

IN THE MATTER OF THE CLAIM	*	BEFORE NEILE S. FRIEDMAN,
OF JAMES E. FULLER,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	OAH No.: DLR-HIC-02-16-37076
FOR THE ALLEGED ACTS OR	*	MHIC No.: 16 (05) 781
OMISSIONS OF WILLIAM WRIGHT	*	
III, T/A WRIGHTWAY HOME	*	
IMPROVEMENTS, INC.,	*	
RESPONDENT	*	

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

On August 16, 2016, James E. Fuller (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$21,683.00 in alleged actual losses suffered as a result of a home improvement contract with William Wright III, trading as Wrightway Home Improvements, Incorporated (Respondent).

I held a hearing on June 1, 2017, 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 himself. Eric B. London, Assistant Attorney General, Department of Labor,

Licensing and Regulation (Department), represented the Fund. The Respondent did not appear. After waiting fifteen minutes for the Respondent or someone to represent the Respondent, and after determining proper service had been made, I proceeded with the hearing. 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

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

- CL Ex. 1 - Remodeling Contract, May 29, 2015
- CL Ex. 2 - Estimate, May 27, 2015
- CL Ex. 3 - Package of checks
- CL Ex. 4 - Package of emails
- CL Ex. 5 - Text messages
- CL Ex. 6 - Letter from Ronald Miller Law, LLC. to the Respondent, September 16, 2015
- CL Ex. 7 - Package of text messages
- CL Ex. 8 - Estimate, September 1, 2015

CL Ex. 9 - Invoice, undated

CL Ex. 10 - Video

The Respondent did not appear to produce any documents into the record.

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Notice of Hearing, March 3, 2017

Fund Ex. 2 - Hearing Order, November 28, 2016

Fund Ex. 3 - Notice, May 25, 2017

Fund Ex. 4 - Claim, August 16, 2016

Fund Ex. 5 - Email from the MHIC to the Respondent, August 17, 2016.

Testimony

The Claimant testified on his own behalf. The Respondent failed to appear at the hearing. The Fund did not call any witnesses to testify.

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 130590.
2. On May 29, 2015, the Claimant and the Respondent entered into a contract in which the Respondent agreed to renovate the Claimant's property located in Timonium, Maryland.
3. The Claimant did not reside in the property, nor does he own more than three residences or dwelling places.
4. The contract required the Respondent to remove the property's interior doors, trim, carpet, flooring, and other items, install new amenities, and completely renovate the property.

5. The original contract price was \$49,400.00, which was increased to \$54,225.00 to account for new siding, running a gas line to the stove, installing a new programmable thermostat for the HVAC, pointing up and painting wall in the garage, and painting the garage floor.

6. Construction was to begin on June 8, 2015 and be completed by August 14, 2015. The Claimant agreed to extend the construction deadline to September 1, 2015.

7. On June 8, 2015, the Respondent started construction on the property but, at some point thereafter, abandoned the project.

8. The Respondent failed to complete construction on the property by September 1, 2015.

9. The Claimant paid the Respondent eight installment payments, totaling \$35,325.00.

10. In early September 2015, the Claimant texted and emailed the Respondent indicating that the Respondent was in breach of the contract, that the contract was terminated, and that they should discuss possible resolution.

11. The Respondent agreed that he was in breach of the contract and to the termination.

12. The Claimant hired Gator's Home Improvement, Inc. (Gator) to finish construction on the property. Construction included installing the following items: kitchen cabinets, appliances, tiling, bath fixtures, bath hardware, plumbing, shower doors, bathroom fans, lighting, interior door hardware, HVAC vents, dryer gas lines, trim, a mail box, smoke detectors, vinyl siding, and railings. Additionally, Gator was to grout the tile, scrape paint, finish the sun porch, reverse the swing of specific doors, and purchase materials. The scope of work was the same as the original contract with the Respondent.

13. Gator charged the Claimant \$40,583.00 to finish construction on the property, which the Claimant paid in full.

DISCUSSION

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 (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); *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.” *Id.* § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.¹

In this case, the Claimant demonstrated that he suffered an actual loss after the Respondent failed to complete construction on the property and abandoned the project. Under the contract, the Respondent was required to complete construction by August 14, 2015, which was later amended to September 1, 2015. The Respondent failed to complete construction by either of

¹According to the law governing the Fund, “An owner can make a claim against the Fund only if the owner resides in the home as to which the claim is made or does not own more than three residences or dwelling places.” Md. Code Ann., Bus. Reg. § 8-405(f)(2) (2015) (emphasis added). While the Claimant did not reside in the home at the focus of the Claim, he did not own more than three residences or dwelling places. Hence, the Claimant is eligible for compensation from the Fund.

these deadlines and eventually abandoned the project. The Respondent did not appear to contest these facts.

Clearly, the Claimant suffered an actual loss; the Claimant paid the Respondent a total of \$35,325.00, in exchange for incomplete work. The Claimant eventually hired another contractor, Gator, who finished the construction project for \$40,583.00, a reasonable amount considering that the Claimant testified credibly that the scope of work was exactly the same, and the Respondent did not appear to contest that fact. As a result, the Claimant paid \$75,908.00 (\$35,325.00 + \$40,583.00) towards a construction project the Respondent agreed to complete for \$54,225.00. Thus, I find that the Claimant is eligible for compensation from the Fund for reimbursement for "costs of . . . completion that arise from . . . incomplete home improvement." *Id.* § 8-401.

Having found eligibility for compensation I now turn to the amount of the award, if any, to which the Claimant is entitled. The following formula offers an appropriate measurement to calculate the amount of the Claimant's actual loss:

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). Applying this formula, the Claimant paid the Respondent \$35,325.00 under the original contract. After the Respondent abandoned the construction project, the Claimant hired Gator. Gator completed the construction project for an additional \$40,583.00. These two figures add up to \$75,908.00. Under the original contract, the Respondent agreed to complete the construction project for \$54,225.00. Hence, the Claimant had to expend an

additional \$21,683.00 to complete the construction project. Therefore, the Claimant's actual loss is \$21,683.00. *Id.*

Although the Claimant proved a loss of \$21,683.00, the maximum recovery available from the Fund is limited to \$20,000.00. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015). Accordingly, the Claimant has successfully established that he is entitled to the maximum reimbursement of \$20,000.00 from the Fund for the Respondent's acts or omissions.

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); 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 \$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 ten percent as set by the Maryland Home Improvement Commission;² and

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

ORDER that the records and publications of the Maryland Home Improvement

Commission reflect this decision.

Signature on File

August 7, 2017

Date Decision Issued

Neile S. Friedman

Administrative Law Judge

NSF/sm
#168382

PROPOSED ORDER

WHEREFORE, this 12th day of September, 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

EXPLANATION

1. The first part of the document is a list of the names of the persons who have been appointed to the various offices of the Government of the State of New York.

2. The second part of the document is a list of the names of the persons who have been appointed to the various offices of the Government of the State of New York.

3. The third part of the document is a list of the names of the persons who have been appointed to the various offices of the Government of the State of New York.

4. The fourth part of the document is a list of the names of the persons who have been appointed to the various offices of the Government of the State of New York.