History, January 17, 2019
- GF Ex. 4 – Home Improvement Claim Form, April 9, 2018

⁴ The document contains the date May 1, 2018, but that is the date the document was printed. The document also has a handwritten date of November 15, 2016. The testimony indicated that the estimate was from November 2015.

GF Ex. 5 – Letter from MHIC to Respondent, August 20, 2018

GF Ex. 6 – Letter from Claimants to MHIC Investigator, May 1, 2018

GF Ex. 7 – Letter from Respondent to MHIC, November 4, 2015

Testimony

The Claimant, Maria Crawford, testified on Claimants' behalf, and presented the testimony Jason Jordan, admitted without objection as an expert in home improvement.

The Respondent testified on his own behalf.

The Fund presented the testimony of the Claimant, Ms. Crawford.

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 01-102296.

2. The Claimants are married to one another and are not relatives, employees, officers or partners of the Respondent. Nor are the Claimants immediate relatives of an employee, officer, or partner of the Respondent. The Claimants reside in the home where the renovation at issue took place, and do not own more than three residences or dwelling places.

3. On July 20, 2015, the Claimants and the Respondent entered into a contract to renovate a bathroom in the Claimants' home located at Marott Drive in Baltimore, Maryland (Contract). The Contract stated that work would begin twenty-four hours after all ordered materials were delivered to the project, and the estimated time of completion was seven days, not to exceed ten days. The Respondent agreed to re-execute any work which did not conform to drawings and specifications. He warranted the work and agreed to correct any faulty workmanship which became evident for a period of one year after completion of the renovation.

4. The scope of the contract was: “demo bathroom...⁵ (remove tub, ceramic, vanity, toilet). Partial upgrade of plumbing; (one function shower diverter, vanity and toilet). Recreate a ceramic shower surround with 40+ inches around all walls, and complete bathroom floor. Install a GFI for vanity, and install vanity light, install ventilation fan. Other detail work in noted estimate sheet.”

5. The detail work included:

- a. Demo, \$375.00;
- b. Removal of construction debris, \$225.00;
- c. Rough end plumbing, \$850.00;
- d. Relocate electrical outlets, \$450.00;
- e. Sheet rock as needed, \$300.00;
- f. Ceramic Walls 46 inches, \$550.00;
- g. Ceramic shower surround, \$465.00;
- h. Ceramic floor, \$300.00;
- i. Install new jetted tub, \$375.00;
- j. Install new toilet, \$150.00;
- k. Install new vanity, \$175.00;
- l. New jetted tub, \$1575.68;
- m. Vanity faucet, \$190.00;
- n. Tub Roman faucet, \$175.00;
- o. New dual flush toilet, \$286.75;
- p. Repaint, \$185.00;
- q. Jetted tub heater, \$190.00;
- r. ADA grab bar, \$65.00;
- s. Double curved shower rod, \$82.00;
- t. Louvered closet bi-fold door, \$123.00;
- u. Install medicine cabinet, \$25.00;
- v. Install lighting, \$50.00;
- w. Ventilation fan install, \$125.00;
- x. Contingencies ten percent, \$750.00.

6. The agreed-upon Contract price was \$8,037.43 which included all project work, and a ten percent contingencies cost.

⁵ Ellipses are for an omission to promote readability.

7. The Claimants paid the Respondent \$4,000.00 on July 21, 2015 and \$2,000.00 on September 30, 2015 for a total of \$6,000.00. The project began on or about September 9, 2015. The Respondent gained access to the job site via a house key kept in a lock box on the Claimants' property.

8. On October 2, 2015, after the Respondent left the job site, the Claimant found a crack in the bath tub that the Respondent installed, and told him about it by phone. The Respondent offered to fix the crack.

9. On October 3, 2015, the Respondent attempted to fix the crack and the Claimant told the Respondent by phone that evening that she wanted the manufacturer to inspect the tub.

10. On October 5, 2015 the Respondent worked his last day at the job site.

11. On October 6, 2015, the Claimants wrote a letter expressing their dissatisfaction with the Respondent's work. The letter was sent via UPS on October 8, 2015 and returned as undeliverable on October 12, 2015. The letter was also sent to the Respondent via email sometime between October 6, 2015 and October 12, 2015.

12. On October 14, 2015, the Claimants paid Premier Finishes, Inc. (Premier) \$150.00 to fix the bath tub crack.

13. On an unknown date in October 2015, the Claimants filed a complaint with the MHIC and the Respondent sent the MHIC a response on November 4, 2015.

14. The Respondent performed the following in an unworkmanlike, inadequate and/or incomplete manner:

- a. Clean grout from the tiles, allowing it to dry and set;
- b. Repair of the cracked bathtub;
- c. Tile installation;
- d. Toilet and vanity installation;
- e. Door installation;
- f. Removal of debris.

15. On November 15, 2016, the Claimants obtained an estimate to complete the bathroom renovation from Jason Jordan, t/a Allpower Construction (Allpower). The estimate to complete the project totaled \$8,500.00.

DISCUSSION

The Claimants have 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”). “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401. A claim may be denied if “the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim.” Md. Code Ann., Bus. Reg. § 8-405. For the following reasons, I find that the Claimants have proven eligibility for compensation.

The Claimant, Maria Crawford, testified that she was dissatisfied with the Respondent’s unprofessional work throughout the time he renovated the bathroom. She lamented paying the Respondent more than one third of the Contract price, and in particular, the \$2,000.00 in

September 2015 that the Respondent asked for to pay his workers. According to the Claimants' letter dated October 6, 2015, the Claimant was unhappy with the work and it was only at her husband's request that she allowed the Respondent to continue.

The Claimant pointed to photographs to support her contention that the bathroom's walls were unfinished and not primed before painting. In addition she said there were chips in the tile the Respondent installed, the vanity and toilet leaked, and the bathtub was cracked. She testified that the Respondent failed to hang doors, left grout on the tile and created uneven tile floors that would have to be removed and replaced. She testified that Mr. Jordan fixed the toilet and vanity leaks, and hung the doors for free, and that Premier fixed the bathtub crack and it works without problem.

I accepted Mr. Jordan as expert in home improvement without objection. Mr. Jordan began his testimony by explaining that he did not like to downgrade another contractor's work because it is a hard job. However, in his opinion, the work completed by the Respondent was unacceptable. The tile work is incomplete and unworkmanlike, because according to Mr. Jordan, the Respondent could have wiped the grout off before it dried and set, but failed to do so. In his expert opinion, the grout should have been applied after the tiles were sealed, but the Respondent did not seal the tiles. According to Mr. Jordan, acid may remove the dried grout, but removing all of the grout is impossible without damaging the tiles. Mr. Jordan also testified there are broken and uneven tiles that cannot be fixed without removing them. Some of the floor tiles stick up one half of an inch, and the only solution for fixing the tripping hazard is to replace the floor and tiles. As part of the tile replacement, he would have to install a new sub-floor and tile board upon which to put the tile. The solution, according to Mr. Jordan, is to start from scratch and he believes his estimate provides what is necessary to accomplish a workmanlike result. He

would have to remove the vanity and the sink in order to retile, but the bathtub could remain in place.

Regarding his estimate, Mr. Jordan testified that \$800.00 of his estimate goes beyond what was called for in the Contract, if I find the Respondent did not contract to replace all of the plaster walls with sheet rock.

The Respondent testified that the scope of what he was supposed to do is in the Contract, and does not include installing sheetrock on any walls above forty-six inches. The plaster walls depicted in the Claimants' exhibits are above forty-six inches, so according to the Respondent, he was not obligated to replace them, although he did agree to scrape them. According to the Respondent, the renovation of the bathroom included the ceramic lower wall and shower, and the sheetrock referenced in the Contract related to tile board. He testified that the house was built in the 1950s, and because of its age no floor or tile could ever be straight.

The Respondent testified that the Claimants reviewed and approved every step of his work. He demanded payment of \$4,000.00 to start because he did not want to "get stuck"⁶ and explained that the Claimants paid him \$2,000.00 after reviewing the tile work, because that was how the Contract was constructed. According to the Respondent, he turned down the Claimants' offer to pay the final balance until a final walk through.

In regard to the grout, the Respondent testified he planned to take care of it, but was locked out of the job site. He testified that after he repaired the crack in the bath tub, he returned the next day to find that the lock box containing the house key was gone. When he called the Claimants, there was no answer, so he may have left a message, but he cannot recall. In any

⁶ What getting stuck meant was not explained further.

event, he did not email, text, or call them further because according to the Respondent, he was not going to harass the Claimants. The Respondent pointed to the letter from the Claimants dated October 6, 2015, as proof they no longer wished to communicate with him. He testified he received the letter by email the day after he repaired the bathtub, and that the MHIC complaint was filed within days. The Respondent characterized the work he had left to do on the renovation as a little clean-up. Thus, according to the Respondent he was the one who lost over \$2,000 in unpaid fees and, in addition, he lost tools worth \$200.00 that he left at the site and never got back. The Respondent testified that because he never heard from the Claimants again, he thought that the \$2,000.00 could be used by the Claimants to pay someone else to finish, and the tools he left were an accepted resolution to the Claimants' complaint.

