IN THE MATTER OF THE CLAIM	*	**BEFORE ABENA Y. WILLIAMS,**
OF CARRAE GREEN,	*	**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 TYRONE	*	
ANDERSON,	*	**OAH No.: LABOR-HIC-02-19-36388**
T/A DECK RENOVATIONS, LLC,	*	**MHIC No.: 19 (05) 431**
RESPONDENT	*	

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PROPOSED DECISION

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STATEMENT OF THE CASE

On March 31, 2019, Carrae Green (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),[1] for reimbursement of $16,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Tyrone Anderson, trading as Deck Renovations, LLC. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).[2]

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[1] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.
[2] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

On November 1, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On December 14, 2020, I held a hearing, the entirety of which was conducted using the Webex audio-visual platform. Code of Maryland Regulations (COMAR) 28.02.01.20B. The hearing was initiated from the OAH in Hunt Valley, Maryland, and the parties participated from their respective locations. COMAR 09.08.03.03A(1). Shara Hendler, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself.

After waiting fifteen minutes for the Respondent to appear, I proceeded with the hearing. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. The hearing was rescheduled multiple times due to the COVID-19 pandemic.[3] On November 25, 2020, the OAH mailed a Notice of Hearing (Notice) to the Respondent at his address of record. COMAR 28.02.01.05C(1). The Notice advised the Respondent 1) that the hearing for his appeal was scheduled for 10:00 a.m. on December 14, 2021 via the WebEx videoconference platform and 2) that failure to appear for the hearing might result in a dismissal of the case or a decision against him.

The United States Postal Service did not return the notice to the OAH as undeliverable. The Respondent did not notify the OAH of any change of mailing address, email address or phone number. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

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.

[3] The original hearing dates were May 15, 2020 and October 7, 2020.

Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 09.01.03; and 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?

3. If so, what is the amount of the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted into evidence the following exhibits offered by the Claimant:

Clmt. Ex. 1 - Photograph 1 of balusters,[4] undated

Clmt. Ex. 2 - Photograph 2 of balusters, undated

Clmt. Ex. 3 - Photograph 3 of balusters, undated

Clmt. Ex. 4 - Photograph of stairs, undated

Clmt. Ex. 5 - Emails from Tyrone Anderson to Carrae Green, October 2, 2017 and October 3, 2017

Clmt. Ex. 6 - Emails from Caroline Anderson of Deck Renovations to Carrae Green, June 21, 2018 to June 29, 2018

Clmt. Ex. 7 - Lowe's Maryland Services Solutions Installed Sales Contract, May 14, 2020

I admitted into evidence the following exhibits offered by the Fund:

Fund Ex. 1 - Hearing Order from the Department, October 28, 2019

Fund Ex. 2 - Notice of Hearing, November 25, 2020

Fund Ex. 3 - MHIC Claim Form, March 31, 2019 with the following attachment: Department Letter to Respondent Regarding MHIC Claim, May 30, 2019

Fund Ex. 4 - MHIC Professional License History, undated

[4] "A baluster is a vertical molded shaft, square, or lathe-turned form found in stairways, parapets, and other architectural features. In furniture construction it is known as a spindle. Common materials used in its construction are wood, stone, and less frequently metal and ceramic." *Baluster*, WIKIPEDIA, https://en.wikipedia.org/wiki/Baluster (last viewed, March 11, 2021).

Testimony

The Claimant testified and did not present other witnesses.

The Fund did not present any testimony or 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 a licensed home improvement contractor under MHIC contractor/salesman license number 5327502. (Fund Ex. 3, Resp. Ex. 3.)

2. At all times relevant to the subject of this hearing, the Respondent operated a home improvement company trading as Deck Renovations, LLC under the same MHIC business license number.

3. The Claimant is not related to the Respondent.

4. The Claimant's property subject to this matter is located in Prince George's County, Maryland (the Property).

5. The Property is the Claimant's primary residence.

6. The Claimant has not filed any other claims against the Respondent outside of these proceedings.

7. Around March 6, 2017, the Claimant and the Respondent entered into an oral contract for the renovation of her deck at her Property (Contract). The scope of work included but was not limited to replacing deck boards, balusters and stairs. (Clmt. Ex. 6.)

8. The original agreed-upon Contract price was $5,480.00.

9. In March 2017, the Claimant paid the Respondent $5,480.00. (Clmt. Ex. 2.)

10. On October 1, 2017, the Respondent completed the work.

11. On October 2, 2017, the Claimant contacted the Respondent via email to report that she was unsatisfied with the results of the Respondent's work. (Clmt. Ex. 5.)

12. In her email, the Claimant reported the balusters were improperly spaced too far apart creating a safety risk, the stairs were improperly installed without a covering and not "to code", and the undercover[5] of the deck was damaged by the Respondent. (Clmt. Exs. 5, 6.)

13. The Respondent responded to the Claimant via email on October 2, 2017, October 3, 2017 and June 21, 2018, but never returned to the Property to fix the items identified by the Claimant. (Clmt. Exs. 5, 6.)

14. The Claimant contacted four different contractors who would not agree to repair the Respondent's work and located one contractor, Deck Builders, who quoted her an amount of $6,200.00 to replace the balusters and install the stairs.

15. On May 14, 2020, the Claimant contracted with Lowe's Home Improvement (Lowe's) to remove and haul away the wood deck, install a new composite deck, install one set of steps with a landing, and install vinyl railing with black balusters for the amount of $16,000.00. (Clmt. Ex. 7.)

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

[5] An undercover, according to the Claimant, provides a base for the deck boards to be placed upon and prevents the deck from rotting.

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor . . . ." Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor."). "'[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401.

There is no dispute that the Claimant is the owner of the subject property and that there is no procedural impediment barring her from recovering from the Fund. Bus. Reg. § 8-405(a), (f). The next issue is whether the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement, and if so, whether the Respondent made good faith efforts to resolve the claim. A claim may be denied if the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim. Bus. Reg. § 8-405(d). For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Claimant testified that she entered into an oral agreement with the Respondent on or about March 6, 2017. The parties did not sign a contract for the home improvement, however, the Respondent sent the Claimant an invoice on March 6, 2017 for the agreed upon work. The home improvement, in general, required that the Respondent renovate the Claimant's deck at her Property. The Claimant testified that she paid the Respondent $5,480.00 in March 2017.

The Claimant averred that after seven months, the Respondent completed the renovation of her deck on October 1, 2017. However, according to the Claimant, the work was unworkmanlike, incomplete, and created a safety risk. The Claimant noted that she contacted the Respondent on October 2, 2017 to inform him of her dissatisfaction with his work. (Clmt. Ex. 5.) The Respondent responded on October 2nd and 3rd of 2017 via email and stated that he would review his work and take care of the repairs but never returned to the Property to fix the items

that were identified by the Claimant, despite her attempts to contact him. (Clmt. Exs. 5, 6.) In response to a follow-up email from the Claimant on June 21, 2018, the Respondent replied and notified her of the warranty for his completed work. The Claimant testified that the Respondent's work came with a warranty but she could not provide the actual warranty document. She explained the email correspondence between the Respondent and herself made reference to a warranty. (Clmt. Ex. 6.) The Claimant testified that Caroline Anderson, a representative of the Respondent's company, contacted her on June 29, 2018 informing her that someone could be out to the property on July 16, 2018. According to the Claimant, neither the Respondent nor any of his representatives returned to her property or made any further attempts to contact her.

Because the Claimant was unable to find a contractor who would repair the Respondent's work, the Claimant stated that on May 14, 2020, she contracted with Lowe's to demolish and reinstall her deck. The work was anticipated to begin on June 14, 2020 and end on September 14, 2020. (Clmt. Ex. 7.)

The Claimant established, by a preponderance of the evidence, the Contract price, the money paid to the Respondent, her efforts made to have the Respondent complete the home improvement and that the Respondent abandoned the home improvement. The evidence shows that the Respondent performed an unworkmanlike, inadequate and incomplete home improvement.

The Fund agreed that the Respondent abandoned the home improvement and that the Respondent performed in an inadequate and incomplete manner. The Fund argued that the cost to repair the work should only cover the replacement of the balusters and stairs for the Deck Builders quote amount of $6,200.00 rather than the $16,000.00 paid by the Claimant to have the entire deck replaced and erected by Lowe's. The Fund explained the replacement of the

balusters and stairs closely resembles the terms of the original agreement between the Claimant and the Respondent. I agree that the cost to fix the Respondent's work is the cost to replace the balusters and stairs, as those were the terms of the original agreement. The Fund argued that the Claimant's credible evidence shows that she proved a loss from the acts or omissions of the Respondent and therefore recommended an award to the Claimant from the Fund.

I agree that the Respondent abandoned the home improvement without having made any effort to complete the project, resulting in the Claimant suffering an actual loss entitling her to an award from the Fund. Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. 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 to measure a claimant's actual loss, depending on the status of the contract work. COMAR 09.08.03.03B(3).

In this case, the Respondent performed some work under the Contract, and the Claimant retained another contractor to complete or remedy that work. Accordingly, the following formula appropriately measures 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).

Using the aforementioned formula, the following calculations apply:

	$5,480.00	The amount paid by the Claimant to Respondent
	$6,200.00	The quoted amount that the Claimant received from Deck Builders to replace the balusters and stairs.
	$11,680.00	The total amount that would have been paid had the Claimant only replaced the incomplete work of the Respondent
	$5,480.00	Less the Contract Amount
Equals	$6,200.00	Actual Loss

Maryland regulations prevent the Commission from awarding from the Fund an amount in excess of the amount paid by or on behalf of the Claimant to the Respondent. COMAR 09.08.03.03B(4). The Business Regulation Article caps a claimant's recovery at $20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is more than the amount paid to the Respondent and less than $20,000.00. Therefore, the Claimant is entitled to recover the amount paid to the Respondent, an actual loss of $5,480.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $5,480.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover $5,480.00 from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $5,480.00; 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;[6] and

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

March 15, 2021
Date Decision Issued

Abena Y. Williams
Administrative Law Judge

AYW/cj
#191014

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

PROPOSED ORDER

WHEREFORE, this 2nd day of June, 2021, 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
Chairman
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION