IN THE MATTER OF THE CLAIM	*	**BEFORE ABENA Y. WILLIAMS,**
OF PATRICIA CALOBONG,	*	**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 KEVIN SERDULA,	*	
T/A KEVIN'S HANDYMAN	*	**OAH No.: LABOR-HIC-02-20-00103**
SERVICES, LLC,	*	**MHIC No.: 18(90)1259**
RESPONDENT	*	

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PROPOSED DECISION

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STATEMENT OF THE CASE

On July 31, 2019, Patricia Calobong (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of $3,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Kevin Serdula, trading as Kevin's Handyman Services (Respondent). Md. Code Ann., Bus. Reg.

§§ 8-401 through 8-411 (2015).[1] On December 10, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on October 20, 2020 at the OAH Headquarters.[2] *Id.* § 8-407(e). Andrew Brouwer, Assistant Attorney General, Department of Labor (Department),[3] represented the Fund. The Claimant represented herself. After waiting approximately fifteen minutes for the Respondent or the Respondent's representative to appear, I confirmed the Respondent was properly served and proceeded with the hearing.[4] Code of Maryland Regulations (COMAR) 28.02.01.23A.

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. 2020); 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 the compensable loss?

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[1] Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code and the 2019 Supplement.

[2] The matter was previously scheduled for a hearing on May 7, 2020 and July 23, 2020 but was postponed initially due to the suspension of in-person hearings at the OAH due to the COVID-19 pandemic and subsequently, due to the Claimant's request for a postponement for a scheduled surgery.

[3] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

[4] Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on September 3, 2020, COMAR 09.08.03.03A(2), and the certified mail receipt was noted as received on September 10, 2020. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Respondent had received proper notice and proceeded to hear the captioned matter.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimant:

CL. Ex. 1 – Letter from Claimant's former attorney regarding her communication with Respondent, dated April 9, 2018

CL. Ex. 2 – Handwritten Contractor's Invoice, dated March 28, 2018

CL. Ex. 3 – Navy Federal Stop Payment Confirmation Letter, dated April 2, 2018

CL. Ex. 4 – MHIC Complaint Form, dated May 24, 2018

CL. Ex. 5 – Navy Federal Credit Union Statement of Account, dated March 19, 2018 – April 18, 2018

CL. Ex. 6 – Black and white photographs taken by the Claimant:

- 6a - Photograph of location of removed transition piece, undated
- 6b - Photograph of door to basement with backward lock, undated
- 6c - Photograph of wall in basement built by Respondent with floating ceiling tiles, undated
- 6d - Photograph of spacing between basement wall and adjoining wall, undated
- 6e - Photograph of spackled hole in wall, undated
- 6f - Photograph of spackle on floor, undated

CL. Ex. 7 – Email from Kevin Bennett to Patricia Calobong, undated

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 – Hearing Order, dated December 10, 2019

Fund Ex. 2 – Notice of Hearing, dated September 1, 2020

Fund Ex. 3 – Notice of Hearing, dated April 28, 2020

Fund Ex. 4 – Notice of Hearing, dated February 6, 2020

Fund Ex. 5 – Letter from the Department to the Respondent, dated August 7, 2019, with the MHIC Claim Form, dated July 31, 2018 attached

Fund Ex. 6 – MHIC Licensing History, License 01-101944 and 05-128445, dated October 16, 2020

Testimony

The Claimant testified on her own behalf and did not present other witnesses.

The Respondent was not present and did not present any testimony or witnesses.

The Fund did not present any witnesses.

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 numbers 01-101944 and 05-128445.

2. On or around March 27, 2018, the Claimant and the Respondent entered into an agreement (Contract) to upgrade the Claimant's residential property located in Westminster, Maryland (Property).

3. The Respondent agreed to install a new transition piece in the doorway between the living room and kitchen, a door to the basement with a doorknob and lock, and a wall in the basement to create a fourth bedroom with a new door. The Contract also included raising the basement ceiling to accommodate the installed wall, spackling a hole in a separate basement wall and smoothing it for painting, and clean up.

4. The Respondent and the Claimant agreed the work would start on or around March 28, 2018 and would take three days to complete.

5. The original agreed-upon Contract price was $2,100.00.[5]

6. The Claimant and Respondent did not reduce their agreement to writing.

7. On March 29, 2018, the Claimant gave the Respondent a check for $500.00 to purchase supplies for the work to be done.

[5] The record reflects that the Claimant's complaint listed $2,000.00, her claim indicated $3,000.00 but she clarified through her testimony that $2,100.00 is the actual contract amount.

8. On March 30, 2018, the Claimant gave the Respondent a check for $300.00 to purchase additional supplies including two doorknobs.

9. To date, the Claimant has paid the Respondent $800.00 out of pocket.

10. Sometime before April 1, 2018, the Claimant tendered a check in the amount of $1,580.00 to the Respondent for the work to be completed under the Contract.[6] However, on April 1, 2018, the Claimant placed a stop payment on a check because she was unhappy with the Respondent's work.

11. In an attempt to collect the funds owed under the Contract, the Respondent's former attorney provided the Claimant's former attorney with a contractor's invoice form filled out by the Respondent (but unsigned by the Claimant), which included a description of the work performed and the amount allegedly owed.

12. The Claimant notified the Respondent of her concerns relating to the work he had performed; he agreed to take a look at the work and make repairs.

13. Not trusting the Respondent would make the repairs to her satisfaction, the Claimant sought a quote from Kevin Bennett, who is not a MHIC licensed contractor, to remove the Respondent's work and reinstall the basement wall, transition piece and doors. Mr. Bennett provided an estimate in the amount of $2,100.00.

14. On or around July 25, 2019, the Claimant filed a claim with the MHIC for $3,000.00.

15. The Claimant is neither related to nor a business partner with the Respondent. She has not filed any other claims, including insurance claims, involving the performance of the Contract.

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[6] The Claimant failed to specify the date that she tendered the check to the Respondent and did not explain why she paid the Respondent an additional $280.00 over and above the Contract price.

DISCUSSION

I. Governing Law, Controlling Regulations and Burden of Proof

In this case, the Claimant has 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"). 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 purposes of recovery from the Fund, the act or omission of a licensed contractor includes the act or omission of a subcontractor, salesperson, or employee of the licensed contractor, whether or not an express agency relationship exists." Md. Code Ann., Bus. Reg. § 8-405(b).

For the following reasons, I find that the Claimant has proven eligibility for compensation from the Fund.

II. The Claimant's Position

The Claimant explained she found the Respondent on the internet. According to the Claimant's testimony, on or around March 27, 2018, the Respondent came to the Property and quoted a price of $2,100.00 to install a transition piece between the dining and living rooms, a

new door leading to the basement and a wall to make a fourth bedroom in the basement with a new door. The Claimant explained the Respondent advised her the work would take three days to complete from March 28, 2018 to March 30, 2018.

The Claimant testified the Respondent started working at the Property around March 29, 2018. She noted she gave the Respondent one check for $500.00 for supplies on March 29, 2018 and on March 30, 2018, she gave him another check for $300.00 for additional supplies including two doorknobs. CL Ex. 5.

The Claimant indicated that she did not notice any issues with the Respondent's work until after the Respondent left, on the third day of work, on or around March 30, 2018, when she tried to go into the basement and had trouble opening the door. The Claimant explained that after she pried the door open with a knife, she went downstairs and saw the lock in the door to the basement was put in backwards, no cleanup occurred, there was white putty on the floor along with a left over piece of drywall. CL Exs. 6d-f. The Claimant testified the Respondent originally agreed to attach the new basement wall to the studs in the ceiling. Instead, she explained, the Respondent only raised the wall to the ceiling tiles. *Id.* Additionally, she stated, the Respondent did not back the drywall flush with the parallel wall and cut it "jagged". *Id.* The Claimant also testified when the transition was installed, she was shocked because it was too large and a tripping hazard.

The Claimant testified that sometime in April 2018, she contacted the Respondent and explained her concerns regarding the transition piece, the door to the basement, and the installed basement wall. The Respondent replied that the Claimant never told him there was an issue with the transition piece and he was surprised she had an issue with his work. The Respondent also offered to review the work and make repairs.

The Claimant noted that although the Respondent offered to fix the work, she consulted with an attorney and determined she did not want the Respondent to return because his initial work was so "shoddy". CL Ex. 1. In an attempt to collect the balance of $1,580.00 owed by the Claimant, sometime in April 2018, the Respondent's attorney sent the Claimant's attorney a contractor's invoice for an additional $1,710.00, raising the total price of the Contract to $2,500.00, rather than the $2,100.00 price that was originally quoted by the Respondent. CL Ex. 2. The Claimant explained she did not believe she owed the Respondent any money because of his poor workmanship.

The Claimant testified that as she did not trust that the Respondent would make proper repairs, she contacted Kevin Bennett, another contractor, on or around May 27, 2018. Mr. Bennett is not an MHIC licensed contractor. CL Ex. 7. He informed the Claimant the wall in the basement needed to be torn down, the hallway created by the wall in the basement was too narrow and not "to code," the ceiling tiles were only installed halfway, the door to the basement needed to be able to open, and the transition piece was too high and created a tripping hazard. *Id.*

The Claimant explained that Mr. Bennett has not yet performed the work because he no longer works as an independent contractor. The Claimant explained she contacted Dunn Wright, another contractor, to do the repairs, however she did not have a copy of their estimate to complete repairs on the Property nor was any information provided as to whether they were MHIC-licensed. To date, the Respondent's work has not been completed or repaired. The Claimant is seeking $1,300.00 from the Fund, which is the Contract price after the deduction of the $800.00 she paid out of pocket.

III. Analysis

Home improvement contracts are required to be in writing and legible. 8-501(b)(1). Failure to comply with the statute, however, is not grounds for dismissal of the claimant's claim nor does it void the oral contract. *Gannon & Son, Inc. v. Emerson*, 291 Md. 443, 449, (1981). In this case, the Claimant hired the Respondent to complete a number of upgrades in her home. Though the Respondent installed the door and drywall, he installed the lock on the door backwards and failed to attach the basement partition wall to the studs in the ceiling. The Respondent also did not clean up his work space and left work materials at the Property. The Respondent failed to complete the work as promised.

The Claimant's testimony was delivered clearly, consistently, and sincerely; without any signs of evasion, falsity, or deception; and was largely supported by documentation, including pictures taken contemporaneously with the performance of the work at issue. CL Exs. 1-7; *see B.H. v. Anne Arundel Cty. Dep't of Soc. Servs.*, 209 Md. App. 206, 224-25 (2012). I find the Claimant's testimony to be credible and supported by the photographic evidence. CL Ex. 6. *See Dickey v. State*, 404 Md. 187, 202-03 (2008) (factors to be weighed by a fact-finder in assessing credibility); *Maryland Bd. of Physicians v. Elliott*, 170 Md. App. 369 (2006) (a finder-of-fact is authorized to determine the credibility of a witness's testimonial evidence based on the witness's demeanor); *Montgomery Cty. Dep't of Health & Human Servs. v. P.F*, 137 Md. App. 243, 268 (2001) (the credibility to be given a witness and the weight to be given his testimony is the exclusive province of the finder-of-fact).

For these reasons, I am persuaded it is more likely than not the Respondent's home improvement was inadequate, incomplete, and unworkmanlike. *See Steinberg v. Arnold,* 42 Md. App. 711, 712 (1979) ("as fact finder, [the judge] has the usual jury prerogatives of whether to

believe or disbelieve witnesses, how much weight to give testimony and ultimately whether to be persuaded or not to be persuaded").

The Claimant notified the Respondent of the issues and though the Respondent agreed to make the repairs, the Claimant did not trust he would complete the repairs to her satisfaction. To date, no repairs have been completed. Though the Commission may deny a claim if the Commission finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim, I do find it was reasonable for the Claimant to reject the Respondent's good faith efforts due to the unmistakably poor quality of his workmanship as evidenced by the photographs in Claimant's Exhibit No. 6. Md. Code Ann., Bus. Reg. § 8-405(d).

Based upon the credible and undisputed evidence of record, I find the Respondent, a then licensed contractor, entered into an agreement with the Claimant to install a new transition piece in the doorway between the living room and kitchen; install a door to the basement with a doorknob and lock, build a wall in the basement to create a fourth bedroom with a new door; raise the basement ceiling to accommodate the installed wall; spackle a hole in a separate basement wall and smooth it for painting; and clean up the workspace. The Respondent accepted and negotiated two checks in the sum of $800.00, which represented one-third of the total contract price of $2,100.00 and performed work that was inadequate and incomplete. Further, I find there is no dispute that the Claimant is the owner of the subject property and that there are no procedural impediments barring her from recovery from the Fund. Md. Code Ann., Bus. Reg. §§ 8-405(f), 8-405(g) (2015); COMAR 09.08.01.13.

I conclude, therefore, that the home improvement at issue here is inadequate, incomplete, and unworkmanlike within the meaning of the statute, the Claim is not barred by any relevant statuary or regulatory provisions, and the Claimant is eligible for compensation from the Fund. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

IV. Award of Compensation from the Fund

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work, unless a unique measurement is necessary. COMAR 09.08.03.03B(3)(a)-(c). The claim sets forth an alleged actual loss of $3,000.00, however at the hearing the Claimant amended the amount to $1,300.00, which is the balance remaining after the $800.00 paid to the Respondent. Fund Ex. 5.

The Respondent performed some work under the Contract. The Claimant solicited another contractor, Mr. Bennett, to complete the original Contract. However, he is unlicensed. Performing a home improvement in this State without being properly licensed by the MHIC is a criminal misdemeanor. Md. Code Ann., Bus. Reg. § 8-601; *see Baltimore Street Builders v. Stewart*, 186 Md. App. 684, 697 (2009) (a person may not act as contractor in this State without a contractor's license and an unlicensed person will not be given the assistance of the courts in enforcing contracts within the provisions of the regulatory statute because such enforcement is against public policy).

As discussed above, when the facts warrant, I may create a unique measure to determine the appropriate award. COMAR 09.08.03.03B(3). The regulations provide a framework from which I can fashion an appropriate measure tailored to the facts of this case and fairly balance the Fund's concerns. The undisputed evidence of record is that the work done by the Respondent has to be redone; it has no value. I will not consider the estimate provided by Mr. Bennet to ensure no award from the Fund will be conflated with monies used to pay an

unlicensed contractor. These facts are analogous to the regulatory calculation to be employed when "the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract[.]" COMAR 09.08.03.03B(3)(b). In such circumstances, "the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor. *Id.*

The Claimant's award, therefore, shall be the sum of the monies she paid to the Respondent for work that had no value ($800.00) minus the value of any materials or services provided by the Respondent, which in this case is ($0), for an award in the sum of $800.00.

I arrive at this measure as being the fairest calculus of damages while doing justice between the parties. This measure does not consider any monies estimated by Mr. Bennett, an unlicensed contractor, to be the cost of repairing the Respondent's work, thus ensuring the Fund's public policy concerns are addressed, while furnishing fair recompense to the Claimant for the Respondent's inadequate, incomplete, and unworkmanlike home improvement. To do otherwise would be to reward the malefactor and harm the victim, the member of the public who relied on the State's licensing system and whose trust was betrayed, an outcome offensive to the statute and the Fund's very purpose.

In accordance with the MHIC's regulations, I recommend the Fund pay to the Claimant all the monies she paid to the Respondent because she received no work or services of value under the Contract, did not unreasonably refuse an offer made by the Respondent in good faith to resolve the Claim, and otherwise is eligible for an award from the Fund in the sum of $800.00. *Id.*

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $800.00 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 Claimant is entitled to recover $800.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $800.00; 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.

January 19, 2021
Date Decision Issued

Administrative Law Judge

AYW/cj
#189995

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

PROPOSED ORDER

WHEREFORE, this 7th day of April, 2021, 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
Chairman
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION