

IN THE MATTER OF THE CLAIM * BEFORE KATHLEEN A. CHAPMAN,
 OF THOMAS RICHIE * AN ADMINISTRATIVE LAW JUDGE
 AGAINST THE MARYLAND HOME * OF THE MARYLAND OFFICE
 IMPROVEMENT GUARANTY FUND * OF ADMINISTRATIVE HEARINGS
 FOR THE ALLEGED ACTS OR *
 OMISSIONS OF MARSHA ADAMS * OAH NO.: DLR-HIC-02-10-37931
 T/A CONTINENTAL CONTRACTING * MHIC NO.: 08 (05) 1738

* * * * *

RECOMMENDED DECISION

STATEMENT OF THE CASE
 ISSUES
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 FINDINGS OF FACT
 DISCUSSION
 CONCLUSIONS OF LAW
 RECOMMENDED ORDER

STATEMENT OF THE CASE

On April 16, 2009, Thomas Ritchie (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$21,134.03 for actual losses allegedly suffered as a result of a home improvement contract with Marsha Adams t/a Continental Contracting (Respondent).

I held a hearing on May 24, 2011, at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland 21021. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010). Jessica Kaufman, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented himself. The Respondent failed to appear after due notice to her address of record.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the OAH 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.

ISSUES

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions, and, if so, what was the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimant's behalf:

- Cl. Ex. 1 - Complaint Form, undated
- Cl. Ex. 2 - Computer generated house design and blueprints
- Cl. Ex. 3 - E-mail from Mike Allen, Project Manager, Respondent, to the Claimant (subject line: new project cost), June 7, 2007
- Cl. Ex. 4 - Contract, June 12, 2007
- Cl. Ex. 5 - Timeline (2007 calendar) from Respondent for performing home improvement contract
- Cl. Ex. 6 - Letter and Land Survey from Thompson & McCord to the Claimant, July 16, 2007
- Cl. Ex. 7 - Claimant's cancelled check #1358 for \$25,789.00, June 13, 2007
- Cl. Ex. 8 - Building Permit, issued October 23, 2007
- Cl. Ex. 9 - Invoice for out-of-pocket expenses from the Respondent, November 7, 2009
- Cl. Ex. 10 - Claimant's cancelled check #1507 for \$22,345.03, December 18, 2007
- Cl. Ex. 11 - Change Order, December 11, 2007
- Cl. Ex. 12 - Home Depot and Lowes receipts (Claimant's purchase of windows and doors)
- Cl. Ex. 13 - Change Orders, November 5, 2007, November 7, 2007 and December 11, 2007

- Cl. Ex. 14 - Building Inspection, October 31, 2007
- Cl. Ex. 15 - Photographs (featuring incomplete work, water damage and siding damage under deck)
- Cl. Ex. 16 - Contract, June 12, 2007, with handwritten notations by the Claimant
- Cl. Ex. 17 - R & S Home Improvement Estimate, August 3, 2008
- Cl. Ex. 18 - Photograph (front of home)
- Cl. Ex. 19 - Building Inspections
- Cl. Ex. 20 - Photographs (front and rear of home)
- Cl. Ex. 21 - Letter from Respondent to the Claimant, January 10, 2008

I admitted the following exhibits on the Fund's behalf:

- GF Ex. 1 - Notice of Hearing, March 1, 2011, with attached certified mailing return receipt cards signed by the Claimant and Respondent
- GF Ex. 2 - Transmittal from the Department to the OAH; Hearing Order, October 6, 2010; Home Improvement Claim form, April 16, 2009
- GF Ex. 3 - Computerized print-out showing the Respondent's licensure history
- GF Ex. 4 - Letter from John Borz, Chairman, MHIC, to Respondent, April 27, 2009, with copy of the Claimant's Home Improvement Claim form, April 16, 2009
- GF Ex. 5 - *In re Michael Goodman*, U.S. Bankruptcy Court for the District of Maryland, Case no. 86-B-1700, Order Granting Relief from Stay

No exhibits were offered on the Respondent's behalf.

Testimony

The Claimant and his wife, Ruth Ritchie, testified on behalf of the Claimant.

The Fund did not present any witnesses.

No witnesses testified on the Respondent's behalf.

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, holding MHIC license number 01-87036.

2. In response to the Claimant's inquiry for a bid on his home improvement project, Mike Allen, Project Manager for the Respondent, sent the Claimant an e-mail, on June 7, 2007, offering a new project price of \$77,368.00 to build a new deck, add stone work to the front of the home, install composite decking and railing to the front of the home and provide an electrical rough in. Mr. Allen also wrote that if the Claimant were interested, he would provide him with an itemized contract.

3. On June 13, 2007, the Claimant and the Respondent entered into a contract to make certain improvements to the Claimant's home. The Respondent agreed to: (a) provide the drawings and obtain the permits required for construction to the "dry-in" stage of the project; (b) demolish existing front and side decks, a tool shed, and interior slider to accommodate a new addition; (c) construct a new addition to include framing, footers and concrete slab; (d) supply and install shingles and paper to the new roof; (e) supply and install five windows; (f) frame new front entrance; (g) install composite deck and railing on the front of the home; (h) supply and install a second floor deck with pressure treated wood; (i) supply and install two metal entrance doors; (j) reframe, supply and install a new entry door; (k) supply and install lighting; (l) remove and replace existing siding with vinyl siding; (m) supply and install aluminum gutters and downspouts; and (n) install stone work façade on the front of the home.

4. All business dealings between the Claimant and the Respondent were through Mr. Allen.

5. The work was to commence on or about July 16, 2007 and be completed on or about October 18, 2007.

6. The contract price was \$77,368.00. This price included all labor, material, permits, and removal of all debris. The price also included a materials allowance for two metal entrance doors (\$420.00), a front entry door (\$1,200.00) and five windows (\$1,500.00) for a total of \$3,120.00.

7. The Claimant paid a down payment in the amount of \$25,789.00 on June 13, 2007.

8. On July 29, 2007, the Claimant purchased a front entry door with a matching fiberglass outer door from the Home Depot and paid \$2,809.00 for the set.

9. The Respondent obtained a building permit on October 23, 2007.

10. On November 7, 2007, the Respondent charged the Claimant \$165.00 for a variance application fee and for posting a zoning sign at the Claimant's home. The Claimant paid the Respondent in cash for these items.

11. On November 12, 2007, the Claimant purchased windows from Lowes in the amount of \$2,517.13.

12. After obtaining the October 23, 2007 building permit, the Respondent began work on the home by removing the existing siding; supplying and installing approximately 65% of the vinyl siding and Tyvek insulation; supplying and installing approximately 80% of the stone work to the front of the home; supplying and installing a second floor deck; reframing and installing the front entry door; installing a covered porch to the front of the home; and replacing and reframing windows.

13. Any additional work on the home, however, slowed considerably as a result of the Critical Bay Permitting process.¹ The Claimant's home abuts the shoreline of Sue Creek.

¹ See *infra*, Findings of Fact No. 25.

14. In November 2007, the Respondent issued three more Change Orders seeking payment for the cost and installation of windows and doors the Claimant purchased. (See Cl. Ex. 13.) The Respondent also refused to give the Claimant a credit for the materials allowance in the amount of \$3,120.00.

15. On December 11, 2007, the parties agreed to a Change Order, in the amount of \$200.00, for the demolition of the front concrete step and for pouring two steps to accommodate a change in the elevation of the front porch. The Claimant paid cash to the Respondent for this change.

16. About this same time, the Respondent requested a second installment payment in the amount of \$22,345.03, on the basis that the money was needed to purchase materials to complete the job. The Claimant paid the Respondent that amount on December 18, 2007.

17. On December 19, 2007, two workers appeared at the Claimant's home, but completed little, if any, work. This was the last day anyone from the Respondent's company appeared at the Claimant's home to perform any work.

18. On January 10, 2008, the Respondent sent the Claimant a letter informing him that she was ceasing all business activities as of January 11, 2008.

19. The Claimant made numerous telephone calls to the Respondent's attorney, Chester Hobbs, and Mr. Allen without success. The Claimant also tried to make contact in person with the Respondent, without success.

20. Eventually the Claimant reached Mr. Allen, who offered to complete the job for the same contract price as an independent contractor. The Claimant declined.

21. On June 12, 2008, the Respondent, through counsel, informed the MHIC that she was filing for Chapter 7 bankruptcy protection.

22. At the time she left the Claimant's job, the Respondent had failed to:
- complete the addition and new roof,
 - install downspouts and gutters,
 - fully finish the demolition of the decks, tool shed, and slider in advance of constructing the new addition,
 - install a composite deck to the front of the home,
 - supply and install two metal entrance doors,
 - install all of the lighting, and
 - complete the installation of vinyl siding and stone work.²

23. In addition, the Respondent failed to seal the second floor deck, causing rainwater to enter into one of the bedrooms destroying the drywall. The Claimant put up an awning to divert the rainwater, but water continues to leak into the room. Moreover, the Respondent failed to install weather stripping around the front entrance which allowed for water leakage. The Respondent did not correct these problems.

24. Other issues concerning the work performed by the Respondent included the use of a bungee cord to hold up outside flood lights, the use of a flimsy metal band barely affixed to the home to hold in place the electrical panel box, damage to the siding underneath the installed deck, and letting the electric reader box hang precariously from the side of the home after the siding was installed.

25. As the Claimant later learned, it took months to complete the Critical Bay Permitting process. While the contract called for the Respondent to handle this aspect of the

² With reference to the front entrance roof and composite deck, the Claimant purchased and installed the rails and spindles. With reference to the lighting, the Respondent did the electrical rough in, but never installed the lighting. With reference to the vinyl siding, only 65 % of the siding was installed. With reference to the stone work, only 80% of the stone work was installed.

home improvement, the Claimant had to obtain the proper permits on his own by interacting with the Planning and Zoning Boards as well as the Critical Variance Committee before he was able to finish the project.

26. The Claimant ran out of cash to complete the home improvement project once the Respondent abandoned the contract, thus hampering his ability to hire another contractor. As a result, the Claimant did a lot of the work himself or hired individual contractors to work on a piecemeal basis.

27. On August 3, 2008, the Claimant obtained an estimate from R & S Improvement detailing the estimated cost of the work performed by the Respondent.

28. The value of the materials and services the Respondent provided under the contract was \$30,000.00.

29. The Claimant paid the Respondent the following sums of money.

Date	Description	Amount paid
June 13, 2007	Initial deposit	\$25,789.00
June 13, 2007	Credit for window and door allowances pursuant to the contract. The Claimant paid for these items out-of-pocket.	\$ 3,120.00
November 7, 2007	Variance application fee and fee for posting a zoning sign	\$ 165.00
December 11, 2007	Change Order (front concrete steps)	\$ 200.00
December 18, 2007	2 nd installment	\$22,345.03
	TOTAL:	\$51,619.03

30. The Claimant's actual loss is \$21,619.03 (\$51,619.03 - \$30,000.00 = \$21,619.03).

DISCUSSION

I. The Respondent's failure to appear

Section 8-312(a) of the Business Regulation Article provides that the Commission shall give the person against whom the action is contemplated an opportunity for a hearing. Md. Code Ann., Bus. Reg. § 8-312(a) (2010). On March 1, 2011, the OAH sent the Respondent a Notice of

Hearing (Notice) at her trading address of record by certified and regular mail. (GF Ex. 1.) The Fund offered into evidence the original green card showing that the Respondent signed for the certified mailing indicating receipt of the Notice. *Id.* The Fund additionally offered into evidence a copy of a letter, dated April 27, 2009, which John Borz, Chairman, MHIC, sent to the Respondent informing her of the Claimant's claim. (GF Ex. 4.) Subsequent to that, the MHIC mailed to the Respondent the Hearing Order, dated October 6, 2010, again informing her of the Claimant's claim. (GF Ex. 2.)

A hearing was scheduled on May 24, 2011, at 10:00 a.m., however, the Respondent failed to appear for the hearing. Under Md. Code Ann., Bus. Reg. § 8-312(h) (2010), “[i]f, after due notice, the person against whom the action is contemplated does not appear ... the Commission may hear and determine the matter.”

Based upon the record before me, I am satisfied that the MHIC properly notified the Respondent of the date, time and location of the scheduled hearing, as well as the issues to be presented. (GF Exs. 1, 2 & 4.) Accordingly, the hearing was convened as scheduled on May 24, 2011, at which time neither the Respondent nor anyone authorized to represent her appeared by 10:15 a.m. so the hearing proceeded in her absence.

II. The merits of the case

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) (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 proven eligibility for compensation.

First, the Respondent was a licensed home improvement contractor at the time she entered into the contract with the Claimant. Second, the Respondent performed incomplete home improvement.

Third, the Claimant's presentation persuasively demonstrated that the Respondent left the job site with a considerable amount of work left undone. (See Findings of Fact No. 22.) Moreover, where work was performed, the quality of the work was either patently unworkmanlike (see Findings of Fact No. 24) or completely deficient resulting in rainwater leaking into the home (see Findings of Fact No. 23). As the Claimant testified, with regard to the front entrance, the weather stripping was missing and fortunately that was easily correctable, however, he has yet to figure out the cause of the water leakage near the second floor deck. As a result of the continuous leaking, the drywall in that bedroom has been destroyed. Finally, the Claimant presented photographs to corroborate his testimony concerning the condition of the home improvement project at the time the Respondent abandoned the work. I found the photographs quite compelling since I can easily see the exposed exterior of the home on the left hand side where the new addition was intended to be built as well as the other items left undone. (Cl. Ex. 15.)

I further find that the Claimant made the best of out an untenable situation. He testified that he finished most of the work himself or hired licensed contractors, in particular an electrician and stone mason, to complete the work he was not capable of doing himself. The Claimant testified that in order to finish the home improvement contract he had to complete the permitting process on his own, as well. While the Claimant acknowledged that the permitting process may have explained some of the delay in getting the project started or, alternatively, finished, he believes that the Respondent was woefully inexperienced in this aspect of the contract in light of what he learned after-the-fact. Nevertheless, as the Claimant pointed out, it

was the responsibility of the Respondent to obtain the permits per the contract. The Claimant further noted that he had to scale back on some of the work envisioned under the contract due to funds. In addition, the Claimant testified that he had to sell his beloved Corvette to a neighbor in order to pay for the rest of the repairs after the Respondent absconded with the second installment without performing any additional work. With sincerity, the Claimant testified that selling his Corvette and seeing his neighbor driving the vehicle has been a painful reminder of this home improvement project debacle involving the Respondent.

Finally, with the Respondent's filing for bankruptcy, the Claimant was not given the opportunity to resolve this situation prior to filing the Fund claim. The Respondent made it abundantly clear that she had no desire to honor the contract at this point. To wit, her attorney wrote on January 10, 2008, that "[the Appellant] is ceasing all business activities as of January 11, 2008." (Cl. Ex. 21.)

III. Compensation from the Fund

Having found eligibility for compensation, I now turn to the amount of the award. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The Fund recommends, and I concur, that one of those formulas, found at COMAR 09.08.03.03B(3)(b), offers the best measurement in this case:

If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.³

Here, the Claimant presented copies of his two cancelled checks in the amount of \$48,134.03 showing that he paid the Respondent. (Cl. Exs. 7 and 10.) He also provided receipts from Lowes and Home Depot to show that he also paid \$5,326.13 out-of-pocket for windows and doors. (Cl. Ex. 12.) As noted in the contract, the Respondent allotted a materials allowance in the amount of \$3,120.00 for these same items. (Cl. Ex. 4.) The Claimant testified that he and the Respondent had numerous conversations in November 2007 concerning the materials allowance because the Respondent erroneously issued multiple change orders (Cl. Ex. 13) with differing figures seeking additional payment for installation despite the fact that installation was already provided for under the contract. The Claimant credibly testified that he was not able to resolve this dispute with the Respondent and ultimately did not receive a reimbursement for the material allowance. The Claimant further testified that he paid \$365.00 in cash to the Respondent after receiving an invoice for the variance application fee and posting of a zoning sign at his home (Cl. Ex. 9) as well as a change order for additional work on the front concrete steps (Cl. Ex. 11). This payment was in addition to the contract price of \$77,368.00.

The Claimant also submitted an estimate prepared by R & S Home Improvement, dated August 3, 2008 (Cl. Ex. 17), to support his contention that the value of the services and materials provided by the Respondent at the time she abandoned the project was \$30,000.00. As

³ The Claimant testified that he did not do a good job of maintaining receipts when he paid for services rendered by an electrician and stone mason. The evidence shows that the Respondent finished the electrical rough in, but failed to install the lighting. (See Footnote No. 2, *supra*.) The Claimant is not a licensed electrician and is not qualified to perform this aspect of the home improvement. The evidence also shows that the Respondent finished approximately 80% of the stone work. *Id.* The Claimant testified that he hired a stone mason to complete this small aspect of the contract, as well. Since the Claimant was unable to provide a contract or invoice showing all the work performed by either himself, the electrician or stone mason, the formula found at COMAR 09.08.03.03B(3)(c) does not adequately address the circumstances of this case.

mentioned in Footnote No. 3, *supra*, this approach makes perfect sense since the Claimant did much of the work himself to finish the home improvement. Moreover, the Respondent did not participate at this hearing to challenge this aspect of the Claimant's case; as such, I find the Claimant's testimony and evidence persuasive on this point.

Therefore, applying the above-noted formula to the facts of this case, the Claimant's actual loss is as follows:

AMOUNT PAID		
June 13, 2007	Initial deposit	\$25,789.00
June 13, 2007	Credit for window and door allowances pursuant to the contract. The Claimant paid for these items out-of-pocket.	\$ 3,120.00
November 7, 2007	Variance application fee and fee for posting a zoning sign	\$ 165.00
December 11, 2007	Change Order (front concrete steps)	\$ 200.00
December 18, 2007	2 nd installment	\$22,345.03
	TOTAL:	\$51,619.03
VALUE OF SERVICES		
	Per R & S Home Improvement Estimate	\$30,000.00
ACTUAL LOSS		
	TOTAL:	\$21,619.03

Whereas the actual loss exceeds the statutory cap of \$20,000.00, the Claimant is eligible for an award in that amount only. Md. Code Ann., Bus. Reg. § 8-405(c)(1) (2010).

CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual loss of \$21,619.03 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010); COMAR 09.08.03.03B(3)(b). However, the Claimant is only eligible for the statutory cap amount of \$20,000.00. Md. Code Ann., Bus. Reg. § 8-405(c)(1) (2010).

RECOMMENDED ORDER

I PROPOSE 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 at least ten percent as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

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

June 15, 2011

Date Decision Issued


Chapman
Administrative Law Judge

KAC/ch
#123644

IN THE MATTER OF THE CLAIM * BEFORE KATHLEEN A. CHAPMAN,
OF THOMAS RICHIE * AN ADMINISTRATIVE LAW JUDGE
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FILE EXHIBIT LIST

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No exhibits were offered on the Respondent's behalf.

PROPOSED ORDER

WHEREFORE, this 8th 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.

J. Jean White

*I. Jean White
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION