

IN THE MATTER OF THE CLAIM
OF WILLIAM SMITH,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED
ACTS OR OMISSIONS OF
MAURICE CHRISTENSEN,
T/A HAMMER HOME
IMPROVEMENT, LLC,
RESPONDENT

* BEFORE ANDREW J. BROUWER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-23-29559
* MHIC No.: 23 (75) 1147
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PROPOSED DECISION

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STATEMENT OF THE CASE

On May 22, 2023, William Smith (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$30,000.00 for actual losses allegedly suffered as a result of home improvement contracts with Maurice Christensen, trading as Hammer Home Improvement, LLC (Respondent). Md. Code

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).

Ann., Bus. Reg. §§ 8-401 to 411 (2015 & Supp. 2023),² On November 15, 2023, the MHIC issued a Hearing Order on the Claim and forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 1, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. The Claimant and the Respondent were self-represented. MacKenzie Read, Assistant Attorney General, Department, represented the Fund.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); Code of Maryland Regulations (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 have attached a complete Exhibit List as an Appendix.

Testimony

The Claimant testified and presented the following witnesses: Dolores Watt.

The Respondent testified and did not present other witnesses.

The Fund did not present any witnesses.

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

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 under MHIC license numbers 01-107191 and 05-131274.

Contracts & Payments

2. On February 24, 2022, the Claimant entered into a contract with the Respondent for a kitchen addition (Kitchen Contract). (CL. Ex. 1). The Kitchen Contract price was \$38,500.00.

3. On an unspecified date in February 2022, the Claimant entered into another contract with the Respondent for an addition to the living space in his home (Addition Contract). (CL. Ex. 2). The Addition Contract price was \$42,500.00.

4. The total original price for the Kitchen Contract and Addition Contract (collectively Contracts) was \$81,000.00.

5. The Contracts each provided that the costs could change depending on changes in materials, property conditions, or unforeseen damages, which meant items not included in the either Contract and not visible. (CL Ex. 1, p. 2; CL Ex. 2, p. 2).

6. The Claimant and Dolores Watt, the Claimant's girlfriend, anticipated that the Respondent would start work on April 1, 2022, and finish in June 2022.

7. The Claimant and Ms. Watt sought these dates because Ms. Watt was selling her home and planned to move her belongings into the Claimant's home, so they hoped to have the work completed in time for her move.

8. The Kitchen Contract had a note indicating that Ms. Watt wanted the work to begin on April 1, 2022.

9. The Addition Contract does not have a requested start date.

10. Neither of the Contracts have a completion date.
11. It was important to the Claimant that the Respondent not use subcontractors.
12. Neither of the Contracts addresses the use of subcontractors.
13. Both Contracts contain a provision indicating that each constitutes the entire agreement, that no other written or verbal agreements exist, and that each Contract could only be modified by a written agreement signed by both parties.

14. Due to permitting issues beyond the Respondent's control, specifically delays due to the local permitting department's transition to an electronic system, the work did not begin until July 25, 2022.

15. The Claimant was aware of the permitting delays.

16. On or before September 7, 2022, demolition exposed unforeseen damage to the wall next to the Claimant's driveway. Specifically, the wall was dry-rotted and needed to be rebuilt. This work required additional permitting and slowed progress on the work under the Contracts.

17. On dates not entirely clear from the record, but while the Respondent was continuing to perform work under the Contracts, the total cost of the Contracts grew to \$93,650.00 with increases and decreases as follows:

Increases:

- \$8,200.00 added to address the unforeseen damages to the wall
- \$2,700.00 added for architect drawings
- \$1,800.00 added for the installation of an electrical sub panel
- \$310.00 added in labor and materials for an exhaust fan
- \$200.00 added in labor and materials for two outdoor lights

Decreases:

- \$410.00 subtracted for the Claimant reusing his existing garbage disposal
- \$150.00 subtracted in relation to a storm door

18. The Claimant and Ms. Watt paid the Respondent a total of \$93,650.00 towards the Contracts as follows:

- \$14,000.00; February 23, 2022; Check 287; Payor: Claimant; Payee: Respondent
- \$13,000.00; March 1, 2022; Check 413; Payor: Ms. Watt; Payee: Respondent
- \$7,500.00; July 25, 2022; Check 293; Payor: Claimant; Payee: Respondent
- \$7,000.00; July 26, 2022; Check 294; Payor: Claimant; Payee: Respondent
- \$22,700.00; August 31, 2022; Check 296; Payor: Claimant; Payee: Respondent
- \$8,200.00; September 7, 2022; Check 297; Payor: Claimant; Payee: Respondent
- \$8,050.00; November 11, 2022; Check 298; Payor: Claimant; Payee: Respondent
- \$13,200.00; March 13, 2023; Check 303; Payor: Claimant; Payee: Respondent

19. The Claimant and Ms. Watt paid the Contracts in full.

20. The Respondent completed work under the Contracts in March 2023.

Claimant's Workmanship Complaints

Kitchen Paint

21. On November 11, 2022, the Respondent painted the kitchen.

22. On November 28, 2022, the Claimant notified the Respondent that the kitchen paint was peeling.

23. On November 29, 2022, the Respondent evaluated the kitchen paint and on December 19, 2022, he repaired the kitchen walls and repainted the entire kitchen.

