IN THE MATTER OF THE CLAIM	*	**BEFORE NANCY E. PAIGE,**
OF ODETTE WILLIAMS ,	*	**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 NELSON ORTEGA,	*	
T/A CLARIAXEL CONSTRUCTION,	*	**OAH No.: LABOR-HIC-02-19-24026**
INC.,	*	**MHIC No.: 19 (05) 381**
RESPONDENT	*	

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PROPOSED DECISION

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STATEMENT OF THE CASE

On October 29, 2018, Odette Williams (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of $1,200.00 in actual losses allegedly suffered as a result of a home improvement contract with Nelson Ortega, trading as Clariaxel Construction, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).[1] On July 15, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

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

I held a hearing on November 14, 2019 at the OAH in Hunt Valley, Maryland. Bus. Reg. § 8-407(e). Eric London, Assistant Attorney General, Department of Labor (Department),[2] represented the Fund. The Claimant represented herself. After waiting more than 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:

Cl. #1. August 25, 2018 Estimate/Contract

Cl. #2. Undated photographs

Cl. #3. Copy of August 25, 2018 cancelled check

Cl. #4. September 11, 2018 letter from Claimant to HIC

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[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 August 28, 2019, COMAR 09.08.03.03A(2), and not returned as unclaimed/undeliverable. 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.

Cl. #5. September 12, 2018 email from Claimant to Respondent

Cl. #6. Copy of September 9, 2018 returned check (insufficient funds)

The Respondent did not offer any exhibits.

I admitted the following exhibits on behalf of the Fund:

Fund #1. August 28, 2019 Notice of Hearing with attachment

Fund #2. October 2, 2019 letter "To Whom It May Concern" from HIC

Fund #3. July 10, 2019 Hearing Order

Fund #4. October 29, 2018 Home Improvement Claim Form

Fund #5. October 29, 2018 letter from HIC to Respondent

Testimony

The Claimant testified. No other witness testified.

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 numbers 01-107234 and 05-131374.

2. On August 25, 2018, the Claimant and the Respondent entered into a contract to repair the ceiling in the upstairs bathroom in Claimant's home (Contract). The ceiling was damaged by water from a roof leak.

3. The original agreed-upon Contract price was $2,800.00.

4. On August 25, 2018, the Claimant gave the Respondent a check for $1,200.00 as a deposit. She asked him not to cash the check until the roof was repaired.

5. The Respondent deposited the check on August 27, 2018. On or about September 1, 2018, at the Claimant's request, the Respondent gave her a check dated September 5, 2019 in

the amount of $1,200.00 to refund the amount he had cashed contrary to her instructions. The Claimant deposited the check on September 1, 2018. It was returned for insufficient funds.

6. The Respondent has failed to return the Claimant's deposit. He has performed no work on the Contract.

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); *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 Respondent took money from the Claimant and performed no work on the contract. Accordingly, the following formula appropriately measures the Claimant's actual loss: "If the contractor abandoned the contract without doing any work, the

claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract." COMAR 09.08.03.03B(3)(a).

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 was the amount paid to the Respondent, which was less than $20,000.00. Therefore, the Claimant is entitled to recover her actual loss of $1,200.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $1,200.00 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)(a). 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 $1,200.00; 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.

January 24, 2020
Date Decision Issued

Nancy E. Paige
Administrative Law Judge

NEP/emh
184221

PROPOSED ORDER

WHEREFORE, this 3rd day of March, 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