

IN THE MATTER OF THE CLAIM	* BEFORE MARY R. CRAIG,
OF ALLINDA J. JACKSON,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH NO.: DLR-HIC-02-13-11833
FOR THE ALLEGED ACTS OR	* MHIC NO.: 11(05)1321
OMISSIONS OF STEVE LAMB,	*
T/A B-DRY SYSTEM OF	*
METROPOLITAN WASHINGTON,	*
RESPONDENT	*

* * * * *

PROPOSED 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 4, 2011, Allinda J. Jackson, (Claimant), filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$2,650.00 for actual losses allegedly suffered as a result of a home improvement contract with Steve Lamb, t/a B-Dry System of Metropolitan Washington (Respondent).

I held a hearing on August 16, 2013 at the Bel Air Library, Bel Air, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2013). Chris King, Assistant Attorney General,

Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented herself. The Respondent failed to appear after proper notice.¹

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. 2013), Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; and 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 attached an exhibit list to this Proposed Decision.

Testimony

The Claimant testified in support of her Claim.

The Fund presented no 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 under MHIC license number #4286676.

¹ The OAH mailed a notice to the Respondent on April 19, 2013 to his address of record. The certified mail return receipt was received at the OAH on April 24, 2013, indicating that the notice was signed for by D. Corbin on behalf of the Respondent. The notice stated that failure to appear could lead to a decision against the Respondent. The Respondent failed to appear for the hearing or to request a postponement.

2. The Claimant owns a house located at 2010 Northbourne Road, Baltimore, Maryland, 21239 (Property).
3. Prior to November 17, 2009, the Claimant experienced water leaking into the basement of the Property in the area near the front window.
4. On November 17, 2009, the Claimant and the Respondent entered into a contract to repair the foundation wall at the Property (Contract). The Contract stated that work would begin by November 24, 2009. No completion date was provided in the Contract.
5. The Respondent guaranteed in writing to the Claimant that, after the Respondent performed the agreed work, the Claimant's basement water leak and foundation problems would be permanently solved.
6. The original agreed upon contract price was \$1,500.00.
7. On November 17, 2009, the Claimant paid the Respondent \$20.00, and on November 24, 2009, the Claimant paid the Respondent \$1,480.00 for a total of \$1,500.00.
8. The Respondent came to the Property on November 24, 2009 and affixed several pieces of black tape or fabric to the interior basement wall of the house underneath the window well. The Respondent did not perform any other work at the house.
9. In February and March 2010, the Claimant continued to experience water leaking into the basement of the Property through the same area that the Respondent had affixed the tape or fabric. The Claimant repeatedly called the Respondent asking that the Respondent come to the Property to observe the water in the basement and make repairs.
10. The Respondent sent his employees to the Property twice in 2010. The Respondent's employees told the Claimant that she needed to install a sump pump for an additional fee paid to the Respondent.

11. The Claimant refused to pay the Respondent any more money, referring to the guarantee that she received with her Contract.
12. After the Claimant refused to pay for a sump pump, the Respondent refused to return to her Property or to make any repairs.
13. On November 18, 2011, the Claimant entered into a contract with Basement Waterproofing Nationwide, Inc. (BWN) to install a sump pump and to water proof the basement of the Property. The Claimant paid BWN \$2,600.00 to do so.
14. As BWN required before it would install the sump pump, the Claimant paid CNA \$150.00 for an engineering analysis of the soil along the outside of her front basement wall.
15. BWN installed the sump pump in the basement of the Property. After BWN did so, the Property did not leak in the basement.
16. The Claimant's actual loss is \$2,750.00.

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.2013). *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 entered into the Contract with the Claimant.

Second, the Respondent performed inadequate home improvement work at the Property. It is undisputed that the Claimant hired the Respondent to address the water leaking into the Property through the front basement wall. It is also undisputed that the Respondent's employees came to the Property and placed some black tape or other material on the wall under the window. The Claimant testified, and her testimony was not refuted, that the basement continued to leak after the Respondent's employees performed the work.

The Respondent issued the Claimant a guarantee that her basement would not leak after the Respondent performed the services under the Contract. However, after two visits to the Property, the Respondent's employees refused to perform additional services at the Property unless the Claimant paid for a sump pump. The Respondent at that point essentially abandoned the Claimant's job.

I conclude that the Respondent performed inadequate home improvement work at the Property. The Claimant engaged the Respondent's services because her basement was leaking. The Respondent performed services which did not stop the leak, and refused to return to honor the guarantee.

Having found eligibility for compensation, I now turn to the amount of the award, if any. 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:

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 this formula, the Claimant's actual loss is \$2,750.00 calculated as follows:

Amount paid to the Respondent	\$1,500.00
Amount paid to correct the inadequate work	<u>+\$2,750.00</u>
Total	\$4,250.00
Contract price	<u>-\$1,500.00</u>
Actual loss	\$2,750.00

However, the Claimant is entitled to only a portion of her actual loss from the Fund.

Pursuant to Md. Code Ann., Bus. Reg. §8-405(e)(1) and (5) (Supp. 2013), the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. The Claimant paid \$1,500.00 to the Respondent, which is less than her actual loss computed using the formula noted in COMAR 09.08.03.03B(3)(c). Hence, the Claimant is entitled to reimbursement in the amount of \$1,500.00 from the Fund.

CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual/compensable loss of \$2,750.00 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).

I further conclude that the Claimant's recovery from the Fund is limited to \$1,500.00, the amount she paid the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(1) and (5) (Supp. 2013).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$1,500.00; 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.

Signature on File

October 28, 2013
Date Decision Mailed

Mary R. Craig
Administrative Law Judge

MRC/rbs
144723

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RESPONDENT *

* * * * *

FILE EXHIBIT LIST

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

Clam. Ex.1 Contract between Claimant and Respondent, November 17, 2009

Clam. Ex. 2 Check paid to Respondent, March 20, 2010

Clam. Ex. 3 Engineer's Field Analysis, September 23, 2011

Clam. Ex. 4 Basement Waterproofing Nationwide estimate, September 1, 2011

Clam. Ex. 5 Letter from Respondent's company to Claimant, November 16, 2009, with Claimant's notes

Clam. Ex. 6 Respondent's Warranty, undated

Clam. Ex. 7A & B Photographs of Claimant's basement

Clam. Ex. 8 Basement Waterproofing Nationwide contract, November 18, 2011

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

- Fund Ex. 1 Notice of hearing, April 19, 2013, green card return receipts for Respondent, signed April 22, 2013, and Claimant, signed May 3, 2013
- Fund Ex. 2 MHIC Hearing Order, March 11, 2013
- Fund Ex. 3 MHIC licensing history for Respondent
- Fund Ex. 4 Claim, November 4, 2011
- Fund Ex. 5 Letter from MHIC to Respondent, November 21, 2011

PROPOSED ORDER

WHEREFORE, this 26th day of November 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.

W. Bruce Quackenbush, Jr.

W. Bruce Quackenbush, Jr.
Panel B

MARYLAND HOME IMPROVEMENT COMMISSION