

IN THE MATTER OF THE CLAIM OF  
TERESA L. BENNETT  
AGAINST THE  
MARYLAND HOME IMPROVEMENT  
GUARANTY FUND ON ACCOUNT OF  
HOME IMPROVEMENT WORK  
UNDERTAKEN BY  
ROBERT BOWLES, SR. T/A  
EXTREME HOME IMPROVEMENT

\* BEFORE STEPHEN J. NICHOLS,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\*  
\*  
\* OAH NO.: DLR-HIC-02-12-04900  
\* MHIC NO.: 08 (90) 901  
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**RECOMMENDED DECISION**

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

**STATEMENT OF THE CASE**

This case arose because of a complaint filed by Teresa L. Bennett (Claimant) with the Maryland Home Improvement Commission (MHIC) against Robert Bowles, Sr. t/a Extreme Home Improvement (Respondent). The complaint asserts that the Claimant entered into a contract with the Respondent for the performance of home improvement work at her residence, including the building of a two-story addition. The complaint alleges that the Respondent abandoned the home improvement contract after obtaining a deposit without beginning to build the addition.

On or about June 25, 2009, the Claimant filed a claim with the MHIC seeking to recover \$23,410.00 from the Home Improvement Guaranty Fund (Fund). On May 3, 2010, the Claimant amended the claim lowering the amount of the claim to \$21,615.00. On January 26, 2012, the MHIC issued an order for a hearing on the claim against the Fund.

On October 17, 2012, the above-captioned case was heard before Stephen J. Nichols, Administrative Law Judge (ALJ), on behalf of the MHIC. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2)(i) (2010 & Supp. 2012). The hearing was conducted at the Administrative Law Building located in Hunt Valley, Maryland.

Molly M. Bogendorfer, Esquire, represented the Claimant. Jessica Berman Kaufman, Assistant Attorney General, Office of the Attorney General, Department of Labor, Licensing & Regulation, represented the Fund. The Respondent failed to appear at the hearing.

On May 24, 2012, the Office of Administrative Hearings (OAH) had mailed notice of the hearing to the Respondent by certified and regular mail to his last address of record on file with the MHIC. The notice advised the Respondent of the time, place, and date of the hearing. The U.S. Postal Service returned the certified mail marked "Unclaimed." The U.S. Postal Service did not return the regular mail to the OAH.

The initial hearing was scheduled to be held on July 19, 2012. At the initial hearing on July 19, 2012, neither the Claimant nor the Respondent appeared for the hearing. The July 19, 2012 hearing was rescheduled in order to attempt to provide additional notice to the parties who had not appeared.

The Respondent's license with the MHIC expired on September 5, 2008. An investigator, acting for the MHIC, confirmed with the Motor Vehicle Administration (MVA) that the Respondent was a licensed driver in this State. As the Respondent is a valid licensed driver in this State, he is required to keep his address updated with the MVA. The Respondent's home

address according to MVA records was different from his last known business address on file with the MHIC.

On August 10, 2012, the OAH mailed notice of the hearing to the Respondent by certified and regular mail to his address of record on file with the MVA. The notice advised the Respondent of the time, place, and date of the rescheduled hearing. The U. S. Postal Service returned a receipt for the certified mail to the OAH indicating it had been received and signed for by someone (signature was illegible) at that address. The U. S. Postal Service did not return the regular mail to the OAH.

“In Maryland, a finding that an individual properly mailed a letter raises a presumption that the letter ‘reached its destination at the regular time and was received by the person to whom it was addressed.’” *Bock v. Insurance Comm’r*, 84 Md. App. 724, 733, 581 A.2d 857, 861 (1990) quoting *Border v. Grooms*, 267 Md. 100, 104, 297 A.2d 81, 83 (1972), and *Kolker v. Biggs*, 203 Md. 137, 144, 99 A.2d 743, 746 (1953). Based on that presumption, a signature on the certified mail return receipt, and that the regular mail was not returned to the OAH, the notice of hearing sent by the OAH to the Respondent is deemed to have been received by him at his address on file with the MVA and provided him with notice of the instant hearing in a timely fashion.

“If, after due notice, the person against whom the action is contemplated does not appear, nevertheless the Commission may hear and determine the matter.” Md. Code Ann., Bus. Reg. § 8-312(h) (Supp. 2012). Since notification requirements were met, the ALJ directed the hearing to proceed in the Respondent’s absence.<sup>1</sup>

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<sup>1</sup> “The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission.” Md. Code Ann., Bus. Reg. § 8-312(d) (Supp. 2012).

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the OAH Rules of Procedure govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2012); Code of Maryland Regulations (COMAR) 09.01.03, COMAR 09.08.02.01, COMAR 09.08.03.03; COMAR 28.02.01.

### ISSUES

The issues are whether the Claimant sustained an "actual loss" compensable by the Fund as the result of an act or omission of the Respondent under a home improvement contract within the meaning of section 8-401 of the Business Regulation Article of the Annotated Code of Maryland; and if so, the amount of the award.

### SUMMARY OF THE EVIDENCE

#### A. Exhibits

The following items were admitted into the record:

- Fund Exhibit #1 – Copy of a Notice of Hearing and Order for Hearing (thirty-one pages, four envelopes, and three green receipts for certified mail)
- Fund Exhibit #2 – Dept. of Labor, Licensing & Regulation Transmittal Form, Copy of an Order for Hearing, and two Home Improvement Claim Forms (five pages)
- Fund Exhibit #3 – Dept. of Labor, Licensing & Regulation I.D. Registration Inquiry on the Respondent, dated June 19, 2012 (four pages)
- Fund Exhibit #4 – Affidavits of Thomas Marr, dated July 24, 2012 (two pages)
- Fund Exhibit #5 – Copy of a letter to the Respondent from the MHIC, dated May 24, 2010, and a copy of a Home Improvement Claim Form (two pages)
- Claimant Exhibit #1 – Copy of an agreement to build a two story addition and perform other home improvement work at 1300 Redbridge Drive, Fort Meade, MD, dated April 14, 2007
- Claimant Exhibit #2 – Copy of check #1060, dated July 13, 2007
- Claimant Exhibit #3 – Four photographs (four pages)

Claimant Exhibit #4 – Copy of a Proposal from Endurance Builders General Contracting,  
MHIC# 121906

No other exhibits were offered into evidence.

B. Testimony

The Claimant testified on her own behalf. No other witnesses were called to testify.

**FINDINGS OF FACT**

After considering all of the testimony and exhibits, the ALJ finds, by a preponderance of the evidence, the following to be fact:

1. At all times relevant, the Respondent was a home improvement contractor licensed with the MHIC under contractor license number 01-93241.
2. At all times relevant, the Claimant and her spouse owned and lived at the residence located at 1300 Redbridge Drive, Severn, Maryland (the property).
3. On April 14, 2007, the Claimant and the Respondent entered into a home improvement contract for the Respondent to build an addition to the existing structure at the property and to perform other home improvement work. The scope of the work included ground excavation, construction of footers and foundation, framing, installing a deck off of the addition/house, installing new siding/soffit over entire house/addition, replacing windows, pressure washing and painting areas of an overhang of the existing house, installing a new header and door in the existing house, and installing new sheet rock to areas of the existing kitchen.
4. The contract price for the work was \$42,360.00.
5. During the last week in April 2007, the Respondent began work by removing the drywall in the existing kitchen and installing new sheet rock and drywall joint compound in its place.

6. After working for about two weeks, the Respondent asked the Claimant for a payment as a deposit for him to proceed with the remainder of the work under the home improvement contract.

7. On May 9, 2007, the Claimant paid \$14,000.00 to the Respondent as a deposit for the remainder of the work. This was accomplished by check #1060 drawn against the Claimant's checking account with the Citizens National Bank and given by the Claimant to the Respondent. The Respondent negotiated and cashed that check.

8. After the Respondent negotiated the \$14,000.00 check, his progress with the home improvement work slowed. After June 21, 2007, the Respondent stopped appearing at the job site and abandoned his work at the property.

9. When the Respondent stopped working, he had removed the drywall in the existing kitchen and installed new sheet rock and drywall joint compound to most of the areas of the kitchen; installation of new drywall in the kitchen was not yet completed.

10. During August 2007, the Claimant telephoned the Respondent's business office number and his cell phone number approximately twenty times in an attempt to convince him to resume work on the home improvement project. The Respondent did not answer any of the telephone calls that the Claimant made and so she left numerous voice mail messages, but none were returned. At about the same time, the Claimant sent approximately five e-mail messages to the Respondent's e-mail address, but none were returned.

11. After June 21, 2007, the Respondent never returned to resume work under the contract for construction of the addition at the property and he has not refunded the \$14,000.00 deposit to the Claimant.

12. The Claimant filed a complaint with the MHIC and, on or about June 25, 2009, a claim against the Fund.

13. The fair market value of the labor the Respondent performed and the materials he installed at the property is \$350.00

### DISCUSSION

In 1985, the Maryland General Assembly enacted legislation that first established the Fund. By this means, the legislature sought to create a readily available pool of money from which homeowners could seek relief for losses sustained at the hands of incompetent or unscrupulous home improvement contractors. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411 (2010 & Supp. 2012).<sup>2</sup> Under this statutory scheme, licensed contractors are assessed for the monies that subsidize the Fund. Homeowners who are victimized by the actions of licensed contractors may recover their “actual losses” from this pool of money, subject to a \$20,000.00 limitation on the claim of any one aggrieved homeowner because of the work of any one contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(1) (Supp. 2012). A homeowner is authorized to recover from the Fund when he or she sustains an actual loss that results from an act or omission by a licensed contractor. Md. Code Ann., Bus. Reg. § 8-405(a) (Supp. 2012). When the Fund pays money to a homeowner as a result of the faulty performance of a home improvement contractor, the responsible contractor is obligated to reimburse the Fund. Md. Code Ann., Bus. Reg. § 8-410. The MHIC may suspend the license of any such contractor until he or she fully effectuates reimbursement. Md. Code Ann., Bus. Reg. § 8-411.

Recovery against the Fund is based on “actual loss” as defined by statute and regulation. “[A]ctual 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. “The Fund may only compensate for actual losses [Claimant] incurred as a result of

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<sup>2</sup> Unless otherwise noted, all references to the Annotated Code of Maryland, Business Regulation Article are to the version published in the 2010 Replacement Volume.

misconduct by a licensed contractor.” COMAR 09.08.03.03B(2). “At a hearing on a claim, the claimant has the burden of proof.” Md. Code Ann., Bus. Reg. § 8-407(e)(1).

The uncontradicted evidence establishes that the Claimant and the Respondent entered into a contract on April 14, 2007, for the construction of an addition and other home improvement work at the property. The Respondent began work by replacing the drywall in the existing kitchen. On May 9, 2007, the Claimant paid \$14,000.00 to the Respondent as a deposit for the remainder of the work. After the Respondent negotiated the \$14,000.00 check, his progress with the home improvement work slowed. After June 21, 2007, the Respondent stopped appearing at the job site. When the Respondent stopped working, all he had done was remove the drywall in the existing kitchen and install new sheet rock and drywall joint compound to most of the areas of the kitchen. The Respondent did not even complete the installation of new drywall in the Claimant’s kitchen.

Soon after he had obtained a \$14,000.00 deposit, the Respondent ceased working and abandoned his work leaving the home improvement project unfinished. After the work stopped, the Claimant telephoned the Respondent many times in order to convince him to resume work on the home improvement project. She left numerous voice mail messages that were not returned. The Claimant also sent the Respondent e-mail messages that were not returned. All of the Claimant’s efforts to get the Respondent to continue with the work were unsuccessful. Subsequently, the Claimant filed a complaint with the MHIC and then a claim against the Fund.

On April 13, 2008, the Claimant obtained an estimate of the value of the Respondent’s work that had been done in the form of a proposal from Endurance Builders General Contracting, MHIC# 121906, to replace the drywall (sheet rock and joint compound) that the Respondent had installed in her kitchen. Endurance Builders General Contracting gave the Claimant a price of



\$350.00 to perform that work. That amount is deemed to be the fair market value of the materials and services provided by the Respondent at the property.

Because of the Respondent's "misconduct" described above, the Claimant has established an entitlement to reimbursement on her claim against the Fund. COMAR 09.08.03.03B(2); Md. Code Ann., Bus. Reg. § 8-401. COMAR 09.08.03.03B(3) sets forth the following formulas for determining an "actual loss:"

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

(a) 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.

(b) 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.

(c) 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 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)(a) does not apply to the facts as found. The Claimant testified that since the Respondent stopped his work, she has not had any other contractor perform work at the property. Therefore, the ALJ will not calculate the Claimant's "actual loss" in accordance with COMAR 09.08.03.03B(3)(c). The ALJ will calculate the Claimant's "actual loss" in accordance with COMAR 09.08.03.03B(3)(b). The calculations follow:

|                    |  |
|--------------------|--|
| \$14,000.00        | Paid to Respondent by the Claimant                                 |
| - <u>\$ 350.00</u> | Less the Value of Materials or Services provided by the Respondent |

\$13,650.00 Actual Loss

Pursuant to COMAR 09.08.03.03B(3)(b), the Claimant has demonstrated an "actual loss" of \$13,650.00. Md. Code Ann., Bus. Reg. § 8-401.

**CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact and Discussion, the ALJ concludes as a matter of law that the Claimant has sustained an "actual loss" as a result of the Respondent's acts and omissions in the amount of \$13,650.00. Md. Code Ann., Bus. Reg. § 8-401; COMAR 09.08.03.03B(3)(b).

**RECOMMENDED ORDER**

On the basis of the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Maryland Home Improvement Commission:

ORDER, that the Claimant be awarded \$13,650.00 from the Maryland Home Improvement Guaranty Fund to compensate her for "actual losses" sustained by the "acts and omissions" of the Respondent under section 8-409 of the Business Regulation Article of the Annotated Code of Maryland; and further,

ORDER, that the Respondent be ineligible for any MHIC license until the Respondent reimburses the Maryland Home Improvement Guaranty Fund for all monies disbursed under this Order plus annual interest of ten percent (10%), pursuant to section 8-411 of the Business Regulation Article of the Annotated Code of Maryland; and further,

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

**Signature on File**

November 27, 2012  
Date Decision Mailed

Stephen J. Nichols  
Administrative Law Judge

SJN:sn  
#138123vl

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