

<p>IN THE MATTER OF THE CLAIM</p> <p>OF STEVEN ROSS,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF ABRAHAM PORAT,</p> <p>t/a AJP BUILDERS, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE JOHN J. LEIDIG,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: DLR-HIC-02-15-37207</p> <p>* MHIC No.: 15 (90) 717</p>
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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSION OF LAW
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STATEMENT OF THE CASE

On June 2, 2015, Steven Ross filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$66,112.37 in alleged actual losses suffered as a result of a home improvement contract with Abraham Porat, t/a AJP Builders, LLC (Respondent) for repairs and improvements to a home located at 19121 Dowden Circle, Poolesville, Maryland (the Property).¹

¹ Mr. Ross and his spouse, Kevin O’Neill, are co-owners of the Property. Only Mr. Ross signed the Claim form; however, the parties stipulated that both Mr. Ross and Mr. O’Neill are co-claimants in this case. For purposes of this proposed decision, the term “Claimant” refers to Mr. Ross and/or Mr. O’Neill.

- Clmt. Ex. 7 Claimant's narrative and photographs regarding the Property entitled "19121 Dowden Circle Report Rev 1 February 19, 2014"
- Clmt. Ex. 8 Cover page with attached emails dated April 1 through 14, 2014
- Clmt. Ex. 11³ Cover page with attached emails dated December 14, 2013; computer printout relating to permitting the Property; text messages dated October 7 and 31, 2013; and Claimant's personal ledger entries relating to the Project
- Clmt. Ex. 13 Cover page with attached emails dated February 21 through 28, 2014
- Clmt. Ex. 14 Cover page with attached emails dated March 9 through 27, 2014
- Clmt. Ex. 16 Cover page with attached emails dated April 14 through 16, 2014
- Clmt. Ex. 17 Cover page with attached emails dated May 6, 2014
- Clmt. Ex. 21 "To Whom it May Concern" Letter from Geneva K. James, dated March 6, 2014, with attached emails dated March 2 through 17, 2014; Application for Residential Building Permit signed March 20, 2013; and Building Permit #647333 for the Property (expiration dated August 30, 2014)
- Clmt. Ex. 30 Large scale plans for the Project prepared by Nelson Aguilar around April 2014

The Respondent did not offer any exhibits for admission.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 Notice of Hearing, dated November 20, 2015
- Fund Ex. 2 Department's Hearing Order, dated October 30, 2015
- Fund Ex. 3 Printouts of the Respondent's licensing, claim, and penalty history with the Department, dated March 3, 2016
- Fund Ex. 4 Home Improvement Claim Form completed by the Claimant, received by the Department on June 2, 2015
- Fund Ex. 5 Letter from the Department to the Respondent, dated June 5, 2015

³ The Claimant's exhibits were pre-numbered. If a numbered exhibit does not appear on this list, it means that the exhibit was not offered by the Claimant for admission. All of the exhibits offered by the Claimant for admission were admitted as listed.

Changes are collectively referred to as the Contract.) Pursuant to the Contract, the Respondent agreed to complete the following work (Work):

- Demolition of entire addition, partition walls in master bedroom, bathroom, and basement as required for new layout;
- Electrical work, including replacing panel, installing new switches and plugs throughout, installing 44 recessed lights and 8 new dedicated lines; install island structural support, frame basement support walls to gym room;
- Total renovation of existing bathroom, including making it three feet larger;
- Total renovation of kitchen, including tile backsplash, cabinets, island, granite countertops;
- Finish carpentry throughout, including doors, frames, baseboard trim, and trim around windows;
- Install prefinished 2 ¼" hardwood flooring throughout main level;
- Install new windows and exterior doors throughout the house;
- Demolish the deck, not including structural supports, and rebuild new decking, including an additional four feet;
- Install new roof in addition, to match existing roof of main house;
- Complete existing concrete slab at back patio;⁴
- Insulate all exterior walls, drywall all walls in addition, and anywhere else needed throughout, spackle and paint;
- Install owner supplied hot tub;
- Install French door in upper addition;
- Move closet to master bedroom and build small closet in guest room;
- Install laminate flooring in basement;
- Add new windows in living room by fireplace;
- Install smoke detectors in entire house;
- Install transoms near fireplace;
- Install vinyl siding on entire house;
- Drywall office in basement and ceiling in bar and bedroom;
- Install new duct lines;
- Replace damaged plywood on house;
- Waterproof front of house and addition;

⁴ This is the wording found in the Contract, and it was not explained at the hearing.

12. Despite these issues, the Claimant continued to provide the Respondent access to the Property to complete the Work after February 28, 2014.

13. In March 2014, the Respondent removed the drywall and most of the insulation from the ceiling of the living room of the addition. This was done to allow for an inspection by Permitting. The Respondent also began digging holes for deck footings because he realized that there was insufficient structural support for the deck.

14. As a result of the inspection by Permitting, the roof needed to be structurally reinforced.

15. Sometime during March 2014, the Claimant hired Nelson Aguilar to prepare plans for the deck and to advise how to address the remaining deficiencies in the Respondent's Work. Mr. Aguilar coordinated his efforts with the Respondent.

16. Up until April 14, 2014, the Claimant provided the Respondent reasonable access to the Property to complete the Work. However, the roof and the deck were not satisfactorily completed by that date. The Respondent did not perform any work at the Property after April 14, 2014.

17. In May 2014, the Claimant hired Charles Garza (t/a Charles Garza Home Improvement and t/a Custom Design Home Improvement) to replace and repair the Respondent's incomplete and deficient Work based on the plans prepared by Mr. Aguilar. Mr. Garza determined the drywall on the ceiling was so poorly installed that it would eventually fall down; the rafters were not strong enough to support the roof; and part of the deck was sagging because there were no footings under any of the deck posts.

18. To remedy these issues, Mr. Garza constructed new footings for the deck; reinforced the rafters; modified the existing ceiling joists; installed a new ridge beam, re-installed insulation in the ceiling; and installed and finished the drywall on the ceiling.

the project. Although the Respondent started the Work in January 2013, the only plans for the Work submitted into evidence were prepared by Nelson Aguilar in April 2014. At the hearing, the Respondent admitted that he made a mistake by failing to secure all of the necessary permits for the Work. As a result, the Respondent built an addition that was structurally unsound. In particular, the foundation, the deck footings, and the rafters were inadequate. The Respondent contended that a new foundation, footings, and rafters were not specifically included as Work items in the Contract. Nevertheless, the Respondent did not dispute that he was the general contractor for the Work, and as such he is charged with the responsibility of obtaining all necessary permits and ensuring that the final construction is sound. In this case, the Respondent failed to do so. Tellingly, he admitted at the hearing that he was “unfortunately a little too hands off.”

The expert opinion offered by Claimant’s witness Charles Garza provided persuasive evidence that the Respondent’s work was inadequate in the following respects:

- the rafters were not strong enough to support the structure;
- the drywall on the ceiling was so poorly installed that it would eventually fall down;
- the foundation was not sufficient to hold the load of the addition; and
- part of the deck was sagging because there were no footings under any of the deck posts.

Mr. Garza’s opinions were well-reasoned, based on more than fifteen years of experience as a contractor (MHIC #88786, t/a Charles Garza Home Improvement), and delivered in a calm and measured tone — even when the cross-examination became argumentative. Mr. Garza explained that the addition promised by the Respondent required a stronger foundation and footings, and that the Respondent’s failure to construct them posed a substantial risk to the integrity of the addition. He further opined that the ceiling drywall was in danger of becoming detached due to

As part of my consideration of this issue, I found Mr. Aguilar's testimony useful and credible. He testified that the Claimant gave the Respondent numerous opportunities to complete the Work, and that it was reasonable for the Claimant to eventually seek a replacement contractor in April 2014. According to Mr. Aguilar, the "last straw" was when the Respondent sent two unlicensed electricians to the Claimant's house who were not known to the Claimant and had no ID badges or other work credentials. The record contains no evidence of any meaningful progress on the Work by the Respondent after March 2014. For these reasons, I conclude that the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve deficiencies in the Work.

Having decided that the Claimant suffered an actual loss, the remaining issue is the amount of that loss. MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss 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).

There is no dispute that the Contract price for the Work was \$156,920.00 and that the Claimant paid that Respondent \$147,920.00. In addition, the Claimant produced invoices and

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$20,000.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:


ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; 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 (10%) as set by the Maryland Home Improvement Commission;¹ and

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

Signature on File

May 23, 2016 _____
Date Decision Issued


Administrative Law Judge

JJL/dlm

¹ see Md. code Ann., Bus. Reg. § 8-410(a) (2015); COMAR 09.08.01 .20.

PROPOSED ORDER

WHEREFORE, this 10th day of July, 2017, 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.

Sachchida Gupta

***Sachchida Gupta
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION