

The Maryland Home  
 Improvement Commission

v. Carl Savelli  
 t/a Atlantic Paving LLC  
     (Contractor)  
 and the Claim of  
 Peter Moran  
     (Claimant)

\* BEFORE THE  
 \* MARYLAND HOME IMPROVEMENT  
 \* COMMISSION  
 \*  
 \* MHIC No.: 08 (90) 2157  
 \*  
 \*

\*\*\*\*\*

**FINAL ORDER**

WHEREFORE, this August 26, 2010, Panel B of the Maryland Home Improvement  
 Commission **ORDERS** that:

1. The Findings of Fact set forth in the Proposed Order dated April 26, 2010 are **AFFIRMED**.
2. The Conclusions of Law set forth in the Proposed Order dated April 26, 2010 are **AFFIRMED**.
3. The Proposed Order dated April 26, 2010 is **AFFIRMED**.
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.

*I. Jean White*  
 I. Jean White, Chairperson  
 PANEL B

**MARYLAND HOME IMPROVEMENT COMMISSION**

PHONE: 410.230.6309 • FAX: 410.962.8482 • TTY USERS, CALL VIA THE MARYLAND RELAY SERVICE  
 INTERNET: WWW.DLLR.STATE.MD.US • E-MAIL: MHIC@DLLR.STATE.MD.US

<b>IN THE MATTER</b>	<b>* BEFORE DEBORAH H. BUIE,</b>
<b>OF THE CLAIM OF</b>	<b>* AN ADMINISTRATIVE LAW JUDGE</b>
<b>PETER B. MORAN</b>	<b>* OF THE MARYLAND OFFICE</b>
<b>AGAINST THE MARYLAND HOME</b>	<b>* OF ADMINISTRATIVE HEARINGS</b>
<b>IMPROVEMENT COMMISSION</b>	<b>*</b>
<b>GUARANTY FUND</b>	<b>*</b>
<b>FOR THE VIOLATIONS OF</b>	<b>* OAH NO.: DLR-HIC-02-09-19995</b>
<b>CARL SAVELLI, T/A ATLANTIC</b>	<b>*</b>
<b>PAVING</b>	<b>* MHIC NO.: 08 (90) 2157</b>

\* \* \* \* \*

**RECOMMENDED DECISION**

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

**STATEMENT OF THE CASE**

On or about July 3, 2008, Peter B. Moran (Claimant) filed a claim against the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$16,850.00 for an actual loss allegedly suffered as a result of home improvement work performed by Carl Savelli, trading as Atlantic Paving (Respondent), a licensed home improvement contractor.

I held a hearing on December 14, 2009 at the Office of Administrative Hearings (OAH) in Wheaton, Maryland under sections 8-312 and 8-407(c)(2) of the Business Regulation Article.

Annotated Code of Maryland (Supp. 2009) on behalf of the MHIC. Hope Sachs, Assistant Attorney General, represented the Fund. The Claimant represented himself. The Respondent failed to appear after due notice to his last address of record.

The Fund presented evidence that the MHIC sent a July 13, 2009 Order for Hearing to the Respondent at his address on record; the OAH sent a Notice of Hearing to the same address via certified and first-class mail. The OAH notice was returned by the U.S. Postal Service as "Unclaimed." After making a determination that proper notice and service had been made, I proceeded with the hearing in the Respondent's absence. Md. Code Ann. Bus. Reg. § 8-312(h) (2004); Code of Maryland Regulations (COMAR) 28.02.01.20.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, Title 10, Subtitle 2 of the State Government Article, Annotated Code of Maryland (2009); the procedural regulations of the Department of Labor, Licensing and Regulation (D.L.L.R), COMAR 09.01.03, 09.08.02, and 09.08.03; and the Rules of Procedure of the OAH, COMAR 28.02.01.

### **ISSUES**

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

### **SUMMARY OF THE EVIDENCE**

#### Exhibits

The Claimant submitted the following exhibits, which I admitted into evidence:

- Claimant 1 Packet of documents:
- Claim form, dated June 23, 2008
  - Construction permit, dated April 1, 2008
  - Three checks paid to Respondent, totaling \$14,850.00
  - Letter to Claimant from HIC, dated May 23, 2008

- Claimant 2 Inspection Report and Proposal from RB Paving, dated May 21, 2008
- Claimant 3 Proposal from B.R.E. Paving, dated September 26, 2008, with checks attached
- Claimant 4 Photographs (a – g), undated

The Fund submitted the following exhibits, which were admitted into evidence:

- Fund 1 Notice of Hearing, dated July 13, 2009
- Fund 2 MHIC contractor information printout, printed December 10, 2009
- Fund 3 MHIC Claim Form, dated June 23, 2008

#### Testimony

The Claimant testified on his own behalf and presented the testimony of Richard Boylan, Field Inspector, and Brent Eader, of B.R.E. Paving. No witnesses testified for the Fund.

#### **FINDINGS OF FACT**

I find the following by a preponderance of the evidence:

1. The Respondent was a licensed home improvement contractor, trading as Atlantic Paving, under contractor's license #01-85409 at all times pertinent to this matter. As of the date of this hearing, his home improvement license was current.
2. On March 27, 2008, the Claimant entered into a written contract with the Respondent to install a horseshoe driveway and replace and extend the existing asphalt driveway. The Claimant paid the Respondent a deposit of \$4,950.00.
3. The Respondent began work the next day and on April 1, 2008, the Claimant obtained a driveway construction permit from the Montgomery County, Department of Permitting Services.
4. On April 4, 2008, the Claimant paid the Respondent a second payment of \$4,950.00.

5. On an unknown date, County Inspector Richard Boylan inspected the county aprons surrounding the driveway construction. The Respondent was working on the day of the inspection.

6. On April 16, 2008, the work was finished and the Claimant paid the Respondent the final payment of \$4,950.00. The work appeared satisfactory to the Claimant.

7. Upon leaving the job for the final time, the Respondent took the Claimant's copy of the contract. The Claimant had not intended for the Respondent to take the contract; he called the Respondent and asked the Respondent to mail the contract back to him. The Respondent agreed.

8. The Respondent did not return the contract.

9. After a few days, during which time it rained, the Claimant noticed substantial ponding and cracking of the asphalt. He observed flooding of his front yard and his neighbor's front yard from water running off the driveway.

10. The Claimant called the Respondent approximately eight times; the Respondent did not answer the calls and the Claimant left messages. The messages requested that the Respondent come and look at the driveway.

11. The Respondent did not respond and the Claimant contacted RB Paving. On May 21, 2008, Ronald Brookman (Brookman), from RB Paving, inspected the driveway. He observed numerous areas of ponding and cracking in the pavement. The ponding was due to improper grading and the cracking was due to inadequate application of asphalt.

12. Brookman recommended that the entire driveway be excavated and regraded. His estimated cost for the work was \$16,850.00.

13. On September 26, 2008, the Claimant obtained a proposal from B.R.E. Paving. Brent Eader (Eader) recommended the existing driveway be excavated and 2.5 inches of base asphalt, along with 1.5 inches of topping asphalt, be installed. He also recommended that sub-grading (dirt) be compacted for positive water flow. The cost of the proposal was \$16,450.00.

14. On October 20, 2008, the Claimant hired B.R.E. Paving and agreed to a contract for the performance of the proposed work, but at a price of \$15,100.00; he paid Eader a \$5,000.00 deposit.

15. On October 23, 2008, B.R.E. Paving completed the work; the Claimant paid the balance of \$10,100.00.

#### 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. 2009). *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 (2004). For the following reasons, I find that the Claimant has proven eligibility for compensation.

First, the Respondent was a licensed home improvement contractor at the time he and the Claimant entered into the contract.

Second, the Respondent performed an unworkmanlike and inadequate home improvement. The Respondent was to install an asphalt driveway. He completed the work; however, the driveway was not properly graded, causing water to pool and also causing improper run-off. In addition, the surface began to crack within a few days and an inspection by another

contractor revealed that the Respondent did not properly lay a sub-grade of dirt and also did not apply the proper thickness of asphalt material.

The Respondent presented his case in a very coherent and credible manner. He supported his testimony with both documentation (photographs) and witness testimony. Since, the Respondent had taken his original contract, the Claimant presented testimony from the county inspector to establish that Atlantic Paving was the company that was working on his driveway. He also presented credible testimony from the owner of the company (B.R.E. Paving) who repaired the work done by the Respondent. Mr. Eader concluded his testimony by stating that in 20 years of working in the area of paving, the job done by the Respondent was "the poorest job I have ever seen."

I find that the Claimant took all necessary steps to allow the Respondent to return to the job and fix the problems with the driveway. Because he testified credibly and provided supporting documentation to demonstrate that he hired another contractor to perform the exact work originally contracted with the Respondent, I find that he is eligible for compensation.

I now turn to the amount of the award, if any. A claimant may not be compensated for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). Unless a claim requires a unique measurement, actual loss is measured by one of the three following formulas:

(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 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). In this case, the third option is the appropriate option for calculating the Claimant's actual loss. The Claimant's actual loss is calculated as follows:

\$14,850.00	amount paid to the Respondent, plus
<u>\$15,100.00</u>	amount paid to repair & complete the work
\$29,950.00	
<u>- \$14,850.00</u>	less original contract price
\$15,100.00	actual loss

Therefore, I find that the Claimant has sustained an actual loss of \$15,100.00 and is entitled to an award of that amount from the Fund.

### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law, that the Claimant is entitled to recover \$15,100.00 from the Fund as a result of the Respondent's poor workmanship. Md. Code Ann., Bus. Reg. § 8-401 (2004); COMAR 09.08.03.03B(3)(c).

### RECOMMENDED ORDER

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

**ORDER**, that the Claimant be awarded \$15,100.00 from the Maryland Home Improvement Commission Guaranty Fund; and



**ORDER**, that the Respondent be ineligible for a Maryland Home Improvement Commission license until he reimburses the Maryland Home Improvement Commission



Guaranty Fund for all monies disbursed under this Order plus annual interest of ten percent under Md. Code Ann., Bus. Reg. § 8-411 (2004); and

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

February 25, 2010  
Date Decision Mailed

  
Deborah H. Buie  
Administrative Law Judge 

DHB  
4111798