

IN THE MATTER OF THE CLAIM	*	BEFORE GERALDINE A. KLAUBER,
OF LOIS GUTMAN,	*	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 BRETT	*	
SCHOOLNICK,	*	OAH No.: DLR-HIC-02-18-30924
T/A BAYWOOD DESIGN/BUILD	*	MHIC No.: 18 (05) 269
GROUP, INC.	*	
RESPONDENT	*	

\* \* \* \* \*

**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 October 24, 2017, Lois Gutman (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$49,322.12 in actual losses allegedly suffered as a result of a home improvement contract with Brett Schoolnick, trading as Baywood Design/Build Group, Inc. (Respondent). Md. Code Ann.,

Bus. Reg. §§ 8-401 through 8-411 (2015).<sup>1</sup> On October 1, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on January 16, 2019, at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland. Bus. Reg. § 8-407(e). Eric London, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. The Claimant represented herself. After waiting twenty minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.<sup>2</sup>

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. 2018); 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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<sup>1</sup> Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

<sup>2</sup> By letter dated September 12, 2017, Barton Sidle, Esquire, filed a response to the Claimant's Complaint with the MHIC on behalf of the Respondent (Fund #2). Additionally, by letter dated March 19, 2018, Mr. Sidle notified the MHIC that the notice of the Complaint filed against the Respondent in a separate case was sent to the address that was on record for the Respondent with the MHIC, but was no longer the Respondent's current address. Mr. Sidle provided the MHIC was the Respondent's current mailing address of P.O. Box 1011, Columbia Maryland, 21044 (Fund Ex. 4). Notice of the hearing was mailed by regular and certified mail on November 19, 2018 to the Respondent at the address provided, COMAR 09.08.03.03A(2). The Notice sent by certified mail was returned by the United States Postal Service (USPS) as "not deliverable as addressed." The certified receipt return card for the Notice sent to Mr. Sidle was signed by Mr. Sidle on November 23, 2018.

## SUMMARY OF THE EVIDENCE

### Exhibits

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

- Clmt. Ex. 1 - Complaint Form, August 16, 2017
- Clmt. Ex. 2 - Home Improvement Claim Form, January 2, 2019
- Clmt. Ex. 3 - Claimant's statement
- Clmt. Ex. 4 - Claimant's Summary of her claim
- Clmt. Ex. 5 - Email from Michael Van Allen, Maryland Shingle, Inc., to Claimant, February 12, 2017
- Clmt. Ex. 6 - Contract between the Claimant and the Respondent, April 13, 2017
- Clmt. Ex. 7 - Email from Claimant to Respondent, June 26, 2017
- Clmt. Ex. 8 - Email exchanged between Claimant and Respondent with attached schedule (3 pages), July 3, 2017
- Clmt. Ex. 9 - Letter from Respondent to Claimant, August 13, 2017
- Clmt. Ex. 10 - Case Summary of Respondent's Bankruptcy case, filed September 9, 2017
- Clmt. Ex. 11 - Summary of Claimant's payments and credits, with the following attachments documenting the payments and credits
  - Change Order, April 26, 2017
  - Check in the amount of \$19,500.00, April 13, 2017
  - Check in the amount of \$3,658.00, April 28, 2017
  - Check in the amount of \$6,500.00, April 23, 2017
  - Check in the amount of \$6,500.00, May 3, 2017
  - Change Order, May 14, 2017
  - Change Order, June 8, 2017
  - Check in the amount of \$1,901.00, June 8, 2017
  - Change Order, June 12, 2017
  - Check in the amount of \$4,730.00
  - Credit to Claimant, July 31, 2017
  - Check in the amount of \$2,750.00
  - Build Network Invoice, December 31, 2018
  - Receipt for orders from Amazon, June 9, 2017
  - Invoice from Ehrhardt Plumbing, July 3, 2017

- Invoice from Tri Star Electric, July 13, 2017
- PARCO Renovation and Remodeling (PARCO) Proposal, October 18, 2017 regarding repairs

Clmt Ex. 12 - Email from Claimant to Respondent, July 17, 2017

Clmt Ex. 13 - Email exchange between Claimant and Respondent, August 7, 2017, with attached Homestead Door Company Warranty requirements

Clmt Ex. 14 - Emails from Claimant to Respondent, June 25, 2017, July 10, 2017, July 16, 2017 and August 9, 2017

Clmt. Ex. 15 - Two photographs of work done by Respondent

Clmt Ex. 16 - Home Improvement license status for PARCO

Clmt. Ex. 17 - PARCO Proposal, October 18, 2017, regarding completion of contract

Clmt. Ex. 18- Not admitted

Clmt Ex. 19 - United States Bankruptcy Court, District of Maryland, Certificate of Notice, November 20, 2017

Clmt. Ex. 20 – Claimant’s closing summary

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Notice of hearing, November 19, 2018

Fund Ex. 2 - Certified Mail Receipt Card signed by Barton Sidle, November 23, 2018

Fund Ex. 3 - Email exchange between Kevin Niebuhr, DLR, and Barton Sidle, Esq., September 14 and 19, 2017

Fund Ex. 4- Letter from Barton Sidle, Esq., to David Finneran, March 19, 2018

Fund Ex. 5 - Hearing Order, September 27, 2018

Fund Ex. 6 - Licensing History of Respondent, January 4, 2019

Fund Ex. 7 - Home Improvement Claim Form, October 19, 2017

Fund Ex. 8 - Letter from Kevin Niebuhr, MHIC, to Respondent, November 28, 2017

Testimony

The Claimant testified and presented the testimony of Greg Allen Parr, proprietor of PARCO.

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 number 0121664.
2. On February 12, 2017, the Claimant forwarded to the Respondent a forty-two page home inspection report and requested that the Respondent provide a cost estimate for the work specified in the inspection report.
3. On April 13, 2017, the Claimant and the Respondent entered into a contract (Contract) to perform the work contained in the inspection report provided by the Claimant. The work essentially entailed a remodel of the kitchen, installation of four new sliding glass doors, renovation to master bath and powder room, rear deck beam buttressing, and miscellaneous basement repairs. The Contract did not specify a start or stop date, but the Respondent represented to the Claimant that the work would be completed on or about August 7, 2017.
4. The original Contract price was \$52,259.00.
5. At the time the Contract was entered into, the Claimant made clear to the Respondent that installation of the two deck doors was the first priority in order to prevent ongoing water intrusion. The Respondent never ordered the doors.

6. On or about April 27, 2017, the Claimant and the Respondent agreed to a Change Order in the amount of \$3,658.00 for a kitchen window, hall closet, basement walls, corbels and hall closet stile.

7. The Respondent began work on May 1, 2017.

8. On or about May 14, 2017, the Claimant and the Respondent agreed to a Change order in the amount of \$6,468.00 for interior doors.

9. On or about June 8, 2017, the Claimant and the Respondent entered into a Change Order for sheet rock removal and a kitchen window.

10. After entering into the contract, the Respondent reported to the property just several hours per day, or did no work at all.

11. On or about June 13, 2017, the Claimant and the Respondent entered into a Change Order in the amount of \$4,730.00 for electrical upgrades.

12. Concerned about the lack of work being done, on June 26, 2017, the Claimant sent the Respondent an email requesting that he provide her with a timeline for all pending work.

13. On July 3, 2017, the Respondent provided the Claimant with a new timeline with a completion date of September 7, 2017. The Respondent did not complete the work as provided in his revised schedule.

14. The Claimant made the following payments to the Respondent, which totaled \$52,007.00:

- April 13, 2017 - Initial deposit on (\$19,500.00)
- April 27, 2017- Draw B- demolition (\$6,500.00)
- April 28, 2017 - Change order for kitchen window, hall closet, basement walls and corbels (\$3,658.00)
- May 3, 2017 - Draw C- mechanicals (\$6,500.00)

- May 14, 2017 - Change order - sheet rock removal, kitchen window (\$1,901.00)
- June 13, 2017 - Electrical upgrades (\$4,730.00)
- August 1, 2017 - Draw D -partial -sheet rock installation (\$2,750.00)

15. The Claimant paid \$1,151.12 out of pocket for the following services or items that were responsibility of the Respondent per the Contract:

- Three Kohler sinks (\$277.20)
- Recessed lights and trim housing (\$459.94)
- Electrical work by Tri Star Electric (\$413.98)

16. As of August 4, 2017, the Respondent had completed only ten percent of the Contract, the majority of which was demolition.

17. By email dated August 13, 2017, the Respondent notified the Claimant that the business would cease operating on August 14, 2017, and that he would be filing for bankruptcy.

18. The Respondent did not properly protect the hardwood floors prior to demolition, resulting in visible damage to the floors.

19. The Respondent failed to address the structural deficiencies with the deck. The Respondent improperly installed two joists and applied new plywood to the underside of the deck band board, which were cosmetic repairs only. In order to correct the deficiency, PARCO removed and replaced all deteriorated wood, raised the subfloor and secured five sister joists, replaced an eight foot section of band board and reattached the deck to the band board.

20. During demolition, the Respondent damaged sheetrock in the office.

21. The Respondent installed improper ventilation in the master bathroom.

22. The Respondent's framing of the master bathroom was not done in a workmanlike manner and needed to be taken out and redone.

23. The venting from the vanity in the master bath was not properly installed and needed to be removed and redone.

24. The kitchen cabinets installed by the Respondent were not properly fitted.

25. The supply lines for the kitchen sink installed by the Respondent fell apart when touched.

26. On October 18, 2017, the Claimant entered into a contract with PARCO to complete the Contract and repair the work performed by the Respondent that was inadequate or unworkmanlike.

27. The Claimant paid PARCO \$65,280.00 to repair and complete the work called for in the Contract.

28. The Claimant owed the Respondent's electrical subcontractor, Tri Star Electric \$3,500.00 for work performed by Tri Star but not reimbursed for by the Respondent. The Claimant paid \$3,400.00 owed to Tri Star.

29. The Claimant owes the Respondent's plumbing subcontractor, Ehrhardt Plumbing (Ehrhardt), \$2,490.00 for work performed on the contract but not reimbursed for by the Respondent. Ehrhardt agreed to waive payment of this amount until the Claimant's claim with the MHIC was resolved.

30. The Contract contained an arbitration clause and the Respondent waived arbitration of the Claimant's claim.

31. The Respondent filed for bankruptcy on September 19, 2017.



## DISCUSSION

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) (2015); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).<sup>3</sup> “[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); *see also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). “[A]ctual 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 Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Claimant purchased a home in Columbia that needed renovations. The Claimant provided the Respondent with an extensive inspection report and requested that he provide her with a cost estimate for him to do the necessary renovations. Based on the report, on April 2017, the Claimant and the Respondent entered into the Contract for \$52,259.00. The Respondent and the Claimant agreed to three change orders which increased the total contract price to \$76,016.00.

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<sup>3</sup> As noted above, “COMAR” refers to the Code of Maryland Regulations.

The Claimant testified that despite the Respondent's representations that the Contract would be completed by August 2017, the Respondent frequently failed to work full days or show up at all. When he did report to work, the Respondent frequently came to the job site with insufficient tools and materials. The Claimant explained that when she entered into the Contract, she informed the Respondent that the abatement of water intrusion was a priority. This work included deck repair and installation of doors. The Respondent never ordered the doors. According to the Claimant, the Respondent's work to address the water infiltration was only cosmetic in nature. The Claimant testified that approximately ten percent of the job was completed when the Respondent abandoned the project in August 2017. She further testified that the little amount of work done by the Respondent was shoddy. She ultimately hired another contractor to complete the improvements provided for in the Contract.

On October 18, 2017, the Claimant hired, PARCO, a licensed home improvement contractor, to complete the work. The Claimant presented testimony from, Greg Parr, sole proprietor of PARCO, to establish that the work that the Respondent actually performed was unworkmanlike and inadequate. Mr. Parr was not offered as an expert, but given his twenty years of experience in the home renovation industry and his experience in all phases of home construction and renovation, I have afforded his testimony great weight.<sup>4</sup> He testified confidently and credibly regarding his assessment of the work done by the Respondent and the necessary repairs.

Mr. Parr testified that when he arrived at the Claimant's home he found the kitchen was demolished with incomplete walls and poorly installed sheet rock. He testified that the kitchen cabinets that were newly installed did not fit properly. He further testified that the ventilation

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<sup>4</sup> The Claimant suggested that Mr. Parr would be testifying as an expert, but he was never formally qualified as such.

system as configured from the microwave was impossible to function. Additionally, the new supply lines for the kitchen sink were improperly installed so that when he touched them, they literally fell apart. Mr. Parr also testified that the only work done in the master bath was improperly constructed framing that needed to be torn out and redone. The venting from the vanity was not adequate and needed to be redone. He described observing the sheet rock in the office that had been damaged during demolition. Regarding the Claimant's issue with water infiltration in the basement, Mr. Parr testified that the work done by the Respondent was basically a Band-Aid and did not address the source of the problem. Finally, Mr. Parr testified that the work done on the fireplace in the great room needed to be redone because the Respondent had placed tile over the brick, which was not going to remain adhered.

Mr. Parr testified that based on his review of the Contract, he estimated that the Respondent had performed approximately ten percent of the work called for in the Contract.

Base on the documentation and testimony offered by the Claimant, which was corroborated by the testimony of Mr. Parr, I find that the Respondent failed to perform the great majority of work for which he was paid, and the work that was completed was inadequate and unworkmanlike. Therefore, I find that the Claimant sustained an actual loss and is eligible for 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.<sup>5</sup> Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's

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<sup>5</sup> The Claimant's original claim for reimbursement included attorney fees. At the hearing, the claimant stated she understood that the attorney fees were not compensable and she withdrew her request that the fees be included in her claim.

regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent performed some work under the contract, and the Claimant has retained another contractor to complete that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

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, I have computed the Claimant's actual loss as follows:

Amount paid the Respondent	\$52,007.00
	+
Amount paid to other contractors	<u>\$72,421.00<sup>6</sup></u>
	\$124,428.00
	-
Original contract price	<u>\$76,016.00<sup>7</sup></u>
	\$48,412.00

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor, and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

<sup>6</sup> This figure was derived by adding the amount the Claimant paid to the Respondent, the amount paid to Tri Star Electric to release the mechanics lien (\$3,500.00), the amount due and owing to Ehrhardt Plumbing ( \$2,490.00) and the out of pocket purchases made by the Claimant (\$1,151.00).

<sup>7</sup> The original contract price of \$59,259.00 plus the change orders totaling \$16,757.00.

In this case, the Claimant's actual loss of \$48,412.00 exceeds \$20,000.00. Therefore, the Claimant's recovery is limited to \$20,000.00. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss \$20,000.00 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 \$20,000.00 from the Fund.

**RECOMMENDED ORDER**

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

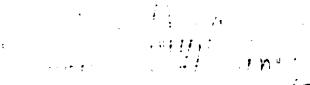
**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; and

**ORDER** that the Respondent is ineligible for a Maryland Home Improvement Commission license until 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;<sup>8</sup> and

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

March 4, 2019  
Date Decision Issued

GAK/sw  
#178195

  
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Geraldine A. Klauber  
Administrative Law Judge

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

**PROPOSED ORDER**

***WHEREFORE, this 25<sup>th</sup> day of April, 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.***

***Joseph Tunney***

***Joseph Tunney  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**