

**IN THE MATTER OF THE CLAIM \* BEFORE LAURIE BENNETT,  
OF RICHARD W. MOORE \* AN ADMINISTRATIVE LAW JUDGE  
AGAINST THE MARYLAND HOME \* OF THE MARYLAND OFFICE  
IMPROVEMENT GUARANTY FUND \* OF ADMINISTRATIVE HEARINGS  
FOR THE ALLEGED ACTS OR \* OAH NO.: DLR-HIC-02-10-37885  
OMISSIONS OF LUKE STECKEL, \* MHIC NO.: 07 (90) 2646  
T/A LUKE STECKEL \***

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**RECOMMENDED DECISION**

STATEMENT OF THE CASE  
ISSUE  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On March 27, 2009, Richard W. Moore (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$70,061.17 for actual losses allegedly suffered as a result of a home improvement contract with Luke Steckel (Respondent). (Fund Ex. 3, Home Improvement Claim Form.) On October 12, 2010, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on June 9, 2011, at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010). Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. Cynthia M. Weisz, Esquire, represented the Respondent. Jacob T. Lampell, Esquire, represented the Claimant.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010), Code of Maryland Regulations (COMAR) 09.01.03.01; 09.08.02.01; and 28.02.01.01.

### **ISSUE**

1. Did the Respondent justifiably abandon a contract he had with the Claimant?
2. If not, did the Respondent make a good faith effort to complete the contract?
3. If the Respondent did not justifiably abandon the contract and did not make a good faith effort to complete the contract, did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits introduced by the Fund:

Fund Ex. 1: Notice of Hearing, dated April 19, 2011; Hearing Order, dated October 6, 2010

Fund Ex. 2: Letter/Respondent's licensing history, dated May 25, 2011, from the MHIC "To Whom It May Concern"

Fund Ex. 3: Letter, dated April 14, 2009, from the MHIC to the Respondent; Home Improvement Claim Form, dated March 2, 2009 and received by the MHIC on March 27, 2009

I admitted the following exhibits introduced by the Respondent:

Resp. Ex. 1: Unsigned letter from John J. Handscomb, Esquire, dated January 19, 2007;

Facsimile Transmittal Sheet, dated February 1, 2007<sup>1</sup>

Resp. Ex. 2: Letter from Michael J. Jack, Esquire, dated February 1, 2007

Resp. Ex. 3: Blank Settlement Agreement and Release

The Claimant did not introduce any exhibits.

Testimony

The Claimant testified and presented his wife, Rita Moore, as a witness. The Respondent testified on his own behalf. The Fund did not present any witnesses.

**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.
2. On or about April 7, 2006, the Claimant and the Respondent entered into a home improvement contract to renovate the Claimant's one-story rancher-style residence into a two-story dwelling at a contract price of \$325,000.00. The Respondent built into the price of the contract a reasonable number of changes, which in his experience occurred on every job.
3. The Claimant made some payment under the contract.
4. Between April and December 2006, the Claimant and the Respondent engaged in many change orders, none of which were reduced to writing because the Respondent viewed them as costs he had already included in the contract. (See Finding of Fact 2.)

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<sup>1</sup> I admitted the letter and Facsimile Transmittal Sheet without objection. After the hearing, I realized that the letter is from Mr. Handscomb to Mr. Jack and the Facsimile Transmittal Sheet is from Mr. Jack to Mr. Handscomb. Obviously, the two documents are unrelated. It is more likely that the Facsimile Transmittal Sheet goes with Mr. Jack's letter at Respondent Exhibit 2. Nevertheless, the parties agree that the letters in Respondent Exhibits 1 and 2 were sent and received by the two senders/recipients.

3. The Respondent was still working under the contract when, on December 18, 2006, the Claimant telephoned him to say that a digital camera and leather jacket were missing from the house.
4. The Respondent spoke to a crew member, whom an unspecified person suspected of taking the camera and jacket.
5. On December 19, 2006, the suspect confronted the Claimant and/or his wife about the allegation that he had taken the Claimant's personal property.
6. Immediately after the confrontation, the Claimant called the Respondent, who went to the Claimant's house about fifteen minutes later. The Claimant and/or his wife told the Respondent that they were angry that the Respondent had asked the suspect about the missing property. The Respondent felt that he had no choice but to talk to the suspect, as he was taking the Claimant's accusation seriously. The conversation between the Claimant, Mrs. Moore and the Respondent escalated, and the Respondent expressed anger that the Claimant had asked for so many changes to the contract, that the Claimant had used up all of his good will over the changes, and that the Claimant had not attended two recent meetings the Respondent scheduled to discuss the renovation.
7. The Respondent announced his intention to abandon the job. The Claimant told the Respondent to stay and finish the job. The Respondent cleaned up the job site and exited the property, leaving behind items that the Claimant thought he could use under the contract. The Respondent did not intend to return to complete the contract.
8. On or about the next day, the Respondent went to the Claimant's house and presented the Claimant with a release, which would have absolved both parties of

any future claims against the other under the contract. The Claimant refused to sign it. Resp. Ex. 3.

9. On January 19, 2007, John Handscomb, the Respondent's attorney, wrote to the Claimant's attorney, Michael Jack, and stated that the Respondent would complete the contract, as Mr. Jack requested in his January 4, 2007 letter to Mr. Handscomb. Resp. Ex. 1.
10. On February 1, 2007, Mr. Jack rejected the Respondent's offer to complete the contract, stating "that train has left the station." Resp. Ex. 2.
11. In February 2007, the Claimant hired another contractor to complete the job.

#### DISCUSSION

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) (Supp. 2010). *See also* COMAR 09.08.03.03B(2). 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 (2010). For the following reasons, I find that the Claimant has failed to prove his eligibility for compensation.

The Claimant and the Respondent agree to the following: (1) they entered into a home improvement contract on April 7, 2006; (2) on December 19, 2006, they had an argument about some personal property allegedly missing from the Claimant's house; (3) December 19, 2006 was the last day the Respondent performed any work under the contract; (4) on January 19, 2007, the Respondent offered to complete the contract; and, (5) on February 1, 2007, the Claimant rejected the Respondent's January 19, 2007 completion offer. The Claimant argues, however, that he is entitled to reimbursement from the Fund because the Respondent abandoned the contract.

A contractor may not “abandon or fail to perform, without justification, a home improvement contract.” Md. Code Ann., Bus. Reg. § 8-605. I do not find that the Respondent was justified in leaving the job. The Respondent left in anger, not over the possible theft, but because he thought the Claimant had used up all of his good will over change orders and had refused to meet with the Respondent to discuss the future of the job. Neither reason justifies abandoning the job. Although any massive renovation (as the Claimant described it) involves change orders, the Respondent was never under any obligation to agree to make changes the Claimant requested. Thus, he had no reason to feel frustrated that the Claimant had made too many requests. Further, the Respondent testified that he never charged the Claimant extra for any changes, which is why he felt that the Claimant had used up all of his good will. The Respondent, however, testified that he essentially built a certain amount of changes into the contract price. The Respondent has only himself to blame for not charging the Claimant for changes he could not comfortably absorb.

Even though the Respondent abandoned the job, the Fund “may deny a claim if the [Fund] finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim.” Md. Code Ann., Bus. Reg. § 8-405. The Respondent made the required good faith effort when, on January 19, 2007, through counsel, he offered to return to the job, as the Claimant had requested just two weeks earlier. On February 1, 2007, the Claimant, through counsel, rejected the offer, stating in short “that train has left the station” and that the Claimant himself had already done a large amount of the work necessary to complete the contract. Resp. Ex. 2. The Claimant did not testify or present other persuasive evidence that he had done a large amount of work himself. The Claimant did not retain a contractor to finish the work until February and, thus, I do not find that the Respondent’s offer came too late. Although the Claimant was understandably irritated with the Respondent for abandoning the job, he offered no

good reason for refusing the Respondent's good faith offer to return to the job, especially since he had asked the Respondent to do so.

The Claimant testified that he rejected the Respondent's offer because he had other "contractors in motion" by January 4, 2007. If he had other contractors in motion by that date, why did the Claimant's attorney make a written request on that date for the Respondent to complete the job? In any event, the Claimant did not hire another contractor until sometime in February; thus, the Respondent's offer was timely.

Moreover, although the Claimant testified that there were some problems with the job along the way, as he would have expected in such a massive project, for the most part the job was going well. Thus, the Respondent did not leave the job because the Claimant had accused him of substandard work. The Claimant's satisfaction with the Respondent's work is yet another reason the Claimant improperly rejected the Respondent's offer to return to the job.

For all of these reasons, I conclude that the Claimant did not have grounds to reject the Respondent's good faith effort to complete the job. Accordingly, the Claimant should not receive reimbursement from the Fund.

Even assuming that the Claimant should be permitted to pursue reimbursement, I find that he has not proven his loss. Fund regulations provide that "[i]f 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 did not present any documents to support his claim and his testimony alone is insufficient to prove the value of his loss. The Claimant did not present the contract between the parties. Nevertheless, because he and the Respondent agree that the contract price was \$325,000.00, I accept that figure as fact. I am less clear about the scope of the contract.

The only evidence of the scope came from the following: (1) the Claimant, who said that it involved a "massive" home improvement project, in which the Respondent would transform a one-story rancher into a two-story residence; and (2) the Respondent, who said that he performed some demolition. The Claimant testified that he paid the Respondent \$250,000.00, but he did not present any cancelled checks or other verification. The Claimant testified from a list he had prepared of the payments he made to the Respondent, but he only mentioned two \$50,000.00 payments, made on April 7, 2006 and May 24, 2006. Therefore, the record does not establish that the Claimant paid the Respondent \$250,000.00.

The Claimant testified that he also had a \$40,000.00 allowance from the Respondent for cabinets and other items for which the Claimant had paid and for which the Claimant had not been reimbursed by the Respondent. The Claimant did not present any documentation to support his testimony; for example, I have no addendum to the contract showing the allowance or receipts showing that the Claimant actually made the expenditures.

The record also failed to establish the extent of the work the Respondent actually performed and the work that remained under the contract after the Respondent left the job. The Claimant was vague on this point. He testified only that the Respondent did "a great amount of work" and conceded that he had no idea what portion of the work the Respondent failed to complete. When the Fund pressed him to elaborate, the Claimant was defensive, apparently



unaware that his answer would aid him in his claim.

The Claimant testified that he hired a contractor to complete the contract, who quoted him \$57,000.00 to complete the contract. The Claimant did not present a contract between he and the new contractor that would show, for example, the scope of the work. Moreover, the Claimant did not present any documentary proof that he paid the new contractor.

In the claim form, the Claimant asserted, under the penalties of perjury, that he paid another contractor \$105,061.17 to restore, repair, replace or complete the work done by the Respondent, which is poor or unworkmanlike or otherwise inadequate or incomplete. (Fund Ex. 3.) Nevertheless, the Claimant did not explain why he said at the hearing that he only paid \$25,000.00 to complete the contract.

Assuming the Respondent abandoned the job, I simply do not have sufficient credible and persuasive evidence to determine the amount of the loss. I do not find that the Claimant's often vague and contradictory testimony is sufficient, in and of itself, to entitle determine the loss and to entitle him to reimbursement. The value of the work completed and the cost for another contractor to complete the contract are essential elements in establishing the value of a claim.

Although documents necessary to value the claim are apparently in the Claimant's possession, I find no valid reason why they were not presented at the hearing. After the parties presented their cases and made closing arguments and just as I was poised to state that the hearing was concluded, Mr. Lampell announced that he had all of the documents necessary to support his client's claim against the Fund but had failed to present them because he was inexperienced. He made this announcement in response to the Fund's and the Respondent's closing arguments that the Claimant had not sustained his burden because he did not present any of the documents necessary to support his claim. I denied Mr. Lampell's request to present the documents so late in the hearing.

First, the hearing had essentially concluded. Second, inexperience does not provide sufficient grounds for me to receive belated evidence. Third, I find that Mr. Lampell understood that he needed to present his documents during the evidentiary phase of the hearing. At the start of the hearing, before the first witness testified, the Fund, as it customarily does, introduced documents relating to the notice of the hearing, the Respondent's licensing history and the claim form, which I admitted without objection. As I customarily do, to make the hearing more efficient, I asked the Claimant whether he had any documents to introduce that I could admit as a preliminary matter, assuming neither party had any evidentiary objection. The Claimant offered three documents, which I marked for identification, but I reserved a ruling on their admissibility based on an objection by the Fund that it needed a witness to authenticate the documents before it could decide whether to raise an objection. I then asked Mr. Lampell whether the Claimant had any documents to offer as a preliminary matter, and he said that he would reserve them until later in the hearing. Mr. Lampell was obviously aware at that time that he had documents to introduce and knew or should have known he had to introduce them at an appropriate time. Finally, during Mrs. Moore's testimony, Mr. Lampell wanted to show the witness photographs of the Claimant's property, presumably to support an issue in the case. Ms. Sachs reminded him to show her the photographs before showing them to the witness. Mr. Lampell gave Ms. Sachs the photographs and both she and Ms. Weisz looked at them before Ms. Sachs returned them to Mr. Lampell, who placed them on counsel's table and rested his case. Mr. Lampell knew or should have known that once he presented the photographs to the witness for authentication, he could have offered them for admission into evidence.

### **CONCLUSIONS OF LAW**

1. The Respondent abandoned the contract with the Claimant without justification. Md. Code Ann., Bus. Reg. § 8-605 (2010).

2. The Claimant is ineligible to receive reimbursement from the Fund because he rejected the Respondent's good faith effort to complete the contract. Md. Code Ann., Bus. Reg. § Md. Code Ann., Bus. Reg. § 8-405 (2010).
3. Assuming the Claimant did not reject the Respondent's good faith effort to complete the contract, the Claimant failed to prove an actual loss compensable by the Fund as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).

**RECOMMENDED ORDER**

**I PROPOSE** that the Maryland Home Improvement Commission:

**ORDER** that the Maryland Home Improvement Guaranty Fund not award the Claimant reimbursement; and

**ORDER** that the records and publications of the Maryland Home Improvement Commission reflect the Commission's final decision.

June 22, 2011  
Date Decision Issued

  
Laurie Bennett  
Administrative Law Judge

LB/  
# 123505

IN THE MATTER OF THE CLAIM \* BEFORE LAURIE BENNETT,  
OF RICHARD W. MOORE \* AN ADMINISTRATIVE LAW JUDGE  
AGAINST THE MARYLAND HOME \* OF THE MARYLAND OFFICE  
IMPROVEMENT GUARANTY FUND \* OF ADMINISTRATIVE HEARINGS  
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OMISSIONS OF LUKE STECKEL, \* MHIC NO.: 07 (90) 2646  
T/A LUKE STECKEL. \*

\* \* \* \* \*

**FILE EXHIBIT LIST**

*For the Fund:*

Fund Ex. 1: Notice of hearing, dated February 10, 2011; Hearing Order, dated October 6, 2010

Fund Ex. 2: Letter/Respondent's licensing history, from the DLLR addressed to "To Whom It May Concern," May 25, 2011

Fund Ex. 3: Letter, April 14, 2009, from the DLLR to the Respondent; Home Improvement Claim Form, March 2, 2009

*For the Respondent:*

Rspn Ex. 1: Letter from John J. Handscomb, Esquire, January 19, 2007

Rspn Ex. 2: Letter from Michael J. Jack, Esquire, February 1, 2007

Rspn Ex. 3: Blank Settlement Agreement and Release

*For the Claimant:*

None.

PROPOSED ORDER

*WHEREFORE, this 4th day of August 2011, 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.*

*Marilyn Jumalon*

*Marilyn Jumalon  
Panel B*

**MARYLAND HOME IMPROVEMENT COMMISSION**