

IN THE MATTER OF THE CLAIM	* BEFORE JOHN J. LEIDIG,
OF BETSY REID-DORSEY,	* 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 GENE HAYNES,	*
T/A HAYNES CONSTRUCTION	* OAH No.: DLR-HIC-02-17-06447
RENOVATIONS/BUILDERS, INC.,	* MHIC No.: 16 (05) 1275
RESPONDENT	*

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On December 20, 2016, Betsy Reid-Dorsey (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$3,300.00 in alleged actual losses suffered as a result of a home improvement contract with Gene Haynes, trading as Haynes Construction Renovations/Builders, Inc. (Respondent).

On June 14, 2017, I held a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented herself. Assistant Attorney General Hope Sachs, Department of Labor, Licensing

and Regulation (Department), represented the Fund. The Respondent represented himself. Code of Maryland Regulations (COMAR) 28.02.01.23A.

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. 2016); 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 that loss?

SUMMARY OF THE EVIDENCE

Exhibits

The Claimant did not offer any exhibits for admission into evidence.

The Respondent did not offer any exhibits for admission into evidence.

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Notice of Hearing, March 22, 2017; Hearing Order, February 28, 2017

Fund Ex. 2 - Printout of the Respondent's licensing history with the Department, June 13, 2017

Fund Ex. 3 - Letter from the Department to the Respondent, December 20, 2016, with attached Claim, December 20, 2016

Fund Ex. 4 - Printout of the docket in Case No. 010100153112016 in the District Court of Maryland for Baltimore City

Testimony

The Claimant testified in her own behalf.

The Respondent testified in his own behalf and presented testimony from George Mitchell, an individual who allegedly worked on the roof repairs.

The Fund did not present any witnesses.

PROPOSED FINDINGS OF FACT

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

1. At all relevant times, the Respondent was a licensed home improvement contractor under MHIC license number 102088.
2. On or about June 26, 2015, the Claimant and the Respondent entered into a contract (Contract) for the Respondent to resurface the roof of the Claimant's house located at 1223 East Lanvale Street, Baltimore, Maryland 21202 (Property) with a rubber coating.
3. The agreed-upon Contract price was \$3,300.00.
4. The Claimant paid the Respondent \$3,300.00 to complete the Contract.
5. After the Contract was signed, the Respondent did not promptly start resurfacing the roof as planned. As a result, the Claimant contacted the Respondent and the parties discussed the completion of the project. Despite this and subsequent efforts by the Claimant to have the Respondent perform the work, the Respondent never performed any work on the Contract, except to take some brushes and a bucket of tar to the Property.
6. On or about July 5, 2016, the Claimant filed a civil complaint against the Respondent in the District Court of Maryland for Baltimore City (District Court), seeking damages as a result of the Respondent's failure to perform the Contract work.
7. On or about November 1, 2016, the District Court conducted a trial on the merits; on the same day, the District Court entered a judgment in favor of the Claimant against the Respondent in the principal amount of \$3,300.00, plus costs of \$86.00, plus additional post-judgment interest as provided by law.
8. The Respondent participated in the District Court trial.

9. The Respondent has not paid the Claimant any money on account of the District Court judgment, and the Respondent has not returned any portion of the \$3,300.00 that the Claimant paid him on account of the Contract.

10. The Claimant's actual loss is \$3,300.00.

DISCUSSION

The Claimant bears 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 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) (2015);¹ *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 eligibility for compensation.

There is no dispute that the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. Therefore, the issue is whether the Claimant has sustained an actual loss as a result of the acts or omissions of the Respondent.

¹ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

The Complainant testified that she executed a written Contract with the Respondent to have the roof of the Property resurfaced, and that she paid \$3,300.00 to the Respondent by means of two checks. She further testified that the Respondent never did any work on the roof except to bring two buckets of tar and some brushes to the Property. The Claimant also testified that she previously had documentary materials to support her Claim, including a copy of the Contract and various pictures, but that she gave her only copies of those documents to a Mr. David Brown who she said was helping her with the District Court case in which she obtained a civil judgment against the Respondent.

In defense of the Claim, the Respondent and Mr. Mitchell testified that they performed some work under the Contract. However, I conclude that their testimony was not credible. Neither of them produced a copy of the Contract or photos of the roof, and neither of them provided any substantive details as to what work they performed, when they performed it, or why they believe the work was adequate. Mr. Mitchell stated that the Respondent provided tar and brushes for the job, but this was not consistent with other testimony establishing that it was a rubber—not a tar—roof that was to be installed. In addition, the Respondent did not produce any business records that I would expect a licensed contractor to maintain for a job of this type, including an estimate or bid sheet, a copy of the Contract, work logs, receipts for materials, or invoices for labor or materials. The Respondent admitted that the Claimant paid him the entire Contract price (\$3,300.00) and that he had not repaid any portion of that amount to the Claimant.

In addition, there was no dispute that the Claimant has already obtained a judgment against the Respondent in the District Court following a trial on the merits in which the Respondent participated. Specifically, the District Court entered a judgment on November 1, 2016, in favor of the Claimant against the Respondent in the principal amount of \$3,300.00, plus \$86.00 costs, plus post-judgment interest at the legal rate. Although the District Court judgment

does not dictate that I allow the Claimant's Claim for recovery from the Fund,² the judgment does constitute further evidence supporting my finding that the Complainant suffered an actual loss compensable from the Fund. Consequently, I conclude that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation, I now turn to the amount of the award, if any, to which the Claimant is entitled. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). 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 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).

In this case, the Respondent abandoned the Contract without doing any work. Thus, the Claimant's actual loss is \$3,300.00, the amount she paid to the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(3)(a). Pursuant to the applicable law, the maximum recovery 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). The amount paid by the Claimant to the Respondent does not exceed \$20,000.00. Accordingly, the Claimant is entitled to recover from the Fund the entire amount she paid to the Respondent, \$3,300.00.

² The legal elements for recovery in the District Court case are in some respects different from the proof required to show that the Claimant incurred an actual loss as a result of the actions or omissions of a MHIC-licensed contractor.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss in the amount of \$3,300.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$3,300.00; 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;³ and

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

Signature on File

August 22, 2017
Date Decision Issued

John J. Leidig
Administrative Law Judge

JJL/dlm
#168555

³ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 10th day of October, 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.

Bruce Quackenbush

***Bruce Quackenbush
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION