

CLAIM OF GLORIA J. LARMAN	* BEFORE MARLEEN B. MILLER,
AGAINST THE MARYLAND HOME	* AN ADMINISTRATIVE LAW JUDGE
IMPROVEMENT GUARANTY FUND,	* OF THE MARYLAND OFFICE
REGARDING THE ALLEGED ACTS	* OF ADMINISTRATIVE HEARINGS
AND OMISSIONS OF THOMAS MOORE,	* OAH NO.: DLR-HIC-02-10-24087
SR., T/A MOORE HOME	* MHIC NO.: 08 (90) 1645
IMPROVEMENT	*

THE LICENSEE

* * * * *

RECOMMENDED DECISION

STATEMENT OF THE CASE
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SUMMARY OF THE EVIDENCE
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STATEMENT OF THE CASE

On or about September 11, 2008, Gloria J. Larman (the Claimant) filed a claim (the Claim) with the Maryland Home Improvement Commission (the MHIC or the Commission) Guaranty Fund (the Fund), for reimbursement of the actual losses she allegedly suffered as a result of the acts and omissions of Thomas Moore, Sr., t/a Moore Home Improvement (the Licensee). After investigation, the Commission issued an October 9, 2009 Hearing Order and forwarded the case to the Office of Administrative Hearings (OAH) on June 29, 2010.

On March 23, 2011, I conducted a hearing on the Claim at the Calvert County Library in Prince Frederick, Maryland, pursuant to section 8-407(a) of the Maryland Annotated Code's

Business Regulation Article¹ (incorporating the hearing provisions of Business Regulation Article § 8-312).² The Claimant and the Licensee represented themselves, and Assistant Attorney General Jessica Kaufman appeared on the Fund's behalf.

The contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010); the Commission's Hearing Regulations, COMAR 09.01.03, 09.08.02.01, and 09.08.03; and OAH's Rules of Procedure, COMAR 28.02.01, govern procedure in this case.

ISSUES

Did the Claimant sustain an actual loss as a result of the Licensee's acts or omissions and, if so, what amount is the Claimant entitled to recover from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

The Claimant submitted the following documents, which I admitted into evidence as the exhibits numbered below:

1. The Claimant's Log
2. #1 Repair Request, with related correspondence
3. Floor Systems, Inc. Invoice and Acknowledgements
4. Invoice, dated February 4, 2008
5. Letter from the Licensee to the Commission
6. Email from Armstrong Flooring, dated December 17, 2007
7. Checks from the Claimant to the Licensee
8. Piece of flooring

¹ Throughout this Recommended Decision, the 2010 Replacement Volume to the Maryland Annotated Code's Business Regulation Article will be referred to as the Business Regulation Article.

² On May 17, 2010, the Licensee requested a postponement of this hearing, which the OAH denied as untimely filed.

9. Three photos of the buckled flooring
10. Five photos showing where taping was laid under new flooring
11. Additional photo showing where taping was laid under new flooring
12. Five photos showing condition of old flooring when vinyl flooring was removed
13. Three photos of the flooring installed by Floor Systems, Inc.

The Licensee submitted the following documents, which I admitted into evidence as the exhibits numbered below:

1. Home Improvement Contract, dated October 1, 2007
2. Copy of Vinyl Flooring Tape packaging
3. No-Glue Vinyl Sheet instructions

The Fund submitted the following documents, which I admitted into evidence as the exhibits numbered below:

1. November 19, 2010 Notice of Hearing
2. October 9, 2009 Hearing Order
3. The Licensee's licensing history
4. October 6, 2008 letter from the Commission to the Licensee, with enclosed September 11, 2008 Claim
5. July 30, 2009 letter from the Commission to the Licensee

Testimony

The Claimant testified on her own behalf. The Licensee and his son, Andrew Michael Moore, testified for the Licensee. The Fund presented no witnesses.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all relevant times, the Licensee has been a licensed home improvement contractor, License # 91020.

2. In or around September of 2007, the Claimant decided to remodel her kitchen and contacted the Licensee in response to a flyer she had received from his company.

3. On October 1, 2007, the Claimant entered into a home improvement contract (the Contract) with the Licensee, including the removal and replacement of her kitchen flooring, at a cost of \$925.00.

4. The Claimant agreed to provide the new flooring and purchased Armstrong Premium flooring off a roll from Lowes for the Licensee's installation.

5. The Licensee advised the Claimant that the new flooring could be effectively taped over her old wood flooring and proceeded to do so, filling in a space where an island had been removed, installing subflooring with liquid nail (a glue product), placing tape along the perimeter in various places, placing additional tape in X and L patterns at numerous points on the floor and placing molding around the perimeter. The Licensee did not place tape under the seams in the new flooring.

6. The work was completed in or around the middle of October 2007, and, at that time, the Claimant was satisfied with how it looked. Consequently, she paid the Licensee the \$925.00 due under the Contract.

7. In or around late November, the flooring installed by the Licensee began to stretch, ripple and bulge in at least two places and the number and size of the bulges increased over time.

8. The Claimant called the Licensee regarding the problem and, on or about December 6, 2007, the Licensee's son, who works with his father, came out to look at the

flooring. He questioned the possibility of a manufacturing defect and directed her to contact Lowes.

9. On December 7, 2007, the Claimant called Lowes, and a salesman checked the store's computer, advising her that there were no recorded defects or recalls regarding the flooring she had purchased. He suggested that the Claimant have another contractor look at the floor and provide an estimate for repair or replacement.

10. On December 10, 2007, the Claimant called the Licensee, who advised her that he was not responsible and that she should contact Armstrong directly for a product review.

11. On December 15, 2007, the Claimant contacted Floor Systems, Inc. (Floor Systems), to set up an appointment for an estimate of the cost to repair or replace the flooring.

12. On December 17, 2007, the Claimant spoke to Rick Delt, an Armstrong customer support representative, who emailed her copies of the product warranty, product installation recommendations/guidelines and information regarding bulging or lifting of its flooring.

13. Proper installation of the Armstrong flooring purchased by the Claimant and installed by the Licensee requires use of the "loose lay tape method." Installation should be planned for a minimum number of seams, with tape applied only under seams (where needed), at doorways (where needed) and under heavy moveable appliances. Tape should not be installed around the entire perimeter of the room, and baseboard molding or coved molding should be installed (but not nailed to the flooring) to cover an expansion zone, which should be left around the perimeter of the room.

14. The Claimant's telephone calls to the Licensee on December 19 and 22, 2007 were not returned.

15. On December 19, 2007, the Claimant sent a certified letter to the Licensee, advising him that she expected him to remedy this situation and, if he did not, she would hire another flooring installer and expect return of the installation cost that she had paid to the Licensee.

16. On December 20, 2007, a Floor Systems' representative came to the Claimant's home and advised her that the vinyl flooring was lifting due to faulty installation, that the problem was too extensive to be repaired and that the flooring would have to be pulled up and reinstalled.

17. On December 21, 2007, the Claimant spoke to the Licensee over the phone; he denied that installation was a factor in the problems she was having with her flooring. He offered to reinstall the flooring at a reduced cost and expected to be reimbursed by Armstrong.

18. On December 22, 2007, the Claimant paid Floor Systems a deposit of \$200.00 to replace the kitchen floor.

19. On December 26, 2007, Andrew Moore telephoned the Claimant. He left a message that he would like to look at the floor again and suggested that he might possibly be able to repair the bulging section of the floor — by removing the refrigerator, seaming the floor, and gluing only that section. The Claimant was unwilling to do this because she did not believe, based on the documentation from Armstrong and discussion with Floor Systems' representative, that Mr. Moore's proposal would effectively resolve the problem.

20. In February 2008, the Licensee reported the Claim to its insurance company and, on April 10, 2008, the company denied coverage.

21. On February 2, 2008, Floor Systems' representative, Robert Farrell, removed the new kitchen flooring and discovered (in the Claimant's presence) that excessive tape had been used and that no tape had been installed under the seams in the flooring.

22. Because the Licensee had used liquid nail, rather than nailing the subflooring, portions of the underlying wood floor and subflooring came up and the vinyl tore when Mr. Farrell tried to remove it. As a result, Floor Systems had to remove the subflooring and base flooring, level the floor, install new subflooring, install new vinyl flooring and reinstall the molding. The Claimant has had no problems with the flooring since that installation.

23. On February 8, 2008, the Claimant wrote to the Licensee, demanding reimbursement of the \$2,349.00 she paid to Floor Systems to replace the flooring.

24. The Claimant and the Licensee communicated back and forth in an unsuccessful effort to resolve the dispute regarding the flooring.

25. On September 11, 2008, the Claimant filed her Claim against the Fund.

DISCUSSION

Pursuant to Business Regulation Article §§ 8-405(a) and 8-407(e)(1), to recover compensation from the Fund, the Claimant must prove, by a preponderance of the evidence, that she incurred an actual loss, which resulted from a licensed contractor's acts or omission. Business Regulation Article § 8-401 defines an "actual loss" as "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." For the reasons set forth below, I conclude that the Claimant has met this burden, by proving that the Licensee failed to perform a workmanlike job and that the Claimant incurred an actual loss, entitling her to an award of \$925.00.

No expert witness testified at the hearing to establish whether the Licensee installed the

Claimant's kitchen flooring in an unworkmanlike manner. Nevertheless, I do not need an expert to assist me in determining that the flooring installed by the Licensee should not have buckled within a month of installation. Absolutely no evidence exists from which one might conclude that the vinyl flooring purchased was in anyway defective. In contrast, photograph evidence, specifications from the manufacturer of the flooring installed by the Licensee and lay testimony were produced, which demonstrated the proper procedures for installation of the flooring and the Licensee's failure to comply with those procedures, e.g., by failing to place tape in appropriate places under the flooring. Therefore, I agree with the Claimant and the Fund's representative that it is reasonable for me to conclude, at the very least, that the Licensee is responsible for having performed inadequate home improvement work.

Section 8-405(d) of Business Regulation Article provides that "[t]he Commission may deny a claim if the Commission finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim." I do not find that the Claimant did so in this case. The Licensee repeatedly denied responsibility, then offered to fix things for a price and, later, suggested that he might possibly be able to repair the bulging section of the floor by removing the refrigerator, seaming the floor, and gluing only that section. None of these offers were reasonable under the circumstances. Moreover, I cannot consider the monetary settlement offers made by the Licensee after the filing of the Claim as the type of good faith efforts contemplated by Business Regulation Article § 8-405(d). Consequently, I conclude that the Claimant has met her burden of proof and is entitled to an award from the Fund.

With respect to such awards, COMAR 09.08.03.03B(b)(3)(c) provides as follows:

B. Measure of Awards from Guaranty Fund.

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

(a) If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract.

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

(c) 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.

Using the above formula, I calculate the Claimant's actual loss as follows:

\$ 925.00	Amount the Claimant paid the Licensee
+ 2,349.00	Amount required to repair/replace the Licensee's Work
\$ 3,276.00	Total amounts paid by the Claimant
- 925.00	Contract price
\$ 2,351.00	The Claimant's actual loss

Business Regulation Article § 8-405(e)(5) however provides that no claimant may be awarded "an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed." Consequently, I recommend that the Claimant be awarded the full amount she paid the Licensee for installation of her kitchen flooring, \$925.00

CONCLUSIONS OF LAW


Based upon the foregoing Findings of Fact and Discussion, I conclude that the Claimant has met her burden of proving that she incurred an actual loss as a result of the Licensee's inadequate performance of the home improvement work. Business Regulation Article §§ 8-405(a) and 8-407(e)(1). The total amount of that loss is \$925.00, which the Claimant should be awarded from the Fund. *Id.* § 8-405(e)(5); COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

Upon due consideration, I **RECOMMEND** as follows:

1. The **MHIC ORDER** that the Claimant, Gloria Larman, be awarded \$925.00 from the MHIC Fund, for the actual losses she sustained as a result of the Licensee's inadequate home improvement work;
2. The Licensee, Thomas Moore, Sr., t/a Moore Home Improvement., be ineligible for an MHIC license, under Business Regulation Article § 8-411(a), until the Fund is reimbursed for the full amount of the award paid pursuant to its Order, plus annual interest of at least ten percent; and
3. The records and publications of the MHIC reflect this decision.

June 17, 2011
Date decision mailed


Marleen B. Miller
Administrative Law Judge

MBMrbs
#123844

**CLAIM OF GLORIA J. LARMAN
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND,
REGARDING THE ALLEGED ACTS
AND OMISSIONS OF THOMAS MOORE,
SR. T/A MOORE HOME
IMPROVEMENT**

*** BEFORE MARLEEN B. MILLER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH NO.: DLR-HIC-02-10-24087
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* MHIC NO.: 08 (90) 1645

THE LICENSEE

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FILE EXHIBIT LIST

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PROPOSED ORDER

WHEREFORE, this 4th day of August 2011, 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.

J. Jean White

***I. Jean White
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION