

IN THE MATTER OF THE CLAIM
OF TASMEEN WEIK,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF
FARUK YILDIRIM, T/A
BELTWAY KITCHEN AND BATH,
LLC
RESPONDENT

* BEFORE JOHN T. HENDERSON, JR.,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-18-26791
* MHIC No.: 17(75)616

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RECOMMENDED DECISION

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STATEMENT OF THE CASE

On November 7, 2017, Tasmeen Weik (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for the reimbursement of \$20,000 of actual losses allegedly suffered because of a home improvement contract with Faruk Yildirim, t/a Beltway Kitchen and Bath, LLC (Respondent).¹

¹ The Claimant first filed a claim against the Respondent with the Fund on October 13, 2017. MHIC advised the Claimant by letter dated February 15, 2018, that the first claim is consolidated with the November 7, 2017 claim.

On September 20, 2018, the Office of Administrative Hearings (OAH) mailed a notice of the hearing to the Respondent by certified and regular mail to his address of record on file with the MHIC. Md. Code Ann., Bus. Reg. § 8-312(d) (2015).² The notice advised the Respondent of the time, place, and date of the hearing. On September 28, 2018, the United States Postal Service returned the green certified receipt evidencing the notice was received and signed by someone at the address of 20634 Muddy Harbour Square, Sterling, Virginia 20165, the Respondent's address of record. I determined there was adequate notice of the hearing provided to the Respondent.

I held the hearing on November 20, 2018, at the Office of Administrative Hearings, 10400 Connecticut Avenue, Suite 208, Kensington, Maryland 20895. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(a) and (e) (2015). The Claimant appeared and represented herself. The Respondent did not appear. Shara Hendler, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the DLLR, 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 09.08.02; COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund because of the Respondent's acts or omissions?
2. If so, how much is the Claimant entitled to receive from the Fund?

² "The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission." Md. Code Ann., Bus. Reg. § 8-312(d) (2015).

SUMMARY OF THE EVIDENCE

Exhibits

I admitted into evidence exhibits offered by the Claimant as follows:

- Cl. Ex. 1 Claimant's Summary and Timeline of Events
- Cl. Ex. 2 Letter to MHIC, regarding complaint number 816-2017, undated; HIC claim form, November 1, 2017; Claimant's proof of completed work, undated; Claimant's report of contract violations with photographs; Claimant's contract with Respondent, July 25, 2016; Respondent's Virginia and Maryland business licenses; Claimant's Certificate of Liability Insurance, January 19, 2015; advertisement of Respondent's company; two photographs of example of the expected home improvement; proposal of Chevy Chase Remodeling, July 21, 2017; proposal of Kustom Floors, LLC, signed by the Claimant on December 1, 2017; Letter from Claimant to MHIC regarding complaint number 816-2017, undated; HIC claim form, September 27, 2017; letter from Claimant to MHIC, undated; Claimant's Master Contract violations, with photographs; Claimant's contract with Respondent, August 1, 2016; Respondent's Virginia and Maryland business licenses; Claimant's Certificate of Liability Insurance, January 19, 2015; advertisement of Respondent's company; proposal of Chevy Chase Remodeling, July 21, 2017; proposal of Kustom Floors, LLC, signed by the Claimant on December 1, 2017
- Cl. Ex. 3 Link of videos of home improvement construction; fourteen photographs of home improvement construction, taken October 21, 2016
- Cl. Ex. 4 Three photographs of home improvement construction, undated; text messages between the Claimant and the Respondent, August 9, 2016 and October 25, 2016
- Cl. Ex. 5 Letter from Attorney Mark L. Hellel, to the Respondent, November 14, 2016; Claimant's Contract Violations; twenty photographs taken November 8, 2016; emails between the Claimant and Respondent, November 16, 18 and 21, 2016; letter from Attorney Hessel to the Respondent, December 5, 2016
- Cl. Ex. 6 Claimant's record of payments to the Respondent, from July 27, 2016 through September 13, 2016; check number 478, July 25, 2016, check number 479, July 31, 2016, check number 480, August 1, 2016, check number 505, September 14, 2016, check number 507, September 25, 2016, check number 485, August 18, 2016, check number 484, August 23, 2016, check number 504, September 5, 2016; Claimant's record of payments to Chevy Chase Remodeling and Kustom Floors; check number 302, April 11, 2017, check number 491, February 14, 2017, check number 488, January 12, 2017, check number 516, August 4, 2017, check number 514, May 21, 2017, check number 494, April 26, 2017, check number 471, November 30, 2016, check number 470, November 27, 2016; Claimant's checking account bank statement with SECU

Cl. Ex. 7 Proposals from: Kuzma Construction, February 1, 2017; EcoBeco Design/Build, February 7, 2017

Cl. Ex. 8 Thumb drive of video showing damage to the home

I admitted exhibits on behalf of the Fund as follows:

GF Ex. 1 Hearing Order from HIC, August 17, 2018

GF Ex. 2 Notice of Hearing, September 20, 2018

GF Ex. 3 MHIC Claim Forms, received by MHIC on November 21, 2017 and October 13, 2017

GF Ex. 4 Letter from MHIC to the Claimant, February 15, 2018

GF Ex. 5 DLLR license history of the Respondent as of October 31, 2018

GF Ex. 6 Certified receipts of mailing, November 20, 2018 and return receipt of delivery, September 26, 2018

Testimony

The Claimant testified on her behalf. The Fund did not present any witness 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 contractor's license number 01-109270 and was trading as Beltway Kitchen and Bath, LLC, license number 05-132318.
2. The Claimant is not related to the Respondent.
3. The Claimant's property subject to this matter is located in Chevy Chase, Maryland, the Property).
4. The Property is the Claimant's primary residence.
5. The Claimant has not filed other claims against the Respondent outside of these proceedings.

6. In July 2016, the Claimant and her spouse, Thomas Weik, met with the Respondent to discuss the home improvement of renovating their kitchen, master bathroom and master bedroom at the Property.

7. On July 25, 2016, the Claimant, Mr. Weik and the Respondent signed a contract (contract one) for home improvements to the Property.

8. The scope of the work for contract one was as follows:

• Obtain building permit, gas line permit and electrical permit	\$ -0-
• Conduct demolition of the kitchen	\$ 1,000.00
• Install and build new kitchen	\$15,200.00
• Install countertops and island, in kitchen	\$ 5,700.00
• Install kitchen backsplash	\$ 1,800.00
• Relocate plumbing and install new sink, faucet, dishwasher refrigerator and disposal in kitchen	\$ 1,600.00
• Redo electrical lines, lights, switches in kitchen	\$ 3,400.00
• Additional construction work in kitchen identified within contract	\$ 7,100.00
• Demolish powder room	\$ 1,000.00
• Install new powder room floor, vanity, countertops, sink, plumbing, door, toilet and exhaust vent and additional construction	\$ 6,000.00
• Install hardwood flooring	\$ 6,800.00
• Install new baseboards	\$ 750.00
• Install new appliances	<u>\$ 4,462.00</u>
• Total project cost for contract one:	\$54,812.00

(Claimant Ex. 2, contract one with Respondent)

9. The terms of payment pursuant to contract one were as follows:

30% initial down payment for materials

20% first day of work start

20% after cabinets delivered

20% after countertops installation

10% final payment after job completion and punch list items addressed.

10. The estimated start date was August 2, 2016 and the estimated completion date was twenty four business days later, weather permitting and obtaining materials in a timely manner.

11. On August 1, 2016, the Claimant and the Respondent signed a second contract (contract two) for additional home improvement to the Property.

12. The scope of the work for contract two was as follows:

• Obtain building permit and electrical permit	\$ -0-
• Conduct demolition of master bathroom	\$ 1,000.00
• Install and build new master bathroom	\$42,840.00
• Remove carpet, vinyl floor, hardwood floors; install new hardwood floors, sand and refinish stairs, existing railing	\$ 5,980.00
• Install new baseboards	<u>\$ 680.00</u>
• Total project cost for contract two:	\$50,500.00

(Claimant Ex. 2, contract two with Respondent)

13. The terms of payment pursuant to contract two was as follows:

30% initial down payment for materials

20% first day of work start

20% August 20th workers' pay

10% after floor installation

20% final payment after job completion and punch list items addressed.

14. The total cost of the home improvement project was \$105,312.00

15. The estimated start date for contract two was August 2, 2016 and the estimated completion date was thirty business days later, weather permitting and obtaining materials in a timely manner.

16. The Claimant paid the Respondent a total of \$86,166.00 toward both contracts, listed as follows:

<u>Date</u>	<u>Check No.</u>	<u>Amount</u>
July 25, 2016	478	\$16,443.60
July 31, 2016	479	\$ 3,123.40
August 1, 2016	480	\$15,150.00
August 18, 2016	485	\$20,170.00
August 23, 2016	484	\$ 6,196.00
September 5, 2016	504	\$ 4,999.00
September 14, 2016	505	\$10,085.00
September 25, 2016	507	<u>\$10,000.00</u>
Total Payments		\$86,167.00

17. The Respondent began the home improvement work without obtaining construction permits.
18. An official from the Village of North Chevy Chase inspected the property and demanded construction permits be obtained prior to continuing with the work.
19. The Claimant contacted the Respondent to inquire about the construction permits. The Respondent's reply was to threaten to walk away from the home improvement and not complete the work.
20. Subsequently, the Respondent notified the Claimant and told her he was bankrupt, sold his business and could not complete her home improvement project.
21. The Respondent walked away from the home improvement and cancelled both contracts on October 25, 2016. (Claimant's exhibit 4.)
22. Some of the work left incomplete included failure to hang walls in the bathroom; failure to remake demolished stairs; electrical wires were left hanging exposed. In addition, the Respondent caused sewage to flow into the garage of the property from the upstairs bathroom.
23. The Respondent demolished the wrong bathroom and left a mess of debris in front of the Property, to include an overflowing dumpster.
24. The Respondent did complete work on the home improvement totaling \$24,585.00. (Cl. Ex. 2, Proof of Completed Work.)

25. In July 2017, the Claimant hired Chevy Chase Remodeling, a MHIC-licensed home improvement contractor, to fix the electrical panel, HVAC, plumbing and finish the master bathroom and master bedroom. The Claimant paid \$49,700.00 to Chevy Chase Remodeling.

26. In December 2017, the Claimant hired Kustom Floors, a MHIC-licensed home improvement contractor, to fix the stairs and finish the powder room and hallway at a cost of \$20,311.00.

27. The Claimant paid \$70,011.00 to repair and complete the home improvements abandoned by the Respondent.

DISCUSSION

In 1985, the Maryland General Assembly enacted legislation that first established the Fund. By this means, the legislature sought to create a readily available reserve of money from which homeowners could seek relief for actual losses sustained because of an unworkmanlike, inadequate, or incomplete home improvement performed by a licensed home improvement contractor. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411 (2015).³ Under this statutory scheme, licensed contractors are assessed fees, which subsidize the Fund. Homeowners who sustain losses by the actions of licensed contractors may seek reimbursement for their “actual losses” from this pool of money, subject to a maximum of the lesser of \$20,000.00 or the amount paid by or on behalf of the claimant to the contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(1) and (5). A homeowner is authorized to recover from the Fund when he or she sustains an actual loss that results from an act or omission by a licensed contractor. Md. Code Ann., Bus. Reg. § 8-405(a). When the Fund reimburses a homeowner as a result of an actual loss caused by a licensed contractor, the responsible contractor is obligated to reimburse the Fund. Md. Code Ann., Bus. Reg. § 8-410. The MHIC may suspend the license of any such contractor until he or she

³ Unless otherwise indicated, all references are to the 2015 version.

reimburses the Fund in full with annual interest as set by law. Md. Code Ann., Bus. Reg.

§ 8-411(a).

Recovery against the Fund is based on “actual loss,” as defined by statute and regulation. “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401. “By employing the word ‘means,’ as opposed to ‘includes,’ the legislature intended to limit the scope of ‘actual loss’ to the items listed in section 8-401.” *Brzowski v. Md. Home Improvement Comm’n*, 114 Md. App. 615, 629 (1997). The Fund may only compensate claimants for actual losses incurred as a result of misconduct by a licensed contractor. COMAR 09.08.03.03B(2). At a hearing on a claim, the Claimant has the burden of proving the validity of the 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).

There is no dispute that the Respondent held a valid contractor’s license in 2016 when he and his company entered into the Contracts with the Claimant. Md. Code Ann., Bus. Reg. § 8-405(a). There is no dispute that the Claimant is the owner of the subject property and that there is no procedural impediment barring her from recovering from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a), (f). The next issue is whether the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement due to misconduct, and if so, whether the Respondent made good faith efforts to resolve the claim. A claim may be denied if the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim.

Md. Code Ann., Bus. Reg. § 8-405(d). For the following reasons, I find that the Claimant has proven eligibility for compensation. In addition, the Respondent did not make any good faith efforts to resolve the claim.

The Claimant testified that she and her spouse purchased the Property intentionally to fix it up and improve its condition. The Respondent was located after reviewing internet ads and reading customer reviews. The Claimant and her spouse contracted twice with the Respondent to demolish particular rooms in the Property and construct a new kitchen, master bedroom, master bathroom, and powder room, and to install hardwood floors and stair railings.

The Claimant testified that the total cost of both contracts for the home improvement was \$105,312.00 and that she and her spouse paid a total of \$86,167.00 to the Respondent toward both contracts. Her exhibits support this testimony.

The work was to begin on August 1, 2016, which occurred. At some point, an inspector with the Town of Chevy Chase, Maryland, visited the property and determined there were no required building permits on site. The inspector told the Claimant and her spouse that building permits were required before construction could continue. The Claimant contacted the Respondent to inquire about the building permits. The Respondent reacted belligerently to the inquiry and threatened to walk away from the home improvement.

The Claimant testified that on any given day, when workers arrived, there were no more than three working on site, and that the Respondent failed to appear to inspect and supervise the work.

The Claimant's photographs and video admitted into evidence clearly show the destruction and damage to the Property caused by the Respondent. Although the Respondent completed a minimal amount of work to the Property pursuant to the two contracts, the home remained uninhabitable when the Respondent left the job on October 25, 2016.

Pursuant to the Respondent abandoning the home improvement, the Claimant and her spouse were forced to secure new contractors to repair and complete the home improvement. The Claimant hired Kustom Floors to fix the stairs and complete the front foyer and powder room, at a cost of \$20,311.00 and she also hired Chevy Chase Remodeling to complete the remainder of the home improvement, at a cost of \$49,700.00. The Claimant and her spouse spent a total of \$70,011.00 to repair and complete the home improvement abandoned by the Respondent.

The Fund argued that the credible evidence shows that the Claimant proved a loss by the acts or omissions of the Respondent and recommended an award to the Claimant of \$20,000.00, representing the total amount available from the Fund. The Fund agreed that the work done by the Respondent was unworkmanlike, inadequate and incomplete.

I agree. The Claimant sustained an actual monetary loss. She is eligible for compensation from the Fund. I now turn to the amount of the award, if any.

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 offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3) sets forth the various formulas for determining an "actual loss." According to the Fund, and I agree, the appropriate formula is the following:

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

...

(c) 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.

Using the formula in COMAR 09.08.03.03B(3)(c), the following calculations apply:

\$86,167.00	Payments made to the Respondent by the Claimant under both Contracts
\$20,311.00	The Amount required to pay Kustom Floors to complete the home improvement
<u>\$49,700.00</u>	The Amount required to pay Chevy Chase Remodeling to complete the home improvement
Total	\$156,178.00
Less	<u>\$105,312.00</u> The original price for two contracts
	\$50,866.00 Considered as actual loss

The MHIC may not award from the Fund more than \$20,000.00 to one claimant for acts or omissions of one contractor or an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015). The claim does exceed that limit, therefore, the claim is limited to \$20,000.00.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual loss of \$20,000.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(e)(1) and (5) (2015); COMAR 09.08.03.03B(3)(a).

RECOMMENDED ORDER

I **PROPOSE** that the Maryland Home Improvement Commission:
ORDER that the Claimant sustained an actual loss; and
ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until he reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent as set by the Maryland Home Improvement Commission;⁴ and

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

Signature on File

February 6, 2019
Date Decision Issued

JTH/emh
#178113

John T. Henderson, Jr.
Administrative Law Judge

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

PROPOSED ORDER

WHEREFORE, this 25th day of March, 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.

Michael Shilling

***Michael Shilling
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION