

IN THE MATTER OF THE CLAIM
OF MARIE S. HILL,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF
ERNEST LEIGHTNER, JR. t/a
LEIGHTNER CUSTOM CARPENTRY,
RESPONDENT

* BEFORE DANIEL ANDREWS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH NO.: DLR-HIC-02-14-09078
* MHIC NO.: 13 (05)1241
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RECOMMENDED DECISION

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STATEMENT OF THE CASE

On January 15, 2014, Marie S. Hill (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of an actual loss allegedly suffered as a result of a home improvement contract with Ernest Leightner Jr. t/a Leightner Custom Carpentry (Respondent).

I convened a hearing on October 3, 2014, at the Talbot County Free State Public Library, located at 100 W. Dover Street, Easton, Maryland 21601. Md. Code Ann., Bus. Reg.

§§ 8-312, 8-407 (2010 & Supp. 2014). The Claimant represented herself. The Respondent failed to appear for the hearing. Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), MHIC, 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 (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.

ISSUES

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions? If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Claimant:

- Cl. Ex. 1 Contract between Claimant and Respondent (Contract), dated December 3, 2012 and Deposit Check paid by Claimant to Respondent, dated December 3, 2012.
- Cl. Ex. 2 Letter from Claimant to Respondent, dated March 29, 2013, delivered by certified mail, with photocopy of signed return receipt, dated April 1, 2013.

No exhibits were admitted into evidence on behalf of the Respondent.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 MHIC Hearing Order, dated March 12, 2014
- Fund Ex. 2 MHIC Licensing History for Respondent, dated October 2, 2014
- Fund Ex. 3 MHIC Claim Form filed by Claimant, dated January 14, 2014
- Fund Ex. 4 MHIC letter to Respondent, dated February 5, 2014

Testimony

The Claimant testified on her own behalf.

There was no testimony presented on the Respondent's behalf.

The Fund did not present any testimony.

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 license number 01-97452.
2. The Respondent's personal and business address with the MHIC is 6723 Bailey Store Road, Federalsburg, Maryland 21632 (address of record).
3. On December 3, 2012, the Claimant and Respondent entered into a home improvement contract to construct a front porch onto the Claimant's home. The Contract price was \$3,350.00. The Contract required a \$1,350.00 deposit upon acceptance of the Contract and a \$2,000.00 payment upon completion of the work.
4. The Contract did not contain a designated start time, but provided that after obtaining a building permit, the job will take approximately four days to complete.
5. On December 3, 2012, after accepting the Contract, the Claimant paid the Respondent a deposit of \$1,350.00.
6. On February 18, 2013, the Respondent was scheduled to begin work under the Contract. On this date, the Respondent called the Claimant and explained that another project was not finished and the Respondent's son was ill. Consequently, the Respondent did not begin any work required by the Contract.

7. On March 1, 2013, a building permit for the Claimant's porch construction was filed with the Town of Easton.

8. On March 7, 2013, the Respondent was scheduled to begin work under the Contract. The Respondent, however, informed the Claimant that the building permit had not been filed with the Town of Easton.¹

9. On March 15, 2013, the Town of Easton notified the Respondent that the building permit was ready to be picked up.

10. On March 25, 2013, the Respondent was scheduled to begin work under the Contract; however, due to a snow storm, the Respondent did not begin work that day. Otherwise, the nature of the work to be performed did not prevent work from beginning due to cold temperatures.

11. On March 26, 2013, the weather improved and the Respondent was expected to begin work under the Contract, but did not show up to do any work.

12. On March 26, 2013, the Claimant telephoned the Respondent, but he did not answer the phone. The Claimant left a voice message stating that the Claimant expected the Respondent to begin work on Wednesday, March 27, 2013 and finish by Friday, March 29, 2013, or return the deposit money previously paid.

13. On March 27 and 28, 2013, the Respondent did not show up at the Claimant's home to begin work and did not notify the Claimant of any reason for his failure begin work.

14. As of March 28, 2013, the building permit for the Claimant's porch construction had not been picked up by the Respondent.

¹ Based on testimony from the Claimant, the Respondent reported an alleged misunderstanding with the filing of a building permit for another job instead of filing for a building permit for the Claimant's front porch. However, without with further testimony from the Respondent or some other corroborating evidence, it appears this was an excuse by the Respondent to not perform the Contract.

15. On March 29, 2013, the Respondent did not show up at the Claimant's home to begin work and did not notify the Claimant of any reason for his failure begin work.

16. On March 29, 2013, the Claimant mailed to the Respondent a certified letter, which explained that the Respondent failed to perform the Contract and that the Claimant wanted a full repayment of the deposit money. The Respondent received the Claimant's certified letter on April 1, 2013.

17. In early April 2013, the Respondent telephoned the Claimant about the Contract. During the telephone conversation, the Claimant demanded that the Respondent repay the deposit money. The Respondent agreed to mail the Claimant a money order to repay the deposit. As of early May 2013, however, the Respondent failed to remit the deposit money.

18. On January 10, 2014, the Claimant submitted a claim with the MHIC seeking reimbursement for an actual loss, in the amount of \$1,350.00, because Respondent failed to perform a home improvement contract.

19. On February 5, 2014, the MHIC mailed to the Respondent, using his address on record, a copy of the claim filed by the Claimant.

20. On July 30, 2014, the OAH mailed a Notice of Hearing (Notice) to the Respondent by certified and regular first-class mail, using his address of record with the MHIC. The Notice informed the Respondent of the date, time, and location of a hearing on the Claimant's claim against the fund.

21. On August 1, 2014, the Respondent accepted delivery of the Notice.

DISCUSSION

Respondent's Failure to Appear

Section 8-312 of the Business Regulation Articles provides that the Commission shall give the person against whom the action is contemplated an opportunity for a hearing. Md. Code Ann., Bus Reg. § 8-312(a) (Supp. 2014). On July 30, 2014, the OAH sent a Notice by certified to the Respondent's address of record with the MHIC. The Notice advised the Respondent that a hearing on the Claimant's claim against the Fund was scheduled for October 3, 2014, that it would begin at 10:00 a.m., and would be held at the Talbot County Public Library located on 100 W. Dover Street, Easton, Maryland 21601. The Respondent accepted delivery of the Notice on August 1, 2014.

On October 3, 2014, I convened the hearing in accordance with the Notice. The Respondent, however, failed to appear for the hearing. After waiting approximately fifteen minutes to give the Respondent an opportunity to appear for the hearing, he still failed to appear. Since the Respondent received due notice of the hearing, I conclude that he was afforded an opportunity to participate in the hearing, but failed to appear. Accordingly, I found it appropriate to proceed in the Respondent's absence.

Merit of Claimant's Claim

A homeowner 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). A contractor may not abandon or fail to perform, without justification, a home improvement contract. Md. Code Ann., Bus. Reg.

under the Contract. COMAR 09.08.03.03B(3)(a). In this case, the Claimant paid the Respondent a deposit in the amount of \$1,350.00, which establishes the amount of her actual loss compensable from the Fund. Accordingly, I recommend that the Fund award the Claimant for an actual loss sustained in the amount of \$1,350.00

CONCLUSIONS OF LAW

I conclude, as a matter of law, that the Claimant has established an actual loss because of the Respondent's omission or, in this case, abandonment, of the home improvement. Md. Code Ann., Bus. Reg. § 8-405(a) (Supp. 2014). *See also* COMAR 09.08.03.03B(2).

I further conclude as a matter of law that the Claimant established an actual loss in the amount of \$1,350.00. Md. Code Ann., Bus. Reg. § 8-401 (2010); COMAR 09.08.03.03B(3)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$1,350.00; 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 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

November 17, 2014
Date Decision Issued

Daniel Andrews
Administrative Law Judge

§ 8-605 (2010). An “actual loss” is defined 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 (2010).

It is undisputed that the Respondent is a licensed MHIC contractor and entered into a home improvement contract with the Claimant on December 3, 2012. Additionally, the Claimant paid the Respondent a deposit of \$1,350.00. From December 3, 2012 through March 29, 2013, for a period of four months, the Respondent never began work under the Contract. The Contract required the Respondent to build a front porch on the Claimant’s home and the winter weather would not have impeded the Respondent from beginning any work required by the Contract. During the same four month period, the Respondent provided several excuses why he could not start working, but none of these excuses provided a justification for his failure to perform the Contract within four months after December 3, 2013, especially since the Contract anticipated that it would only take four days to complete the contract. Under these circumstances, the Claimant reasonably concluded that the Respondent abandoned the Contract without justification. The Fund did not contest the Claimant’s evidence and agrees with this position. Accordingly, I am satisfied that the Claimant established a compensable actual loss because of the Respondent’s omission or, in this case, abandonment, of the home improvement. Md. Code Ann., Bus. Reg. § 8-405(a) (Supp. 2014). *See also* COMAR 09.08.03.03B(2).

Having found eligibility for compensation, I now turn to the amount of the award, if any. Unless a particular claim requires a unique measurement, the MHIC shall determine a claimant’s actual loss using one of the formulas found in COMAR 09.08.03.03B(3). Since the Claimant established that the Respondent abandoned a contract without justification and without doing any work, the Claimant’s actual loss shall be the amount which the Claimant paid to the Respondent