

**IN THE MATTER OF THE CLAIM OF
SHAKEEL SHEIKH,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF DAVID COWLEY,
T/A DAVID COWLEY,
RESPONDENT**

*** BEFORE NEILE S. FRIEDMAN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DLR-HIC-02-17-15618
* MHIC No.: 16 (05) 1451
*
*
*

*** * * * ***

PROPOSED DECISION

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

STATEMENT OF THE CASE

On September 16, 2016, Shakeel Sheikh (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$47,612.76 in alleged actual losses suffered as a result of a home improvement contract with David Cowley, trading as David Cowley (Respondent).

I held a hearing on September 5, 2017 at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland 21031. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). Jeri Lyons Chase, Esquire, represented the Claimant. The Respondent represented himself. Eric B. London, Assistant Attorney General, Department of Labor,

Licensing and Regulation, represented the Fund. The contested case provisions of the Administrative Procedure Act, the MHIC procedural 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. 2017); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 09.08.02.01B; 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

I admitted the following exhibits on the Claimant's behalf:

- Claimant Ex. 1 Contract, undated
- Claimant Ex. 2 Email from Claimant to MHIC, including attachment, March 4, 2016
- Claimant Ex. 3 Not offered
- Claimant Ex. 4 Estimate from American Remodeling Corporation, August 5, 2016
- Claimant Ex. 5 Drawing, undated

The Respondent offered no exhibits into the record.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 Notice of Hearing, June 7, 2017
- Fund Ex. 2 Hearing Order, March 17, 2017
- Fund Ex. 3 MHIC Occupations/Professional License History and Inquiry for the Respondent, printed July 31, 2017
- Fund Ex. 4 MHIC Claim Form, signed September 9, 2016
- Fund Ex. 5 Letter, MHIC to Respondent, October 12, 2016
- Fund Ex. 6 Copy of Photograph, undated
- Fund Ex. 7 Copy of Photograph, undated

Testimony

The Claimant testified.

The Respondent testified.

The Fund did not call any witnesses.

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 licensed by the MHIC as a home improvement contractor.
2. In July 2015, the Claimant and the Respondent entered into a contract to install a second floor addition on the Claimant's home. The project included the following scope of work:

1. We will provide all plans and permits for all required inspections
2. We will remove all existing roof structure to include shingles, decking boards, rafters, and cross supports
3. We will install 8" steel I beam as central header support over living room area
4. We will install new 2x10 floor joist system 16" oc WITH 2' Cantilever over front of house
5. We will install R-19 sound bat insulation in floor joist system
6. We will install new 3/4" OSB tongue and groove sub floor
7. We will frame new exterior walls and partition walls to create 3 bedrooms and 2 bathrooms and laundry room
8. We will install new attic style roof trusses 24" o.c.
9. We will install new 7/16 OSB roof decking
10. We will install new roof underlayment consisting of self-adhesive ice and weather shield first coarse and remainder 30# felt
11. We will install new 25 year 3 tab shingles (color to be determined)

12. We will install new 7/16" OSB sub siding and cover the Tyvek house wrap
13. We will install new vinyl, insulated, sliding, energy star rated windows
14. We will install new vinyl siding on new work color to be determined
15. We will install new gutters and downspouts
16. We will install new rough in electrical wiring, & recessed light fixtures to local and national electrical code
17. We will install all necessary rough in plumbing for new bathrooms per local and national codes
18. We will install R-38 insulation in attic space
19. We will install R-15 insulation in exterior walls
20. We will install ½" drywall, tape, finish, prime and paint 2 coats on walls and ceilings
21. We will install new interior doors and trim and paint (color to be determined)
22. We will install all finish light fixtures, electrical outlets, switches and covers
23. We will install all new tubs, toilets and sinks in bathrooms
24. We will install new ceramic tile floors in bathrooms
25. We will install all new bathroom accessories towel bars, toilet paper holders, mirrors etc.
26. We will install new carpet and padding on remaining floors
27. We will install flex duct in attic for HVAC (HVAC units installed by others)
28. We will remove all resulting debris

Claimant Ex. #1.

3. The price to complete this scope of work was \$65,000.00.

4. The project began in September 2015, but the work proceeded slowly, with the Respondent and the Claimant arguing over money, the scope of work changing, and the Respondent not appearing for work regularly.

5. In February 2016, the parties agreed that the Respondent would complete the following additional work: \$800.00 in additional engineering required by the County, \$1,100.00 for a change from a 2x10 floor joist system to engineered 1 joist system, and \$1,900.00 to add new footings, a column and a beam.

6. The total amount added to the contract in February 2016 was \$3,800.00, increasing the total contract price to \$68,800.00.

7. On October 26, 2016, the Claimant obtained a proposal from American Remodeling Corp. (American) to complete the project for \$50,012.76. Some of the work was not in the original scope of work set forth in the Respondent's contract with the Claimant or in the additions to the contract.

8. The Respondent and the Claimant continued arguing over money, with the scope of the work continuing to change. The Respondent failed to come to the job site at all in the second half of 2016. Eventually, in December 2016, the Claimant agreed to pay the Respondent an additional \$10,000.00 to complete the job. This increased the total contract price to \$78,800.00.

9. In December 2016 and January 2017, the Respondent's workers returned to work on the project.

10. The Claimant paid the Respondent a total of \$75,400.00.

11. The Respondent did not complete the entire scope of work. The amount of work that was not completed would cost \$4,483.42 to complete, using the costs set forth in the

proposal from American. This includes additional drywall, painting, installation of columns and a beam, gutters, and some additional electrical items.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of his 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 (3rd. 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.” Md. Code Ann., Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Claimant barely presented a viable claim against the Respondent through his own testimony. His testimony was extremely confusing and he presented a lot of testimony that was irrelevant to his claim in that he complained about work that the Respondent initially failed to complete, but eventually completed. The Claimant presented no other witnesses. He submitted the original contract with the Respondent, but the details of the contract additions and the amounts he paid to the Respondent were extremely confusing and not supported by documentary

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

evidence--he presented no change orders or cancelled checks to support his testimony. As to the work he claims is still incomplete, he presented no photographs or other documentary evidence demonstrating what was incomplete as of January 2017, after the Respondent's workers returned to complete work under the contract. While he did present a proposal by American to complete the work as of August 2016, much of the work detailed in that proposal was indeed completed after that point.

However, the parties stipulated to the basic facts in this case. There was no disagreement as to the original contract price (\$65,000.00) or to the additions to the contract price (\$3,800.00 and \$10,000.00). Thus, the total contract price of \$78,800.00 was not in dispute. Nor was it disputed that the Claimant paid the Respondent a total of \$75,400.00. Finally, the parties stipulated as to most of the work that the Respondent failed to complete as well as to the cost to complete that work. The stipulation was that, while the Respondent did not complete the entire scope of work, the amount of work that was not completed would cost \$4,483.42 to complete, using the costs set forth in the proposal from American. This includes additional drywall, painting, installation of columns and a beam, gutters, and some additional electrical items.

There were three items that the Claimant claimed were not completed that the Respondent disagreed with. The items included sealing/priming and painting the upper stairwell, installation of drywall in the basement stairwell, and sealing and painting the closet shelving. I do not agree with the Claimant that two of items were part of the scope of work of the contract in that nowhere in the contract or in any corroborating documentation is it evident that the Respondent agreed to do any work in the lower stairwell or to paint closet shelving—as the Respondent pointed out, he usually installs closet shelving that is wire, and does not need painting. Moreover, the Claimant failed to show me any corroborating evidence that these items

were incomplete as of January 2017, when the Respondent finished working on the project.

Accordingly, I will not add these items to those that are reasonably part of the Claimant's claim.

Thus, the undisputed evidence shows that the Respondent failed to complete the scope of work for the Claimant's home renovation. Accordingly, I find that the Claimant is eligible for compensation from the Fund based on an incomplete home improvement.

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 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).

Using this formula, actual loss is calculated by adding the amount paid to the Respondent under the contract to the amount reasonably paid by the Claimant to complete the contract, and deducting the original contract price, as shown here:

Amount paid to the Respondent	\$75,400.00
Plus amount to complete	<u>\$ 4,483.42</u>
Equals subtotal	\$79,883.42
Minus contract price	<u>\$78,800.00</u>
Equals actual loss	\$ 1,083.42

In this case, the Claimant has proven that his total actual loss is \$1,083.42. Accordingly, the Claimant is entitled to reimbursement of \$1,083.42. Md. Code Ann., Bus. Reg. § 8-405(a); COMAR 09.08.03.03B(3)(c).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual loss of \$1,083.42 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)(c).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$1,083.42; 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;² and

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

Signature on File

November 28, 2017
Date Decision Issued

Neile S. Friedman
Administrative Law Judge

NSF/sm
#171043

² See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

10/10/1954

PROPOSED ORDER

WHEREFORE, this 25th day of January, 2018, 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