IN THE MATTER OF THE CLAIM	*	**BEFORE WILLIS GUNTHER BAKER,**
OF TRACEY TURNER,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF STEVEN HESSLER,	*	
T/A ROCK CREEK DECKS &	*	**OAH No.: LABOR-HIC-02-21-24188**
ADDITIONS, LLC,	*	**MHIC No.: 20 (90) 69**
RESPONDENT	*	

* * * * * * * * * * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On September 24, 2019, Tracey Turner (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),[1] for reimbursement of $ 8,324.00 in actual losses allegedly suffered as a result of a home improvement contract with Steven Hessler, trading as Rock Creek Decks and Additions, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401

[1] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

through 8-411 (2015).[2] On November 2, 2020, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a remote hearing via the Webex platform on April 28, 2021 from the Office of Administrative Hearings (OAH) in Hunt Valley Maryland. Md. Code Ann., Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B. Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself.

After waiting more than fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. On March 4, 2021, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail and certified mail delivery to the Respondent's address on record with the OAH. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). Notice was also sent to the Respondent's Counsel, Richard J. Hackerman, Esquire. The Notice stated that a hearing was scheduled for April 28, 2021 at 9:30 a.m. via Webex. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service (USPS) did not return the Notice to the OAH, but the USPS did return the certified mail receipt as delivered for both the Respondent and Mr. Hackerman. On March 12, 2021, Mr. Hackerman withdrew his appearance. The Respondent did not notify the OAH of any change of mailing address, email address, or phone number. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of

[2] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

the hearing.[3] COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 09.01.03; COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

2. If so, what is the amount of the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

Clmt. Ex. 1 - Summary prepared by the Claimant, undated

Clmt. Ex. 2 - Gotsch Inspections, LLC Report, September 13, 2019

Clmt. Ex. 3 - Video of porch roof, undated (subsequent to August 2018)

Clmt. Ex. 4 - Starcom Design Build Corp Estimate, September 22, 2019

Clmt. Ex. 5 - Payments to the Respondent, multiple dates

Clmt. Ex. 6 - Six pages of photographs of deck and porch roof, late 2019

Clmt. Ex. 7 - Text messages between the Claimant and the Respondent, July 3, 2019

Clmt. Ex 8 - Contract between the parties, July 6, 2018

[3] A prior hearing date of March 2, 2021 was postponed at the Respondent's request due to unavailability of Counsel.

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

Fund Ex. 1 - Hearing Notices, sent November 13, 2020, January 21, 2021, and March 4, 2021

Fund Ex. 2 - MHIC Hearing Order, October 28, 2020

Fund Ex. 3 - Respondent's MHIC Licensing information, various dates

Fund Ex. 4 - Letter from MHIC to the Respondent advising of the Claimant's Complaint and attaching the Claim Form, October 8, 2019

No exhibits were offered by the Respondent.

Testimony

The Claimant testified and did not present other witnesses.

The Fund and the Respondent did not offer any witnesses.

PROPOSED 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.

2. On July 6, 2018, the Claimant and the Respondent entered into a contract to remove, replace, and enlarge three exterior decks and construct a screened porch at the Claimant's home (Contract). The Contract stated that work would be completed by twenty-one business days from the start of the work, with a time extension for inclement weather, material shipment delays or change orders. The Contract expressed "Time shall be of the essence in this agreement."

3. The original agreed-upon Contract price was $24,700.00.

4. The Claimant paid the Respondent $7,725.00 on July 11, 2018; $7,616.50 on August 10, 2018; $7,622.00 on August 14, 2018; and $2,420.50 on August 31, 2018, totaling $25,384.00.

5. The decks and porch were substantially completed by the Respondent, but there were many issues of concern including: leaving vulnerable areas of water penetration with the porch roof; using improper fasteners for post to deck connection on the porch; loose handrails on the decks; missing electrical box on the porch fan; aesthetic concerns with mismatched railings, missing trim and edging, protruding nails, loose screens on porch, and unpatched nail holes.

6. The Claimant communicated her concerns to the Respondent on many occasions between August 2018 and July 2019 and the Respondent promised to make the repairs, but the Respondent abandoned the repairs in July 2019 and advised the Claimant that he was going out of business.

7. The Claimant engaged Gotsch Inspections, LLC to review the Respondent's work and identify dangers and vulnerabilities created by the Respondent.

8. The Claimant received an estimate of $8,109.00 from Starcom Design Build Corp, a licensed home improvement contractor, to correct the items identified in the Gotsch report and complete the work left unfinished by the Respondent.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

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); *see also* COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for actual losses . . .

incurred as a result of misconduct by a licensed contractor."). "'[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. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered the Contract with the Claimant. The Respondent performed unworkmanlike, inadequate, and incomplete home improvements. The Respondent was hired to remove and replace three decks and construct a screened porch at the Claimant's home. While the work was substantially completed, it was shoddy, mismatched and unprofessional. The roof to the porch was not wide enough or properly shingled and flashed, and the porch itself was not properly attached to the house. The deck railings were loose, mismatched and not installed the same way on each of the decks, causing both a fall danger and aesthetic concerns. The ceiling fan on the porch was installed without an electrical box causing shock or fire hazards.

The Claimant tried to work with the Respondent who kept promising to send someone to make the appropriate repairs and completions, but after waiting eleven months, the Respondent finally abandoned the project. The Claimant hired an inspector to document the unworkmanlike issues and sought an estimate from a licensed contractor to make the repairs. I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent performed some work under the Contract, and the Claimant intends to retain other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

> 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).

The Claimant testified that she paid the Respondent the full contract amount of $24,700.00. However, the documents she provided showed that she actually paid the Respondent $25,384.00. It is unclear why there is a discrepancy, but because the Claimant has indicated in her testimony and on her claim form that the amount paid to the Respondent was $24,700.00, it is that amount I will use for the calculations. The Claimant provided an estimate from Starcom to repair and complete the Respondent's work in the amount of $8,109.00. The Claimant also included in her claim form to the MHIC the $215.00 cost of the Gotsch inspection, however this is not recoverable as it is a consequential damage, not a cost to repair. Therefore, in applying the above formula, I find that the Claimant's actual loss is $8,109.00.[4]

[4] Amount paid to Respondent $24,700.00 + Cost to repair $8,109.00 – Contract Price $24,700.00 = Actual Loss $8,109.00.

The Business Regulation Article caps a claimant's recovery at $20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than $20,000.00. Therefore, the Claimant is entitled to recover her actual loss of $8,109.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $8,109.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $8,109.00; 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 ten percent (10%) as set by the Maryland Home Improvement Commission;[5] and

[5] *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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

Willis Gunther Baker

Julu 15, 2021
Date Decision Issued

Willis Gunther Baker
Administrative Law Judge

WGB/cj
#192987

PROPOSED ORDER

WHEREFORE, this 13th day of October, 2021, 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.

Joseph Tunney

Joseph Tunney
Chairman
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION