

**IN THE MATTER OF THE CLAIM
OF JAMES G. BLIZZARD
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR ALLEGED VIOLATIONS OF
ROBERT MAURER
t/a HANDY HAMMER HOME
IMPROVEMENT COMPANY**

* **MARYLAND HOME
IMPROVEMENT COMMISSION**

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MHIC CASE NO. 13 (90) 1028

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FINAL ORDER

WHEREFORE, this 2ND day of March, 2015, Panel B of the Maryland Home

Improvement Commission ORDERS that:

- 1) The Findings of Fact of the Administrative Law Judge are Affirmed.**
- 2) The Conclusions of Law of the Administrative Law Judge are Amended as follows:**
 - A) As set forth by the Administrative Law Judge, COMAR 09.08.03.03B(3) provides that the Commission may determine that a particular claim requires a unique measure of actual loss.**
 - B) Based on review of the record in this matter, the Commission concludes that this claim requires a unique measure of actual loss, pursuant to the Commission's authority under COMAR 09.08.03.03B(3). The Commission concludes that the fair and reasonable measure of the Claimant's actual loss in this matter is the amount paid by the claimant to the respondent less the value of the work performed. The Commission concludes that the value of the work performed is 25% of the total amount, \$2,800.00, paid by the Claimant to the Respondent. Therefore, the Claimant's actual loss is \$2,100.00.**

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3) The Recommended Order of the Administrative Law Judge is Amended as follows:

A) The Claimant is Awarded \$2,100.00 from the Home Improvement Guaranty Fund.

B) Pursuant to Business Regulation Article, §8-411(a), any home improvement licenses held by the Respondent shall be Suspended at such time as any money is paid from the Home Improvement Guaranty Fund under this Order, and the Respondent shall then be ineligible for any home improvement license until such time as the Home Improvement Guaranty Fund has been reimbursed. The Respondent shall also be liable for 10% annual interest on any unreimbursed balance owed to the Fund.

4) This Final Order shall become effective thirty (30) days from this date. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.

**Andrew Snyder
Chair - Panel B
Maryland Home Improvement Commission**

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| IN THE MATTER OF THE CLAIM | * BEFORE DEBORAH H. BUIE, |
| OF JAMES G. BLIZZARD, | * AN ADMINISTRATIVE LAW JUDGE |
| CLAIMANT, | * OF THE MARYLAND OFFICE |
| AGAINST THE MARYLAND HOME | * OF ADMINISTRATIVE HEARINGS |
| IMPROVEMENT GUARANTY FUND | * OAH NO.: DLR-HIC-02-13-34290 |
| FOR THE ALLEGED ACTS OR | * HIC NO.: 13(90)1028 |
| OMISSIONS OF ROBERT MAURER, | * |
| t/a HANDY HAMMER HOME | * |
| IMPROVEMENT COMPANY, | * |
| RESPONDENT | * |

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PROPOSED DECISION

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

STATEMENT OF THE CASE

On July 19, 2013, James G. Blizzard (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of actual losses allegedly suffered as a result of a home improvement contract with Robert Maurer t/a Handy Hammer Home Improvement Company (Respondent).

I held a hearing on July 17, 2014 at the Office of Administrative Hearings (OAH), Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2013).

Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented himself. The Respondent was present and was represented by co-counsel Mark Van Bavel, Esquire, and A. Tony Heper, Esquire.

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 (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2013); Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 28.02.01.

ISSUE

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

SUMMARY OF THE EVIDENCE

Exhibits

An Exhibit List is attached to this Proposed Decision.

Testimony

The Claimant testified in support of his Claim.

The Fund presented no witnesses.

The Respondent testified on his own behalf.

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 home improvement contractor, licensed by the MHIC.

2. The Claimant owns a house located at 2626 Windsor Road, Parkville, Maryland (the Property).

3. On or about March 1, 2013, the Claimant and the Respondent entered into a contract (Contract) for home improvement work.

4. The Contract provided for the renovation of the Claimant's bathroom to include: removal of existing paneling/replace with drywall and painting; installation of new toilet and vanity; removal of existing flooring and installation of new flooring; installation of new shower stall; installation of new base molding and casing around door; and installation of crown molding around ceiling edge.

5. The agreed-upon Contract price was \$2,800.00. The Contract was for labor only; all supplies were provided by the Claimant.

6. The Claimant paid the Respondent a total of \$2,800.00 under the Contract.

7. The work was completed on or about March 14, 2013.

8. Upon completion of the work, the shower door had not been installed properly. The shower door required a push for it to slide into the metal framing with a sound fit.

9. In addition, other work performed by the Respondent was inadequate, incomplete, or unworkmanlike as follows:

- The marble threshold installed with the new flooring was lopsided
- Nail pops were visible throughout
- Smudges visible on wallboard
- Caulking and painting were unprofessionally done
- The shower head was installed too high
- Wooden door not plumb

10. In and around April and early May 2013, the Claimant contacted the Respondent numerous times, explaining the problems and requesting that the Respondent correct the problems. The Respondent eventually agreed to come out and he suggested putting a clip on the shower door to correct the problem. The Claimant contacted the maker of the shower door, Kohler, and was told that putting a clip on the door would be modifying the product thereby voiding the warranty on the door. The Claimant demanded that the Respondent remove the shower door and reinstall it, and the Respondent refused.

11. On May 7, 2013, the Respondent sent workers to the job in response to the Claimant's complaints. The threshold was replaced and the smudges on the wall were sanded and refinished. A broken floor board was replaced and the wooden door that was not plumb was shaved down. The Claimant signed off indicating he was satisfied with the work.

12. The next day, on May 8, 2013, the Claimant contacted the Respondent, even though he had signed off on the work the day before, asking him to return to the job for the remaining issues; however, the Respondent failed to return to the home to correct the problems.

13. The Claimant contacted and received proposals from two other contractors to correct the problems, one for \$3,870.00 and the other for \$2,885.15.

DISCUSSION

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. ("Bus. Reg.") § 8-405(a) (Supp.2013). *See also* COMAR 09.08.03.03B(2). Actual loss "means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401. Md. Code Ann., Bus. Reg. § 8-405(e)(1) (2010) provides that the Commission may not award from the Fund "more than \$20,000 to one

claimant for the acts or omissions of one contractor.” In 2010, Maryland’s General Assembly amended section 8-405(e), adding an additional limit to a claimant’s recovery. Under the amended statute, a claimant may not recover “an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is made.” Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2010 & Supp. 2013). For the following reasons, I find that the Claimant has proven eligibility for compensation.

In this case, the Respondent simply failed to fulfill his obligations under the Contract. Although the work was begun and completed on schedule, central to the bathroom renovation was the installation of a new shower stall. After installation, the shower stall did not work as intended; that is, the door did not slide snugly into the frame for proper closing. Other work was done with poor workmanship; e.g., a wooden door installed also did not close properly. The Claimant presented a recording of the defects and the poor quality in areas was clearly depicted. The Respondent made an attempt to correct the problems and specifically, with the shower stall, he offered a repair that the Claimant rejected. The Claimant’s rejection of the proposal to install a clip to help the door slide into place was reasonable given the manufacturer’s warning. The Respondent simply ignored the Claimant’s other requests related to fixing the unworkmanlike work.

The Respondent testified briefly but ultimately he did not dispute the Claimant’s assertions about the shower stall. He testified that he tried to remedy the shower door issue by taking it out and putting it back in, but ultimately, it would not close as intended. As to the floor threshold, the Respondent testified that he told the Claimant the sill would be lower than the wooden floor and warned the Claimant that a wooden floor was not a good idea for the bathroom. In response to the Claimant’s proposals to repair his work, the Respondent suggested

that three hundred dollars was a more reasonable cost to fix the other issues like the caulking, painting and nail pops.

While the Claimant has established poor workmanship and met all of the criteria for eligibility for compensation, he did not provide credible evidence of the value of the Respondent's work that needs to be repaired or replaced. The Fund thoroughly examined the Claimant on the proposals he presented and recommended that his proposals be rejected as too high.

The remaining issue, therefore, is the amount of the award, if any. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest, and the Claimant does not seek such damages. COMAR 09.08.03.03B(1). MHIC's regulations at COMAR 09.08.03.03B(3) offer three formulas for measurement of a claimant's actual loss:

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

(a) If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract.

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

(c) 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 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.

None of the formulas stated above in COMAR 09.08.03.03B(3)(a-c) is an appropriate measure of damages in this case. The Claimant is soliciting another contractor but has not presented "reasonable amounts" that he will be required to pay another contractor to repair the poor work done by the Respondent. Accordingly, I agree with the Fund that a unique formula is required, keeping in mind that the Claimant's actual loss cannot exceed the Contract price. Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2010 & Supp. 2013).

In this case, the Claimant paid the Respondent in full, an amount of \$2,800.00, for a bathroom renovation. The three major components of the renovation were the installation of a new shower stall, a new toilet, and new flooring. Assigning, therefore, one-third value to each of those components, results in an amount of \$933.33 per item. The toilet was installed without complaint and the flooring is not an issue that is identified in either proposal. Accordingly, I recommend the Claimant receive \$934.00 for repair of the shower stall plus an additional \$500.00 for the repair of the remaining touch-up type work (painting/caulking/re-hanging of wooden door, etc.), needed for a professional finish. An award in the amount of \$1,434.00 is recommended.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant has sustained an actual and compensable loss of \$1,434.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$1,434.00; and

ORDER that the Respondent be 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 as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

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

Signature on File

October 1, 2014
Date Decision Issued

_____h
Deborah H. Buie
Administrative Law Judge

DHB/ih
#151867

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| IN THE MATTER OF THE CLAIM | * BEFORE DEBORAH H. BUIE, |
| OF JAMES G. BLIZZARD | * AN ADMINISTRATIVE LAW JUDGE |
| CLAIMANT, | * OF THE MARYLAND OFFICE |
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| t/a HANDY HAMMER HOME | * |
| IMPROVEMENT COMPANY, | * |
| RESPONDENT | * |

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FILE EXHIBIT LIST

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

- Cl. Ex.1 DVD
- Cl. Ex. 2 Contract, March 1, 2013
- Cl. Ex. 3 Installation instructions for shower door
- Cl. Ex. 4 PerryHall Remodeling estimate, June 22, 2013
- Cl. Ex. 5 Trubuilt Construction estimate, July 6, 2013

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 Notice of hearing, dated April 11, 2014; Hearing Order, dated August 9, 2014
- Fund Ex. 2 Licensing History for Respondent, dated March 4, 2014
- Fund Ex. 3 Letter from MHIC to the Respondent, dated July 19, 2013

I admitted the following exhibit on behalf of the Respondent:

- Resp. Ex. 1 Job Notes of repairs done, May 7, 2013

PROPOSED ORDER

WHEREFORE, this 21th day of November 2014, 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.

Andrew Snyder

*Andrew Snyder
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION