

<p>IN THE MATTER OF THE CLAIM</p> <p>OF FLORA STOKES,</p> <p>CLAIMANT,</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF DANIEL B.</p> <p>BRONSTEIN, t/a WASHINGTON</p> <p>HOME REMODELERS, INC.,</p> <p>RESPONDENT</p>	<p>* BEFORE DANIEL ANDREWS,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH NO.: DLR-HIC-02-14-27206</p> <p>* MHIC NO.: 13(05)1258</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>
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PROPOSED DECISION

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

STATEMENT OF THE CASE

On July 8, 2013, Flora Stokes (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of actual losses allegedly suffered as a result of a home improvement contract with Daniel B. Bronstein, t/a Washington Home Remodelers, Inc. (Respondent). On July 25, 2014, the Fund issued a Hearing Order and transmitted the matter to the Office of Administrative Hearings (OAH) to schedule a hearing.

On March 18, 2015, the OAH issued a Notice of Hearing (Notice) to the Claimant and Respondent which informed the parties of a hearing scheduled for April 16, 2015, at 10:00 a.m., at the Largo Government Center, Room 102, 9201 Basil Court, Largo, Maryland 20774. On April 16, 2015, I held the hearing as scheduled. Md. Code Ann., Bus. Reg., § 8-312(a), 8-407(e) (2015). The Claimant represented herself. The Respondent failed to appear. Eric London, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department and the Rules of Procedure of the 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

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

If so, what is the amount of the Claimant's actual loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibit into evidence on behalf of the Claimant:

Cl. 1 - A packet of documents which includes:

- Contract between Claimant and Respondent, dated January 19, 2011
- Home Improvement Credit Contract, dated January 26, 2011
- Letter from Respondent to Claimant, dated May 23, 2011
- Billing Statements from Lendmark Financial Services (Lendmark), dated April 28 and July 31, 2012

There were no exhibits offered on the Respondent's behalf.

I admitted the following exhibits into evidence on behalf of the Fund:

Fund 1 - OAH Notice of Hearing on April 16, 2015, dated March 18, 2015

Fund 2 - Fund Hearing Order, dated July 25, 2014

Fund 3 - Licensing History for Respondent, printout dated April 15, 2015

Fund 4 - Home Improvement Claim Form, received June 13, 2013

Fund 5 - Letter from the Fund to Respondent, dated June 18, 2013

Fund 6 - Home Improvement Claim Form, received July 8, 2013

Fund 7 - Series of photographs of work performed by Respondent at Claimant's home, undated

Fund 8 - Proposals by Bath Fitter, dated August 2, 2012, and Ziba Home Improvement (Ziba), undated

Testimony

The Claimant testified on her own behalf.

No testimony was presented on the Respondent's behalf.

The Fund presented no witnesses.

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 home improvement contractor, licensed by the MHIC.
2. The Claimant owns a house located at 1219 Accokeek Landing Drive, Accokeek, Maryland (the Property).
3. On January 19, 2011, the Claimant and the Respondent entered into a home improvement contract (the Contract) to remodel a bathroom in the Claimant's home.
4. The Contract price was \$14,000.00 and included labor and material.

5. Under the Contract, the Respondent was required to demolish the existing bathroom, install a seat and corner shelf in the new shower, replace tile on the shower wall, replace exhaust and light, vanity, commode, install lighted mirror, and install sliding door (collectively “the Work”).

6. On or about January 26, 2011, the Claimant obtained financing for the full Contract price from Lendmark.

7. The Contract did not establish a start date or completion date.

8. After the Claimant made several telephone calls to the Respondent to get the Work started, the Respondent had not begun any of the Work as of May 23, 2011, and the Respondent was prepared to cancel the contract.

9. By letter dated May 23, 2011, the Respondent warned the Claimant that according to the Contract it will cost her a lot of money to cancel the Contract, and that he was ready and able to begin the Work.

10. The Respondent began to perform the Work under the Contract after May 23, 2011, during a period of time when the Claimant was on vacation and out of the house. While the Claimant was on her vacation, the Respondent telephoned the Claimant stating that he needed to be paid.

11. The Claimant authorized Lendmark to pay the Respondent the full Contract price of \$14,000.00.

12. The Respondent received the full contract price of \$14,000.00.

13. The Respondent demolished and removed material from the Claimant’s existing bathroom. He also installed a new tile shower floor and purchased a new commode and vanity, which were not installed.

14. Sometime after the work began in late May or early July 2011, the Respondent stopped performing the Work. The Claimant made several attempts to communicate with the Respondent through early 2012 to request that he return and complete the Work. The Respondent, however, never responded to any communication from the Claimant.

15. The Claimant obtained two estimates from other licensed MHIC contractors, Bath Fitter and Ziba, to determine the cost of completing any work performed by the Respondent.

16. On August 2, 2012, Bath Fitter estimated that it would cost \$12,386.00 to complete the work required under the Contract, but offered the Claimant a 10% discount for a total cost of \$11,147.00.

17. Through an undated estimate, Ziba estimated that it would cost \$14,900.00 to complete the work under the Contract.

18. In order to complete the Work, a contractor will have to redo work performed by the Respondent because he did not properly grade the tile floor. In addition, the contractor will need to reorder the commode and vanity because the Respondent ordered the wrong items which could not be installed in the Claimant's bathroom.

19. As of April 16, 2015, the Work has not been completed at the Claimant's property.

20. The Respondent's address on record with the MHIC is 4920 Niagara Road, #401, College Park, Maryland 20740.

21. On March 18, 2015, the OAH sent a Notice by certified and regular first class mail to the Respondent's address on record with the MHIC. The Notice sent by certified mail was returned as unclaimed. The Notice sent by first class mail was returned as undeliverable.

DISCUSSION

The Respondent's Failure to Appear

Neither the Respondent nor anyone authorized to represent the Respondent appeared at the hearing on April 16, 2015. On March 18, 2015, the OAH sent a Notice by certified and regular first class mail to the Respondent's address at 4920 Niagara Road, #401, College Park, Maryland 20740, which is the Respondent's address on record with the MHIC. The Notice advised the Respondent of the time, place and date of the hearing. The Notice sent by certified mail was returned to OAH by the United States Postal Service marked as unclaimed. Additionally, the Notice sent by first class mail was returned to the OAH marked as undeliverable.

COMAR 28.02.01.05A requires that reasonable notice of the hearing shall be provided to the parties in hearings before the OAH. The record reflects that the Fund met the notification requirements for the hearing when the Notice was sent to the Respondent at his address on record on file with the MHIC. Md. Code Ann., State Gov't §§ 10-208, 10-209 (2014); Md. Code Ann., Bus Reg. § 8-312 (d), (h) (2015). When the Respondent failed to appear and no one appeared on his behalf by approximately 10:15 a.m., I proceeded with the hearing in the Respondent's absence.

The Merits of the Claim

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) (2015). *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 (2015). The MHIC may not award from the

Fund “more than \$20,000 to one claimant for the acts or omissions of one contractor.” Md. Code Ann., Bus. Reg. § 8-405(e)(1) (2015). For the following reasons, I find that the Claimant has proven an actual loss and her eligibility for compensation from the Fund.

In this case, the Respondent simply failed to fulfill his obligations under the Contract. Although a portion of the Work was started, the Respondent stopped working sometime in late May or early July 2011. The Claimant presented a credible account of her disappointing experience with the Respondent, maintaining that she hired him to remodel her bathroom in January 2011. Subsequent to executing the Contract in January 2011, the Claimant obtained financing to pay the Contract price of \$14,000.00. The Contract did not specify a start or end date for the work to be performed. However, it is not unreasonable for the Claimant to expect that the work would begin shortly after entering into the Contract. The Respondent, however, did not begin any work within a reasonable time. For this reason, by May 23, 2011, the Claimant was prepared to cancel the Contract. The Respondent, however, convinced the Claimant to allow him to begin the Work under the Contract, which he did in late May or early July 2011. The pictures entered into evidence demonstrate that the Respondent demolished the Claimant’s old bathroom, removed the old material, and began to install the new bathroom. The Respondent installed a new tiled shower floor and purchased a commode and vanity, but did not install the commode and vanity. Unfortunately, the Claimant was on vacation and out of the home when the Respondent began to perform the Contract. While on vacation, the Respondent called the Claimant stating that he needed to be paid. The Claimant explained that she felt pressured to make the payment and authorized Lendmark to pay the Respondent the full Contract price of \$14,000.00, which the Respondent received. After receiving payment, the Respondent essentially left the Contract incomplete and never returned to perform work, despite several

attempts by the Claimant through early 2012 to request that he complete the work. As of April 16, 2015, the date of the hearing in this matter, the Contract remained incomplete.