Trash and Debris

24. The Claimant complained that the Respondent left trash and other construction debris in the Claimant's driveway for extended periods.

25. The Respondent had a dumpster onsite from August 29, 2022, through September 1, 2022. (Resp. Ex. 2A).

26. Between September 2, 2022, and January 12, 2023, the Respondent had trash removed by "No Boundaries junk removal" (No Boundaries). On or about the following dates,

No Boundaries removed trash:

- September 2, 2022 (Resp. Ex. 2B, C)
- September 6, 2022 (Resp. Ex. 2D, E)
- October 14, 2022 (Resp. Ex. 2F, G)
- November 10, 2022 (Resp. Ex. 2H, I)
- January 12, 2023 (Resp. Ex. 2J, K)

27. By or about January 12, 2023, the Respondent had all trash removed.

28. The Respondent intentionally left some siding on the property that the Claimant could use to repair any potential future damage, because otherwise the Claimant could not obtain exact matching siding.

Kitchen Cabinets

29. On a date not reflected in the record, the Claimant noticed issues with the newly installed kitchen cabinets.

30. On November 18, 2022, the Claimant photographed the issues, which included exposed screws connecting the upper cabinets at the top, a crack in one of the upper cabinets at the top, a screw head protruding from inside one of the upper cabinets, and unrepaired screw holes in the kitchen pantry where the Respondent had drilled holes that missed the framing studs.

31. On December 18, 2022, one of the kitchen cabinet handles fell off the cabinet.

32. On a date not reflected in the record, the Respondent reinstalled the handle.

33. On a date not reflected in the record, the Claimant also noticed issues with the lower cabinets cracking and paint chipping. The evidence presented does indicate when the Claimant discovered that the lower cabinets were cracking and paint chipping or whether he ever alerted the Respondent.

Kitchen Lights

34. The Kitchen Contract called for the Claimant to receive "approx." six recessed lights. (CL Ex. 1).
35. The Respondent installed three recessed lights in the kitchen.
36. One of the recessed lights had a poor finish around it.
37. On December 19, 2022, the Respondent repaired the finish issues when repainting the entire kitchen.

Kitchen Electrical Outlet Cover

38. The Respondent cut the corner off an electrical outlet cover to enable it to fit flush against an adjacent window's molding.

Exterior Concrete Cracking

39. The concrete that the Respondent installed next to the living addition had some thin cracking, and the Claimant brought the issue to the Respondent's attention at an unknown time in 2023.

40. The Respondent has not repaired the cracks.

Addition Hardwood to Carpet Transition

41. A height transition exists between the original hardwood floor and the carpet connected to the new living addition. It is less than a half inch.

Addition Electrical Outlet

42. The immediate wall area surrounding an outlet in the addition had an uneven texture, which caused it to have an unfinished look.
43. Although the Respondent repaired the issue, the Claimant believes that it still has an unfinished look, so he believes it was not properly repaired.

HVAC Ducting and Insulation under Living Addition

44. The newly installed duct work to the living addition is connected to the Claimant's furnace by an eight-foot-long rigid pipe in his basement followed by an eighteen-foot-long flexible insulated pipe running under the crawl space beneath the living addition.

45. The Claimant does not feel much air coming out of the vent in the living addition when he puts his hand over it and believes that the ducting is too long.

46. On January 26, 2024, the Claimant went into the crawl space beneath the living addition to take photographs.

47. The Claimant noticed and photographed some insulation falling from the underside of the living addition floor and an unsealed gap where the crawl space meets the access panel that the Respondent installed into the Claimant's basement.

48. While the record reflects that the Claimant notified the Respondent of issues with the eight-foot rigid HVAC pipe in the basement, it does not reflect whether the Claimant ever notified the Respondent of any issues with falling insulation.

Kitchen Sink

49. On or about December 30, 2023, the Claimant noticed a drip coming from the right side of the kitchen sink where it met the butcherblock countertop.

50. The Respondent installed both items.

51. On January 19, 2024, the Claimant obtained a \$450.00 estimate from a plumber, Kevco Solutions, to remove the sink and faucet, clean and prep the area, and to reassemble and reinstall the kitchen faucet and sink.

