

CLAIM OF AKILAH M. GRIFFIN	* BEFORE MARLEEN B. MILLER,
AGAINST THE MARYLAND HOME	* AN ADMINISTRATIVE LAW JUDGE
IMPROVEMENT GUARANTY FUND,	* OF THE MARYLAND OFFICE
REGARDING THE ALLEGED ACTS	* OF ADMINISTRATIVE HEARINGS
AND OMISSIONS OF DONALD R.	*
WATSON T/A ADVANCED QUALITY	* OAH NO.: DLR-HIC-02-12-27726
PAINTING,	* MHIC NO.: 11 (90) 59
THE RESPONDENT	*

* * * * *

RECOMMENDED DECISION

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STATEMENT OF THE CASE

On February 4, 2011, Akilah M. Griffin (the Claimant) filed a claim with the Maryland Home Improvement Commission (the MHIC or the Commission) Guaranty Fund (the Fund), for reimbursement of the actual losses she allegedly suffered as a result of the acts and omissions of Donald R. Watson t/a Advanced Quality Painting (the Respondent). On or about March 3, 2011, the Claimant amended the amount of her claim, but, on May 27, 2011 she reinstated her original claim. After investigation, the Commission issued a June 25, 2012 Hearing Order and forwarded the case to the Office of Administrative Hearings (OAH) on June 28, 2012.

On March 1, 2013, I conducted a hearing at OAH's Administrative Law Building in Hunt Valley, Maryland, pursuant to section 8-407(a) (incorporating the hearing provisions of Business

Regulation Article § 8-312) of the Maryland Annotated Code's Business Regulation Article. Assistant Attorney General Peter Martin appeared on the Fund's behalf, and the Claimant represented herself.

Despite adequate notice from OAH, neither the Respondent nor anyone acting on his behalf appeared at the hearing or requested a postponement. Accordingly, I conducted the hearing in the Respondent's absence. *See* Business Regulation Article § 8-312(h); Code of Maryland Regulations (COMAR) 09.01.02.09.

The contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2012); the Commission's Hearing Regulations, COMAR 09.01.03, 09.08.02.01, and 09.08.03; and OAH's Rules of Procedure, COMAR 28.02.01, govern procedure in this case.

ISSUES

Did the Claimant sustain an actual loss as a result of the Respondent's acts or omissions and, if so, what amount is the Claimant entitled to recover from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

The Claimant submitted the following documents, which I admitted into evidence as the exhibits numbered below:

1. A detailed explanation of the facts and circumstances giving rise to the Claimant's claim, undated
2. August 6, 2010 Invoice to the Claimant from Prompt Restoration, Inc.
3. October 5, 2010 proposal to the Claimant from Hidden Levels, LLC
4. October 5, 2010 contract between the Claimant and Hidden Levels, LLC
5. April 20, 2010 contract between the Claimant and the Respondent
6. March 5, 2010 contract between the Claimant and the Respondent

7. The Claimant's credit card statement from Chase Online, including the notation of a \$1,500.00 payment to the Respondent
8. The Claimant's July 1, 2010 Complaint against the Respondent

The Fund submitted the following documents, which I admitted into evidence as the exhibits numbered below:

1. October 3, 2012 Notice of Hearing, with attached Hearing Order
2. The Respondent's licensing history
3. February 17, 2011 letter to the Respondent from the Commission, with a copy of the February 4, 2011 Claim
4. April 19, 2011 letter to the Respondent from the Commission, with a copy of the Claimant's amended claim
5. May 27, 2011 email from the Claimant to the Commission, reinstating her original claim

The Respondent submitted no documents for admission into evidence.

Testimony

The Claimant was the only witness who testified at the hearing.

FINDINGS OF FACT

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

1. At all relevant times, the Respondent has been a licensed home improvement contractor, License # 01- 27432.
2. At all relevant times, the Claimant owned property at 424 South Eden Street in Baltimore, Maryland (the Property).
3. In anticipation of returning to from Ohio to live in the Property, the Claimant met with the Respondent in March 2010 to discuss renovation work that she wanted performed on the Property.

4. On March 5, 2010, the Claimant entered into a contract with the Respondent for the following work to be performed on the Property at a cost of \$5,700.00:

- Remove existing stairs and railing
- Remove existing landing
- Remove plaster walls over framing in hall area between the kitchen and living room and below the landing
- Install wood beams on ceilings between living room and kitchen
- Install wood wall beam brace for ceiling with 6x6 beams
- Install steps from the 2nd floor to the 1st floor
- Install metal railings
- Reinstall electrical switches and lighting

5. After the Respondent commenced work on the Property, he advised the Claimant not to visit because the work site was allegedly unsafe.

6. When the Claimant nevertheless came to inspect the Property on April 10, 2010, she was surprised to see the walls torn down, the formerly working electrical system disabled, and the house in a mess.

7. The Claimant spoke to the Respondent, who said that he had experienced unexpected problems and would need to do more work at additional cost to the Claimant.

8. On April 20, 2010, the Claimant entered into another contract with the Respondent for additional work to be performed at the prices indicated below:

- Remove old mortar from brick wall, install 12 new bricks and point up bricks with new mortar; open up door entrance into kitchen and mortar - cost \$450.00
- Remove plaster ceiling on the 2nd floor landing; install recessed lighting -

cost \$825.00

- Install insulation in attic areas - cost \$780.00
- Remove plaster ceiling and install new drywall ceiling on the 1st floor; frame wall on right side of entrance door; install insulation between framing and install drywall over framing -cost \$2,200.00

(The two agreements between the Claimant and the Respondent will hereinafter be referred to collectively as the Contract.)

9. The Respondent completed only the following work:

- He removed the existing railing;
- He removed the plaster walls over the framing in the hall area;
- He installed steps from the 2nd floor to the 1st floor;
- He removed the old mortar from the brick wall, installed 12 new bricks and pointed up the bricks with new mortar;
- He removed the plaster ceiling on the 2nd floor landing; and
- He removed the plaster ceiling on the 1st floor.

10. The Respondent refused to complete any more work to be performed under the Contract until the Claimant employed the Respondent's electrician to do the electrical work at an additional cost of \$5,000.00. After the Claimant chose not to use the Respondent's electrician because she believed his proposed price to be excessive, the Respondent returned the Claimant's keys and stopped returning her voicemails.

11. The steps constructed by the Respondent were unstable and unsafe, loose electrical wires were left exposed, and debris was left on the interior and exterior of the Claimant's home.

12. The Claimant paid \$7,000.00 to the Respondent for his work under the Contract, but obtained a \$1,500.00 credit on her credit card account for a payment in that amount to the Respondent.

13. The Claimant paid an unlicensed contractor to stabilize the new stairway to provide access to the 2nd floor.

14. When, after several attempts, the Claimant was unable to contact the Respondent to complete the work to be done under the contract, she contracted with Hidden Levels, LLC to repair and to complete the remaining work under the Contract at a total cost of \$12,850.00.¹

15. On February 4, 2011, the Claimant filed her Claim against the Fund for an alleged actual loss in the amount of \$5,495.00.

16. On or about March 3, 2011, the Claimant amended the amount of her claim to \$5,000.00, but, on May 27, 2011 she reinstated her original claim.

DISCUSSION

Pursuant to Business Regulation Article §§ 8-405(a) and 8-407(e)(1), to recover compensation from the Fund, the Claimant must prove, by a preponderance of the evidence, that she incurred an actual loss, which resulted from a licensed contractor's acts or omissions. Business Regulation Article § 8-401 defines an "actual loss" as "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." For the reasons set forth below, I conclude that the Claimant has met this burden, by proving that the Respondent failed to complete the work required under the Contract and that the Claimant incurred an actual loss entitling her to an award of \$5,495.00.

The Fund presented conclusive evidence that the Respondent was at all relevant times a

¹ The Claimant paid a licensed contractor, Prompt Restoration, Inc., to complete the electrical work at a cost of \$1,900.00, but the Claimant did not include the amount she paid to the company as part of her claim.

licensed home improvement contractor. The Claimant testified and presented documentation establishing the Contract terms, her payments to the Respondent and the replacement contractors, and the Respondent's failure to properly complete the agreed-upon work under the Contract. The Respondent did not appear at the hearing to place any of the Claimant's evidence in dispute, and the Fund's representative acknowledged that the evidence clearly established the Claimant's entitlement to an award from the Fund under the following formula set forth in COMAR 09.08.03.03B(3)(c):

B. Measure of Awards from Guaranty Fund.

....
 (3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

....
 (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. . . .

Applying this formula, I calculate the Claimant's actual loss as follows:

\$ 5,500.00	Amount the Claimant paid the Licensee (\$7,000.00 – \$1,500.00)
<u>12,850.00</u>	Amount to repair/complete
\$ 18,350.00	
<u>— 9,955.00</u>	Contract price
\$ 8,395.00	The Claimant's actual loss

Because I could not allow the Claimant to amend her \$5,495.00 claim when the Respondent failed to receive notice of any such amendment, I conclude that the Claimant should only be entitled to recover the \$5,495.00 claimed.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant has met her burden of proving that she incurred an actual loss as a result of the

Respondent's incomplete and unworkmanlike performance of work to be performed under the Contract. Business Regulation Article §§ 8-405(a) and 8-407(e)(1). The total recoverable amount of that loss is \$5,495.00, which the Claimant should be awarded from the Fund. COMAR 09.08.03.02C, 09.08.03.03B(3)(c).

RECOMMENDED ORDER

Upon due consideration, I **RECOMMEND** as follows:

1. The **MHIC ORDER** that the Claimant, Akilah M. Griffin, be awarded \$5,495.00 from the MHIC Fund, for the actual losses she sustained as a result of the Respondent's incomplete and unworkmanlike performance of agreed-upon home improvement work;
2. The Respondent, Donald R. Watson t/a Advanced Quality Painting, be ineligible for an MHIC license, under Business Regulation Article § 8-411(a), until the Fund is reimbursed for the full amount of the award paid pursuant to its Order, plus annual interest of at least ten percent; and
3. The records and publications of the MHIC reflect this decision.

May 7, 2013

Date

MBM/rbs
#142343

Signature on File


Marleen B. Miller
Administrative Law Judge

CLAIM OF AKILLAH M. GRIFFIN	* BEFORE MARLEEN B. MILLER,
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FILE EXHIBIT LIST

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The Respondent submitted no documents for admission into evidence.

IN THE MATTER OF THE CLAIM OF
AKILAH M. GRIFFIN

v.

DONALD R. WATSON,
t/a ADVANCED QUALITY PAINTING

*

MARYLAND HOME
IMPROVEMENT COMMISSION

*

MHIC CASE NOS. 11 (90) 59

*

* * * * *

PROPOSED ORDER

WHEREFORE, this 17TH day of May, 2013, Panel B of the Maryland

Home Improvement Commission ORDERS that:

- 1) The Findings of Fact and Conclusions of Law of the Administrative Law Judge are Affirmed.
- 2) In addition, the Commission concludes as a matter of law:
 - A) Pursuant to Business Regulation Article, §8-405(e)(5), Annotated Code of Maryland, the Commission may not award to a Guaranty Fund claimant an amount greater than the amount paid by or on behalf of the claimant to the original contractor against whom the claim is filed. The Claimant paid the Respondent a total of \$5,500.00 (Finding of Fact # 12). Therefore, even if the Claimant were permitted to amend her claim, the maximum award that she would be eligible to recover from the Guaranty Fund would be limited to \$5,500.00.
- 3) The Recommended Order of the Administrative Law Judge to award the Claimant \$5,495.00 from the Guaranty Fund is Affirmed.
- 4) Unless any party 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, any party then has an additional thirty (30) day period during which they may file an appeal to Circuit Court.

Andrew Snyder
Chairperson - Panel B
Maryland Home Improvement Commission