

<p>IN THE MATTER OF THE CLAIM</p> <p>OF LORI MATHIS,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF TYRONE</p> <p>ANDERSON,</p> <p>T/A DECK-RENOVATIONS,</p> <p>RESPONDENT</p>	<p>* BEFORE WILLIAM F. BURNHAM,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-20-00093</p> <p>* MHIC No.: 19 (75) 1290</p> <p>*</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On June 11, 2019, Lori Mathis (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),¹ for reimbursement of \$2,712.50 in actual losses allegedly suffered after entering into a home improvement contract with Tyrone Anderson, trading as Deck-Renovations (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).²

¹ On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.
² All references to the Business Regulation Article are to the 2015 Replacement Volume and 2020 Supplement of the Maryland Annotated Code.

On January 13, 2020, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

The hearing was originally scheduled for October 29, 2020, but that date was postponed due to the COVID-19 pandemic. The case was rescheduled for December 16, 2020, but that date was postponed for reasons not reflected in the record. The case was rescheduled for February 4, 2021 via the Webex audio visual platform.

On February 4, 2021, I held the hearing using Webex audio visual platform. Md. Code Ann., Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). John Hart, Assistant Attorney General for the Department, represented the Fund. The Claimant represented herself. The Respondent did not appear.

After waiting at least fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. 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. On January 4, 2021, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail to the Respondent's address on record with the OAH. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for February 4, 2021, at 9:30 a.m., via Webex. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service did not return the Notice to the OAH. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

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; and 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 on the Claimant's behalf:

- CL 1. Copy of a check from the Claimant to the Respondent, October 31, 2018
- CL 2. Letter from Navy Federal Credit Union (Navy Federal) to the Claimant, January 25, 2019
- CL 3. Email from the Claimant to the Respondent, February 6, 2019
- CL 4. Contract between the Claimant and the Respondent, March 14, 2018

I did not admit any exhibits on the Respondent's behalf.

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

- FUND 1. Hearing Notice, November 5, 2020
- FUND 2. Hearing Order, December 10, 2019
- FUND 3. Home Improvement Claim Form, June 11, 2019
- FUND 4. MHIC Licensing record for the Respondent, September 28, 2020
- FUND 5. Hearing Notice, January 4, 2021

Testimony

The Claimant testified.

The Respondent did not present any 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 number 6254. FUND 4, p. 2.

2. On March 14, 2018, the Claimant and the Respondent executed a contract to perform home improvements to a deck on the property located at Whistling Duck Drive, Upper Marlboro, Maryland (Contract). The price of the Original Contract was \$6,559.00. CL 4.

3. The Contract provided that the Respondent would perform the following "Job Details:"

- Power washing, railing, fascia, and post
- Demolition of all floorboards
- Adding 2X10 support beam
- Installation of new TREX Select 5/4X6 floorboards
- Staining deck railing (color undecided)

4. The Claimant made the following payments to the Respondent:

- \$2,000.00 deposit on March 18, 2018;
- \$980.00 payment on June 21, 2018;
- \$448.00 payment on July 10, 2018;
- \$448.00 payment August 1, 2018;
- \$2,683.00 payment on an unknown date before September 10, 2018; and
- \$1,400.00 payment on October 31, 2018.

5. The Respondent began the work in June 2018.

6. During the completion of the project, the Complainant and Respondent agreed to terminate their relationship leaving the Contract incomplete because 250 rails had to be painted. The Respondent agreed to accept \$1,400.00 as a final payment in lieu of the contracted final payment of \$2,683.00.

7. The Respondent finished all of the work except for painting.

8. On an unknown date, the Respondent debited the Complainant's Navy Federal account for \$2,683.00.

9. On September 10, 2018, Navy Federal issued a provisional credit to the Claimant of \$2,683.00 because she disputed that she owed the money to the Respondent.

10. On February 4, 2019, Navy Federal removed the credit and stated:

- The debit card transaction in dispute is associated with rendered services and was correctly applied to the balance owed. The check payment negotiated after the invoice that was satisfied is a cash-like instrument. The excessive payment made to the merchant must be resolved with the merchant directly.

CL 2.

11. On February 4, 2019, the Respondent told Navy Federal that the Claimant did not owe \$2,683.00 because she paid the Contract in full with a \$1,400.00 payment on October 31, 2018. The Respondent indicated that the "\$2,683.00 credited to Joist³ was done in error." CL 3.

12. The Claimant paid the Respondent \$7,959.00.

13. The Claimant purchased paint for \$29.50 to complete the Contract and did the work herself.

³ Joist was not further identified. In any event, "[f]or 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.

14. The Claimant does not own more than three residences, and she is not related to nor is she an employee, officer, or partner of the Respondent.

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); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

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) ("The Fund may only compensate claimants for 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." Md. Code Ann., Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The facts in this case are not in dispute. The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant and was paid \$7,959.00 by the Claimant to renovate her deck. The Claimant and the Respondent agreed that the Respondent would abandon the job leaving the Contract incomplete because 250 rails had to be painted. Other than the Contract was incomplete, the Complainant had no issue with the quality of the Respondent's work. The Claimant testified that the Respondent completed everything as promised except the "touch up" painting.

At issue is the \$2,683.00 payment that was debited from the Claimant's Navy Federal account sometime after she and the Respondent agreed that \$1,400.00 would be the last payment

for the Respondent's work, and not \$2,683.00. The Respondent conceded to Navy Federal that the \$2,683.00 debit should not have been made, but Navy Federal concluded that the debit was for services rendered and did not reimburse the Claimant's account.

The Claimant filed her Home Improvement Claim Form on June 11, 2019. FUND 3. She indicated that the Contract was for \$6,559.00 and it was changed by a decrease of \$1,283.00, ostensibly the difference between the contracted last payment of \$2,683.00 and the agreed upon last payment of \$1,400.00. *See id.* She estimated the value of the Respondent's work to be \$5,276.00, i.e., the difference between the Contract price of \$6,559.00 and the decrease of \$1,283.00. *Id.* Accordingly, she subtracted the value of the work, \$5,276.00, from the amount she paid the Respondent, \$7,959.00, equaling \$2,683.00 to which she added her paint cost of \$29.50 to arrive at her claimed actual loss of \$2,712.50. *See id.*

“‘Actual 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. There was no evidence that the work completed by the contractor was unworkmanlike or inadequate. There is evidence in the record that the Contract was incomplete, and the Claimant spent \$29.50 on paint to complete the work herself. Therefore, in this case, the contractor did work according to the contract and the Claimant is not soliciting another contractor to complete the contract. *See* COMAR 09.08.03.03B(3)(b). The Claimant's actual loss is the amount which the Claimant paid to the Respondent less the value of any materials or services provided by the Respondent.⁴ *Id.* I accept the testimony of the Claimant that is supported by the exhibits and not refuted by the Respondent. The Respondent failed to complete the Contract and was paid in excess of the estimated value of his work. The Claimant does not own more than three residences, and she is not related to nor is she an employee, officer, or

⁴ The \$29.50 paid by the Claimant to purchase paint does fall under this definition.

partner of the Respondent. See Md. Code Ann. Bus. Reg. § 8-405(f)(1). For these reasons, I find that the Claimant 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. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's 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 is not retaining other contractors to complete or remedy 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 is not soliciting another contractor to complete the contract, 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.

COMAR 09.08.03.03B(3)(b).

Below is this formula as applied to the facts of this case:

Amount Paid by Claimant to Respondent	\$7,959.00
Value of any materials or services provided by the Respondent	-\$5,276.00
	<hr/>
	\$2,683.00

The Business Regulation Article provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed and caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss of \$2,683.00

does not exceed \$20,000.00, nor is it an amount in excess of the amount paid by or on behalf of the Claimant to the Respondent. Therefore, the Claimant's recovery is \$2,683.00. *Id.*

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$2,683.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015). I further conclude that the Claimant is entitled to recover \$2,683.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5); 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 \$2,683.00; 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;⁵ and

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

CONFIDENTIAL

April 29, 2021
Date Decision Issued

William F. Burnham
Administrative Law Judge

WFB/at
#191867

⁵ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 28th day of June, 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***