52. The Claimant never alerted the Respondent to these issues with the kitchen sink.

Storm and Exterior Doors

53. In 2006, the Claimant had exterior doors and storm doors installed at his home by Master Seal.

54. The Respondent was to remove and reuse two doors, one from the kitchen and one from the addition, and two storm doors, one from each of the same locations.

55. After the Respondent reinstalled the doors and the kitchen storm door, they fit imperfectly, had gaps, were missing hardware, lacked a finished look, and did not function as well as they had prior to the Respondent's removal and reinstallation.

56. The Claimant chose not to have the Respondent reinstall the living addition storm door after he observed problems with the other doors and kitchen storm door.

57. The Respondent reduced the total amount owed under the Contracts by \$150.00 to account for the living addition storm door not being reinstalled.

58. On November 18, 2022, the Claimant took photographs documenting the problems with the doors.

59. On or about May 17, 2023, Master Seal provided the Claimant with an estimate for \$6,200.00 to replace the kitchen door, to reinstall the kitchen storm door, to reinstall the addition door, and to replace the addition storm door.

60. On or about August 14, 2023, Master Seal replaced the kitchen door, reinstalled the kitchen storm door, reinstalled the addition door, and replaced the addition storm door.

Roof

61. On November 28, 2023, while hanging Christmas lights, the Claimant noticed gaps in the siding near where the Respondent had connected the new roof to his home.

62. On November 29, 2023, the Claimant had Aero Residential Contractors, Inc. (Aero) inspect the roof and provide him with an estimate for repairs.

63. Aero estimated it would cost \$975.00 to replace rotted and damaged fascia board at the addition/main roof transition, cover with new aluminum trim coil, and to install flashing in the transition area.

64. The Claimant never notified the Respondent of these issues with the roof.

Respondent's Resolution Efforts

65. In March 2023, the Respondent completed the Contracts, and the Claimant made the final payment on them.

66. Before March 2023, the Claimant filed his initial complaint with the MHIC.

67. In or about March 2023, the Respondent received a copy of the Claimant's MHIC complaint and met with the Claimant at the Claimant's home to discuss the issues raised in the MHIC complaint.

68. The Respondent offered to address all the Claimant's concerns with the work at no cost to the Claimant.

69. In addition to his workmanship complaints, the Claimant expressed that he did not trust the Respondent's workers' ability to perform the work based upon the work that they had already performed.

70. The Respondent offered to bring different workers and to personally supervise their work. He also offered to replace any damaged kitchen cabinets, and to buy and install new doors.

71. During their meeting, the Claimant rejected the Respondent's offers, and he advised the Respondent that he did not want the Respondent to perform any more work at his home because he had no confidence that the work would be done properly.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217 (2021); 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 Cnty. 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." Bus. Reg. § 8-405(a) (Supp. 2023); *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." Bus. Reg. § 8-401. The MHIC may deny a claim if it finds the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim. Md. Code Ann., Bus. Reg. § 8-405(d). After considering the evidence, I find the Claimant is not eligible for an award from the Fund because the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the Claim. *Id.*

The project did not start favorably as the Claimant and Ms. Watt had to endure significant initial delays. This colored their experience from the outset because the timing was intended to accommodate Ms. Watt's pending move into the Claimant's home. Unfortunately permitting delays ensued. Those delays prevented the work from starting until July 25, 2022, nearly a month after the Claimant and Ms. Watt had hoped to have the entire project completed. Those delays, however, were not attributable to the Respondent. Rather, they stemmed from the local permitting department's transition to an electronic system.

Not long after the project got underway, further delays followed. The demolition work revealed significant unforeseen problems with a dry-rotted wall, which required reconstruction. This required more work, more permits, and caused more delays. As the delays continued, the work dragged into the holiday season, which impacted the Claimant's and Ms. Watt's Thanksgiving and Christmas celebrations. Ms. Watt stressed these impacts in her testimony, and they clearly troubled her. While the delays were unfortunate, they were reasonable considering the permitting delays were not attributable to the Respondent, the original project's large scope, and the increased scope that included the wall reconstruction.

In addition, the delays led to construction debris remaining in the Claimant's driveway for long periods of time. During his testimony, the Claimant repeatedly noted his concerns with the trash and offered many photographs showing various debris stacked next to his house and on the side of his driveway. The trash and debris greatly bothered the Claimant.

However, this was a major renovation project, so substantial debris is expected. Further, the Respondent had a dumpster onsite between August 29, 2022, and September 1, 2022, and he arranged for five additional trash pick-ups between September 2, 2022, and January 12, 2023. Most importantly, and as the Claimant testified, the Respondent ultimately had all the trash and debris removed. Accordingly, while perhaps the Respondent could have removed the trash and debris more frequently and proactively, the evidence presented indicates that the Respondent handled the matter appropriately and was responsive to the Claimant's concerns.

In addition to the delays and debris, the Respondent's use of subcontractors colored the Claimant's overall impressions. I do not give these concerns any weight. The Claimant stressed in his testimony that he would not have contracted with the Respondent if he had known that the Respondent used subcontractors. However, subcontractor use is a reasonably anticipated practice, particularly in large construction projects. Despite the foreseeability and likelihood that

a contractor would use subcontractors on a project as large as the Claimant's, the Claimant did not insist upon any contract language to address this concern. Aside from the Claimant's and Ms. Watt's testimony, the Claimant also did not present any evidence to indicate that the Respondent knew about the Claimant's objection to subcontractor use. More importantly, the Claimant did not present any evidence indicating that the Respondent had agreed to forego their use. As such, to the extent the Claimant considered subcontractor use as a factor in deciding to reject the Respondent's efforts to resolve the Claim, I conclude that such sentiments were not reasonable.

Upon that backdrop, any real and perceived workmanship issues fell. As to those issues, the Claimant averred things such as cracking cabinets, poor kitchen paint, an improperly finished electrical outlet, and a cut electrical outlet cover next to a window. He also noted that the Respondent's workers had difficulty locating some of the studs in the kitchen addition, so had drilled unnecessary holes in his walls. Further, the Claimant believed the transition between his original hardwood floors onto the carpet of the new addition should have been completely level with no difference in height. Then, most importantly, there were issues with the removal and reinstallation of the Claimant's Master Seal doors.

The Claimant testified that he had the doors installed by Master Seal in 2006. He expressed great affinity for his doors and Master Seal as a business. To his dismay, the removal and reinstallation process had problems. The Respondent lost parts, and the reinstallation failed to match the original installation's quality in both appearance and function. All these concerns led the Claimant to file an MHIC complaint against the Respondent.

Upon receiving the Claimant's MHIC complaint, the Respondent promptly sought to address the Claimant's concerns. The Respondent met with the Claimant at the Claimant's home. During that meeting, he offered to address any issues that the Claimant had with the work, at no cost to the Claimant. He also reaffirmed his responsibility to address any problems and did not

dispute his obligations. He even offered to provide different workers and to personally supervise the work to alleviate any concerns that the Claimant had regarding the prior workers' capabilities. He indicated that he would replace any damaged cabinets and offered to replace the Claimant's doors. The Claimant, however, had decided that he did not want the Respondent to perform work at his home, so rejected the Respondent's offers.

As such, the threshold issue in this case is not whether the Respondent performed inadequate, incomplete, or unworkmanlike home improvements, but rather, whether the Claim is compensable considering the Respondent's good faith efforts to resolve the dispute. The Fund argued the Claimant unreasonably rejected the Respondent's good faith efforts, so is not eligible to recover on his Claim. I agree.

The Claimant's decision to reject the Respondent's efforts to resolve any problems ignored the fact that the Respondent had promptly and competently addressed prior issues. For instance, on November 28, 2022, the Claimant notified the Respondent that the kitchen paint was peeling. Not long thereafter, on December 19, 2022, the Respondent had the kitchen walls repaired and the entire kitchen repainted. Further, the Claimant's rejection fails to account for the fact that this was a major renovation project, which reasonably would have some problems that might need correction. Most importantly, the Respondent expressed an unconditional willingness to attempt to resolve any remaining issues at no cost to the Claimant. He even offered to undertake those resolution efforts with new workers under his personal supervision to alleviate the Claimant's concerns regarding the prior workers' abilities. I conclude that the Respondent's offers were in good faith, fair, and appropriate, and the Claimant's rejection of them constituted an unreasonable rejection of the Respondent's good faith efforts to resolve the Claim. For all of those reasons, I find the Claimant has failed to meet his burden of showing that he is entitled to reimbursement from the Fund.

PROPOSED CONCLUSION OF LAW

Based on the Proposed Findings of Fact and Discussion, I conclude as a matter of law that the Claimant did not sustain an actual monetary loss compensable by the Fund as a result of the Respondent's acts or omissions, and the Claimant is not entitled to an award from the Maryland Home Improvement Commission Guaranty Fund because he unreasonably rejected the Respondent's good faith effort to resolve the Claim. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(d) (2015 & Supp. 2023).


RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's Claim; and

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

April 19, 2024
Date Decision Issued



Andrew J. Brouwer
Administrative Law Judge

AJB/at
#211346

PROPOSED ORDER

WHEREFORE, this 21st day of June, 2024, 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.

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Panel B

*MARYLAND HOME IMPROVEMENT
COMMISSION*