

**IN THE MATTER OF THE CLAIM  
OF KATIE SIMPSON,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF BRIAN VANCE,  
T/A VANCE CONSTRUCTION,  
RESPONDENT**

**\* BEFORE MARY SHOCK,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\*  
\* OAH No.: DLR-HIC-02-18-33624  
\* MHIC No.: 18(05)527  
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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 June 14, 2018, Katie Simpson (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$8,949.82 in actual losses allegedly suffered as a result of a home improvement contract with Brian Vance, trading as Vance Construction (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On October 25, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 26, 2019, I held a hearing at the Caroline County Public Library in Denton, Maryland. Bus. Reg. § 8-407(e). The Claimant represented herself. The Respondent represented

himself. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund.

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); Code of Maryland Regulations (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?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits for the Claimant:

- CL 1 Check from Nationstar Mortgage, Inc., to Claimant, October 19, 2016
- CL 2 Photograph, Claimant's property
- CL 3 Mid-Atlantic Adjusters, Inc., Estimate, November 23, 2016
- CL 4 Email from Mid-Atlantic Adjusters, Inc., to Claimant, December 2 and 5, 2016
- CL 5 Cumberland Insurance Group, Payment Receipt, June 6, 2016
- CL 6-18 Photographs, Claimant's property
- CL 19 Respondent's Estimate, June 8, 2016
- CL 20 Mid-Atlantic Adjusters, Inc., Estimate, January 15, 2016
- CL 21-33a Photographs, Claimant's property
- CL 34 Receipts, February 6, 2017 to February 17, 2018
- CL 35 Photograph, Claimant's property

The Respondent did not offer any exhibits.

I admitted the following exhibits for the Fund:

- FUND 1 Notice of Hearing, February 8, 2019, and Hearing Order, October 18, 2018
- FUND 2 Respondent's MHIC licensing information, March 21, 2019
- FUND 3 Letter from Fund to Respondent, June 22, 2018, with Home Improvement Claim Form, received June 14, 2018

Testimony

The Claimant testified and presented the testimony of her husband, Doug Johnson. The Respondent testified. 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, license numbers 4712486 and 5031610. (FUND 2.)<sup>1</sup>
2. On October 23, 2015, the Claimant experienced damage to her home due to a hot water heater leak. (CL 3.)
3. On January 15, 2016, Mid Atlantic Adjuster, Inc., inspected the property for the Claimant's homeowner's insurance carrier and estimated damages totaling \$9,620.00<sup>2</sup> without depreciation, and \$8,036.00, with depreciation. (CL 20.)
4. On June 6, 2016, the Claimant's homeowner's insurance carrier paid the Claimant \$2,166.49 for some damages due to the water heater leak. (CL 5.)
5. On June 8, 2016, the Respondent provided an estimate to the Claimant in the amount of \$7,500.00 to perform the following work: remove and install laminate flooring in dining room and hallway; remove appliances and vinyl floor in kitchen, fix rot, install new floor under vinyl; paint walls in laundry room and bathroom damaged due to water leak; clean up; and haul trash. (CL 19.)
6. On October 19, 2016, the Claimant received \$1,884.17 from Nationstar Mortgage, LLC, for damages due to the hot water heater leak. (CL 1.)

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<sup>1</sup> References to the exhibits in the Findings of Fact are for the convenience of the reader and may not be the sole basis for the finding.

<sup>2</sup> I have rounded the estimates to even-dollar amounts because the cents in the second figure of "\$8,036" is cut off in the copy of the estimate entered into evidence. (CL 20.)

7. On November 23, 2016, Mid Atlantic Adjusters, Inc., inspected the property. The adjuster estimated \$2,166.49 in additional damages to the kitchen pantry, laundry room bathroom, and dining room walls, ceiling and flooring. (CL 3.)<sup>3</sup>

8. On December 2, 2016, the Claimant's homeowner's insurance carrier agreed to pay the Claimant additional costs for cabinetry, removing and replacing a countertop and sink, removing additional layers of the floor, and replacing the underlayment. (CL 3 and 4.) The Claimant and Respondent added the work to their contract. (FUND 3.)

9. The Respondent performed work on the project and received a payment of \$4,050.66 from the Claimant after inspection of his work.

10. Following the payment, the Respondent advised the Claimant he required additional money to purchase lower cabinets and materials.

11. The Claimant refused to pay the Respondent because of defects she detected in his work including: installing a kitchen cabinet so it was crooked; failing to replace the laundry room wall; failing to replace the plywood under the hot water heater; using an incorrect color of paint; and damaging the microwave oven.

12. The Respondent advised the Claimant that he would not continue work until he received another draw. The Claimant sent the second draw back to the insurance company. The Claimant never spoke to the Respondent again and the Respondent never returned to complete the work.

13. The Respondent did not remove the trash from the side of the house.

14. On February 6, 2017, the Claimant paid Maryland Environmental Service \$56.20 to remove trash from the side of the house. (CL 34, p. 1.)

15. The Claimant paid \$250.00 for the purchase of a microwave oven. (CL 34, p. 2.)<sup>4</sup>

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<sup>3</sup> The Claimant did not clarify why the estimate postdates the payment. (CL 3 and 5.)

<sup>4</sup> The receipt is not dated.

16. On February 3, 2018, the Claimant paid \$254.55 for the purchase of kitchen counters. (CL 34, p. 5.)

17. On February 15, 2018, the Claimant paid \$89.26 for the purchase of paint and paint supplies. (CL 34, p. 3.)

18. For some period while the Respondent was performing the work, the Claimant closed her home child care business.

19. The Claimant contracted with a contractor to complete the work. She did not pay any money to the second contractor in addition to what the insurance company had paid.

### 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). 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)<sup>5</sup>; *see also* COMAR 09.08.03.03B(2). 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 Claimant has not proven eligibility for compensation from the Fund.

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<sup>5</sup> Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

The Claimant and her husband testified that they were dissatisfied with the Respondent's work. They presented photographs showing, for example, the crooked cabinet, the wet wall in the laundry room, and trash on the side of the house. While the Claimant acknowledges that she did not pay another contractor any money in addition to what the insurance company paid her, she argues that her actual loss is the \$4,050.66 the Respondent received from the Claimant for defective work.

The Respondent testified he received the first draw from the Claimant after his work was inspected. When the Claimant did not pay him the second draw, he was unable to complete the work. He stated he would have removed the trash at the end of the job. He also stated the Claimant's microwave was already broken. He testified the insurance company held up the work for two months; he claimed he was not at fault for any delays.

The evidence establishes that the Respondent did not complete the work. When the Respondent stopped working, the counter was crooked, the wall in the laundry room was not repaired, and there was trash on the side of the house. The breakdown between the parties occurred when the Claimant would not pay the Respondent the second draw because she considered the work to be unworkmanlike. After that point, neither party contacted the other in an attempt to reach an agreement so the Respondent could finish the job. Given the opportunity, the Respondent might have completed the work in a workmanlike manner; he testified he would have done so. On the other hand, it might have been reasonable for the Claimant to stop the Respondent mid-job due to her dissatisfaction with the work.

The Respondent's initial work was approved after inspection and the Claimant paid him the first draw. The Claimant did not dispute that point. As a result, the payment demonstrates the Respondent's work was adequate, at least up to that point. For that reason, the Claimant failed to

prove the Respondent's work was unworkmanlike or that the Respondent was at fault for failing to complete the job.

Even if I accept that the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement, the Claimant failed to show an actual loss compensable by the Fund. First, the Claimant testified she closed her day care for a time while the work was ongoing. She did not present evidence of the specific closure dates or income she lost as a result. In any event, lost income is a consequential damage and the Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

Second, in this case, the Respondent performed some work under the contract, and the Claimant retained another contractor to complete or remedy the work. Accordingly, the following formula would measure the Claimant's actual loss had she proved unworkmanlike, inadequate, or incomplete home improvement:

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).

The Claimant's claim form states the total cost of her contract with the Respondent was \$9,666.49, including \$7,500.00 under the original contract, plus \$2,166.49 for a contract change. The Respondent received \$4,050.66 from the Claimant. (FUND 3.) Supporting the statements in the claim form, Mr. Johnson testified the Respondent received \$4,000.00. The

Respondent did not contest the payment amount. As a result, the Claimant established she paid the Respondent \$4,050.66, which is the first figure required to calculate an actual loss.

However, the Claimant failed to present sufficient evidence to establish what she was required to pay the contractor who completed the work, which is the second figure needed to calculate an actual loss. The Claimant did not identify the contractor or present any invoices for the contractor's work. Although she states in her claim that the value of the Respondent's work was zero, she did not substantiate that assertion at the hearing. (FUND 3.) The Respondent did not accept that assertion as accurate and the Claimant's payment for the Respondent's initial, inspected work supports that claim. The Claimant has the burden of proof in this case. Without more evidence, I cannot determine what amount the Claimant was required to pay the second contractor to complete the work and what work the second contractor actually performed.

Additionally, from the adjuster's first estimate, I cannot determine the exact amount the insurance company paid for damages. The Mid Atlantic Adjuster, Inc.'s estimate includes separate calculations for the claim if depreciation is recovered or is not recovered. Those amounts are \$9,620.00 and \$8,036.00, respectively. (CL 20.) The Claimant did not state or provide documentary evidence to establish which figure she actually received. As a result of the lack of evidence, I can only speculate on the amount the Claimant paid to complete the work.

Finally, the Claimant acknowledged that she was not required to pay any money above what the insurance company paid. Although the Claimant hired a contractor to complete the work and although she presented receipts for the cost of paints and material, (CL 34), because she was not required to pay any money beyond what the insurance company already paid to repair the damages, she has not established that she suffered an actual loss.

The Claimant and Mr. Johnson may be rightfully disturbed that the Respondent was paid for work that might have been unworkmanlike and, to their mind, received a windfall of



\$4,050.66 for defective work. However, I am required to follow the regulations when calculating an actual loss. The Claimant did not present sufficient evidence for me to accurately calculate an actual loss and, therefore, has failed to prove that she is entitled to recovery from the Fund.

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant failed to prove she sustained an actual compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. § 8-405; 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 deny the Claimant's claim; and

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

**Signature on File**

May 6, 2019  
Date Decision Issued

\_\_\_\_\_  
Mary Shock  
Administrative Law Judge

MKS/cmj  
#179480

PROPOSED ORDER

*WHEREFORE, this 13<sup>th</sup> day of June, 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.*

*Andrew Snyder*

*Andrew Snyder  
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION

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JUL 10 2019

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JUL 01 2019

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JUL 10 2019

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