

IN THE MATTER OF THE CLAIM
OF SARA CREW,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF DANIEL
SHIFFLETT, SR.,
T/A DANIEL SHIFFLETT,
RESPONDENT

* BEFORE STEPHEN W. THIBODEAU,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-19-37632
* MHIC No.: 19 (75) 176

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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 April 3, 2019, Sara Crew (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$28,160.00 in actual losses allegedly suffered as a result of a home improvement contract with Daniel Shifflett, Sr., trading as Daniel Shifflett (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411

(2015).¹ On November 15, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on March 5, 2020 at the Calvert County Public Library, 850 Costley Way, Prince Frederick, Maryland. Bus. Reg. § 8-407(e). Shara Handler, Assistant Attorney General, Department of Labor (Department),² represented the Fund. The Claimant represented herself. After waiting fifteen 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.³

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. 2019); 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 on the Claimant's behalf, except where otherwise indicated:

Clmt. Ex. 1 - Calvert County Residential Building Permit, May 2, 2018

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

² On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

³ Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on January 7, 2020, COMAR 09.08.03.03A(2), and returned as unclaimed/undeliverable on February 19, 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.

- Clmt. Ex. 2 - Check for \$13,250.00 from Claimant to Josh Shifflett, April 9, 2018; Check for \$7,000.00 from Claimant to Josh Shifflett, April 12, 2018; Check for \$1,000.00 from Claimant to Josh Shifflett, April 19, 2018; Check for \$3,000.00 from Claimant to Josh Shifflett, May 10, 2018; Check for \$2,225.00 from Claimant to Josh Shifflett, May 13, 2018
- Clmt. Ex. 3 - Handwritten note signed by Claimant, Respondent, and Charles Crew, September 26, 2018
- Clmt. Ex. 4 - Contract Proposal from Respondent to the Claimant, September 26, 2018
- Clmt. Ex. 5 - NOT ADMITTED
- Clmt. Ex. 6 - NOT ADMITTED
- Clmt. Ex. 7 - Restoration Contract from J Square Construction, Inc. (J Square), January 29, 2019
- Clmt. Ex. 8 - Invoices from J Square to the Claimant, January 29, 2019; Statement from J Square to the Claimant, March 26, 2019
- Clmt. Ex. 9 - Invoice from J.D. Shifflett Construction, April 9, 2018
- Clmt. Ex. 10 - MHIC Complaint Form from the Claimant against Josh Shifflett, August 1, 2018

I admitted the following exhibits on behalf of the Fund:

- GF Ex. 1 - Hearing Order, November 12, 2019
- GF Ex. 2 - Notice of Hearing, January 7, 2020
- GF Ex. 3 - Home Improvement Claim Form submitted by the Claimant, received April 9, 2019; Letter from the MHIC to the Claimant, April 18, 2019
- GF Ex. 4 - MHIC Licensing History for the Respondent, printed February 3, 2020
- GF Ex. 5 - State Department of Assessments and Taxation Real Property Search Printout for the Respondent's address, printed February 28, 2020
- GF Ex. 6 - Affidavit of William Banks, Jr., Investigator for the MHIC, February 28, 2020

Testimony

The Claimant testified. The Respondent and the Fund did not present any 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 license number 5252049.
2. On April 9, 2018, the Claimant and Josh Shifflett, the Respondent's brother acting on behalf of the Respondent, entered into a contract to remodel the Claimant's master bathroom, power wash the Claimant's back deck and home, and finish the Claimant's basement (Contract).
3. The Contract specifically outlined the scope of work as to the remodel of the Claimant's master bathroom as follows: remove old bathtub, vanity, and toilet; install new vanity, toilet, tile flooring, and stand-up shower; and paint the walls.
4. The Contract specifically outlined the scope of work for power washing to include power washing the deck; replacing and staining three deck boards; painting and staining the deck; and power wash the entire home.
5. The Contract specifically outlined the scope of work for the basement to include framing and insulating all exterior walls; frame a full bathroom; performing electrical work to code; installing drywall for all walls and the ceiling; and installing vinyl plank flooring.
6. The original agreed-upon Contract price was \$26,500.00.
7. The Claimant paid the Respondent a total of \$26,475.00 on the Contract in the following installments:
 - \$13,250.00 on April 9, 2018
 - \$7,000.00 on April 12, 2018
 - \$1,000.00 on April 19, 2018
 - \$3,000.00 on May 10, 2018
 - \$2,225.00 on May 13, 2018

8. Josh Shifflett began work almost immediately after the Contract was signed on April 9, 2018. However, progress on the Contract was slow. Josh Shifflett performed the power washing work and finished work for the master bathroom, but was absent from the job several days at a time and complained to the Claimant that he would need more money to complete the work to the basement.

9. The permit for the work on the Claimant's home was not obtained from Calvert County until May 2, 2018, nearly a month after the Contract was signed. The Respondent was listed as the contractor on the permit. This was the first time the Claimant was aware of the Respondent, and subsequently discovered that Josh Shifflett was the Respondent's brother.

10. Josh Shifflett abandoned work on the Contract sometime shortly after the last payment on the Contract on May 13, 2018.

11. After several efforts by the Claimant to get Josh Shifflett to return to work on the Contract, the Claimant filed a complaint against Josh Shifflett with the MHIC on August 1, 2018.

12. After the complaint against Josh Shifflett was filed, the Respondent contacted the Claimant to resolve the complaint. On September 26, 2018, the Claimant and Respondent reached an agreement in which the Claimant would drop her complaint against Josh Shifflett and in return the Respondent would complete the work from the Contract that Josh Shifflett abandoned.

13. Almost immediately after reaching this agreement, the Respondent failed to perform on the Contract as agreed, and sought more money from the Claimant despite their agreement.

14. On or about November 10, 2018, the Respondent informed the Claimant he would need more money to complete the insulation of the basement walls. At that time, the Claimant refused to pay more money on the Contract.

15. The Respondent stopped work altogether shortly after the discussion about the insulation. The last contact the Claimant had with the Respondent was December 30, 2018, when the Claimant contacted the Respondent to see if he was going to complete the work on the Contract. The Claimant received no response from the Respondent.

16. On January 28, 2019, the Claimant hired J Square Construction, Inc. (J Square), MHIC License #92054, to finish the work left undone by the Respondent to the basement. To that end, the Claimant and J Square entered into a "restoration contract" for the completion of the work left undone by the Respondent in the Claimant's basement. The total cost for the J Square contract was \$28,185.00.

17. The Claimant paid J Square a total of \$28,185.00 in the following installments:

- \$2,818.50 on January 29, 2019
- \$8,455.50 on February 6, 2019
- \$5,637.00 on February 14, 2019
- \$5,637.00 on February 28, 2019
- \$5,637.00 on March 15, 2019

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. 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.” 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”). “[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.

There is no dispute the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. There is also no dispute the Respondent performed unworkmanlike, inadequate or incomplete home improvements. The Claimant testified at the hearing that she worked with both Respondent and the Respondent’s brother, Josh Shifflett, to get both of them to complete the work on the Contract, in particular to the Claimant’s basement. Despite securing an agreement from the Respondent that he would finish the work left uncompleted by his brother, the Respondent eventually left the basement work incomplete as well, causing the Claimant to seek another contractor to complete the work. The Respondent did not appear to contest the Claimant’s evidence of incomplete work. Therefore, I find the Respondent performed an incomplete home improvement, and thus 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. 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 retained 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 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 testified that originally some work was done on the Contract. Indeed, Josh Shifflett did complete the work related to the Claimant's master bathroom and performed the power washing as originally agreed. However, it was the work relating to the finishing of the basement that was left undone by Josh Shifflett and the Respondent. The Claimant paid the Respondent a total of \$26,475.00 for the incomplete work. The original Contract price was \$26,500.00.

The Claimant hired J Square to complete the Respondent's unfinished work to her basement. J Square essentially completed the work left incomplete by the Respondent and did not add any new work to the original Contract. The total amount the Claimant paid J Square to complete the work was \$28,185.00.

Therefore, using the formula outlined above, the Claimant's actual loss is \$28,160.00 (\$26,475.00 paid to the Respondent plus \$28,185.00 paid to J Square equals \$54,660.00, minus the original contract price of \$26,500.00, equals \$28,160.00).

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). In this case, the Claimant's actual loss of \$28,160.00 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 of \$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 that amount 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;⁴ and

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

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

April 22, 2020
Date Decision Issued

SWT/dlm
#185591

CONFIDENTIAL

Stephen W. Thibodeau
Administrative Law Judge



PROPOSED ORDER

WHEREFORE, this 26th day of May, 2020, 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.

J Jean White

I Jean White

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***