

|  |  |
|--|--|
| <p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF MICHAEL GARCIA,</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 SCOTT CANTNER,</b></p> <p><b>T/A CANTNER CONSTRUCTION</b></p> <p><b>AND MANAGEMENT,</b></p> <p><b>RESPONDENT</b></p> | <p>* <b>BEFORE JENNIFER L. GRESOCK,</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>*</p> <p>*</p> <p>*</p> <p>* <b>OAH No.: DLR-HIC-02-14-22395</b></p> <p>* <b>MHIC No.: 14 (05) 219</b></p> <p>*</p> |
|--|--|

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On December 5, 2013, Michael Garcia (Claimant), filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$76,016.93 in alleged actual losses suffered as a result of a home improvement contract with Scott A. Cantner, doing business as Cantner Construction and Management (Respondent).<sup>1</sup>

I held a hearing on January 6, 2015, at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2010 and Supp.

---

<sup>1</sup> The Respondent's name is misspelled as Canter on some of the documents. The correct spelling is Cantner.

2014). Jessica Kaufman, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. Jennifer Landsman, Esquire, represented the Claimant. The Respondent did not appear for the hearing after due notice to the address on record. Notice was sent by certified mail, which the Respondent signed upon receipt, as well as by first-class mail, which was not returned by the United States Postal Service as undeliverable.

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 (2014), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 28.02.01.

### **ISSUES**

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

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted 41 exhibits on the Claimant's behalf. I have included them as an Appendix to this decision.

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

- GF Ex. 1 - Notice of Hearing, dated October 27, 2014
- GF Ex. 2 - MHIC Transmittal Form, undated, with attached Home Improvement Claim Form, dated December 5, 2013, and Hearing Order, dated June 20, 2014
- GF Ex. 3 - DLLR HIC Inquiry Printout, dated December 10, 2014
- GF Ex. 4 - Letter from the MHIC to the Respondent, dated December 30, 2013, with attached Home Improvement Claim Form, dated December 5, 2013
- GF Ex. 5 - Order Granting Relief From Stay, United States Bankruptcy Court for the District of Maryland, dated August 28, 1987

## Testimony

The Claimant testified and presented the testimony of Brian K. Bramel, an expert in professional engineering, structural engineering, and cost estimating.

The Fund did not present any witnesses.

### **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 number 01-90330.
2. In September 2010 and at all times relevant to this proceeding, the Claimant and his family lived at 320 Weatherbee Road, in Baltimore County, Maryland. It is the Claimant's primary residence.
3. In anticipation of renovating his home, the Claimant retained architect Lisa Kyle to design the renovations.
4. Ms. Kyle referred the Claimant to the Respondent.
5. On September 29, 2010, the Claimant and the Respondent entered into a contract (Contract) for extensive renovations to the interior of the home and to build a 400 square foot addition on the rear of the home. The Contract did not specify a start date, but did state that the estimated timeframe for the project was approximately four months.
6. The original agreed-upon contract price was \$170,672.00.
7. At the time the parties signed the Contract, the Claimant paid a deposit of \$56,312.00 to the Respondent.
8. The Respondent began work on the job in mid-December 2010.
9. On February 9, 2011, the Claimant and the Respondent agreed to amend the Contract to remove the planned porch (for which \$18,500.00 was deducted) and replace it with a

front portico (for which \$5,000.00 was added). The revised Contract total was \$157,172.00.

The revised Contract also included a completion date of April 30, 2011.

10. On February 23, 2011, the Claimant paid the Respondent \$10,000.00 for additional work not included in the Contract.

11. On March 17, 2011, the Claimant paid the Respondent \$3,500.00, based on a change order to the Contract (for removal of a structure).

12. On April 14, 2011, the Claimant paid the Respondent \$30,000.00, as a "progress" payment, which had been agreed to in the Contract.

13. On May 19, 2011, the Claimant and Respondent agreed to a change order to add vinyl siding to the existing brick, at an additional cost of \$8,500.00. The Claimant paid this additional cost in full by check on May 19, 2011.

14. The total amount the Claimant agreed to pay the Respondent under the Contract, with change orders included, was \$179,172.00 (based on \$157,172.00 + \$3,500.00 + \$10,000.00 + \$8,500.00).

15. On June 2, 2011, the Claimant paid the Respondent \$17,000.00, based on progress.

16. The Respondent continued work on the job into the month of July 2011.

17. On July 19, 2011, the Respondent informed the Claimant that he was going out of business, effective immediately, and would be unable to complete the job.

18. The total amount the Claimant paid to the Respondent was \$125,312.00 (based on \$56,312.00 + \$10,000.00 + \$3,500.00 + \$30,000.00 + \$8,500.00 + \$17,000.00).

19. At the time the Respondent stopped work on the job, a portion of the back wall of the home had been removed. The home was unsecured. Tarps separated the living areas from construction areas.

20. The Claimant attempted to secure the home by attaching plywood to the back, but rodents were able to enter the home.

21. The partly-completed renovation had severe structural deficiencies, including a column supporting too much of the weight of the structure.

22. The Respondent left an electrical meter hanging loose from the side of the home.

23. The Respondent left trash, debris, and boards with exposed nails strewn around the work site.

24. The Respondent left exposed electrical lines in the addition section of the home.

25. The home had no running water on the first floor, and sharp items, including tools, nails, and screws were strewn throughout the work area.

26. When the Respondent left the job, several subcontractors had not been paid for work they had completed.

27. On July 23, 2011, structural engineer Brian Bramel inspected the home and work site. The Claimant paid Mr. Bramel \$4,276.50.

28. On August 16, 2011, the Claimant contracted with Avalon Associates, Inc., (Avalon) to complete substantially the same job the Respondent had agreed to do. The contract price was \$51,500.00 (Avalon Contract).

29. Avalon is licensed by the MHIC as a contractor.

30. Avalon and the Claimant agreed on four change orders, as follows:

a. Change order #1: an additional \$5,180.00 for front porch landing, side porch, painting and staining

b. Change order #2: an additional \$2,665.52 for changes to bathroom renovations

- c. Change order #3: an additional \$2,400.00 for doors and caulking
- d. Change order #4: an additional \$1,300.00 for moving bathroom wall

31. The Claimant paid Avalon a total of \$66,965.52.

32. The Claimant paid the following subcontractors directly for work within the scope

of the Contract, accounting for allowances in the original Contract:

| Subcontractor  | Amount                  |
|--|-------------------------|
| Overhead Door Company of Baltimore, Inc.                   | \$1,375.00              |
| Hall's Septic Service Inc. & Hall's Honey Pots             | \$333.00                |
| Cool Breeze Heating, Air Conditioning, Refrigeration, Inc. | \$4,204.00              |
| Feliks Leybengrub Painting, LLC                            | \$5,106.00              |
| 1-800-GOT-JUNK?  | \$209.00                |
| Charles A. Klein and Sons                                  | \$648.00                |
| Pulse Electric   | \$2,835.00              |
| Price Plumbing   | \$850.00                |
| Baltimore Floor Supply, Inc.                               | \$1,199.42              |
| FreeState Timbers  | \$2,914.39              |
| Hunt Valley Tile   | \$4,913.95              |
| Borelli Marble & Granite                                   | \$9,000.00 <sup>2</sup> |
| KM Site & Stone  | \$6,500.00              |
| Bray & Scarff Appliance and Kitchen Specialists            | \$9,000.00 <sup>3</sup> |
| Cinder & Concrete Block Corp                               | \$1,947.20              |
| Pella Window and Door Showroom of Hunt Valley              | \$4,593.32              |
| Rock-Tops Fabrication, LLC                                 | \$2,868.00 <sup>4</sup> |
| TOTAL  | \$58,496.28             |

<sup>2</sup> Actual payment was \$9,909.63. However, the Contract included an allowance of \$9,000.00 for kitchen cabinets, so I have used that figure.

<sup>3</sup> Actual payment was \$6,256.80. However, the Contract included an allowance of \$5,000.00 for appliances, so I have used that figure.

<sup>4</sup> Actual payment was \$2,132.00. However, the Contract included an allowance of \$5,000.00, so I have used the difference between the two figures.

## 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 losses . . . incurred as a result of misconduct by a licensed contractor”). 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 (2010). For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. This is clearly established by the evidence. (GF Ex. 3.)

The Respondent also clearly performed unworkmanlike, inadequate or incomplete home improvements. There is no dispute that the Respondent walked off the job in mid-July 2011, as he acknowledges in his July 19, 2011 letter to the Claimant. (Cl. Ex. 2.) The Claimant testified credibly about the condition of the home in mid-July 2011 when the Respondent abandoned work: the job was far from finished, with a portion of a back wall of the home missing, tarps separating the living area from the construction area, trash strewn all over the work site, no running water on the first floor, unsecured doors, and rodents inside the home.

The Claimant also offered the testimony of Mr. Bramel, an expert in professional engineering, structural engineering, and cost estimating. Mr. Bramel visited the home in July 2011 after the Claimant hired him to assess the condition of the home. Mr. Bramel testified that he observed significant structural deficiencies where the existing home structure met the new addition. He also detailed extensive uncompleted work, including an electrical meter hanging loose, exposed electrical wires, trash throughout the work site, an extensive incomplete punch list, incomplete foundation work, and unfinished construction.

Based on the credible and unrefuted testimony of the Claimant and Mr. Bramel, I find that that Respondent performed incomplete home improvement work, and further, that the work he did was both unworkmanlike and inadequate. I thus find that the Claimant is eligible for compensation from the Fund. Having found eligibility for compensation I now turn to the amount of the award, if any, to which the Claimant is entitled.

First, 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). I agree with the Fund that the fee the Claimant paid to Mr. Bramel for his inspection and assessment should be excluded from any award as consequential damages. COMAR 09.08.03.03B(1)(a). For that reason, I have not included the fee paid by the Claimant to Mr. Bramel. With regard to the amount that may be awarded, MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss in this case.

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.

COMAR 09.08.03.03B(3)(c).



Specifically, the calculation is as follows:

|                                |   |                          |
|--------------------------------|---|--------------------------|
| Amount paid to Respondent:     |   | \$125,312.00             |
| Amount paid to subcontractors: | + | \$58,496.28 <sup>5</sup> |
| Amount paid to Avalon          | + | <u>\$66,965.52</u>       |
|                                | = | \$250,773.80             |
| Original contract price:       | - | <u>\$179,172</u>         |
| Actual loss                    | = | \$71,601.80              |

Pursuant to the Business Regulation Article, the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Md. Code Ann., Bus. Reg. § 8-405 (e)(1), (5) (Supp. 2014). The actual loss computed above is \$71,601.80, which exceeds \$20,000.00 by \$51,601.80. Accordingly, the Claimant is entitled to reimbursement from the Fund of only a portion of his actual loss, or \$20,000.00. Md. Code Ann., Bus. Reg. § 8-405 (e)(1) (Supp. 2014).

#### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual loss of \$71,601.80 as a result of the Respondent's acts and omissions, and that \$20,000.00 of that loss is compensable. Md. Code Ann., Bus. Reg. §§ 8-401 and 8-405 (2010 & Supp. 2014).

#### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; and

---

<sup>5</sup> The figure proposed by the Fund was \$58,625.28. The Fund did not present the complete details of its calculations, so I cannot determine the reason for the difference between its calculations and mine. Regardless, the difference is of no consequence, as either figure results in an actual loss well above the \$20,000.00 cap for an award.

**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 (10%) 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**

April 2, 2015  
Date Decision Issued

  
\_\_\_\_\_  
Jennifer L. Gresock  
Administrative Law Judge

JLG/dlm  
# 155330

|  |  |
|--|--|
| <p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF MICHAEL GARCIA ,</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 SCOTT CANTNER,</b></p> <p><b>T/A CANTNER CONSTRUCTION</b></p> <p><b>AND MANAGEMENT</b></p> <p><b>RESPONDENT</b></p> | <p><b>* BEFORE JENNIFER L. GRESOCK,</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-02-14-22395</b></p> <p><b>* MHIC No.: 14 (05) 219</b></p> <p><b>*</b></p> |
|--|--|

\* \* \* \* \*

**APPENDIX**  
**FILE EXHIBIT LIST**

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

- Cl. Ex. 1A- Contract, dated September 23, 2010, and signed on September 29, 2010
- Cl. Ex. 1B - Addendum to Contract, dated February 2, 2011, and signed on February 9, 2011
- Cl. Ex. 1C - Invoice, Cantner Construction & Management, LLC, dated March 16, 2011
- Cl. Ex. 1D - Change Order, Cantner Construction & Management, LLC, dated May 19, 2011
- Cl. Ex. 1E - Checks from the Claimant to the Respondent, dated September 29, 2010 (\$56,312.00); March 19, 2011 (\$3,500.00); April 14, 2011 (\$30,000.00); May 19, 2011 (\$8,500.00); June 2, 2011 (\$17,000.00)
- Cl. Ex. 1F - Allowance Sheet, Cantner Construction & Management, LLC, dated June 6, 2011
- Cl. Ex. 1G - Allowance Sheet, Cantner Construction & Management, LLC, undated
- Cl. Ex. 2 - Letter from the Respondent to the Claimant, dated July 19, 2011
- Cl. Ex. 3 - DLLR HIC Registration Inquiry Printout, dated December 10, 2014

- Cl. Ex. 4A - Avalon Associates, Inc. Contract, dated August 15, 2011 and signed on August 16, 2011
- Cl. Ex. 4B - Invoice, Avalon Associates, Inc., dated October 7, 2011
- Cl. Ex. 4C - Change Order #1, Avalon Associates, Inc., dated September 28, 2011
- Cl. Ex. 4D - Change Order #2, Avalon Associates, Inc., dated October 4, 2011
- Cl. Ex. 4E - Change Order #3, Avalon Associates, Inc., dated September 28, 2011
- Cl. Ex. 4F - Invoice, Avalon Associates, Inc., dated September 13, 2011
- Cl. Ex. 4G - Invoice, Avalon Associates, Inc., dated November 18, 2011
- Cl. Ex. 4H - Invoice, Avalon Associates, Inc., dated February 15, 2012
- Cl. Ex. 4I - Change Order #4, Avalon Associates, Inc., dated February 15, 2012
- Cl. Ex. 4J - Invoice, Avalon Associates, Inc., dated May 10, 2012
- Cl. Ex. 4K - Checks from the Claimant to Avalon Associates, dated August 16, 2011 (\$15,450.00); September 30, 2011 (\$15,450.00); November 22, 2011 (\$20,600.00); September 30, 2011 (\$5,180.00); October 11, 2011 (\$3,005.52); November 7, 2011 (\$2,400.00); September 26, 2011 (\$1,910.00); February 28, 2012 (\$2,044.00); May 30, 2012 (\$926.00)
- Cl. Ex. 5A - Proposal, Overhead Door Company of Baltimore, Inc., dated August 5, 2011
- Cl. Ex. 5B - Invoices and Receipts, Hall's Septic Service, Inc., & Hall's Honey Pots, dated August 28, 2011 and November 18, 2011
- Cl. Ex. 5C - Contract, Cool Breeze Heating, Air Conditioning, Refrigeration, Inc., dated August 5, 2011
- Cl. Ex. 5D - Proposal, Feliks Leybengrub Painting, LLC, undated, and two checks, dated March 13, 2012 (\$1,093.00) and November 18, 2011 (\$4,013.00)
- Cl. Ex. 5E - Invoice, 1-800-GOT-JUNK?, dated March 20, 2012, and check, dated March 20, 2012 (\$209.00)
- Cl. Ex. 5F - Invoice, Charles A. Klein and Sons, Inc., dated October 20, 2011, with Bill Pay notation, dated January 7, 2012 (\$648.00)

- Cl. Ex. 5G - Estimate, Pulse Electric, dated August 4, 2011, with checks, dated September 8, 2011 (\$1,500.00); September 22, 2011 (\$1,335.00)
- Cl. Ex. 5H - Invoice, Price Plumbing, date illegible, with checks, dated August 15, 2011 (\$450.00); August 18, 2011 (\$400.00)
- Cl. Ex. 5I - Invoice, Baltimore Floor Supply, Inc., dated June 28, 2011, with check, dated July 14, 2011 (\$1,199.43)
- Cl. Ex. 5J - Sales Receipts, FreeState Timbers, dated July 9, 2011 (\$1,076.16); July 1, 2011 (\$75.00); June 20, 2011 (\$440.06); May 24, 2011 (\$1,163.06); March 9, 2011 (\$160.11)
- Cl. Ex. 5K - Proposal, Pella Window and Door Showroom of Hunt Valley, dated August 1, 2011, with check, dated August 25, 2011 (\$2,297.32)]
- Cl. Ex. 5L - Estimates, Invoices and Receipts, Hunt Valley Tile and Stone, dated August 3, 2011 (receipt for \$600.00); August 24, 2011 (invoice for \$2,788.43); August 24, 2011 (receipt for \$3,420.40); July 11, 2011 (invoice for \$631.97); September 2, 2011 (invoice and receipt for \$307.90); September 14, 2011 (invoice and receipt for \$363.91); September 28, 2011 (invoice and receipt for \$103.86); October 26, 2011 (invoice and receipt for \$14.08); November 15, 2011 (invoice and receipt for \$103.80)
- Cl. Ex. 5M - Invoice, Borelli Marble & Granite, dated August 29, 2011, reflecting payment of \$9,909.63
- Cl. Ex. 5N - Invoice, KM Site & Stone, undated, with checks, dated July 14, 2011 (\$2,500.00); August 19, 2011 (\$4,000.00); and August 25, 2011 (\$3,177.00)
- Cl. Ex. 5O - Invoice, Bray & Scarff, date illegible, with illegible payment receipt
- Cl. Ex. 5P - Sales Receipt, Cinder & Concrete Block Corp., dated August 2, 2011 (\$1,947.20)
- Cl. Ex. 5Q - Invoice, dated July 15, 2011, with "paid" notation (\$2,132.00)
- Cl. Ex. 6A - Letter, CED Investigative Technologies, Inc., dated July 19, 2011, with check, dated July 22, 2011 (\$1,500.00)
- Cl. Ex. 6B - Invoice, CED Investigative Technologies, Inc., dated September 1, 2011 through September 30, 2011, with check, dated December 2, 2011 (\$2,776.50)
- Cl. Ex. 7 - Resume, Brian K. Bramel
- Cl. Ex. 8 - Photographs, labeled Photograph 1 through Photograph 50

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

- GF Ex. 1 - Notice of Hearing, dated October 27, 2014
- GF Ex. 2 - MHIC Transmittal Form, undated, with attached Home Improvement Claim Form, dated December 5, 2013, and Hearing Order, dated June 20, 2014
- GF Ex. 3 - DLLR HIC Inquiry Printout, dated December 10, 2014
- GF Ex. 4 - Letter from the MHIC to the Respondent, dated December 30, 2013, with attached Home Improvement Claim Form, dated December 5, 2013
- GF Ex. 5 - Order Granting Relief From Stay, United States Bankruptcy Court for the District of Maryland, dated August 28, 1987

**PROPOSED ORDER**

***WHEREFORE, this 13th day of May, 2015, 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**