

IN THE MATTER OF THE CLAIM	*	BEFORE D. HARRISON PRATT,
OF MARIA VERROYE DERBIJ AND	*	AN ADMINISTRATIVE LAW JUDGE
PIERRE VERROYE, ¹	*	OF THE MARYLAND OFFICE
CLAIMANTS,	*	OF ADMINISTRATIVE HEARINGS
AGAINST THE MARYLAND HOME	*	OAH NO.: DLR-HIC-02-13-40115
IMPROVEMENT GUARANTY	*	MHIC NO.: 13 (75) 1239
FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF VICTOR	*	
RODRIQUEZ T/A MONARCH	*	
DESIGN BUILD LLC,	*	
RESPONDENT	*	

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On February 28, 2013, Maria Verroye Derbij (one of the two Claimants) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for

¹Pierre Verroye is the husband of Claimant Maria Verroye Derbij. At the hearing, a request was made to add Pierre Verroye as an additional claimant. He was added without objection.

reimbursement of losses the Claimants allege they sustained as a result of the acts or omissions of Victor Rodriguez, t/a Monarch Design Build LLC (Respondent).

I held a hearing on July 22, 2014 at the Office of Administrative Hearings (OAH) in Kensington, Maryland. Md. Code Ann., Bus. Reg. § 8-312 (Supp. 2014) and § 8-407 (2010). Eric B. London, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimants were present at the hearing and represented themselves. Although properly notified of the hearing, the Respondent did not appear.²

The provisions of the Administrative Procedure Act, the procedural regulations of the Department and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2014), Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; and 28.02.01.

ISSUE

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

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Claimants:

- Cl. Ex. 1 Letter from the Claimants' homeowner's association (HOA) to the Claimants, November 12, 2009, with application for change in property, and photographs attached

² The OAH sent notices of the hearing to the Respondent on May 9, 2014 and again on July 14, 2014. Both notices were mailed to the Respondent by regular first class mail and by certified mail, return receipt requested. Neither of the certified mailings was accepted by the Respondent. However, on May 28, 2014, the Respondent wrote to the OAH. In the letter, the Respondent indicated that there was "no disagreement with the issue at hand and would appreciate the DLLR please (sic) proceed without any further delay." Attached to the letter was a copy of the OAH Notice of Hearing dated May 9, 2014. The last paragraph of the notice states: "If you no longer need or want a hearing, you may withdraw your request for a hearing by signing a copy of this form below and mailing it back to the address on the top of this notice, or by faxing it to (410) 229-4226." Although the Respondent had not requested a hearing, he signed the bottom of this notice on May 20, 2014. Clearly the Respondent had notice of the hearing. (See Fund Ex. 2).

- Cl. Ex. 2 Photographs of the deck on the back of the Claimants' house
- Cl. Ex. 3 Letter from the HOA to the Claimants requiring changes and repairs to the Claimants' deck, March 8, 2013
- Cl. Ex. 4 Letter from Metropolitan Painting, LLC to the MHIC, July 29, 2013, with copy of MHIC claim form attached
- Cl. Ex. 5 Contract with Metropolitan Painting, LLC, May 14, 2013, with cancelled check attached

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 OAH Notice of Hearing, June 24, 2014
- Fund Ex. 2 Letter from the Respondent to the OAH, May 28, 2014, with OAH Notice of Hearing dated May 9, 2014 signed by the Respondent attached
- Fund Ex. 3 MHIC Hearing Order, October 1, 2013
- Fund Ex. 4 MHIC certification as to the Respondent's licensing status, July 8, 2014
- Fund Ex. 5 Claimants' Home Improvement Claim Form, July 29, 2013
- Fund Ex. 6 Letter from the MHIC to the Respondent advising him of the claim, August 5, 2013

The Respondent did not offer any documents into evidence.

Testimony

The Claimants testified on their own behalf. The Respondent was not present at the hearing. The Fund did not call any witnesses.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Claimants live in a residential neighborhood that has an HOA.
2. On October 26, 2009, the Claimants filed an application with the HOA seeking permission to have a deck built on the back of their residence.
3. On November 12, 2009, the HOA approved the Claimants' application.

4. Later in November 2009, the Claimants hired the Respondent to build the deck. The original contract price was \$12,000.00, which the Claimants paid in full.
5. The Respondent began working on the project in November 2009 and completed the work in January 2010.
6. On March 8, 2013, the HOA notified the Claimants that the deck did not meet the specifications it had set out in its approval of the application to build the deck. Specifically, a considerable portion of the deck was deteriorating with portions rotting and coming apart, making the deck unsightly.
7. The Claimants made numerous attempts to contact the Respondent to have him resolve the problems, but he did not respond to their calls.
8. In July 2013, the Claimants hired Metropolitan Painting LLC (Metropolitan) to inspect the deck and determine what the problems were. Metropolitan determined that the Respondent had improperly used wood and pressed cardboard in constructing the deck when he should have used PVC material.
9. The Claimants hired Metropolitan to make repairs, which it did. The Claimants paid Metropolitan \$4,900.00 for the repair work.
10. At the time of the home improvement contract with the Claimants, the Respondent was a licensed Maryland home improvement contractor with license number 01-95042. This license expired on December 12, 2009 and has not been renewed.

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. § 8-405(a) (Supp. 2014). *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.” Md. Code Ann., Bus. Reg. § 8-401. Section 8-405(e)(1) of the Business Regulation Article 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.”

For the following reasons, I find that the Claimants have proven that they sustained an actual loss as a result of the acts or omissions of the Respondent, and they are therefore eligible for compensation from the MHIC Fund.

First, the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimants. Secondly, the Respondent failed to complete the deck with acceptable material. Thirdly, the Claimants suffered an actual loss as they hired another contractor to repair the problems caused by the Respondent’s subpar work and materials.

The Claimants entered into the contract in November 2009. The contract price was \$12,000.00, which the Claimants paid in full. Upon completion of the deck, the Claimants were satisfied with the work. However, in 2013, they noticed that the pillars under the deck and several other portions were deteriorating. Various portions were actually rotting. Although the Claimants made numerous attempts to have the Respondent return to resolve the problems, he did not respond to their attempts to contact him. In fact, the Respondent’s home improvement license had expired in December 2009, even before he completed his work.

The photographs provided by the Claimants show clearly the rotting condition of the pillars under their deck. The unworkmanlike conditions were further corroborated by Metropolitan when it inspected the deck. The inspection revealed that the Respondent had actually used a composite of pressed cardboard in constructing the deck, a material not intended for outdoor use. The Claimants hired Metropolitan to repair the Respondent’s work. Metropolitan is a Maryland licensed home improvement contractor. It completed the repairs for

\$4,900.00. Clearly the Claimants have sustained an actual loss as a result of the Respondent's acts and omissions.

The only remaining issue is to determine the amount of the Claimants' actual loss. 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). The applicable regulation, however, provides in pertinent part as follows:

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 above formula, the Claimants' actual loss is \$4,900.00 and is calculated as follows:

\$ 12,000.00	Amount the Claimant paid the Respondent
<u>\$ 4,900.00</u>	Adding the amount paid to complete Project
\$ 16,000.00	Subtotal
<u>\$-12,000.00</u>	Minus the original Contract Price and Change Order
\$ 4,900.00	The Claimants actual loss

Therefore, I conclude that the Claimants are entitled to compensation from the Fund in the amount of \$4,900.00.

CONCLUSION OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimants have sustained an actual loss in the amount of \$4,900.00 as a result of the

Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 (2010), 8-405 (Supp. 2014). Therefore, the Claimants are entitled to reimbursement from the Fund in the amount of \$4,900.00.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$4,900.00; 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 15, 2014
Date Decision Issued

D. Harrison Pratt
Administrative Law Judge

DHP/dlm
152210

PROPOSED ORDER

WHEREFORE, this 20th 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