

IN THE MATTER OF THE CLAIM	* BEFORE JEROME WOODS, II,
OF KENNETH WEXLEY,	* 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-02-13-05032
OMISSIONS OF ROBERT L. HOPE,	* MHIC NO.: 11 (75) 1300
T/A CHESAPEAKE PAINTING AND	*
RENOVATIONS COMPANY,	*
RESPONDENT	*

* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On November 14, 2011, Kenneth Wexley (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$7,445.00 for actual losses allegedly suffered as a result of a home improvement contract with Robert L. Hope, t/a Chesapeake Painting and Renovations Company (Respondent).

On July 1, 2013, I held a hearing at the Department of Agriculture, Annapolis, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010). Kris King, Assistant

Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund; the Claimant represented himself and the Respondent failed to appear after due notice to his address of record. After determining that proper service was made, I proceeded to conduct the hearing in the Respondent's absence. COMAR 28.02.01.23A.

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. 2012), Code of Maryland Regulations (COMAR) 09.01.03.01; 09.08.02.01; and 28.02.01.01.

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:

Cl. 1 - Complaint Form, dated May 10, 2011

Cl. 2 - Claim form, dated November 11, 2011

Cl. 3 - Color photographs February 2011 through April 2011 of drywall, floor, and bathroom in various stages of construction and demolition

Cl. 4 - Copies of checks from February, March and April 2011

Cl. 5 - Budget Sheet for renovation Project

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

Fund 1 - Notice of Hearing, dated February 12, 2013 with attached notice of

unclaimed mail

Fund 2 - Notice of Hearing, dated February 12, 2013 with attached notice of undeliverable mail

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Fund 4 - Hearing Order, dated January 30, 2013

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Fund 7- Real Property Search, Maryland department of Assessments and Taxation

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Fund 9- Home Improvement Claim Form, dated November 11, 2011

Fund 10- Letter to Respondent from MHIC, dated November 21, 2011

Fund 11- Email from Claimant to MHIC, dated April 3, 2012

Fund 12- Letter from MHIC to the Claimant, dated April 3, 2012

The Respondent was not present and no exhibits were offered on his behalf.

Testimony

The Claimant testified on his own behalf and presented testimony from Todd Giordano, accepted as an expert in home improvement renovations. 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 with MHIC number 89998.

2. On or about July 7, 2006, the Claimant and Respondent entered into a contract to have the Respondent renovate the Claimant's two bathrooms and his kitchen at his townhouse residence.
3. The cost of the contract was approximately \$100,000.00. The specific part of the contract for the bathroom renovation was \$15,350.00. The Claimant paid the entire contract price to the Respondent.
4. The work on the home was performed between July 7, 2006 and December 7, 2006.
5. On February 15, 2011, the Claimant hired a cleaning crew to clean the bathroom located on the top floor.
6. On February 15, 2011, the cleaning crew discovered significant amounts of mold in the bathroom shower.
7. On or about the third week of February 2011, the Claimant hired Todd Giordano of T.G. Services, LLC to investigate the mold problem. Mr. Giordano is a licensed MHIC contractor.
8. Mr. Giordano discovered significant leaking which caused the spread of mold in the bathroom.
9. In order for Mr. Giordano to discover the leaks, he removed the floor and wall tile in the bathroom.
10. The subflooring underneath the tile was soft and rotted because it was not properly sealed, allowing water to penetrate.

11. The Respondent did not install proper water and vapor barriers when he renovated the top floor bathroom. Additionally, the Respondent did not install proper shower lining and mold resistant cement board.
12. The Respondent did not install the shower drain properly, which caused water to spread and also contributed to the mold infestation. Additionally, the vapor barriers installed by the Respondent contained gaps which also caused water to spread.
13. The bathroom tiles and grout had mold and loose grout because the Respondent did not install proper moisture lining and barriers.
14. As a result of the mold and moisture problem, the bathroom had to be reconstructed.
15. The defects in the Respondent's work and the source of the mold infestation were concealed by the bathroom tile and could not be ascertained until the tile and support structure were removed.
16. Mr. Giordano installed new subflooring, vapor barriers, tile, plumbing and cement board barriers to correct the Respondent's work.
17. The total cost for the bathroom repairs was \$8,295.00.
18. The Claimant's bathroom did not have any further mold problems since Mr. Giordano reconstructed the bathroom.
19. On November 9, 2011, the Claimant filed a claim with the MHIC.
20. The Claimant's actual loss is \$8,295.00, the amount he paid to the Respondent to have the bathroom reconstructed.

21. The Respondent's business address on file with the MHIC is P. O. Box 469, Chester, Maryland 21619.
22. Hearing notices were sent to the Respondent's home address listed on his Maryland drivers' record as 213 Sportsman Neck Road, Queenstown, Maryland 21658 and his business address.
23. The hearing notices were sent to the Respondent by certified and regular U.S. mail. The regular mail notice sent to the respondent's home address was not returned and the certified mail notices sent to the business address and home address were returned and marked "unclaimed unable to forward" and "box closed unable to forward".
24. The Respondent failed to appear at the scheduled hearing.

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. 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).

There is no dispute that the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. At issue between the parties is whether or not the Respondent performed an unworkmanlike and/or inadequate home improvement. The Claimant presented evidence to meet his burden to show that the Respondent performed an unworkmanlike home improvement.

On his claim form, the Claimant sought reimbursement for actual losses in the amount of \$7,445.00 as a result of the Respondent's acts or omissions with regard to the work done on the bathrooms. This amount was consistent with the cost of repairs done by a licensed contractor to correct the Respondent's work. At the hearing, the Claimant amended his claim by seeking reimbursement in the amount of \$8,295.00, the amount paid to correct the Respondent's work. The Claimant simply added up the receipts incorrectly and arrived at a figure of \$7,445.00 when he should have listed \$8,295.00. For the reasons addressed below, I find that the Respondent performed home improvement work in an unworkmanlike or inadequate manner and that the Claimant is entitled to reimbursement from the Fund for \$8,295.00.

The Claimant testified that in February 2011, he began having mold problems in a bathroom renovated by the Respondent. The evidence established that the Claimant had a bathroom renovated by the Respondent who installed new tile, subflooring and drainage. The color photographs received into evidence, supports the Claimant's assertions that mold was present in the bathroom and that there was extensive damage done to the subflooring and interior walls because the Respondent did not properly install the drainage piping, vapor and moisture barriers and cement board.

The Claimant contracted with Todd Giordano, a licensed contractor to investigate the source of the mold and to correct any defects. Mr. Giordano inspected the bathroom and determined that the leaks occurred because vapor and moisture barriers including cement board was improperly installed. Specifically, vapor barriers were not cut to the proper length, cement board was not used and the drainage was incorrectly positioned. The Respondent's work could not simply be repaired; instead, to correct the water leaks

and mold, new vapor and moisture barriers as well as tile and drainage had to be installed. Additionally, the Respondent's unworkmanlike work could not have been discovered until February 2011, when Mr. Giordano removed the molded tile, subflooring and walls. Because the Respondent's work was performed so poorly, the Claimant did not want the Respondent to perform any more work to correct the defects.

The Fund does not dispute that the Claimant has met his burden of proof.

The Claimant has established that he is eligible for compensation from the Fund because of the Respondent's unworkmanlike work. Turning to the proper award amount, 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). One of those formulas, as follows, offers an appropriate measurement in this case, since the Claimant had Mr. Girodano correct the work:

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).

Applying the formula set out above, I find that the Claimant sustained an actual loss as follows:

Amount Paid to the Respondent	\$15,350.00
Amount to Correct or Complete Work	<u>+\$ 8,295.00</u>
	\$23,645.00
Amount of Original Contract	<u>-\$15,350.00</u>
Amount of Actual Loss	\$ 8,295.00

Hence, the Claimant is entitled to reimbursement in the amount of \$8,295.00 from the Fund.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Claimant has suffered an actual and compensable loss of \$8,295.00 and is entitled to be compensated for the acts or omissions of the Respondent. Md. Code Ann., Bus. Reg. § 8-401 (2010 & Supp. 2012); COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

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

ORDER that the Claimant be awarded \$8,295.00 from the Maryland Home Improvement Guaranty Fund;

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 (10%) as set by the 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

September 27, 2013
Date Decision Mailed

Jerome Woods, IMAJC
Administrative Law Judge

JW/rbs
145239

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FILE EXHIBIT LIST

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PROPOSED ORDER

WHEREFORE, this 23rd day of October 2013, Panel B of the Maryland Home Improvement Commission approves the Recommended Decision 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