

IN THE MATTER OF THE CLAIM
OF AMORETTE GOODING & ADA
O'CONNOR,

CLAIMANTS

AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF
JAMES J. MARTIN,

PROMPT RESTORATION, INC.

RESPONDENT

* BEFORE JEROME WOODS, II,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-16-29323
* MHIC No.: 16 (90) 859

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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 March 28, 2016, Amorette Gooding filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$175,196.20 in

alleged actual losses suffered as a result of a home improvement contract with James J. Martin, trading as Prompt Restoration, Inc. (Respondent).¹

At ten o'clock a.m. on March 15, 2017, I convened the hearing in this matter at the Largo Government Center, 9201 Basil Court, room 102, Largo, Maryland 20774. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).² The Claimants appeared and represented themselves. Eric London, Assistant Attorney General (AAG), Department of Labor, Licensing and Regulation (Department or DLLR), appeared to represent the Fund. The Respondent, who appeared at the hearing by telephone approximately fifteen minutes after the hearing started,³ 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. 2016); 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 that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Fund:

F Ex. 1 - Notice, February 13, 2017

F Ex. 2 - Notice, November 17, 2016

¹ Ms. Gooding, the original Claimant, amended her claim at the hearing to include her daughter Ada S. O'Connor as a Claimant. The Fund and the Respondent did not oppose the amendment. I find that the Respondent is not prejudiced by the amendment of adding Ms. O'Connor as a Claimant. See COMAR 09.08.03.02C. I refer to Ms. Gooding and Ms. O'Connor collectively as the Claimants in this decision.

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

³ The Respondent participated via telephone.

- F Ex. 3 - Hearing Order, September 21, 2016
- F Ex. 4 - Letter from DLLR To Whom It May Concern, February 13, 2017
- F Ex. 5 - Claim Form, received March 28, 2016
- F Ex. 6 - Letter from DLLR to the Respondent, April 1, 2016
- F Ex. 7 - Insurance Adjuster Cancelled checks for June 27, 2014 loss, re: insured: Amorette Gooding:
- 10/14/14 \$8,727.85
 - 9/26/14 \$61,598.87
 - 11/14/14 \$74,007.55
 - 10/2/14 \$3,987.13
 - 9/5/14 \$2,418.07
 - 8/11/14 \$25,221.33
 - 11/12/14 \$6,071.76
 - 6/19/15 \$50,615.87
 - 10/14/14 \$7,483.96
 - 1/5/15 \$85,056.11
- F Ex. 8 - Final Punch list, June 24, 2015
- F Ex. 9 - Laurel Plumbing, Inc., Job Work Order, July 12, 2016
- F Ex. 10 - Michael and Son Services, Inc., Invoice, February 8, 2016
- F Ex. 11 - Servepro Invoice(s), June 30, 2016, July 5, 2016
- F Ex. 12 - Michael and Son Services, Inc., Proposal, March 1, 2017
- F Ex. 13 - Michael and Son Services, Inc., Work Order, February 23, 2017
- F Ex. 14 - Assi Fabrications, LLC, Invoice, March 9, 2017

I admitted the following exhibit on the Claimants' behalf:

- Cl. Ex. 1 - Agreement Between Owner and Contractor, November 4, 2014 with attached Personal Property Claim Book for loss on June 27, 2014

The Respondent offered no exhibits into evidence.

Testimony

The Claimants testified in their own behalf.

The Fund did not present any additional witnesses but called the Respondent and Ms. O'Connor to testify.

The Respondent testified on his own behalf.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to this hearing, the Respondent was a licensed home improvement contractor operating under MHIC contractor's license numbers 01-100702 and 05-120758 (F Ex. 4).
2. The Respondent is no longer a licensed contractor.
3. On June 27, 2014, the Claimants' home caught on fire and was damaged extensively internally.
4. The Claimants' Insurance Adjuster is Goodman-Gable-Gould Adjusters International (GGG).
5. On November 4, 2014, Ms. Gooding and the Respondent entered into a contract to restore the interior of the Claimants' home.
6. The work was to be performed between November 10, 2014 and April 10, 2015.
7. The parties agree the contract price was \$154,099.54.
8. The Respondent was to perform work to restore the house to its pre-burned condition. The areas of the house that required restoration were as follows: "living room, dining room, kitchen, master bedroom, master bathroom, upstairs front right bedroom, burn bedroom, hallway linen closet, upstairs bathroom, foyer closet, basement bedroom one, basement hallway,

bedroom two, middle bathroom in the basement, master bedroom in basement, main area in basement and burned room” (Cl. Ex. 1).

9. The Respondent was paid in full.

10. On or about the first week of June 2015, the Claimants moved back into the home.

11. On June 24, 2015, the Claimants provided a punch list to the Respondent indicating the following items needed to be completed per the agreed upon scope of work:

- Kitchen: change countertop, reinstall screen door;
- Back left bedroom: mirror closet doors;
- Back left bedroom: mirror closet doors;
- Bath: change toilet seat;
- Hall bathroom: marble threshold;
- Back right bedroom: blank cover plate on light switch;
- Stair: stain stair rail;
- Back left bedroom: closet (after final inspection), cracked window, shelf right and basement vanity;
- Basement living room: two lights cracked;
- Back middle room: fix ceiling, install closet doors;
- Back right bedroom: door knob;
- Back middle bedroom powder room: install mirror, install toilet seat; and
- Deck: pressure wash.

12. Between the first week of June 2015 and September 2015, the Claimants experienced problems with leaky water pipes in the basement, a loose sink, and mold from the leaky pipes.

13. As part of the reconstruction, the Respondent installed eight fire alarms.
14. The eight fire alarms installed by the Respondent malfunctioned and later required replacement because they did not function properly.
15. The total amount to replace the fire alarms required by the contract, including wiring, is \$1,750.00.
16. The Claimants' chose to upgrade the fire alarms for a total price of \$7,886.15. The upgraded fire alarms included features that were not part of the specifications installed by the Respondent and agreed to by the Claimants.
17. The Respondent had agreed to reattach the Corian kitchen countertop in the kitchen.
18. The original Corian countertop was not damaged by the fire on June 27, 2014.
19. The original countertop could no longer fit into the space after the reconstruction of the kitchen.
20. The Respondent installed a temporary Formica countertop in the kitchen.
21. The Respondent did not install the countertop correctly.
22. The cost of reattachment for the type of countertop that the Respondent had agreed to attach is \$650.00.
23. The Claimants chose to upgrade the countertops for \$3,609.00. The upgrade was not part of the contract.
24. On June 30, 2016, Servepro remediated the mold caused by the leaky pipes. The total cost to repair it was \$7,966.08.
25. The cost to replace the tub in the basement was \$8,875.00. This was not part of the contract.

26. The leaky pipes were fixed by Laurel Plumbing, Inc., on July 13, 2016. The cost of repair was \$260.00.

27. The last day the Respondent was onsite was September 25, 2015.

28. Of the items listed on the punch list, the Respondent completed only the back left bedroom mirror closet doors. No other items on the list were completed.

29. Subsequent to the completion of the Project, the Respondent filed for bankruptcy and stopped communicating with the Claimants.

30. The Claimants' actual loss is \$10,620.00.

DISCUSSION

In this case, the Claimants have the burden of proving the validity of their claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).

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). 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. For the following reasons, I find that the Claimants have proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract to perform the Project. The Respondent was to essentially rebuild parts of the interior of the Claimants' home after it was damaged by fire.

When the Claimants returned to their home in June 2015 after the interior reconstruction was completed, they noticed several deficiencies, such as leaky pipes in the basement which contributed to mold, a sink not attached properly to the wall, and fire alarms that malfunctioned. The Claimants brought the deficiencies to the attention of the Respondent so that he could

ameliorate the defects. The Respondent testified that he essentially did not fix the defects because he was experiencing financial difficulties that eventually led to the filing of a bankruptcy.

The mold problem was remediated by another contractor for \$7,966.08 and an additional \$260.00 to fix the leaky pipes and sink. With regard to the fire alarms, the total price to replace the fire alarms and internal wiring was \$1,750.00. However, the Claimants had fire alarms installed at a cost of \$7,886.15. A review of the invoice indicates that the fire alarms installed were a significant upgrade from what the Respondent was supposed to install. As such, the Claimants cannot recover the \$7,886.15.

With regard to the tub replacement, Ms. O'Connor testified that the Respondent agreed to replace the tub. The Respondent testified that he did not agree to replace the tub. The Claimants did not produce any supporting documents or other evidence to substantiate their assertion that replacing the tub was part of the contract. Consequently, they cannot recover for the tub replacement.

With regard to the countertop, the Claimants testified that the Respondent agreed to install a countertop valued at over \$3,000.00. The Respondent denied this. Further, the Respondent testified that he only agreed to reattach the undamaged, original countertop that existed prior to the fire. The Respondent acknowledged that instead, he placed a Formica countertop in the kitchen and that he did not install it correctly. The cost to attach the type of countertop the Respondent agreed to attach is \$650.00. The Claimants did not present any corroborating evidence to support their assertion that the Respondent agreed to install a countertop valued at \$3,609.00. In fact, Ms. Gooding testified that agents of GGG stated the upgraded countertop would be installed and that the Respondent was in the room when the statement was made. However, the upgrade is not in the contract and there is no evidence the

Respondent agreed to install an upgraded countertop. As such, I must consider the type of countertop the Claimants installed to be an upgrade and as such, it is not recoverable.

With regard to other items on the punch list, the Claimants did not offer any evidence of actions taken to ameliorate the identified defects or the cost to do so.

Based on the testimony summarized above along with the documentary evidence in the record, mainly detailed invoice descriptions of the work performed to fix the defects, I find that the work performed by the Respondent failed to meet industry standards in several material respects, and thus, was both unworkmanlike and inadequate. I conclude, therefore, that the Claimants are eligible for compensation from the Fund.

The Fund agreed the Claimants incurred an actual loss as a result of the incomplete and inadequate work of the Respondent, who was licensed with the MHIC at all times relevant to this matter. I conclude that the Claimants are entitled to compensation from the Fund.

Having found eligibility for compensation, I now turn to the amount of the award. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest, and none are sought here. COMAR 09.08.03.03B(1). MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). One of those formulas, as follows, offers an appropriate measurement 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).

Using this formula, the Claimant's actual loss is \$10,620.00 calculated as follows:

Amount paid to the Respondent	\$154,099.54
Amount required to correct the inadequate work	+\$7,960, \$260.00
	<u>\$1,750.00, \$650.00</u>
Total	\$164,719.54
Contract price	<u>-\$154,099.54</u>
Actual loss	\$10,620.00

Hence, the Claimants are entitled to reimbursement in the amount of \$10,620.00 from the Fund.

The Fund agrees with the actual loss amount.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual and compensable loss as a result of the Respondent's unworkmanlike and inadequate work. I further conclude that the amount of that actual and compensable loss is \$10,620.00. 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 Claimants \$10,620.00; 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;⁴ and

⁴ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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

Signature on File

May 30, 2017
Date Decision Issued


Jerome Woods, II
Administrative Law Judge

JW/cj
#168221

PROPOSED ORDER

WHEREFORE, this 5th day of July, 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