In an effort to establish her claim against the Fund, the Claimant obtained two estimates from other licensed MHIC contractors, Bath Fitters and Ziba. Each contractor provided a proposal to complete the work performed by the Respondent as required by the Contract. On August 2, 2012, Bath Fitters proposed an estimate of \$12,386.00, but offered the Claimant a 10% discount for a total cost of \$11,147.00. Through an undated estimate, Ziba estimated that it would cost \$14,900.00 to complete the work under the Contract. The Claimant testified that in order to complete the Contract, a contractor would have to redo work performed by the Respondent because he did not properly grade the tile floor. Additionally, the Claimant explained that a contractor would have to reorder the commode and vanity because the Respondent ordered the wrong items, which could not be installed in her bathroom.

I am persuaded by a preponderance of the evidence that the Respondent, a licensed MHIC contractor at the time of the Contract, left the Contract incomplete sometime in early July 2011. Additionally, despite several unsuccessful attempts by the Claimant requesting the Respondent to complete the Work, the Respondent never returned to complete the Contract and abandoned the job. I am further persuaded that at the time he abandoned the job, the Respondent had only performed a fraction of the required Work, which was performed in an unworkmanlike manner, but was paid the full Contract price of \$14,000.00. Finally, the Claimant produced two estimates from other MHIC licensed contractors who estimated that it would cost between \$11,147.00 and \$14,900.00 to complete the Work required under the Contract. It should be noted that the Claimant's evidence, including the cost to complete the work under the Contract, was subject to the Fund's cross-examination and was ultimately accepted by the Fund in its

closing argument. For these reasons, I conclude that the Claimant established that she suffered an actual loss by a licensed MHIC contractor.

Having found that the Claimant is eligible for compensation, I now turn to the amount of the award, if any. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest, and the Claimant does not seek such damages. COMAR 09.08.03.03B(1). The MHIC regulations offer three formulas to measure a claimant's actual loss. The relevant formula to use is set forth at COMAR .09.08.03.03B(3)(c), which provides:

(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 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.

In this case, the Claimant provided estimates from two contractors to complete the Contract. The attorney for the Fund did not dispute the Claimant's estimates including that the estimates represented the cost to complete the Contract. As to the reasonableness of the cost to complete the Contract, however, the Fund argued that I should accept the lower estimate from Bath Fitters but consider the actual cost to complete the Contract to be the discounted value of \$11,147.00.

I agree with the Fund that the appropriate estimate to accept as the reasonable cost to complete the Contract is the Bath Fitter's estimate. I reach this conclusion because this estimate is the lower of the two estimates. I disagree, however, with the Fund's position to use the discounted price versus the original price provided in the Bath Fitter estimate. The discounted

price by Bath Fitter is an incentive to motivate the Claimant to accept the estimate from Bath Fitter versus other offers from other contractors. Whatever reason Bath Fitter offered the discounted price should not result in a reduced award to the Claimant from the Fund. The purpose of the Fund is to compensate homeowners for an actual loss sustained from the unworkmanlike work of licensed contractors. The Claimant's actual loss must be calculated using the actual cost to complete the Contract, not a discounted price offered to motivate a party to choose one contractor over another. For these reasons, I conclude that the reasonable cost to complete the Contract, as proposed by Bath Fitters, was \$12,386.00.

Using the formula set forth in COMAR 09.08.03.03B(3)(c), the Claimant's actual loss is \$12,386.00, which is calculated as follows:

\$ 14,000.00	Amount the Claimant paid the Respondent
<u>+\$ 12,386.00</u>	Adding the amount to be paid to other contractors to complete the work
\$ 26,386.00	Subtotal
<u>-\$ 14,000.00</u>	Minus the original contract amount
\$ 12,386.00	The Claimant's actual loss.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant has sustained an actual loss in the amount of \$12,386.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 and 8-405 (2015). The Claimant, therefore, is entitled to reimbursement from the Fund in the amount of \$12,386.00.

RECOMMENDED ORDER

I PROPOSE that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$12,386.00; and

PROPOSED ORDER

WHEREFORE, this 22nd day of July, 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.

Michael Shilling

*Michael Shilling
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION