

**The Maryland Home
Improvement Commission**

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**BEFORE THE
MARYLAND HOME IMPROVEMENT
COMMISSION**

**v. Anthony Rankine
t/a Linda B. Construction LLC
(Contractor)
and the Claim of
Genoa Rucker
(Claimant)**

MHIC No.: 16 (90) 558

FINAL ORDER

**WHEREFORE, this 7th day of December 2017, Panel B of the Maryland Home
Improvement Commission ORDERS that:**

- 1. The Findings of Fact set forth in the Proposed Order dated August 21, 2017 are AFFIRMED.**
- 2. The Conclusions of Law set forth in the Proposed Order dated August 21, 2017 are AFFIRMED.**
- 3. The Proposed Order dated August 21, 2017 is AFFIRMED.**
- 4. This Final Order shall become effective thirty (30) days from this date.**
- 5. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.**

Joseph Tunney
**Joseph Tunney, Chairperson
PANEL B**

MARYLAND HOME IMPROVEMENT COMMISSION

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| IN THE MATTER OF THE CLAIM | * | BEFORE GERALDINE A. KLAUBER, |
| OF GENOA RUCKER, | * | 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 ANTHONY RANKINE, | * | |
| T/A, LINDA B. CONSTRUCTION, LLC | * | OAH No.: DLR-HIC-02-16-30507 |
| RESPONDENT | * | MHIC No.: 16 (90) 558 |

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PROPOSED DECISION

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

STATEMENT OF THE CASE

On September 14, 2016, Genoa Rucker (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$16,829.40 in alleged actual losses suffered as a result of a home improvement contract with Anthony Rankine, trading as Linda B. Construction, LLC (Respondent).

I held a hearing on April 2, 2017 at the Largo Government Center, Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented herself. John

Hart, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. 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 Office of Administrative Hearings (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 on the Claimant's behalf:

Clmt. Ex. 1 - Contractor Agreement, July 7, 2015

Clmt. Ex. 2 - Hand Draw Inspection #1, July 28, 2015

Clmt. Ex. 3 - Change Order #1, July 20, 2015

Clmt. Ex. 4 - Bid Items, June 4, 2015

Clmt. Ex. 5 - Letter from the Claimant to Kimberly Philips, September 28, 2015

Clmt. Ex. 6 - Hand Draw Inspection #2, September 18, 2015

Clmt. Ex. 7 - Neighborhood Assistance Corporation of America (NACA) Inspection Report, November 3, 2015

Clmt. Ex. 8 - Email from NACA to Respondent, October 13, 2015

Clmt. Ex. 9 - Email exchange between Respondent and Claimant, October 22-23, 2015

Clmt. Ex. 10 - Email exchanges between NACA and the Claimant and Respondent, October 22 and 28, 2015

Clmt. Ex. 11 - Email from Kimberli Phillips to the Respondent, December 3, 2017

Clmt. Ex. 12 - Letter from the Better Business Bureau to the Claimant, May 4, 2016; Estimate from DSJ Plumbing¹

Clmt. Ex. 13 - Estimate from Exquisite Building Services, Inc., August 8, 2016

Clmt. Ex. 14 - Estimate from Birkhead Electric, Inc., July 28, 2016

Clmt. Ex. 15 - Claimant's list of replacement fixtures for basement bathroom

Clmt. Ex. 16 - Video recording

Clmt. Ex. 17 - Proposal from Bon-Tek, LLC, November 11, 2015

I admitted the following exhibits on the Respondent's behalf:

Resp. Ex. 1 - Contract, July 3, 2015

Resp. Ex. 2 - Photograph of roof construction

Resp. Ex. 3 - Photograph of home with new roof

Resp. Ex. 4 - Photograph of home with old roof

Resp. Ex. 5 - Respondent's response to complaint to MHIC, November 18, 2015

Resp. Ex. 6 - Photograph of rear of home

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Notice of Hearing, November 17, 2016

Fund Ex. 2 - Hearing Order, September 27, 2016

Fund Ex. 3 - Respondent's licensing history, February 13, 2017

Fund Ex. 4 Home Improvement Claim Form, September 2, 2016

Fund Ex. 5 - Letter from HIC to the Respondent, September 15, 2016

¹ Both documents were inadvertently marked as exhibit 12.

Testimony

The Claimant testified in her own behalf

The Respondent testified in his own behalf.

The Fund offered 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 131884.

2. On July 7, 2015, the Claimant and the Respondent entered into a contract (the Contract) to perform the following work:

- Install new HVAC system with additional duct work as needed.
- Side of property-repair open splices and exposed wiring into junction box
- Repair damaged garage wall 2-3-square-feet, leave paint ready; stop water intrusion into back of garage wall; make positive grade away to the exterior side of wall
- Ceilings: basement bathroom- repair leaks, repair damaged ceiling, compound, tape, sand and paint. Living and dining room areas-repair cracks in ceiling, compound, tape, sand and paint
- Roof- tear off all old shingles, replace underlayment ply board, install new 15 lbs. felt paper, install new 25 year shingles, install new drip edge
- Build/repair- porch deck to include railing, ceiling, step section
- New windows- back addition and bedroom- remove two old broken windows and install two new double-hung windows, allowance of \$650.00.
- Basement bedroom will be adjusted, installed properly
- Fence gate will be replaced with new like kind and style material
- Electric switch in the kitchen will be repaired to code

- Basement bathroom install new shower, create new drain system, install new toilet, install new vanity with sink, install new fixtures. Allowance for selection is \$3,800.00
- Electrical- upgrade to 100 amps meter to 200 amps (heavy-up) with 20-25 slots service cable support
- Master bathroom- renovate bathroom, install tub, tile sub surround, install new toilet, install new vanity with sink, install new fixtures. Allowance for selection is \$3,800.00.
- Hallway bathroom- install new shut off valve in upstairs hallway bathroom
- Sump pump- remove two non-working pumps and install two new pumps in basement and redirect drain pipe away from foundation.

3. The contract stated that work would begin no later than 14 days from the date of the Claimant's loan closing date and would be substantially completed by August 30, 2015.

4. The original agreed-upon contract price was \$37,845.00.

5. The Claimant obtained financing for the home renovation through NACA.

6. NACA administers the escrow account and funds borrowed by the Claimant to pay for the renovation. NACA was responsible for making payment to the Respondent under a draw schedule after the work had been inspected and approved. NACA was responsible for reviewing and approving the quality and completeness of the work performed under the contract.

7. The contract between the Claimant and the Respondent required that any controversy between the Claimant and the Respondent arising out of or relating to the contract be submitted to arbitration.

8. On July 23, 2015, the Claimant and the Respondent executed a Change Order that was approved by NACA. The Change Order provided for the following additional work to the basement bathroom:

- Remove main cast iron sewer stack
- Remove hallway bathroom subfloor and tiles
- Replace with new PVC sanitary piping
- Install new PVC toilet flange
- Install new ¾" OSB subfloor
- Retile floor using 12"x 12" tiles

9. The cost of the Change Order was \$2,500.00. The addition of this change order brought the total contract price to \$40,445.00.

10. On July 30, 2015, NACA Inspector Sheldon Faison inspected the work that the Respondent had performed to date for the first draw. The inspector determined that the Respondent should be paid for the replacement of the fence gate and the repair of the kitchen electrical switch. He received partial payment for the partial completion of the basement and master bathrooms and partial payment for the installation of one sump pump.

11. On October 1, 2015, NACA Inspector Warrick Corner performed an inspection of the work performed by the Respondent for the second draw. The Respondent was not present during the inspection. Mr. Corner documented the following issues with the Respondent's work:

- The roof was installed in a manner that required more work – the plumbing stacks and vent stacks are not flashed properly; the sheathing is exposed at many areas of the edge; the sheathing is not flat. The roof needed to be repaired or replaced
- The basement bathroom was demo[lished] but the concrete floor was removed in a manner that tile flooring can't be installed.
- In the back addition and bedroom only one window was installed

12. On October 13, 2015, NACA informed the Respondent that he would not be paid for the second draw because the tear-out work exceeded the amount of any completed work. NACA requested that the Respondent sign a final lien waiver in order to end the Respondent's involvement under the contract.

13. The Respondent refused to execute the lien waiver.

14. The Respondent was not satisfied with the October 1, 2015 inspection because he was not present when the inspection was performed. The Claimant arranged for another inspection to be performed with the Respondent present.

15. On November 3, 2015, Anatol Polillo conducted an inspection of the Claimant's property. Mr. Polillo documented the following issues:

- The heating system was not replaced and the current unit is not operational. Venting is improper
- Exterior outlet partially wired, but power is off and proper cover and GFI protection is not installed
- The garage wall was not properly repaired and the grading at the rear of the garage has not been improved to direct water away from this area. Concrete has been added to this area but this will not improve the situation
- Ceilings are partially patched but not properly finished
- New roof covering has been installed but there are numerous defects. Defects including improperly installed rake flashing, improper ridge shingles, exposed nails and improperly installed vent boot flashing. Damaged sheathing at the rear roof near the chimney that should have been replaced when the new roof covering was installed. The rear roof near the chimney should be covered with a covering designed for low slope roofs. The gable ventilation does not appear to be adequate
- The rear addition is missing a window
- Basement flooring in the bedroom has not been stained or sealed
- The kitchen electrical switch has been wired but no cover is installed

- The basement bathroom is not at full rough in stage. Active leaking on waste pipes in this area. The waste pipes are not properly sealed and sewer gas is entering the home
- Basement carpet has been removed flooring is unfinished
- The master bath has been gutted, active leaking of supply pipe to bathroom. Plumbing is incomplete
- Shut off valves have not been installed for the half bath sink
- Sump pumps are not operational and the one located in the rear basement terminates in the garage instead of the exterior
- Some new piping has been installed in the basement, but it does not appear to be correctly installed

16. The Respondent removed the following fixtures from the basement, which was not part of the contract:

- 2 hallway lights
- Bathroom faucet
- Medicine cabinet
- Vanity
- Toilet
- Bathroom Fan
- Vanity Light

17. The Respondent received \$7,029.00 for the work that he completed.

18. The Respondent failed to respond to the Claimant's attempts to engage in arbitration.

19. The reasonable cost to repair, replace and complete the work performed poorly and incompletely by the Respondent is \$33,966.00.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of her 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 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 on July 7, 2015. The Claimant obtained financing for the home improvements through NACA. NACA was responsible for administration of the escrow account and the funds borrowed by the Claimant to pay for the home improvement work. NACA was also responsible for distributing payment to the Respondent in draws after the work was inspected and approved by NACA.

There is a discrepancy in the documents regarding the total contract price that NACA would ultimately disburse to the Respondent. The Claimant submitted a Contractor Agreement that was a boilerplate agreement drafted by NACA. The agreement listed a contract price of \$37,250.00. The Contractor Agreement incorporates NACA’s Bid Items form defining the scope of work and the cost itemization. The Contractor Agreement also includes a clause that states that the Agreement constitutes the only agreement between the Member, who is the Claimant,

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

and the Contractor. Any changes to the contract need to be in writing and approved by the Claimant, the Respondent and NACA. The Claimant submitted into evidence a Bid Items form dated June 5, 2015 that stated a total of \$37,845.00. The form was signed by the Claimant but not the Respondent. The Respondent submitted into evidence a contract on his business letterhead. The contract is dated July 3, 2015 and was signed by him on July 3, 2015 and the Claimant on July 12, 2015. This contract is essentially just a list of the scope of work and states the contract price to be \$37,250.00, the same amount listed in the Contractor agreement. However, the Respondent also submitted a Bid Item form that was signed by the Claimant on June 5, 2015 and the Respondent on July 7, 2015 and lists the bid items total as \$37,845.00. On July 20, 2015, the Claimant and the Respondent entered into a Change Order that included additional work to be performed at an additional cost of \$2,500.00. The Change Order was approved by NACA on July 23, 2015 and listed the original contract sum as \$37,845.00 with a new contract total of \$40,345.00. The parties offered no testimony to explain the discrepancy in the various contract documents; however, because the Change Order was approved by NACA on July 23, 2015 and listed the original contract price as \$37,845.00, plus the \$2,500.00 in additional work, I have considered the contract price to be \$40,345.00.

I find that the Claimant has proven eligibility for compensation from the Fund because the Respondent performed unworkmanlike, inadequate and incomplete home improvement work under the Contract. The Claimant submitted documentation and reports from NACA that reflected that NACA performed three inspections, and at each inspection NACA found problems with the quality and completeness of the Respondent's work.

At the time of NACA's initial inspection on July 28, 2015, the Respondent had not completed the basement, the basement master bathroom or the installation of the sump pumps. The Respondent had completed just two items to the satisfaction of the inspector, the fence gate and the repair of the kitchen electrical switch. At the October 1, 2015 inspection for the second draw, the Respondent still had not performed the majority of the contract items and the inspector specifically noted that the roof was "installed in a manner that more work is required. The plumbing stacks and vent stacks are not flashed properly. The sheathing was exposed at many areas at the edge. This install appears to be less than professional and needs further repair or replacement. The concrete basement floor was repaired in such a way that the tile flooring could not be installed." (Cl. Ex. 6) At that time, NACA informed the Respondent that he would not be paid any additional funds as the needed tear out of the work he had performed exceeded the value of any of the completed work. NACA even requested that the Respondent execute a lien waiver, essentially dismissing him from the contract. At the Respondent's request, a third inspection was performed by a NACA inspector on November 3, 2015. During this inspection, the NACA inspector discovered and documented even more issues with the Respondent's work. The inspector's report noted and depicted numerous defects in the roof, leaking in the basement and master baths, improper repair of the garage wall, unfinished ceiling repair, sump pumps not operational and one that discharges in garage and not exterior, improperly installed basement piping, improperly sealed waste pipes, missing window in addition, partially wired exterior outlet, unstained and unsealed basement flooring, missing shut off valves for half bath sink and basement bathroom not fully roughed in. NACA informed the Respondent, via a December 3, 2015 email, that his request for payment was denied due to the poor quality of work at the

Claimant's home, the costly need to remediate that work, and his failure to obtain permits from Prince George's County. Consequently, NACA also informed the Respondent that he would be permanently removed from the vendor list and would not be able to bid on work for NACA members.

The Respondent did not offer sufficient credible evidence to rebut the Claimant's case. According to the Respondent, the house was in very poor condition from being vacant for an extended period of time. He testified that although he was only contracted to repair one leak, there were many leaks in the plumbing that he repaired at no cost to the Claimant. The leaks caused mold and other health issues for his workers that required that he remove the drywall and insulation and delayed his progress on the project. According to the Respondent, he contacted NACA about the issues but he was told that there were no funds to be applied.

The Respondent's excuses about the existing leaks and lack of funds did not explain the poor quality of his other work. The Claimant's evidence included two inspection reports, one that included accompanying photographs documenting poor workmanship in the roof replacement. The Respondent asserted, without any corroboration, that his roof replacement was of good quality. He stated that the garage repair was done with the "best possible approach given that the garage is a slab foundation and located at ground level." (Resp. #5) The Respondent offered no additional details regarding his "approach" or why the garage walls still seeped. There was additional evidence that the sump pump did not discharge properly, the sewer gas line was not capped, the windows were not installed, and the concrete basement floor was improperly repaired so that the tile could not be laid. In fact, his work was of such poor quality that NACA terminated his eligibility as a contractor for work on projects which they financed.

The Respondent suggested that he was not given the opportunity to rectify the issues but his assertion is not credible as he refused to submit to the arbitration as provided for in the contract and as requested by the Claimant. Consequently, the absence of arbitration here is not an issue, because *the Respondent* breached the Contract's arbitration clause. The Respondent insists that he is due payment for the work he performed.

Based on the Respondent's unworkmanlike and incomplete work, I find that the Claimant is eligible for compensation from the Fund. 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 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).

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).

The Respondent received \$7,029.00 for the work he performed under the contract. The Claimant provided a Bid Items form from a licensed contractor, Bon-Tek, LLC, which itemizes the cost to repair and replace the Respondent's unworkmanlike work and lists a total of \$33,966.00. The Claimant also submitted estimates from Birkhead Electric in the amount of \$1,499.00, Exquisite Building Services, Inc., in the amount of \$9,657.66 and DSJ plumbing in the amount of \$3,800.00. Because the Bid Item form is the form approved by NACA and mirrors the work done by the Respondent, I have accepted and used that estimate only to perform my calculations of actual loss. I could not determine if the work provided for in the additional estimates was work that was outside of the scope of the original contract or duplicative of some of the work contained in Bon Tek's Bid Item form. The Claimant also seeks reimbursement for the fixtures taken by the Respondent in the amount of \$1,529.94. The Claimant did not provide any evidence to corroborate the replacement cost of the fixtures and therefore I have not included them in my calculations. My calculation is as follows:

| | |
|---------------------|------------------------------|
| \$7,029.00 | Amount paid to Respondent |
| <u>+\$33,966.00</u> | Amount to repair and replace |
| \$40,995.00 | |
| <u>-\$40,345.00</u> | Amount of original contract |
| \$650.00 | |

In accordance with my calculations, the Claimant is entitled to reimbursement from the Fund in the amount of \$650.00.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$ 650.00 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).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$650.00 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.³

Signature on File

June 29, 2017
Date Decision Issued

Geraldine A. Klauber
Administrative Law Judge

GAK/sw
#167947

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

PROPOSED ORDER

WHEREFORE, this 21st day of August, 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.

Joseph Tunney

***Joseph Tunney
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION



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Page 1 of 1

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