The Respondent acknowledged that the renovation was unworkmanlike, but that was because he was never given a chance to complete it. The Respondent testified there is nothing wrong with the floor, but if there are high spots they can be cut out. He said Mr. Jordan is correct if the tiles must come out, so must the tile board. The Respondent agreed that if the grout cannot be cleaned from the tiles, the tiles must be removed.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimants.

The Respondent agrees that he performed unworkmanlike, inadequate or incomplete home improvements. It is undisputed that the Respondent did not finish the bathroom renovation project. At the time he stopped working on the bathroom, the Respondent had completed some, but not all, work required under the Contract. Therefore, the Respondent performed incomplete home improvements. The Respondent testified that the work is inadequate, incomplete and

unworkmanlike because he was not allowed to finish. I disagree. The Respondent was unconvincing in his testimony regarding the event that led to his failure to return to the site. I do not believe that the Respondent could reasonably believe he was harassing a customer, from whom he took \$6,000.00 and was owed over \$2,000.00 more, by calling them after nearly completing the Contract. He did not email nor write nor visit the Claimants despite having, in his view, only a little clean up left in order to collect over \$2,000.00 and his belongings. I do believe he hoped that the Claimants would accept his tools and relinquishment of the final payment as mitigation for his mistakes. Instead, the Claimants were required to pay for repair of the bathtub and get an estimate for repairs to the Respondent's work. Therefore, I find that the Claimants did not unreasonably reject any good faith efforts by the Respondent to resolve the claim. COMAR 09.08.03.02D(3)(c).

I believe Mr. Jordan's testimony regarding the grout, and viewed the photos depicting grout all over the tiles. Even if the Respondent had returned the day after he grouted, he could not wipe the grout off with water, and there is so much grout on the tile that it would be impracticable to get it off. In addition, the tiles are, according to testimony and the photos in the record, crooked and chipped. Having viewed the photos and heard testimony, I believe that the floor tiles are raised and a tripping hazard as described by Mr. Jordan and the Claimant. The Respondent testified that the house is the cause of the tile being raised and uneven, but according to the testimony of Mr. Jordan, it can be remedied, and I believe him.

A fair reading of the Contract is that it did not require the Respondent to sheetrock above forty-six inches, and there is no evidence to the contrary. Although the Respondent was only contracted to sand the walls, the photos do not show that they were sanded. The photos depict rough, raised spots that are not straight.

Having found eligibility for compensation I must determine the amount of the Claimants' actual loss and the amount, if any, that the Claimants are 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.

The Respondent performed some work under the contract, and the Claimant retained another contractor to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimants' 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 Contract was for \$8,037.43 and the Claimants made two payments totaling \$6,000.00. The Claimants obtained an estimate for repairs of the existing tile on both walls and the floor. That estimate includes removal of existing tile board and subfloor. The estimate includes \$800.00 for sheetrock that would be installed above the forty-six inch tile that the Contract provided. I find the sheetrock work in the Allpower estimate is not related to the unworkmanlike and unfinished work by the Respondent, and therefore subtract it from the estimate, making the estimate \$7,700.00, and this estimate provided sufficient credible evidence to calculate the Claimants' actual loss. The Claimants also paid Premier \$150.00 to repair the cracked bath tub.

Therefore, the actual loss is \$6,000.00 paid to the Respondent, plus \$150.00 paid to Premier to fix the bath tub, plus \$7,700.00 necessary to correct the Respondent's tile work, minus the Contract price of \$8,037.43, or \$5,812.57. COMAR 09.08.03.03B(3)(c). The Claimants' claim form indicated that they sought \$4,500.00 in actual loss.

As shown above, this formula produces a result (\$5,812.57) that is greater than the amount sought by the Claimants in their Claim (\$4,500.00). Because it would violate principles of notice and due process to award the Claimant more than the amount he sought in the Claim (i.e. the amount the Fund and the Respondent were provided notice of), I conclude that the proper amount of the Claimants' actual loss is \$4,500.00. COMAR 09.08.03.02C(2).

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 Claimants' actual loss as calculated above (\$4,500.00) is less than the amount paid to the Respondent (\$6,000.00); it is also less than \$20,000.00. Therefore, the Claimants are entitled recover their actual loss of \$4,500.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of \$4,500.00 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(3)(c). I further conclude that the Claimants are entitled to recover that amount from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimants \$4,500.00; 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;⁷ and

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

Signature on File

April 26, 2019
Date Decision Issued

William F. Burnham 1909
Administrative Law Judge

WFB/sw
#179465

⁷ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 13th day of June, 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

***I. Jean White
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION