

IN THE MATTER OF THE CLAIM OF \* BEFORE DEBORAH H. BUIE,  
HAN S. LIM \* 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-02-12-25956  
OMISSIONS OF DANIEL A. JUMALON, \* MHIC NO.: 10 (05) 1430  
T/A BASEMENT PROS \*

\* \* \* \* \*

**RECOMMENDED DECISION**

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

**STATEMENT OF THE CASE**

On August 11, 2010, Han Lim (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$14,517.00 for actual losses allegedly suffered as a result of a home improvement contract with Daniel Jumalon, trading as Basement Pros (Respondent).<sup>1</sup>

I held a hearing on December 3, 2012, at the Wheaton Park Office Complex, 11510 Georgia Avenue, Wheaton, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312 and 8-407 (2010 & Supp. 2012). Kris King, Assistant Attorney General, Department of Labor, Licensing and

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<sup>1</sup> Subsequently, during the hearing, the Claimant amended his claim to \$10,666.00.

Regulation (Department), represented the Fund. The Claimant represented himself. The Respondent was present and represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, 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. 2012); Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02.01; and COMAR 28.02.01.

### **ISSUE**

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 on the Claimant's behalf:

- Clt. 1            Home Improvement Claim Form, with attachments
- Contract, January 2, 2010
  - Receipt for 1<sup>st</sup> payment
  - Email, March 1, 2010
  - Production Schedule, April 9, 2010
  - Cancelled check for 2<sup>nd</sup> payment
  - Letter from Claimant to Respondent
  - Email, May 24, 2010
  - Estimate from Basement Builders
  - Photographs
  - Copies of permits
- Clt. 2            Copies of Checks paid to Respondent, with attachments
- Daily Production Schedule Tracking
  - Contract with Custom Floor & Home Improvements (Custom), September 20, 2010

- Copies of Checks paid to Custom
- Copies of building permits/approval
- Chart of Respondent's progress

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

- Fund 1        Notices of Hearing, October 5 and November 2, 2012
- Fund 2        Hearing Order, April 19, 2012
- Fund 3        The Respondent's licensing history with the MHIC
- Fund 4        Home Improvement Claim Form, August 11, 2010
- Fund 5        Letter to Respondent from MHIC, August 26, 2010

The Respondent did not submit any exhibits.

Testimony

The Claimant testified in support of his claim and the Respondent testified on his own behalf.

**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 01-95049.
2. On January 2, 2010, the Respondent and the Claimant entered into a contract whereby the Respondent agreed to finish the basement of the Claimant's home, to include framing, drywall, electrical, installation of a bathroom, trim, paint and flooring (the Work).
3. The contract price was \$24,999.00. The Claimant paid a deposit of \$8,333.00.
4. Due to several severe snowstorms in the winter of 2010, the Work did not begin until March 2010. On March 1, 2010, the Respondent provided the Claimant a production schedule of

how he expected the Work to be done. The Respondent obtained the necessary permits and began work on March 9, 2010.

5. After starting the framing on March 9, 2010, the Respondent made little progress. He was not working on the job daily. On April 9, 2010, the Claimant met with the Respondent and a new production schedule was devised. At the Respondent's request, the Claimant paid the second draw of \$8,333.00 to help with the purchase of supplies. A job completion date of May 4, 2010 was agreed upon.

6. Thereafter, the Respondent only worked a few days. He began the framing and had the electrical contractor perform some rough work (e.g. some wiring for electrical boxes was installed). The Respondent started the drywall installation and began the plumbing by installing pipes from the water supply to the sink and toilet. He did not, however, obtain plumbing permits.

7. The Respondent stopped working on the project later that month, in April 2010. On May 18, 2010, the Claimant sent the Respondent a letter demanding a refund. The Respondent emailed the Claimant on May 24, 2010 and indicated that he had closed his business. There was no further contact between the parties.

8. None of the work that the Respondent had begun, i.e., the framing, drywall, plumbing and electrical work, was completed.

9. The Claimant paid the Respondent a total of \$16,666.00.

10. On September 20, 2010, the Claimant entered into a contract with Custom to finish the Work. The total amount of the contract was \$17,599.66. Custom completed the Work and the Claimant paid Custom in full.

## DISCUSSION

### The Merits of the Claim

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. 2012). *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 he and the Claimant entered into the contract. Second, there is no dispute that the basement job was not completed. The Respondent acknowledges that he left the Claimant in a difficult situation but attributed his abandonment of the Work to tough financial circumstances.

The Claimant presented credible evidence reflecting, largely through photographs, that the largest chunk of the Work begun and partially completed was the stud framing. The electrical work, done by the Respondent, only comprised of the installation of a few boxes. Moreover, the Claimant maintained that the Respondent really only worked a few days once he obtained the permits on March 9, 2010. Despite the Respondent’s lack of progress, but in an effort to move the project along, on April 9, 2010, the Claimant gave the Respondent the second draw (\$8,333.00), believing that also imposing a definite job completion date of May 4, 2010 would help in that effort. Finally, the Claimant presented credible evidence to establish that he hired Custom to finish the Work at a cost of \$17,599.66.

The Respondent was sincere in his apologies for abandoning the project; however, he argued that the Claimant should not be entitled to the full price paid to Custom to finish the

Work. The Respondent further maintained that the framing, electrical, and plumbing work that he had started could have been retained by Custom, thereby cutting the cost of their expenses. On cross-examination by the Fund, however, the Respondent acknowledged that when a new contractor has to take over an incomplete job a premium is charged the homeowner due to the headache and challenges associated with finishing another contractor's work.

I conclude that the Claimant has presented extensive, credible evidence of an incomplete job performance by the Respondent. The Respondent did not dispute that he abandoned the job. I further find that the costs the Claimant incurred to complete the project were reasonable since the Work done by Custom was essentially the same as the work to be performed by the Respondent, with some insignificant changes.

The Fund argued that the Claimant should be entitled to an award to cover the costs of the monies paid to Custom and I must agree. As a result, the next issue is to determine the amount of the Claimant's actual loss. 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). The applicable regulation, however, provides in pertinent part as follows:

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 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).

Using the above formula, the Claimant's actual loss is \$9,266.66 and is calculated as follows:

\$ 16,666.00	Amount the Claimant paid the Respondent
<u>\$ 17,599.66</u>	Adding the amount to be paid to another contactor for repairs
\$ 34,265.00	Subtotal
<u>\$ 24,999.00</u>	Minus the original contract amount
\$ 9,266.66	The Claimant's actual loss

### CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual loss of \$9,266.66 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010); COMAR 09.08.03.03B(3)(c).

### RECOMMENDED ORDER

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$9,266.66; and

**ORDER** that the Respondent be 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.

**Signature on File**

February 25, 2013  
Date decision mailed

DHB/lh  
140681

  
Deborah H. Buie  
Administrative Law Judge

PROPOSED ORDER

*WHEREFORE, this 29th day of March 2013, 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.*

*Andrew Snyder*

*Andrew Snyder  
Panel B*

**MARYLAND HOME IMPROVEMENT COMMISSION**