

IN THE MATTER OF THE CLAIM
OF CAROL A. QUEEN,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF JOHN RIDGELY,
T/A HOME VISIONS, INC.,
RESPONDENT

* BEFORE MICHAEL D. CARLIS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
*
*
* OAH No.: DLR-HIC-02-16-30781
* MHIC No.: 16 (05) 1014

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACTS
DISCUSSION
PROPOSED CONCLUSION OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On July 24, 2016, Carol A. Queen (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$3,600.00 in alleged actual loss suffered as a result of a home improvement contract with John Ridgely, trading as Home Visions, Inc. (Respondent).

I held a hearing on May 3, 2017, at the Largo Government Center in Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented herself. The Respondent represented himself. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (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 Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

ISSUES

The issues are:

- A. Whether the Claimant sustained an actual loss compensable by the Fund as a result of the Respondent's acts or omissions; and, if so,
- B. What is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits for the Claimant:

Claimant 1: Home Improvement Proposal (Roofing), dated March 19, 2018¹;

Claimant 2: Home Improvement Contract (Roofing), signed by the Claimant and Respondent on March 19, 2015;

Claimant 3: Check for \$3,600.00, dated March 26, 2015; and

Claimant 4: Letter from the Claimant, dated February 9, 2016.

I admitted the following exhibits for the Fund:

Fund 1: Notice of Hearing, dated February 2, 2017; and Hearing Order, September 27, 2016;

Fund 2: Respondent's licensing history; and

Fund 3: Letter to the Respondent, with attachments, dated August 2, 2016.

The Respondent did not offer any exhibits.

¹ The date is an obvious error. It should read 2015.

Testimony

The Claimant testified for herself.

The Fund offered no testimony.

The Respondent testified for himself.

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 number 3846438.
2. On March 19, 2015, the Claimant and the Respondent entered into a home improvement contract to remove and replace the roof on the Claimant's home.
3. The original agreed-upon contract price was \$ 10,980.00.
4. On March 26, 2015, the Claimant paid the Respondent a deposit of \$3,600.00.
5. The Respondent did not perform any work on the home improvement contract.
6. On an undisclosed date, he went out of business and filed bankruptcy.
7. The Claimant's actual loss is \$3,600.00.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of her claim by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true." *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

An owner² 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) (2015);³ *see also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven entitlement to \$3,600.00 in compensation from the Fund.

The Respondent did not dispute any of the material facts.

Based on the Claimant’s testimony and exhibits, the Claimant and Respondent entered into a home improvement contract⁴ on March 19, 2015. At the time the Respondent entered into the contract, he was a licensed home improvement contractor.⁵

The home improvement contract called for the Respondent to remove and replace the existing roof on the Claimant’s home. In return, the Claimant agreed to pay the Respondent a total of \$10,980.00, with \$3,600.00 to be paid as a deposit. The Claimant paid the Respondent \$3,600.00 by check on March 23, 2015.

The home improvement contract stated that the Respondent would begin the home improvement on April 18, 2015. At the request of the Claimant, the Respondent agreed to postpone the start date and begin the home improvement on September 4, 2015. With the

² An “owner” is “a homeowner, tenant, or other person who buys, contracts for, orders or is entitle to a home improvement.” Md. Code Ann., Bus. Reg. § 8-101(k) (Supp. 2016). A “home improvement” is “(i) the addition to or alteration, conversion, improvement, modernization, remodeling, repair, or replacement of a building or part of a building that is used or designed to be used as a residence or dwelling place or a structure adjacent to that building; or (ii) an improvement to land adjacent to the building.” *Id.* § 8-101(g).

³ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

⁴ A “home improvement contract” is “an oral or written agreement between a contractor and owner for the contractor to perform a home improvement.” Md. Code Ann., Bus. Reg. § 8-101(h) (Supp. 2016).

⁵ A “licensed contractor” is “a person who is licensed by the [Home Improvement] Commission to act as a contractor.” *Id.* § 8-101(j).

Respondent's consent, the home improvement was, again, postponed by the Claimant to February 16, 2016.

The Respondent did not begin the home improvement on February 16, 2016. To ensure that the Respondent began work on the home improvement, the Claimant attempted to contact the Respondent by telephone calls, a letter, and driving to the Respondent's place of business. She received no responses to her inquiries and discovered that the location of the Respondent's business appeared abandoned.

The Respondent acknowledged at the hearing that his business by then had failed and he filed bankruptcy. The Respondent also admitted that he did no work on the home improvement. Because the Respondent did no work on the home improvement, I find that he abandoned the home improvement without doing any work, and the Claimant is eligible for compensation from the Fund.

The Respondent testified that it is "not on us" that the Claimant postponed the start date for the commencement of the home improvement. He was "pretty sure" the Claimant had rescheduled the start date three or four times. In addition, the Respondent testified that, prior to going out of business and filing for bankruptcy, an unidentified employee of his tried to contact the Claimant by telephone to schedule the home improvement but was never able to contact her. In response to that testimony, the Claimant denied that she had ever received a telephone call or a message from the Respondent about a different start date for the home improvement. For the following reasons, none of the Respondent's testimony or arguments change my finding that the Claimant is eligible for compensation from the Fund.

The Respondent offered no evidence that he objected to the postponements, attempted to rescind the contract, or offered to return the Claimant's down payment at any time before the date of the hearing. The fact that the parties agreed to new start dates for home improvement

does not afford the Respondent any legal protection against the Claim. The Respondent cited to no law to support a different outcome, and my review of the law shows that none exists.

Furthermore, I do not credit the Respondent's testimony that he tried to contact the Claimant to begin the home improvement before his bankruptcy. The Respondent's testimony was self-serving, lacked specificity, was not corroborated, and was specifically denied by the Claimant, whom I found credible. However, even assuming that such unsuccessful efforts were made, they do not afford the Respondent legal protection against the Claim. The material facts remain unchanged: The Respondent was a licensed contractor when he entered into the home improvement contract; the Claimant paid a deposit of \$3,600.00 to the Respondent; and the Respondent failed to perform any work under the home improvement contract. The Claimant proved her case.

Having found the Claimant eligible for compensation from the Fund, I now turn to the amount of the award to which the Claimant is entitled. The Fund does not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). Under the relevant regulation, there are three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula is appropriate for the circumstances of this case: "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." COMAR 09.08.03.03B(3)(a).

The maximum compensation 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. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015). Because in this case, the Respondent abandoned the contract without doing any work, and the total amount the Claimant paid to the Respondent was \$3,600.00, the

Claimant is entitled to compensation from the Fund in the amount of \$3,600.00, the amount she paid to the Respondent. *Id.* § 8-405(a), (e)(5); COMAR 09.08.03.03B(3)(a).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$3,600.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(a); COMAR 09.08.03.03B(3)(a).

RECOMMENDED ORDER

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

- A. The Maryland Home Improvement Guaranty Fund award the Claimant \$3,600.00;
- B. 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;⁶ and
- C. The records and publications of the Maryland Home Improvement Commission reflect this decision.

Signature on File

July 27, 2017
Date Decision Issued

Michael D. Carlis
Administrative Law Judge

MDC/da
169129

⁶ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii)(2); COMAR 09.08.01.20.



Reference to

the following information is contained in the report of the

Reference to

the following information is contained in the report of the

Reference to

the following information is contained in the report of the

Reference to

the following information is contained in the report of the

Reference to

the following information is contained in the report of the

Reference to

the following information is contained in the report of the

Reference to

the following information is contained in the report of the

Reference to

the following information is contained in the report of the

Reference to

the following information is contained in the report of the

Reference to the following information is contained in the report of the

Reference to the following information is contained in the report of the

Reference to

the following information is contained in the report of the

PROPOSED ORDER

WHEREFORE, this 21st day of August, 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.

Joseph Tunney

***Joseph Tunney
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION

CONFIDENTIAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

CONFIDENTIAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

CONFIDENTIAL
