

IN THE MATTER OF THE CLAIM	* BEFORE DANIEL ANDREWS,
OF FREDERICK AND SYDNEY	* AN ADMINISTRATIVE LAW JUDGE
BARR,	* OF THE MARYLAND OFFICE
CLAIMANTS	* OF ADMINISTRATIVE HEARINGS
AGAINST THE MARYLAND HOME	*
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF DAVID MANSFIELD	*
T/A SAND RENOVATIONS	* OAH No.: DLR-HIC-02-17-06446
RESPONDENT	* MHIC No.: 16(05)-880

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On March 23, 2016, Frederick and Sydney Barr (Claimants) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of alleged actual losses suffered as a result of a home improvement contract with David Mansfield, trading as Sand Renovations (Respondent).

I held a hearing on June 8, 2017, at the Calvert County Public Library, 850 Costley Way, Prince Frederick, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimants represented themselves. Hope Sachs, Assistant Attorney General, Department of

Labor, Licensing and Regulation (Department), represented the Fund. The Respondent failed to appear for the hearing. After waiting fifteen minutes or more, without the Respondent or anyone authorized to represent him appearing, I proceeded with the hearing.

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 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 exhibit into evidence on behalf of the Claimants:

- CL Ex. 1 - A packet of documents containing the following:
- Running History of Events from April 5, 2014 through October 16, 2015
 - Proposal between Sand Renovations and Claimants, July 2, 2017
 - Letter from Steven J. Einhorn, Esquire to Respondent, September 17, 2015
 - Letter from Steven J. Einhorn, Esquire to Respondent, undated, with attachments
 - Claimant's personal checks payable to Respondent on July 4, July 31, September 30, and December 29, 2014
 - Three photographs taken on June 10 and October 16, 2015
 - Proposal from The North Star Companies, LLC, undated, and MHIC Licensing for Brian Marshall
 - Proposal from Lockett Construction, Inc., November 15, 2015

- Claimant's statement of payments to Respondent
- Claimant's statement of money paid to Respondent and to North Star
- Respondent's letter to "whom it may concern," February 8, 2016
- Claimant's checkbook ledge notations for dates from July 4, 2014 through September 8, 2016

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 OAH Notice of Hearing, March 8, 2017, with attached MHIC Hearing Order, February 28, 2017, United States Postal Service (USPS) Certified Mail Receipt and envelope, returned to OAH as unclaimed/unable to forward, March 22, 2017
- Fund Ex. 2 OAH Notice of Hearing, March 8, 2017, with attached MHIC Hearing Order, February 28, 2017, sent by first class mailed, returned by the USPS as undeliverable, March 22, 2017
- Fund Ex. 3 Maryland Motor Vehicle Administration (MVA), Driving Record Information for Respondent, May 26, 2017
- Fund Ex. 4 MHIC letter to Respondent, May 25, 2017, with attached OAH Notice of Hearing and MHIC Hearing Order
- Fund Ex. 5 MHIC Licensing History for Respondent, May 25, 2017
- Fund Ex. 6 MHIC letter to Respondent, April 1, 2016 and Claimant's Home Improvement Claim Form Complaint Form, March 21, 2016

Testimony

Mr. Barr testified on behalf of the Claimants.

The Fund did not present the testimony of any witnesses.

There was no testimony presented on the Respondent's behalf.

PROPOSED FINDINGS OF FACTS

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

1. At all times relevant, the Respondent was a MHIC licensed home improvement contractor under license number 98758. His most current MHIC license was issued January 13, 2015, expired January 14, 2017, and has not been renewed.

2. As of January 14, 2017, the Respondent's address of record with the MHIC was located in North Beach, Maryland.

3. On July 2, 2014, the Claimants entered into a home improvement contract with the Respondent to renovate the Claimants' home located in Chesapeake Beach, Maryland, including a new foundation, sidewalks, crawl space footers with steel columns, floor joists, and vapor barrier. The Respondent was also required to rebuild first and second floor interior walls, new subfloors, windows, upgraded electric panel, install all appliances, and install ceiling fans provided by the Claimants.

4. The total cost of the contract was \$169,909.00. The Claimants was required to provide a \$30,000.00 deposit and make the following schedule of payments: foundation completion - \$39,000.00; start of HVAC, Plumbing, and Electric - \$25,000.00; after HVAC, Plumbing and Electric rough-in inspection - \$25,000.00; Drywall completion - \$20,000.00; interior trim completion - \$20,000.00; balance due upon final inspection - \$2,091.00; and balance due upon garage completion - \$8,881.00.

5. On July 4, 2014, the Claimants paid the Respondent a deposit of \$30,000.00 by a personal check.

6. On July 31, 2014, the Claimants paid the Respondent \$39,000.00 by a personal check.

7. From July 2014 through June 2015, the Respondent performed the contract by pouring concrete footers and foundation, installing structural framing, and installing plumbing.

8. On July 31, 2014, the Claimants paid the Respondent \$39,000.00 by a personal check.

9. On September 30, 2014, the Claimants paid the Respondent \$25,000.00 by a personal check.

10. On December 29, 2014, the Claimants paid the Respondent \$25,000.00 by a personal check.

11. On January 4, 2015, the Claimants paid the Respondent \$25,000.00 by a personal check. As of this date, the Claimants had paid the Respondent a total of \$139,000.00.

12. In April 2015, by email, the Respondent and Claimants discussed the lack of progress on completing the contract. The Respondent acknowledged that the on-site project manager was using a foot-injury as an excuse for not consistently performing the contract. The Respondent informed the Claimants that he did not have any other employees able to help him get back to work on the contract. In the email, the Respondent indicated that his address was located in Beaufort, South Carolina.

13. The last day any work had been performed at the Claimants' home was on or about June 15, 2015.

14. Photographs taken by the Claimants on June 15, 2015, show that the concrete foundation, interior structural framing and exterior walls for the Claimants' home had been installed but no other work required by the contract had been performed.

15. On September 17, 2015, through a letter issued by the Claimants' attorney, Steven J. Einhorn, using the addresses in North Beach, Maryland and Beaufort, South Carolina, the Claimants notified the Respondent that more than a year had passed since executing the contract and construction had not been substantially complete and had ceased, despite the Claimants' repeated attempts to contact the Respondent. The Claimants also informed the Respondent that it appeared that the Respondent had abandoned the contract. Finally, the Claimants informed the Respondent that they wanted the Respondent to complete the contract but that work needed to begin immediately and be completed within a reasonable time period.

16. On or about September 21, 2015, a Code Enforcement Officer with the Town of Chesapeake Beach notified the Claimants that due to the lack of work progress at the Claimants' home there were several code violations for which municipal civil citations had been issued.

17. On October 1, 2015, the Claimants and the Town of Chesapeake Beach entered into an agreement to suspend the code violation enforcement for 120 days from October 1, 2015, provided that the Claimants take immediate take steps to secure all structures from moisture intrusion as well as general access.

18. Subsequent to October 1, 2015, the Claimants, though their attorney, sent a second letter to the Respondent demanding that he immediately resume work and complete the contract.

19. On October 16, 2015, the Respondent sent an email to the Claimants stating that he was not asking for any money to be paid to him, all he would like to do is rectify his wrongs. The Respondent added that he would get it done as fast as he could with the Claimants paying all bills and to let him make it right.

20. On November 10, 2015, the Claimants entered into a home improvement contract with the North Star Companies, LLC, to complete the contract left incomplete by the Respondent. The total contract price was \$121,547.00.

21. North Star is a MHIC licensed home improvement contractor under license number 128906.

22. North Star completed its contract with the Claimants and was paid the full contract price of \$121,547.00.

23. On February 8, 2016, by a letter titled "to whom it may concern," regarding the Claimants' claim to the MHIC, the Respondent admitted that he took money for a job he was unable to complete and did take more money than was warranted. The Respondent stated that he

did not abandon the job but had relocated to South Carolina and had every intention of completing the job but bad hiring decisions led to the situation involving the Claimants, for which he was sorry.

24. On March 8, 2017, OAH mailed a Notice of Hearing (Notice) to the Respondent using his address of record with the MHIC, which was located in North Beach, Maryland. The Notice was mailed by certified and first class mail, both of which were returned by the USPS as undeliverable on March 22, 2017.

25. After a search of the Respondent's Maryland Driving Record history, the MHIC discovered a mailing address for the Respondent located in Beaufort, South Carolina.

26. On May 25, 2017, the MHIC mailed a copy of the Notice and MHIC Hearing Order to the Respondent's Beaufort, South Carolina address, which was not returned as undeliverable.

27. The Notice mailed to the Respondent informed the Respondent that a hearing was scheduled for June 8, 2017, at 10:00 a.m., at the Calvert County Public Library, 850 Costley Way, Prince Frederick, Maryland, 20678. The Notice also informed the Respondent that the issue was whether the Claimants had suffered an actual monetary loss as a result of unworkmanlike, inadequate, or incomplete home improvement work by the Respondent.

28. The Claimants' actual loss is \$90,638.00.00.

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). "[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 (3rd 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);¹ *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. For the following reasons, I find that the Claimants have proven eligibility for compensation.

Respondent’s Failure to Participate in the Hearing

The licensing information submitted into evidence by the Fund demonstrates that the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimants in July 2015 and not due to expire until January 2017. The Respondent’s address of record with the MHIC was located in North Beach, Maryland. The OAH mailed the Notice to the Respondent’s last known address of record which was returned as undeliverable. However, after a research of the Maryland MVA driving record for the Respondent, the MHIC located an out of state address for the Respondent, which was located in Beaufort, South Carolina. Having found the new address, the MHIC mailed the Notice to the Respondent’s new address, which was not returned. Importantly, the Notice mailed by the MHIC to the Respondent’s address in Beaufort, South Carolina was delivered to the same address the Respondent used in an email to the Claimant in April 2015.

¹ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

The Respondent is required to notify the MHIC in writing, within 10 days, of a change of address or trade name of the licensee. COMAR 09.08.01.11. The record demonstrates that the Respondent failed to update his address of record with the MHIC. However, based on the record before me, I am satisfied that the MHIC mailed the Notice to the Respondent using an address his last known address in Beaufort, South Carolina. Under these circumstances, I am persuaded that the Respondent had reasonable notice of the hearing scheduled for June 8, 2017. The hearing began as scheduled and, after waiting for approximately fifteen minutes or more, neither the Respondent nor anyone representing the Respondent appeared for the hearing. Based on this record, I determined the Respondent had an opportunity to participate in the hearing, after proper notice, but failed to appear, and proceeded with the hearing in the Respondent's absence. Md. Code Ann., Bus. Reg. § 8-312(h); COMAR 09.08.03.03A(2).

Merits of Claim

On or about July 2, 2014, the Claimants entered into a home improvement contract with the Respondent for a total renovation of his home. The cost of the contract was \$169,909.00. The uncontested evidence demonstrated that the Respondent began to perform the contract but by June 2015 he had left the contract incomplete. At the time, the Claimants had paid the Respondent a total of \$139,000.00. The Claimants' photographs demonstrate that the Respondent installed a concrete foundation, interior structural framing, and exterior walls. However, due to any lack of progress and because the Town of Chesapeake Beach had begun code enforcement actions, the Claimants were forced to either require the Respondent return to work and complete the contract or seek another contractor to finish the contract. The Respondent was unable to return and complete the contract and admits he took more money for the work performed than was required.

To complete the contract, on November 10, 2015, the Claimant entered into another home improvement contract with North Star, the total price of which was \$121,547.00. North Star completed the Claimants' home improvement work and was paid in full. There was no dispute that the North Star contract contained any work not required by the contract between the Claimants and the Respondent.

Based on the evidence presented by the Claimants it is without question that the Respondent left the home improvement contract with Claimants incomplete. The Respondent admitted to this fact in his letter of February 2016. Accordingly, I am satisfied that the Claimants suffered an actual loss. Therefore, the Claimants are eligible for an award from the Fund.

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.

COMAR 09.08.03.03B(3)(c).

Thus, I calculate the Claimants' loss as follows:

Amount Claimants paid Respondent	\$ 139,000.00
Plus amount Claimants paid North Star	<u>+121,547.00</u>
	\$ 260,547.00
Less original contract price with Respondent	<u>- 169,909.00</u>
	\$ 90,638.00

Accordingly, based on the above formula, the Claimants are entitled to reimbursement from the Fund in the amount of \$90,638.00. However, the MHIC may not award from the Fund

more than \$20,000.00 to one claimant or here, joint Claimants, for the acts or omissions of one contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(1). Therefore, the Claimants are entitled to an award from the Fund in the amount of \$20,000.00

PROPOSED CONCLUSION OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of \$90,638.00, but may only receive the maximum amount permitted to be paid from the Fund in the amount of \$20,000.00, 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)(c).

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Home Improvement Commission **ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimants \$20,000.00; 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;² and

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

Signature on File

September 5, 2017
Date Proposed Decision Issued

Daniel Andrews /
Administrative Law Judge

DA/da
#168491

² See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 10th day of October, 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.

Bruce Quackenbush

***Bruce Quackenbush
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION