

**IN THE MATTER OF THE CLAIM
OF LYNDY DOYLE,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF KELSEY VERA,
T/A SIGNATURE CONTRACTING
LLC,**

*** BEFORE BRIAN PATRICK WEEKS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-19-24775
* MHIC No.: 19 (75) 284**

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PROPOSED DECISION

**STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
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STATEMENT OF THE CASE

On November 20, 2018, Lyndy Doyle (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$14,125.00¹ in actual losses allegedly suffered as a result of a home improvement contract with Kelsey Vera and JJ Jafari, trading as Signature Contracting LLC (Respondent). Md. Code

¹ At the hearing, the Claimant amended the Claim to seek reimbursement for \$11,392.00.

Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On August 1, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on November 20, 2019, at the Calvert County Public Library, 850 Costley Way, Prince Frederick, Maryland 20678. Bus. Reg. § 8-407(e) (2015).² Shara Hendler, Assistant Attorney General, Department of Labor (Department),³ represented the Fund. The Claimant represented herself. After waiting fifteen minutes for the Respondent to appear, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.⁴

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

Unless otherwise noted below, I admitted the following exhibits on the Claimant's behalf:

- Clmt. Ex. 1 - Claim totals, undated; List of incomplete work, undated; Receipts and checks, various dates

² Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

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, 2019, COMAR 09.08.03.03A(2), and the United States Postal Service returned the certified mail as unclaimed on October 1, 2019. 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. For the reasons stated on the record, I determined that the Respondent had received proper notice, and proceeded to hear the captioned matter.

- Clmt. Ex. 2 - MHIC complaint confirmation, undated; Contract, May 30, 2018; Photographs, undated
- Clmt. Ex. 3 - Compass Point Contracting, Inc. estimate, undated; Tim Vaughn invoices, September 5 and 12, 2018 (*not admitted*)
- Clmt. Ex. 4 - Email, text and letter correspondence between Claimant and Respondent, various dates; Contract, May 30, 2018
- Clmt. Ex. 5 - MHIC complaint and response, various dates; Notice of Hearing, September 3, 2019; Hearing Order, July 29, 2019; Correspondence from MHIC to Claimant, various dates

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - Hearing Order, July 29, 2019
- Fund Ex. 2 - Notice of Hearing, September 3, 2019
- Fund Ex. 3 - MHIC Claim with attached response from MHIC, various dates
- Fund Ex. 4 - Respondent's Licensing History, printed October 10, 2019

Testimony

The Claimant testified on her own behalf.

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 this matter, the Respondent was a licensed home improvement contractor under MHIC license number 110543.
2. On May 30, 2018, the Claimant and the Respondent entered into a contract to remodel the Claimant's kitchen and associated entry way by taking out part of the wall and completely replacing the existing cabinets and floor tiles (Contract). The Contract did not specify the start date or the expected completion date.
3. The original agreed-upon Contract price was \$42,000.00, which included the cost of labor and materials.

4. On the following dates, the Claimant paid the Respondent:
 - June 7, 2018 - \$14,000.00 (cash);
 - June 28, 2018, \$11,000.00 (check); and
 - July 27, 2018, \$11,000.00 (check).
5. Around June 25, 2018, the Respondent's workers started working at the Claimant's property.
6. On August 23, 2018, the Respondent told the Claimant's wife that he quit, and then sent his hired electrician to remove his equipment from the Claimant's property. On August 30, 2018, the Claimant sent a letter to the Respondent asking him to schedule a time to pick up his remaining tools from the Claimant's property. The Respondent never responded to the letter.
7. On the date that the Respondent stopped work at the property, there was incomplete installation of the following items in the Claimant's kitchen:
 - electric outlets;
 - cabinets;
 - cabinet lighting;
 - back splash;
 - vent hood; and
 - island.

The Respondent also had improperly installed the kitchen window and door trim, the baseboard, powder room trim, the laundry room baseboard trim, and the pantry room trim. The thresholds between the kitchen and dining room, hallway and dining room, living room and entry way, and dining room and entry way were all improperly installed by the Respondent.

8. On the following dates, the Claimant paid a total of \$6,921.33 for materials that were the responsibility of the Respondent under the Contract:

- August 6, 2018 - \$259.00 (kitchen sink);
- August 18, 2018 - \$1,163.93 (ceiling fan and counter top);
- August 20, 2018 - \$403.39 (hanging lights);
- August 22, 2018 - \$2,100.00 (countertop);
- August 23, 2018 - \$183.86 (recessed lights and down rod for fan);
- August 26, 2018 - \$38.15 (drawer knobs);
- August 27, 2018 - \$269.00 (garbage disposal); and
- August 29, 2018 - \$2,504.00 (countertop).

9. On November 15, 2018, the Claimant paid Sean McCarthy/Absolute Perfection \$4,100.00 for work required to have been completed by the Respondent under the Contract.

10. On September 3, 2018, the Claimant paid Darrold Carter \$442.44 for work required to have been completed by the Respondent under the Contract.

11. On an unspecified date, Compass Point Contracting furnished an estimate to the Claimant for various repairs to the Claimant's property, including an estimate of \$1,750.00 to install low voltage lighting in the upper cabinets.

12. At the time of the hearing, the only outstanding item from the Contract was the installation of lighting in the upper cabinets.

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). "[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”). “[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. Starting around June 25, 2018, the Respondent began work at the Claimant’s property. What began as an amicable relationship became increasingly antagonistic as the Claimant and the Claimant’s wife became frustrated with the pace of the Respondent’s work. The Claimant’s wife expressed dissatisfaction regarding the pace of the work in text messages to the Respondent. In his responses to the Claimant’s wife’s text messages, the Respondent wrote that he was experiencing financial difficulties and did not have enough manpower or cash flow to complete the work required by the Contract.

On August 23, 2018, things boiled over. The Claimant’s wife agreed to go to Home Depot to obtain supplies needed by the Respondent’s electrician. As she arrived back at the property, she observed the electrician leaving the property. She called the Respondent, and a verbal altercation ensued, during which the Respondent stated that he quit. The Respondent never returned to the Claimant’s property to finish the work required by the Contract. On August 29, 2018, the Claimant instructed the Respondent to pick up his tools from her property.

In early September, the Claimant took photos of the property that show that the Respondent performed incomplete home improvements, and that some of the work that was completed was inadequate. The following items were not completed as required by the Contract: electric outlets, cabinets, cabinet lighting, back splash, vent hood, and island. The photos also show that the recently installed tile grout was chipping, and that the trim and baseboard installation throughout the kitchen was substandard because of improper alignment and damage to the trim, and that the new tile floor was not level. Based on these uncontested facts, I conclude that the Respondent performed unworkmanlike, inadequate or incomplete home improvements.

I 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 has retained other contractors, and intends to retain additional contractors to complete or remedy the Respondent's 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 paid the Respondent a total of \$36,000.00. After the Respondent stopped work, the Claimant paid Sean McCarthy/Absolute Perfection a total of \$4,100.00 and Darrold Carter a total of \$442.44 for work required by the Contract. The Claimant also paid a total of \$6,921.33 for materials that the Respondent was supposed to purchase under the Contract, including the following: kitchen sink, recessed lights, ceiling fan, garbage disposal, down rod for fan, hanging lights, cabinet hardware, and quartz countertop. The only work required by the Contract that had not yet been completed as of the date of the hearing was the installation of low voltage lighting for the upper cabinets – for this item the Claimant received an estimate from a MHIC-licensed contractor, Compass Point Contracting, Inc., for a total of \$1,750.00. In total, the amounts paid to or on behalf of the Respondent is \$42,921.33 (\$36,000.00 (paid to Respondent) + \$6,291.33 (paid for materials that were the obligation of the Respondent under the Contract)). The total amount paid or required to be paid to complete the work is \$6,302.44 (\$4,542.44 (completed payments to contractors for work required by the Contract) + \$1,750.00 (estimate from Compass Point Contracting, Inc.)). Adding the amounts paid to or on behalf of the Respondent (\$42,921.33) to the total amount paid or required to be paid to complete the work (\$6,302.44) results in a total amount of \$49,223.77. Subtracting the original contract price (\$42,000.00) from that amount results in an actual loss calculation of \$7,223.77.

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 is less than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled recover her actual loss of \$7,223.77.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$7,223.77 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 \$7,223.77; 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.

January 30, 2020
Date Decision Issued

CONFIDENTIAL

Brian Patrick Weeks
Administrative Law Judge

BPW/dlm
#184105

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

PROPOSED ORDER

WHEREFORE, this 6th day of April, 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.

Joseph Tunney

Joseph Tunney

Chairman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***