

<p>IN THE MATTER OF THE CLAIM</p> <p>OF LARRY HENDERSON,</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 ALBERT NICHOLS,</p> <p>T/A ARMOR RESTORATION,</p> <p>RESPONDENT</p>	<p>* BEFORE JOY L. PHILLIPS,</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-02-23-05165</p> <p>* MHIC No.: 22 (75) 1326</p>
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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 November 18, 2022, Larry Henderson (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$17,466.24 for actual losses allegedly suffered as a result of a home improvement contract with Albert Nichols, trading as Armor Restoration (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 411 (2015 & Supp. 2022).² On February 3, 2023, the MHIC issued a Hearing Order

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).
² Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

on the Claim. On February 14, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 23, 2023, I held a hearing by video. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Catherine P. Villareale, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. William Paul Blackford, Esquire, represented the Respondent, who was present by telephone.

Following the Claimant's presentation of evidence, the Respondent moved to dismiss or for judgment because the Claimant's evidence showed he used an unlicensed contractor to complete the work after refusing to allow the Respondent to return to the property. The Fund objected and noted that under COMAR 09.01.03.05B, a motion to dismiss must be denied if the other parties do not concur. The Fund did not concur. Additionally, pursuant to COMAR 28.02.01.12E, I may decline to grant a motion for judgment and proceed to hear the case. My role is to render a Proposed Decision on the merits for the Department's review. Accordingly, I denied the motion on the record.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); 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 offered by the Claimant:³

- Clmt. Ex. 1 Packet submitted to MHIC on or about September 22, 2022, with cover memo (pp. 1-3) and attachments:
- A. Chart created by Claimant of contract provisions (pp. 4-6)
 - B. Itemized final bill, undated (p. 7)
 - C. Chart created by Claimant regarding kitchen layout (p. 8)
 - D. Chart created by Claimant of contract provisions with results, (pp. 9-13.1⁴), and canceled checks: No. 17184304, October 7, 2021, \$5,554.02; No. 16845226, July 9, 2021, \$15,699.88; No. 16840739, July 8, 2021, \$10,050.28; No. 16590778, April 30, 2021, \$9,209.98
 - E. Mailings from Nationwide Insurance accompanying three checks (pp. 14.1 - 14.3)
 - F. Incomplete emails from Michael D. Cooney, Nationwide, to Claimant, February 11, 2022 (pp. 15-16)
 - G. Final Invoice from the Respondent, undated (p. 17)
 - H. Photographs of kitchen, undated (p. 18)
 - I. Invoice from Johnson Design and Renovation, undated (p. 19)
 - J. Home Depot Receipts, various dates in August 2022 (pp. 20-22)
- Clmt. Ex. 2 Claim Form, signed September 22, 2022 (p. 22) and MHIC Order, June 2, 2022 (p. 23)
- Clmt. Ex. 3 Various emails within Nationwide, February 21-24, 2022 (pp. 24-26); email from Claimant to Bobby Rue (Respondent's employee), January 25, 2022 (pp. 27-28); memo from Claimant to MHIC, June 10, 2022 (pp. 29-31); email from Respondent to Claimant, May 31, 2022 (p. 32); emails between Respondent and Claimant, May 16-19, 2022 (pp. 33-35); memo from Claimant to Respondent, May 19, 2022 (pp. 36-42); texts between Brie Grimaldi (Respondent's employee) and Claimant, January 18-19 and May 16, 2022 (p. 43); memo by Claimant, undated (pp. 44-46)
- Clmt. Ex. 4 Various documents, including: Work Authorization, signed May 5, 2021 (p. 47); Rebuild Contract, signed August 3, 2021 (pp. 48-49); Work Order, signed May 5, 2021 (p. 50); Line Items list of work, May 19, 2021 (pp. 51-73); Nationwide print-out, April 19, 2021 (p. 74); Nationwide cover letter and estimate, April 22, 2021 (pp. 75-94)
- Clmt. Ex. 5 Pictures, taken April and October 2021 (nine pages)

³ Many of the exhibits were created by the Claimant's wife, Love Henderson. The two presented the case jointly and Ms. Henderson was completely involved in the renovation. When referring to Claimant in this Decision, I am including Ms. Henderson, unless specifically noted.

⁴ The packet received by the OAH was slightly different from the packet emailed to the parties. Although we added page numbers to the documents during the hearing, I made some accommodations with the numbering due to the differences in the packets.

I admitted the following exhibits offered by the Respondent:

- Resp. Ex. 1 Rebuild Contract, August 3, 2021
- Resp. Ex. 2 Emails between the Respondent and MHIC, June 10-14, 2023
- Resp. Ex. 3 Group texts between unidentified persons, and photos, various dates in November and December 2021 and January and May 2022
- Resp. Ex. 4 Texts between Love Henderson and Bob Rue, July 27, 2021-April 14, 2022
- Resp. Ex. 5 Photographs
- Resp. Ex. 6 (Not admitted⁵)
- Resp. Ex. 7 Checks from the Respondent to JMB Cabinetry, dated December 14, 2021, and January 20, 2022
- Resp. Ex. 8 Estimate from Capitol City Contracting & Design, Inc., May 9, 2022

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 Letter from MHIC to Respondent, November 18, 2022
- Fund Ex. 2 Home Improvement Claim Form, signed September 22, 2022
- Fund Ex. 3 Hearing Order, February 3, 2023
- Fund Ex. 4 Notice of Remote Hearing, May 12, 2023
- Fund Ex. 5 MHIC Licensing print-out, printed June 22, 2023

Testimony

The Claimant testified and presented the testimony of his wife, Love Henderson.

The Respondent called one witness to testify: Robert "Bobby" Rue, Operations Manager, Armor Restoration.

The Fund presented no 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 01-110110.
2. In or around April 2021, there was a fire in the Claimant's home kitchen.
3. The Claimant submitted a claim under his home insurance policy to cover costs associated with renovating the kitchen after the fire.

⁵ This was a recording played during the hearing. The Respondent was directed to submit it on a thumb drive if he wanted it admitted into evidence. The Respondent did not submit a thumb drive.

4. The Respondent frequently performs remediation and restoration work on homes after a disaster such as a fire. He is accustomed to fulfilling the requirements of an insurance company covering the costs of remediation and restoration. Generally, insurance policies cover only standard furnishings and fittings, not custom work.

5. In May 2021, the Claimant and the Respondent came to an agreement for the Respondent to demolish the kitchen, clean ductwork and all areas needing to be cleaned following a fire, replace the cabinets, flooring, and appliances, paint the kitchen, and clean up.⁶

6. The original agreed-upon price for this work was \$30,069.00.⁷

7. The parties signed a contract on August 3, 2021, to do the specific renovation work as itemized by the Claimant's insurance company for a contract price of \$41,014.00 (Contract).⁸ The work was to be done by November 3, 2021.

8. In total, the Claimant paid the Respondent \$34,960.00.

9. The Respondent completed the demolition, ordered cabinets after extensive discussions and texts with the Claimant, and painted the kitchen.

10. The Respondent repaired part of the floor that had been damaged by water around the sink, even though that was not covered by the insurance policy because it did not result from fire. He installed a subfloor, even though it was not covered by the insurance policy, because it was necessary to have a level floor. He worked with the Claimant to choose an acceptable floor, but once it was installed, Ms. Henderson was dissatisfied with it, so the Respondent replaced the flooring with something else.

11. After the Respondent installed cabinets that had been chosen by Ms. Henderson, the Claimant was unhappy with certain aspects of them. In particular, the Claimant did not want

⁶ This is a brief list of the work to be done. A lengthy itemization was admitted as Claimant Exhibit 4, pp. 51-73.

⁷ All dollar amounts are rounded down.

⁸ Resp. Ex. 1, p. 2. The record does not reveal the reason for the difference in price between the original estimate and the final contract, but the parties agreed the higher amount was the contract price.

what he calls a “blind” cabinet in the corner, where it is difficult to reach into and obtain items. He wanted a Lazy Susan in that cabinet. As that was not available in the standard cabinets covered by the insurance policy, the Respondent offered to make modifications, including adding two spice racks, but the Claimant wanted only one. Additionally, the cabinets were deeper than the Claimant thought the kitchen could accommodate, so the Respondent cut off the backs of the cabinets to make them less deep.⁹

12. The Claimant was never satisfied with the blind cabinet or the modifications the Respondent suggested.

13. On November 4, 2021, the Claimant texted Brie, an employee of the Respondent, to say they had “[t]hought about the other cabinets with the dead space. I want that cabinet removed and replaced with a corner cabinet with or without a lazy Susan.”¹⁰

14. The Respondent also closed in a window so that he could hang a microwave there, at Ms. Henderson’s request.

15. On January 25, 2022, Ms. Henderson emailed the Respondent with a list of concerns about the cabinets.

16. The Respondent did no further work as he was waiting for drywall installation which was not part of the Contract.¹¹ He was also waiting for the Claimant to choose the countertop material. The Respondent remained in touch with the Claimant and continued to work with him to choose other items, such as the countertop material.

17. On April 14, 2022, the Claimant and Bobby Rue texted with each other to discuss the countertop installation. The Claimant also texted, “Ps...we should touch base about the

⁹ The Claimants asserted their carpenter friend came up with this idea. It is irrelevant to this decision.

¹⁰ Resp. Ex. 3.

¹¹ The record is unclear where this drywall was being installed.

cleaning charges and the remaining items that need to be completed.” Mr. Rue responded, “Yes ma’am let me know as soon as the countertops are installed and will be there to finish up.”¹²

18. On May 9, 2022, the Claimant obtained an estimate from Capitol City Contracting & Design, Inc., (Capitol City), Fort Washington, Maryland, to remove the cabinets, replumb the kitchen as necessary, install cabinets, hardware, thresholds, countertop, and backsplash, paint the kitchen, and haul away construction material. A management fee of \$1,290.00 was included in the estimate. The total for this estimate was \$7,740.00.¹³ Capitol City is not licensed with the MHIC.

19. On an unknown date, the Claimant obtained an estimate from Johnson Design and Renovation, Brandywine, Maryland, (Johnson Design) to re-install cabinets, re-plumb the kitchen as needed, purchase and install countertops, paint the kitchen, install the backsplash, haul away construction materials, install wallpaper, install appliances, and install light dimmer switches. The cost of this work included a “management fee of \$3,218.35” and totaled \$16,091.35.¹⁴

20. Capitol City and Johnson Design are not the same company. They have different names, different addresses, different logos, and only Johnson Design is licensed with the MHIC.¹⁵

21. On May 19, 2022, the Claimant asked the Respondent to refund all of the money paid under the Contract. The Claimant sent the Respondent the Capitol City estimate.

22. The Claimant hired Capitol City to complete the work under the Contract. At that point, the only work remaining to be done in the kitchen was installing the backsplash, putting up

¹² Resp. Ex. 4.

¹³ Resp. Ex. 8.

¹⁴ Clmt. Ex. 1, Att. I.

¹⁵ The Claimant asserted that Capitol City and Johnson Design were the same company, but there is no reason from the exhibits to believe this is the case.

wallpaper, installing the oven once the downdraft had been connected, insulating the attic, and cleaning the carpets once all the work was done.

23. The Respondent was ready and able to complete the Contract, but the Claimant abruptly stopped communicating with him and hired another company.

24. On June 14, 2022, the Respondent emailed the MHIC to respond to the Claimant's complaints and assure the MHIC he was willing to complete the Contract.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; 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 Cnty. 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." Bus. Reg. § 8-405(a) (Supp. 2022); *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." Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has not proven eligibility for compensation.

By statute, certain claimants are excluded from recovering from the Fund altogether. The claim was timely filed, there is no pending court claim for the same loss, and the Claimant did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022). The Claimant resides in the home that is the subject of the claim or does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2022). The parties did not enter into a

valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022). The Claimant is not a relative, employee, officer, or partner of the Respondent, and is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2022).

A final statutory bar is if the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022). I conclude that he did. There was a delay in the work due to the cabinets needing to be cut down and reworked in the corner, but the Respondent completed that work. There was another delay when the Claimant needed time to choose a countertop. There was communication in January and again in April 2022 over what else needed to be done, the Claimant's general unhappiness with the cabinets, and when the countertops would be chosen. These delays were not attributable to the Respondent. In May 2022, the Claimant hired a new contractor, sent the estimate to the Respondent, and asked for a full refund of the amount paid to the Respondent by the insurance company. Even into June 2022, the Respondent was ready to return and complete the Contract, and he informed the MHIC of that intention. It was the Claimant who ended the Contract.

The Claimant contracted with the Respondent to have remediation and restoration work done on his kitchen after a fire destroyed it. Generally, the Claimant seemed satisfied with the work done and the progress made, but restoration was slow, due, in part, to the supply chain problems that occurred during the COVID pandemic. As time went on, the Claimant became dissatisfied with aspects of the rebuild, primarily centered on the corner base cabinet. Nothing the Respondent could do satisfied Ms. Henderson. The insurance policy did not cover custom cabinets and the basic cabinets that were covered did not have the type of corner cabinet with a Lazy Susan that Ms. Henderson wanted.

Ms. Henderson conceded in her testimony that the Respondent tried to accommodate her requests. He cut off the back of the cabinets so they would not be so deep. He closed in a window to allow for a microwave to be placed there. He replaced the flooring twice in an effort to please her. Despite these efforts, she was dissatisfied. By the time the Claim was filed, she had a long list of items that were not yet done or that she was not pleased with. Some of those items would have been completed had she allowed the Respondent to complete the Contract –laying insulation in the attic, installing countertops, painting, and cleaning the carpets, for example. She complained that there were different teams of workers doing various work. She complained the workers did not go to the house frequently enough. She testified the Contract should have been completed on August 3, 2021, which was confusing because that was the day the Contract was signed.

The Claimant hired a new contractor, Capitol City, to complete the work, but produced no receipts to show that he paid for the work. The Claimant conceded Capitol City is not licensed by the MHIC but argued that is only “one small piece” of the claim.

Mr. Rue testified on behalf of the Respondent to the extreme measures he took to try to satisfy the Claimant and Ms. Henderson, and Ms. Henderson agreed in her testimony that he did try to accommodate her wishes. As I have already outlined, the Respondent performed numerous jobs that went beyond the Contract or what was covered by the insurance company in an attempt to provide an acceptable kitchen for the Claimant. Nevertheless, nothing he did satisfied the Claimant or Ms. Henderson.

The Respondent did not perform unworkmanlike, inadequate, or incomplete home improvements. Essentially, the Claimant and Ms. Henderson were simply dissatisfied with the choices they made once those items, primarily the cabinets and the flooring, were installed. But the Claimant failed to produce evidence that any of the work done by the Respondent was

unworkmanlike or inadequate. Anything that was incomplete was only so because the Claimant ended the Contract and hired a new contractor to complete the work. The Respondent remained ready and willing to complete the Contract.

The Respondent and the Fund argued that in the event I found any of the work done by the Respondent to be unworkmanlike, inadequate, or incomplete, it would be inappropriate to include funds paid to Capitol City, the unlicensed contractor who completed the work, in the actual award. Legislative policy is designed to encourage contractors to be licensed and to discourage homeowners from using unlicensed contractors. The legislative policy is reflected in a number of ways: A homeowner may recover compensation from the Fund only for an actual loss resulting from an act or omission by a *licensed* contractor. Bus. Reg. §§ 8-401, 8-405(a). If the Respondent had not been licensed by the MHIC, the Claimant would have been barred from asserting its claim against the Fund. Moreover, if the Respondent had been unlicensed when he performed the work, he would have committed a misdemeanor crime and been subject to a fine of \$1,000.00 or imprisonment not exceeding six months, or both, for a first offense. *Id.* § 8-601.

Additionally, Maryland appellate decisions offer some guidance on the treatment of unlicensed home improvement contractors. Because the Maryland home improvement law was enacted for the protection of the public and mandates a licensing system to encourage contractors to be licensed and to discourage homeowners from using unlicensed home improvement contractors, the courts, as a matter of public policy, will not enforce contracts made by or with unlicensed contractors. *Goldsmith v. Mfrs.' Liability Ins. Co. of N.J.*, 132 Md. 283, 286 (1918); *see also Balt. St. Builders v. Stewart*, 186 Md. App. 684, 706 (2009). The purpose of the Fund is to compensate a homeowner for an actual loss resulting from an act or omission of a licensed home improvement contractor. Bus. Reg. § 8-405(a); COMAR 09.08.03.03B(2). The licensing

of a contractor is an essential element, since as a matter of public policy, home improvement contracts executed by unlicensed individuals or entities are considered unlawful.

When an award is granted, the Fund is entitled to reimbursement from the original contractor in the amount paid to a claimant, plus interest. Bus. Reg. § 8-410(a)(1)(iii). MHIC is also permitted to suspend a contractor's license until the Fund is reimbursed. *Id.* § 8-411(a). If the Fund were to grant reimbursement for the work performed by unlicensed contractors, it would be rewarding a claimant who was a party to an illegal contract with an unlicensed contractor at the expense of a licensed contractor who, although deficient, observed the licensing requirements of the State. It would be improper for the Fund to act against public policy and condone a contract undertaken by a claimant with a party that the Fund considers in violation of the law.

Therefore, even if I found any of the work done by the Respondent to be unworkmanlike, inadequate, or incomplete, I would not include the amounts paid to Capitol City in the calculation of an award.

Because I conclude that the Claimant failed to prove the Respondent performed unworkmanlike or inadequate work under the Contract, refused to allow the Respondent to finish the Contract, and rejected the Respondent's good faith efforts to complete the Contract, I find that the Claimant is not eligible for compensation from the Fund.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B.

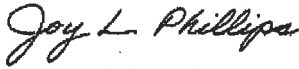
RECOMMENDED ORDER

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.

August 28, 2023
Date Decision Issued



Joy L. Phillips
Administrative Law Judge

JLP/at
#206242

PROPOSED ORDER

WHEREFORE, this 25th day of October, 2023, 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***