

IN THE MATTER OF	* BEFORE LATONYA B. DARGAN,
THE CLAIM OF	* AN ADMINISTRATIVE LAW JUDGE
AISHA AND GLENN CASSIS,	* OF THE MARYLAND OFFICE
CLAIMANTS,	* OF ADMINISTRATIVE HEARINGS
AGAINST THE MARYLAND	* OAH Case No.: DLR-HIC-02-14-09082
HOME IMPROVEMENT	* MHIC Case No.: 14 (75) 473
COMMISSION GUARANTY FUND	*
FOR THE ALLEGED	*
ACTS OR OMISSIONS OF	*
WILLIAM JONES, t/a	*
COMMUNITY DESIGN &	*
REMODELING, LLC,	*
RESPONDENT	*

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On January 31, 2014, the Claimants filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$7,289.00 for actual monetary losses allegedly suffered as a result of the inadequate, incomplete or unworkmanlike home

improvement performed by William Jones, t/a Community Design & Remodeling, LLC (Respondent). On March 12, 2014, the MHIC ordered the Claimants should have a hearing in order to establish eligibility for an award from the Fund.

On September 5, 2014, I conducted a hearing at the Office of Administrative Hearings (OAH) in Kensington, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2010 and Supp. 2014). Glenn Cassis represented the Claimants. Jessica B. Kauffman, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the Fund. No one appeared on behalf of the Respondent. The Notice of Hearing (Notice) was sent to the parties via certified mail, return receipt requested, on June 16, 2014. On June 23, 2014, the OAH received the certified mail return receipt cards for the copies of the Notice sent to the Claimant and the Respondent. Accordingly, I found the Respondent received proper notice of the hearing and, despite receiving notice, he failed to appear. I conducted the hearing in the Respondent's absence. Md. Code Ann., Bus. Reg. § 8-312(h); Md. Code Ann., State Gov't § 10-209; and, Code of Maryland Regulation (COMAR) 09.01.02.07.

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 as a result of the Respondent's acts or omissions in performing home improvement work; and, if so,
2. What is the amount of the award to which the Claimant is entitled from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits for the Claimants:

Claim. Ex. A: June 15, 2010 Contract

Claim. Ex. B: Proof of payments

Claim. Ex. D: Description of Contracted Roof Work

Claim. Ex. E: 2010 Inspection Report

Claim. Ex. F: 2013 Inspection Report

Claim. Ex. G: Roof Repair Estimate

Claim. Ex. H: Description of Contracted HVAC Work

Claim. Ex. J: Hot Water Heater Repair Estimate

Claim. Ex. K: Description of Contracted Brick Stoop and Sidewalk Work

Claim. Ex. L: Photographs

Claim. Ex. M: County Inspection – Stoop and Sidewalk

Claim. Ex. O: Brick Stoop and Sidewalk Repair Estimate

Claim. Ex. P: Description of Contracted Electrical Panel Work

Claim. Ex. Q: Photograph

Claim. Ex. R: Receipt for Electrical Panel Replacement

I admitted the following exhibits for the Fund:

Fund Ex. 1: OAH's June 16, 2014 Notice of Hearing

Fund Ex. 2: Hearing transmittal with attached March 12, 2014 MHIC Order

Fund Ex. 3: Licensing information on the Respondent

Fund Ex. 4: The MHIC's February 5, 2014 letter to the Respondent with attached January 31, 2014 Claim Form

No exhibits were submitted for the Respondent.

Testimony

The Claimants testified and did not present any other witnesses. The Fund did not present any witnesses. No one testified on behalf of the Respondent.

FINDINGS OF FACT

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

1. At all times relevant to this matter, the Respondent was a home improvement contractor licensed by the MHIC under registration number 100491.
2. In June 2010, the Claimants resided at 12313 Chesterton, Upper Marlboro, Maryland (the Property).
3. On or around June 15, 2010, the Claimants entered into a contract with the Respondent for the Respondent to perform a complete renovation and remodeling of the Property. The original contract price was \$44,200.50. Work was to commence on June 10, 2010¹ and to be completed on August 24, 2010.
4. Among the work the Respondent was required to perform under the contract were the following items:²
 - a. Replace the existing roof, including the installation of 100 square feet of new architectural shingles with matching ridge vent, the installation of 12 new sheets of ½-inch plywood, the installation of 15 pounds of new tar paper, and reflashing the chimney
 - b. Remove and replace brick stoop with similar color and pattern materials
 - c. Remove and replace concrete sidewalk
 - d. Repair the electrical connection to the HVAC unit and service the HVAC unit

¹ No one explained why the contract is dated after the commencement of work date.

² The full scope of work under the contract was substantial, but the Respondent's work performance related to these five items constitutes the basis of the Claimants' claim.

- e. Upgrade the electrical panel from 60 amp to 100 amp panel
5. The Respondent began work on the Property in June 2010 and completed the project on or around January 11, 2011.
6. Including the cost of change orders under the contract, the Claimants paid the Respondent a total of \$50,830.58 to perform work at the Property.
7. At some point in August 2011, the Claimants noticed the sidewalk was deteriorating. The concrete had started separating in some places and crumbling in others, and the surface layer was eroded in several places.
8. On February 12, 2012, an inspector with the Prince George's County Department of Environmental Resources – Building Inspections Section visited the Property as part of routine inspections. The inspector failed the stoop and the sidewalk leading to the stoop as not meeting county code specifications for the distance of the risers in the stairs of the stoop. The risers were not properly spaced in relation to one another, which could cause someone to trip and fall while climbing the stairs.
9. Sometime in September 2012, the Claimants experienced a power outage at the Property. Subsequent to the power outage, the main electrical panel would frequently spark. The Claimants had the panel inspected by Professional Electric, Inc. (PEI),³ which determined the panel was undersized for the amount of drain placed on it. The panel was 100 amps and should have been 150 amps. Additionally, the wiring to the panel was not properly cut, leaving exposed, rather than insulated, wiring, which contributed to the sparks.

³ PEI's invoice indicates the company is "licensed" but it does not contain an MHIC registration number.

10. PEI recommended the replacement of the 100 amp panel with a 150 amp panel, and the replacement of the main breaker. The cost of the repair was \$1,000.00, which the Claimants paid on or around September 12, 2012.
11. Sometime in September 2013, the Claimants noticed problems with the Property's roof, namely leaks when it rained. Concerned, the Claimants hired Pro-Spex, a professional home inspection company (Inspection License No. 29749), to perform an inspection of the Property to determine if there were any other problems with the renovation of the Property. Pro-Spex also performed the pre-renovation inspection of the Property, and recommended the replacement of the roof. Glenford Blanc conducted a September 26, 2013 inspection of the Property on behalf of Pro-Spex.
12. During his inspection, Mr. Blanc observed the following deficiencies:
 - a. Although the Respondent was supposed to replace the old roof under the terms of the contract, he did not remove the old roof. Instead, he installed the new roof shingles on top of the old roof.
 - b. The sheathing along the dividing wall was water-damaged. It should have been noticed at the time of the renovation and, had the roof been properly replaced, it should have been repaired.
 - c. Water intrusion in the attic from the roof as a result of the deteriorating and damaged sheathing.
 - d. The vent was not properly secured to the top of the water heater, which can result in the vent becoming dislodged and causing dangerous exhaust gasses to enter the home.
13. In light of the various deficiencies with the Respondent's work, the Claimants were unwilling to secure his services to perform the repairs needed to the roof, water heater or stoop and sidewalk.

14. The Claimants obtained a proposal for replacement of the existing roof from Corley Roofing & Sheet Metal Co., Inc. (MHIC Registration No. 5878) (Corley). Corley estimated the roof repair would cost \$2,544.00.
15. The Claimants obtained an estimate for repair of the water heater from Jiffy Plumbing, Heating and Cooling (MHIC Registration No. 17747), which determined the cost to repair the water heater was \$735.00.
16. The Claimants also obtained an estimate for the repair/replacement of the stoop and sidewalk from American Professional Chimney and Masonry, Inc. (MHIC Registration No. 34419), which determined the cost of replacement to be \$3,000.00.

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. 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.” Md. Code Ann., Bus. Reg. § 8-401 (2010). The Claimants bear the burden of proof by a preponderance of the evidence to show entitlement to an award from the Fund. COMAR 09.08.03.03A(3). For the following reasons, I find that the Claimants have proven eligibility for compensation.

There is no dispute that the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimants and during the time he performed work at the Property. The Claimants’ evidence demonstrates the Respondent’s performance was unworkmanlike and inadequate. In August 2011, a mere seven months after the renovations, the Claimants noticed visible deterioration of their sidewalk, a condition clearly captured in

photographs. The surface had already begun to erode and the concrete began to separate and crumble in several places. Additionally, as the county-mandated inspection demonstrated, the Respondent had not constructed the front steps/stoop in a manner that conformed to county code requirements. It is unlikely that if the Respondent had used satisfactory materials and if he had conformed his work to code requirements, the Claimants would have experienced the obvious problems with the sidewalk and stoop.

The Respondent's inadequate and unworkmanlike performance is even more egregious with respect to the Claimant's roof. Despite the clear contractual requirement for the Respondent to wholly replace the old roof at the Property with a new one, Mr. Blanc's September 26, 2013 inspection revealed the Respondent did not remove the old roof, but instead, placed the new roof shingles on top of the old ones. As a result, there was water leakage into the attic and other parts of the house whenever it rained, which led to significant and visible water damage to the roof sheathing. In Mr. Blanc's opinion, had the roof been replaced as called for in the contract, it was unlikely water damage would have been sustained.

In addition to the problems with the roof, sidewalk, and front steps/stoop, the Respondent did not adequately install the water heater or main electrical paneling, deficiencies which created dangerous conditions in the Claimants' home, and for which the Claimants had to contract with other home improvement professionals to repair.

Having found that the Claimants are eligible for compensation, I now turn to the amount of the award. 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). MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR

09.08.03.03B(3)(a), (b) and (c). One of those formulas, as follows, offers an appropriate measurement 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. 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).

Applying the formula set out above, I find that the Claimants sustained an actual loss as follows:

Amount Paid to the Respondent	\$50,830.58
Amount Paid to Correct or Complete Work	<u>+\$ 7,279.00⁴</u>
	\$58,109.58
Amount of Original Contract	<u>-\$50,830.58</u>
Amount of Actual Loss	\$ 7,279.00

Under Business Regulation § 8-405(e)(5) (Supp. 2014), the amount of an award to a claimant is limited to the amount the claimant paid the contractor whose work was inadequate, incomplete, or unworkmanlike. Accordingly, I recommend an award to the Claimants in the amount of \$7,279.00.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Claimants suffered an actual loss of \$7,279.00, and they are entitled to be compensated in the amount of \$7,279.00 as a result of the acts or omissions of the Respondent. Md. Code Ann., Bus. Reg. §§ 8-401 (2010), 8-405(e)(5) (Supp. 2014); COMAR 09.08.03.03B(3)(c).

⁴ This amount includes the estimates for the repair of the roof, water heater, and the sidewalk and stoop, as well as the cost of the replacement of the electrical panel, which the Claimants have already paid.

PROPOSED ORDER

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

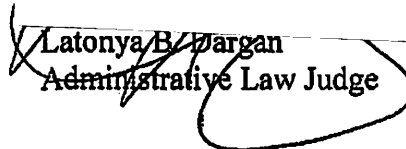
ORDER that the Maryland Home Improvement Guaranty Fund award the Claimants \$7,279.00; and,

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

December 2, 2014
Date Decision Mailed


Latonya B. Wargan
Administrative Law Judge

LBD/kkc
#152966

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FILE EXHIBIT LIST

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No exhibits were submitted for the Respondent.

PROPOSED ORDER

WHEREFORE, this 20th day of January 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.

J. Jean White

***I. Jean White
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION