

The Maryland Home  
Improvement Commission

v. Allen Davis  
t/a Davis Contracting, Inc.  
(Contractor)  
and the Claim of  
Mary Meyer  
(Claimant)

\* BEFORE THE  
\* MARYLAND HOME IMPROVEMENT  
\* COMMISSION  
\*  
\* MHIC No.: 14 (75) 1028  
\*  
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**FINAL ORDER**

WHEREFORE, this 11<sup>th</sup> day of February 2016, Panel B of the Maryland Home

Improvement Commission ORDERS that:

1. The Findings of Fact set forth in the Proposed Order dated September 1, 2015 are AFFIRMED.
2. The Conclusions of Law set forth in the Proposed Order dated September 1, 2015 are AFFIRMED.
3. The Proposed Order dated September 1, 2015 is AFFIRMED.
4. This Final Order shall become effective thirty (30) days from this date.
5. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.

*Joseph Tunney*  
Joseph Tunney, Chairperson  
PANEL B

MARYLAND HOME IMPROVEMENT COMMISSION

PHONE: 410-230-6309 • FAX: 410-962-8482 • TTY USERS, CALL VIA THE MARYLAND RELAY SERVICE  
INTERNET: WWW.DLLR.MARYLAND.GOV • E-MAIL: DLOPLMHIC-DLLR@MARYLAND.GOV

LARRY HOGAN, GOVERNOR • BOYD K. RUTHERFORD, LT. GOVERNOR • KELLY M. SCHULZ, SECRETARY

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF MARY MEYER,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF ALLEN DAVIS,</b></p> <p><b>T/A DAVIS CONTRACTING, INC.,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE KIMBERLY FARRELL,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>* OAH No.: DLR-HIC-02-15-07565</b></p> <p><b>* MHIC No.: 14 (75) 1028</b></p>
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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On August 13, 2014, Mary Meyer (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$2,500.00 in alleged actual losses suffered as a result of a home improvement contract with Allen Davis, trading as Davis Contracting, Inc. (Respondent).

I held a hearing on June 25, 2015, at the Department of Agriculture, 50 Harry S. Truman Parkway in Annapolis, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented herself. The Respondent represented himself. Peter Martin, Assistant

Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, 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), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 28.02.01.

### **ISSUE**

Did the Claimant file a timely Fund claim?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits on the Claimant's behalf, except for CLMT #9:

- CLMT #1 Complaint Form, November 5, 2013
- CLMT #2 Correspondence from the Claimant to the MHIC, November 4, 2013, with attached business cards for the Respondent
- CLMT #3 Correspondence from the MHIC to the Claimant, June 3, 2014
- CLMT #4 Correspondence from the Claimant to the MHIC, May 19, 2014, with attached letter from the Respondent to the MHIC, April 30, 2014, and correspondence from the MHIC to the Claimant, April 15, 2014
- CLMT #5 Photocopies of envelopes with MHIC personnel as the addressees, Home Improvement Claim Form, signed by the Claimant August 10, 2014, Trustworthy Construction, Inc., Contract, August 8, 2014, and correspondence from the MHIC to the Claimant, April 15, 2014
- CLMT #6 Receipt from Arnold Post Office, November 6, 2013
- CLMT #7 Pictures marked on the back as 7A, 7CC, and 7DD
- CLMT #8 Not admitted - Pictures marked on the back as B-Z, AA, BB, EE, FF, and GG<sup>1</sup>

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

- RESP #1 Complaint Form, signed by the Claimant, marked as received by the MHIC on April 15, 2014

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<sup>1</sup> The pictures that were not admitted are with the file, in a Sam's Club Photo envelope.

I admitted the following exhibits on behalf of the Fund:

- MHIC #1 Notice of Hearing, April 22, 2015, with attached Hearing Order and additional documents
- MHIC #2 Corrected Notice of Hearing, May 12, 2015,<sup>2</sup> with attachments
- MHIC #3 MHIC licensing history for the Respondent, May 11, 2015
- MHIC #4 Correspondence from the MHIC to the Respondent, August 20, 2014, with attached claim form

Testimony

The Claimant and the Respondent testified.

**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 numbers 01-75458 and 05-121842.
2. On March 22, 2011, the Claimant and the Respondent entered into a contract that called for the Respondent to perform roof and soffit work on the Claimant's home, porch and shed located at 1643 B&A Boulevard in Arnold, Maryland.
3. The Respondent completed the work by April 3, 2011.
4. The Respondent was paid in full on or before April 4, 2011.
5. The Claimant noticed leaking which she attributed to the Respondent's work within a week of completion of the project.
6. The Claimant filed a Fund claim with the MHIC on August 13, 2014, alleging that the roof work was poor or unworkmanlike or otherwise inadequate or incomplete.

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<sup>2</sup> The original notices incorrectly stated that the hearing was scheduled for midnight. The corrected notice set the hearing for 10:00 a.m.

## DISCUSSION

Although no motion was filed in advance, it became apparent during the hearing that the timeliness of the Claimant's claim was an issue. The Respondent moved to dismiss the claim as untimely filed partway through the hearing and all parties had a full opportunity to address that question. The merits hearing was well under way when timeliness was formally raised, so I completed the merits hearing. Under COMAR 09.01.03.05B, an administrative law judge may not grant a motion to dismiss or any dispositive motion "without the concurrence of all parties." Although the Fund and the Respondent were in agreement that the claim should be dismissed as untimely, the Claimant was not.

Section 8-405 of the Business Regulation Article provides that 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 (2015). Section 8-401 defines "actual loss" as "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 (2015). A request for such compensation is made by way of a claim filed with the Fund. Maryland law dictates that "a claim shall be brought against the Fund within 3 years after the claimant discovered or, by use of ordinary diligence, should have discovered the loss or damage." Md. Code Ann., Bus. Reg. § 8-405(g) (2015).

Although the precise date is unknown, the Claimant agreed that by about April 10, 2011, and in no event later than mid-April 2011, she discovered leaking which she attributed to unworkmanlike, inadequate, or incomplete home improvement by the Respondent. The Claimant was already acquainted with the MHIC complaint and claim process because the Respondent had guided her through it when she filed a claim against a contractor who had

worked on her roof before she met the Respondent. The Claimant filed her complaint against the Respondent earlier, in late 2013 or April 2014,<sup>3</sup> and the Claimant understood there was a distinction between complaints and claims filed with the Fund, but she failed to file her claim until August 13, 2014, roughly three years and four months after she discovered her alleged loss.

The Claimant alleged that MHIC personnel did not handle her complaints (plural) properly in general and that she knew that she was facing a time deadline. She also asserted that the MHIC did not provide her with a claim form when she first requested one. The Claimant's time and energy were also consumed, during a portion part of the time between when the work was finished and when she filed her claim, by caretaker responsibilities related to her spouse, who was very ill and who has since died. None of these considerations, singly or in combination, excuse the Claimant from filing a claim against the Fund within three years of when she discovered the loss.

The Claimant has failed to meet the requirements of the statute because her claim was not filed in a timely manner. The Appellant's claim must be dismissed.

### **CONCLUSION OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Claimant failed to file her claim within the statutorily required three-year time limit after she discovered the loss or damage for which she seeks compensation. Md. Code Ann., Bus. Reg. § 8-405(g) (2015).

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<sup>3</sup> The Claimant testified that she filed her complaint in November 2013 and she produced a receipt from the U.S. Post Office in Arnold from November 6, 2013, showing that she paid \$3.60 to send a parcel by first-class mail. The receipt had no information identifying what was sent or to whom. The Claimant testified that she mailed her complaint(s) at that time. MHIC records reflect that the MHIC received the complaint April 15, 2014. The Claimant argued that the MHIC had incorrectly assigned one case number to distinct complaints and implied that the date of April 15, 2014, may have been related to the date the MHIC assigned a second number to one of her complaints.

**RECOMMENDED ORDER**

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

**ORDER** that the Claimant's claim against the Maryland Home Improvement Commission Guaranty Fund and the Respondent be dismissed; and

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

July 27, 2015  
Date Decision Mailed

**Signature on File**  
*Kimberly Farrell*  
Kimberly Farrell  
Administrative Law Judge

KAF/kkc  
Document #157286