

IN THE MATTER OF THE CLAIM
OF RALPH BOLDYGA,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF JOSEPH MARINI,
T/A JOSEPH MARINI ASPHALT
PAVING,
RESPONDENT

* BEFORE TAMEIKA LUNN-EXINOR,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-18-14934
* MHIC No.: 17 (90) 241

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PROPOSED DECISION

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

STATEMENT OF THE CASE

On May 1, 2017, Ralph Boldyga (Claimant) filed an amended claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$2,700.00¹ for an alleged actual loss suffered as a result of a home improvement contract with Joseph Marini, t/a Marini Asphalt Paving (Respondent).

¹ On or about November 6, 2016, the Claimant filed a Home Improvement Claim Form with the MHIC requesting \$1,950.00 for actual loss based on the Respondent's alleged unworkmanlike performance. After an investigation, the MHIC found that the Respondent performed the contracted work in a poor and unworkmanlike manner and the Claimant sustained an actual loss in the amount of \$1,950.00. On April 18, 2017, the DLLR revoked OAH's delegation to conduct a hearing in the matter. On April 27, 2017, the Fund awarded Claimant \$1,950.00. On May 1, 2017, the Claimant amended his Complaint to increase his actual loss to \$2,700.00. The Claimant's Amended Complaint was transmitted to OAH by DLLR on May 10, 2018 for a hearing on the merits.

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

- CL 1 Claimant's narrative regarding his Reason for Complaint, not dated
- CL 2 Written scope of work prepared by Claimant, not dated
- CL 3 Drawing of Claimant's original driveway with contracted driveway additions prepared by Claimant, not dated
- CL 4 Claimant's narrative regarding Conditions Prior to Repair and Replacement, not dated
- CL 5a – 5q Photographs of the driveway after work performed by Respondent, taken May 6, 2017
- CL 5r A piece of asphalt cut from the Claimant's driveway after the Respondent's work
- CL 6 Driveways Article from the National Asphalt Pavement Association, printed April 14, 2017
- CL 7 Weather Report from Weather Underground for December 8, 2015, printed April 22, 2017
- CL 8a MHIC Proposed Order, Complaint No.: 17 (75) 241, dated April 27, 2017
- CL 8 Claimant's Chronology of Events with the following attachments:
- Complaint Form, dated August 22, 2016
 - Order from MHIC to Respondent, dated September 2, 2016
 - Letter from MHIC to Claimant, dated September 27, 2016
 - Letter from Respondent to MHIC, faxed October 8, 2016
 - Home Improvement Claim Form, dated November 6, 2016
 - Letter from Claimant to MHIC, dated November 6, 2016
 - Letter from MHIC to Respondent, dated November 17, 2016
 - Letter from MHIC to Claimant, dated December 5, 2016
 - Letter from MHIC to Claimant, dated March 23, 2017
 - Notice to Guaranty Fund Claimants, not dated
 - Notice of Guaranty Fund Workshop, not dated
 - Letter from Susan Cherry, Assistant Attorney General to OAH, dated April 17, 2017
 - Notice that Delegation was Revoked by DLLR, dated April 18, 2017
- CL 9 Copy of Check in the amount of \$2,400.00 from Claimant to Respondent, dated December 8, 2015

7. On December 8, 2015, the Claimant was immediately troubled by the driveway extension installed by the Respondent. The driveway was not paved as marked and agreed by the Claimant and the Respondent. The area paved had a sharp corner and could not be used for parking or turning around in the driveway. The asphalt was thin and trucks created indentions in the surface.

8. On December 9, 2015, the Claimant contacted the Respondent regarding his concerns with the driveway extension.

9. On December 11, 2015, the Respondent told the Claimant that his crew returned to the workshop with too much asphalt left in the truck after the Claimant's driveway was installed. The Respondent agreed to fix the problem when weather permitted.

10. On December 12, 2015, Melissa Marini, Respondent's daughter, told the Claimant that the Respondent would repair the driveway in the Spring.

11. In June 2016, Melissa Marini visited the Claimant's home to inspect the drive way and agreed to make the repairs.

12. The Respondent scheduled three dates with the Claimant to repair the driveway; the final promised date was August 22, 2016. The Respondent did not show up to repair the driveway.

13. On June 23, 2016, the Claimant received two estimates from Southern Maryland Paving & Seal Coating. The first estimate was in the amount of \$1,950.00 and the scope was to remove a sharp corner of asphalt installed by the Respondent and round out the area by adding some asphalt. The second estimate was in the amount of \$2,750.00 and the scope of work was to follow the flagged area originally marked by the Claimant.

14. The Claimant hired Southern Maryland Paving & Seal Coating to install the original driveway extension in the amount of \$2,750.00.

contractor”). Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” *Id.* at § 8-401.

For the following reasons, I find that the Claimant has proven eligibility for compensation.

Claimant's Case

The Claimant testified that the Respondent installed his original driveway twelve years before he hired the Respondent to complete an extension on his driveway. The Claimant was pleased with the Respondent's work twelve years prior and therefore he did not feel the need to have a formal contract. The Claimant contacted the Respondent to install an asphalt extension to his driveway at his residence. The Claimant explained the Respondent came out to the Claimant's home and discussed the scope of the job, which included preparing the area with the correct grade, installing two to three inches of compact stone, and installing three inches of asphalt. The Claimant flagged the area where the asphalt should be poured and showed the Respondent. The Respondent also made suggestions. There was no written contract between the parties, but their agreement was for the Respondent to be paid \$2,400.00 when he completed the work. The Claimant testified he was not at home when the work was performed and his wife paid the Respondent the \$2,400.00 once the work was completed on December 8, 2015

The Claimant testified that when he came home on December 8, 2015, he immediately noticed the asphalt extension was not within the scope of work agreed to by the parties. He stated that only a small portion of the driveway extension was completed, with an awkward corner. The Claimant explained he wanted an extension to use as both a parking space and an area to turn around in the driveway. The Claimant testified he could not park in the new area because the asphalt was too thin and his truck left indentions in the asphalt. He also stated the area was too small to use as a space for turning around. As a result, the Claimant called the Respondent to discuss these issues. The Respondent told him the crew returned to the shop with

job with a small dog, left while the work was being performed, and she paid his workers. She stated that the Respondent was unprofessional.

Respondent's Case

The Respondent testified that the photos provided by the Claimant of the repaired driveway are not of the same driveway he worked on for the Claimant. The Respondent also argued that the piece of asphalt the Claimant presented as a cutout from his work on the driveway "did not look like it came from the driveway he put in." The Respondent also argued that the Claimant has no experts so he cannot meet his burden in this matter.

In his testimony, the Respondent conceded he and the Claimant had an oral agreement for a driveway extension in the amount of \$2,400.00. The Respondent testified he installed the asphalt driveway as requested by the Claimant and he left the Claimant's marking in place when he left. On cross-examination, the Respondent testified that he showed the crew where the asphalt would go, dug the area, installed the asphalt, and he rolled it. The Respondent testified that he did not discuss asphalt thickness with the Claimant but that he put two-and-a-half inches of asphalt down and rolled it until it stopped moving. The Respondent denies that he set up flags and markers with the Claimant. However, the Respondent also testified that he does not remember a lot from three-and-a-half years ago.

Analysis

Actual Loss

This case has evidentiary issues mostly as a result of the parties orally agreeing to the installation of the Claimant's asphalt driveway and the failure to reduce the oral agreement to writing. As a result, the terms of the contract are disputed. The Claimant asserted both he and the Respondent discussed installing an asphalt driveway extension that could be used for additional parking and as an area for vehicles to turn around in the driveway. The discrepancy

points like his house and the driveway, which show a definite color difference between the driveway that was installed twelve years ago and the extension. I can reasonably conclude the photographs were of the Claimant's driveway located at his residence. By reasonable inference and because the Respondent admits he installed the asphalt at the Claimant's home, I have no doubt that the asphalt contained in the Claimant's photographs is the asphalt installed by the Respondent. The Claimant's photographs clearly demonstrate that the asphalt installed by the Respondent developed indentations in many areas. The photographs also show that the area installed by the Respondent does not match the scope of work diagram submitted by the Claimant. The Claimant also provided a cutout of the Respondent's asphalt which was one inch thick. Collectively, the photographs and the physical evidence demonstrate that the asphalt installed by the Respondent was installed inadequately or in an unworkmanlike manner.

Additionally, I was persuaded by the Claimant's testimony that in order to repair the work performed by the Respondent he was required to remove a portion of the asphalt and pay another contractor to overlay the remaining asphalt and install asphalt to complete his scope of work.

I find that there was a home improvement contract between to the Claimant and Respondent, a MHIC licensed contractor, to install an asphalt driveway at cost of \$2,400.00. I further find it was installed inadequately or in an unworkmanlike manner. As a result of the inadequate and unworkmanlike installation, a subsequent contractor had to partially remove, overlay, and install additional asphalt to complete the original scope of work, leading to an actual loss sustained by the Claimant and compensable by the Fund. Having found eligibility for compensation, I now turn to the amount of the award, if any, to which the Claimant is entitled.

Award

When determining the amount of an actual loss, there are several applicable regulations. The Fund may not compensate a claimant for consequential or punitive damages, personal

had no value. Based on this finding, the Claimant's actual loss is the \$2,400.00, which is the amount he paid to the Respondent.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss as a result of the Respondent's acts and omissions. I further conclude that the amount of the actual and compensable loss is \$2,400.00. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405; COMAR 09.08.03.03B(3)(b).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$2,400.00; 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

December 17, 2018
Date Decision Issued

Tameika Lunn-Exinor
Administrative Law Judge

TLE/cmg
#177332

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

PROPOSED ORDER

WHEREFORE, this 9th day of January, 2019, 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