

IN THE MATTER OF THE CLAIM OF	* BEFORE ANN C. KEHINDE,
ILANA D. TANOWITZ AGAINST THE	* AN ADMINISTRATIVE LAW JUDGE
MARYLAND HOME IMPROVEMENT	* OF THE MARYLAND OFFICE
GUARANTY FUND FOR THE	* OF ADMINISTRATIVE HEARINGS
ALLEGED ACTS OR OMISSIONS OF	* OAH NO.: DLR-HIC-02-09-34227
RALPH P. PRATHER,	* MHIC NO.: 08(75)594
1/a RALPH P. PRATHER SERVICES,	*
RESPONDENT	*

* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On August 12, 2008, Ilana D. Tanowitz (Claimant)¹ filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$14,276.38 for actual losses allegedly suffered as a result of a home improvement contract with Ralph P. Prather. 1/a Ralph Philip Prather Services (Respondent).

I held a hearing on August 3, 2010 at the Office of Administrative Hearings – Wheaton, 2730 University Boulevard, West, Wheaton, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010). Alexander Chizhik, Esquire, represented the Claimants. Hope M. Sachs, Assistant

¹ At the hearing both Ilana and Marc Tanowitz appeared and Mr. Tanowitz testified. The Fund did not have any objection to amending the claim to include both Mr. and Mrs. Tanowitz as Claimants in this case since they both own the home and were both involved with the home improvement transaction that led to the claim.

Demolition	4,288.00	
Rough-in	4,288.00	
Totals	\$16,138.00	\$6,024.38

It was clear from the evidence that the Claimants did not receive any value for the payments that were made to the Respondent for the master bathroom or for the fixtures for the hallway bathroom, a total of \$9,374.50. Further, the Respondent did not refund any of this amount to the Claimants.

After carefully considering all of the evidence of record, I conclude that the Claimants did not receive any value for the work the Respondent performed on the hallway bathroom. The Claimant's testimony was clear and uncontroverted that he solicited bids for contractors to renovate the bathrooms according to the scope of work in the contract with the Respondent. The other contractors would not give the Claimants any discount for the demolition work that was done by the Respondent. In fact, all of the bids were higher than the original contract price. Further, the rough-in work was of no value as the Claimants had to pay another contractor to correct the installation of the water lines. Even though the Claimants cannot recover the amounts they paid to another contractor, that evidence is persuasive to demonstrate they received no value for the money they paid to the Respondent for the demolition and rough-in.³

In sum, the Claimants presented documentation, in the form of cancelled checks, showing that they paid the Respondent \$22,162.38. (Cl.'s Ex. 2). As the maximum award any one

³ Consequently, based on the enactment of amendments to section 8-405(e), I find that the formula referred to in COMAR 09.08.03.03B(3)(c) is effectively obsolete, so I am applying the formula that appears in COMAR 09.08.03.03(B)(3)(b).

claimant can receive from one contractor is \$20,000.00, I conclude that the Claimants are entitled to a maximum award from the Fund of \$20,000.00.

CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual loss of \$20,000.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimants \$20,000.00; 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.

November 1, 2010
Date decision mailed



Ann C. Kehinde
Administrative Law Judge

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RESPONDENT	*

* * * * *

FILE EXHIBIT LIST

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

1. Contract between Ralph P. Prather Services and Respondent, dated June 5, 2007
2. Copies of check numbers 1505, 1510, 1509, 1522, 1524 and 1526; and, Conditional Waiver and Releases dated August 14, 20 and 29, 2007
3. Emails from Ilana and Marc Tanowitz to Respondent
4. Seven photographs of work left unperformed by Respondent
5. Invoices from Noland Company
6. Hamm's Plumbing invoice; Contract with Floor Rio Abbey Carpet; VISA bill documenting purchase of tile and fixtures

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

1. Notice of Hearing, dated May 21, 2010, returned as undeliverable (certified)
2. Notice of Hearing, dated May 21, 2010, returned as undeliverable (regular mail)

PROPOSED ORDER

WHEREFORE, this 6th day of December 2010, 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