

<p>IN THE MATTER OF THE CLAIM</p> <p>OF JANICE SCHAFFER,</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 TIMOTHY B. SHAW,</p> <p>T/A TWO POINT CONSTRUCTION, LLC</p> <p>RESPONDENT</p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p>BEFORE LORRAINE E. FRASER,</p> <p>AN ADMINISTRATIVE LAW JUDGE</p> <p>OF THE MARYLAND OFFICE</p> <p>OF ADMINISTRATIVE HEARINGS</p> <p>OAH No.: DLR-HIC-02-14-28963</p> <p>MHIC No.: 14(90)334</p>
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PROPOSED DECISION

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

STATEMENT OF THE CASE

On January 10, 2014 Janice Schaffer, (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$20,000.00 in alleged actual losses suffered as a result of a home improvement contract with Timothy B. Shaw, trading as Two Point Construction, LLC, (Respondent).

I held a hearing on February 12 and March 16, 2015, at the Calvert County Public Library in Prince Frederick, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2010 & Supp. 2014). The Claimant represented herself. David Hebb, Esquire, represented the

Respondent, who was present. Jessica Kauffman, 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 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 compensable by the Fund as a result of any acts or omissions committed by the Respondent?
2. If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

- Cl. Ex. 1 Complaint Form, 9/20/13
- Cl. Ex. 2 Contract, 5/20/09, with Claimant's husband's notes
- Cl. Ex. 3 Claimant's payments to the Respondent, 5/26/09, 6/2/09, 6/25/09 (2 payments), 7/22/09, 11/2/09, 12/10/09
- Cl. Ex. 4 Invoice and Contract, Rohdeway Electric, Inc., 4/2/10
- Cl. Ex. 5 Invoice May's Plumbing, LLC, 6/25/10
- Cl. Ex. 6 Invoice R.E. Michel Company, Inc., 3/11/10 & 3/12/10
- Cl. Ex. 7 Claimant's payments to Rohdeway Electric, 4/5/10; May's Plumbing, 6/25/10; Edward Wenker, 3/11/10 & 3/12/10; and Frank Guy, 7/9/11
- Cl. Ex. 8 Lowe's receipt, 8/3/11

- Cl. Ex. 9 Receipts: Lowe's, 6/1/09, 12/7/09, 10/27/09; Walmart, 6/25/09; 12 photographs, taken 2014
- Cl. Ex. 10 Emails to Ms. Crawley from the Claimant, 7/16/14, with attachments
- Cl. Ex. 11 Email to Ms. Crawley from the Claimant, 7/16/14, with attachments
- Cl. Ex. 12 49 photographs taken during construction
- Cl. Ex. 13 The Respondent's answer to the Claimant's HIC complaint, 10/28/13, with notes written by the Claimant's husband
- Cl. Ex. 14 Lowe's receipts, 6/1/09 & 10/27/09
- Cl. Ex. 15 The Respondent's copy of the contract, 5/20/09
- Cl. Ex. 16 16 photographs
- Cl. Ex. 17 Email to HIC from the Claimant, 7/16/14, with attachments
- Cl. Ex. 18 Email to HIC from the Claimant, 7/16/14, with attachments, including Proposal from John Krause Construction, Inc., 7/16/14
- Cl. Ex. 19 Job Estimate D & M Plumbing, 2/8/14
- Cl. Ex. 20 Estimate Rohdeway Electric, Inc., 2/7/14

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

- Resp. Ex. 1 The Respondent's January 2011 calendar

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 Notice of Hearing, 11/14/14
- Fund Ex. 2 Transmittal Form; Hearing Order, 8/14/14; Home Improvement Claim Form, 1/10/14
- Fund Ex. 3 The Respondent's licensing history, 1/30/15
- Fund Ex. 4 Home Improvement Claim Form, 1/10/14
- Fund Ex. 5 Order Granting Relief From Stay, HIC v. Goodman & Friedman, Case No. 86-B-1700, 8/28/87

Testimony

The Claimant and her husband James Schaffer testified and presented the testimony of Robert Combs.

The Respondent testified and presented the testimony of Craig Spence, electrician.

PROPOSED 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 licensed home improvement contractor under MHIC license number 01-87570.
2. On May 20, 2009, the Claimant and the Respondent entered into a contract to remodel the interior of the Claimant's house, including: removing and framing walls, installing drywall, moving the stairs to the basement, moving the washer and dryer upstairs, installing new doors, a new window, new trim, and new bathroom and lighting fixtures, constructing bookshelves, installing flooring, and installing new facing and a mantel on the fireplace; finish the basement, including: relocating the HVAC and hot water heater, installing new HVAC, plumbing, and electrical, installing insulation and drywall, replacing windows, and installing a bathroom; pour a concrete pad, parge the walls and install a wooden staircase for exterior access to the basement; install a driveway; construct a ramp to the garage; install plumbing and a utility sink in the garage; install weather stripping on the garage door; and replace a gutter on the garage. The contract did not state beginning and completion dates for the work to be performed.
3. The original agreed-upon contract price was \$68,000.00.
4. On May 26, 2009, the Claimant paid the Respondent \$12,000.00.
5. In June 2009, the Respondent started work on the driveway.
6. On June 2, 2009, the Claimant paid the Respondent \$8,000.00.

7. On June 25, 2009, the Claimant paid the Respondent \$12,000.00.
8. On July 22, 2009, the Claimant paid the Respondent \$15,000.00.
9. On November 2, 2009, the Claimant paid the Respondent \$5,000.00.
10. On December 10, 2009, the Claimant paid the Respondent \$5,000.00.
11. Between June 2009 and January 2011, the Respondent, or those employed by him, worked on the Claimant's home sporadically.
12. During the time the Respondent was working on the Claimant's home, he completed the driveway, framed the walls in the basement, installed drywall in the basement, constructed bulkheads for the HVAC and plumbing, installed plumbing in the basement bathroom, replaced two windows in the basement, relocated the hot water heater, framed walls on the main floor, installed electrical wiring in the basement and first floor, relocated the HVAC unit and hot water heater, installed new HVAC lines to the basement rooms, installed plumbing and electrical wiring for a new laundry room, constructed cabinets in the laundry room, installed a new staircase, demolished the master bathroom, started installing a fan vent in the master bathroom, demolished the fireplace face, poured a concrete pad outside the basement stairs, replaced an outside spigot, installed plumbing from the house to the garage, and constructed a garage ramp.
13. After the HVAC unit was moved, the unit began making loud banging noises. The Claimant notified the Respondent of the problem several times. The Respondent said he would fix it but did not do so.
14. In early March 2010, the Claimant hired Edward Wenker to correct the noise problem in the HVAC. He installed a return in the new trunk line to prevent the new trunk line from flexing and banging as it drew air without a return. He also found that air was leaking out

of the trunk line because the flexible duct hose used by the Respondent was not sealed. He replaced the flexible hose with metal pipe and corrected the air flow problem.

15. The Claimant paid Mr. Wenker \$400.00 to correct the Respondent's work.

16. Prior to the Respondent hanging the drywall, the Claimant asked another electrician, Tice Electric, to look at the electrical work. Mr. Tice identified code violations and safety hazards with the Respondent's work but declined to correct the work.

17. On April 2, 2010, Tim Rohde, Rohdeway Electric, Inc., checked and corrected electrical work performed by the Respondent, including replacing two heating circuits, replacing low voltage thermostat wiring, running the circuit for the bathroom in the basement, rewiring all the recessed lights with proper connectors, rewiring all outlet boxes with proper grounding, running the circuit for two sump pumps, adding 20 amp circuits for the first floor bathrooms, installing a disconnect for the hot water heater, rewiring television and telephone lines, adding 3-wire to two ceiling fans, replacing the GFI on the front porch, replacing 15A wiring with 20A wiring in the office, and completing installation of the master bath exhaust vent. Mr. Rohde corrected all loose connections he found, secured dangling wires, and disposed of unused wires.

18. The Claimant paid Rohdeway Electric, Inc., \$1,750.00 to correct the Respondent's work.

19. Sometime in approximately May or June 2010, the Claimant noticed a leak in the copper pipe that connected to the outside spigot that the Respondent replaced. The Claimant notified the Respondent about the leak. The Respondent replied that he was certain that there was no leak.

20. On June 25, 2010, the Claimant hired May's Plumbing to fix the leak. May's Plumbing fixed the leak by removing the spigot and reconnecting it to the copper pipe.

21. The Claimant paid May's Plumbing \$397.00 to fix the leak.
22. The Respondent did not have any of the electrical or plumbing work inspected prior to hanging drywall over it in August 2010.
23. The last day the Respondent worked at the Claimant's home was January 12, 2011.
24. During 2011, 2012, and 2013, the Claimant continued to ask the Respondent to return to her home to complete the work under the contract.
25. The Respondent left a large amount of work incomplete at the Claimant's home and some of the work he performed needs to be corrected.
26. On February 7, 2014, Rohdeway Electric, Inc., estimated it would cost \$8,160.00 to complete the electrical work remaining unfinished under the Respondent's contract with the Claimant.
27. On February 8, 2014, D & M Plumbing, Inc., estimated it would cost \$6,000.00 to complete the plumbing work remaining unfinished under the Respondent's contract with the Claimant.
28. On July 16, 2014, John Krause Construction, Inc., estimated it would cost \$64,800.00 to complete the remodeling work (excluding plumbing and electrical work) remaining unfinished under the Respondent's contract with the Claimant. That work includes stippling the first floor ceiling; installing windows, interior doors, flooring, shelves in the linen closet and pantry, stone facing on the fireplace and a mantel, crown moulding, door handles, and railings; constructing two half walls; and finishing the three bathrooms. Also included: reparging the exterior stairwell because the work the Respondent performed is cracking and

breaking off and constructing a concrete retaining wall on the side of the garage pad that the Respondent did not construct.

29. The Claimant paid the Respondent a total of \$57,000.00.

30. The Claimant's actual loss is \$70,507.00.

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. 2014). *See also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401 (2010). For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. The Respondent performed unworkmanlike, inadequate or incomplete home improvements on the Claimant's home. Specifically, the Respondent did not work on the Claimant's home consistently, causing delays, and he eventually abandoned the job leaving much of the work partially complete or not even started. The Claimant testified that the Respondent told her the work would take approximately three months. The Claimant and her husband described how the Respondent worked sporadically, sometimes did not work full days, and sometimes did not return for weeks or months. The Claimant offered into evidence numerous pictures showing the partially complete home renovation. In essence, the Claimant's home looks like a construction site with exposed framing, wiring, and subflooring, and without bathroom fixture and lighting fixtures. The Claimant also produced receipts for and pictures of

supplies she purchased. In addition, some of the work the Respondent performed needed or needs correction. The Respondent performed HVAC, plumbing, and electrical work that needed immediate correction. The Claimant notified the Respondent of the problems but he did not correct them. The HVAC unit made loud banging noises because the Respondent failed to install a return when he installed a new trunk line in the basement. The exterior spigot the Respondent installed leaked. The electrical work performed by the Respondent lacked proper connections and grounding, and had loose connections and dangling wires. The Claimant hired other contractors to make the necessary immediate repairs. Additional plumbing and electrical work remains to be completed. Also, the Respondent's parking work on the exterior stairwell is cracking and coming off and he did not construct a concrete retaining wall described in the contract. The Claimant presented estimates from an electrician, plumber, and contractor to complete the work specified in the Claimant's contract with the Respondent. Those estimates total \$78,960.00.

The Respondent denied that the Claimant notified him of any problems with his work, although he also said the Claimant complained about everything and everyone. He testified that the Claimant caused delays in the work by failing to purchase supplies and paint promptly. He asserted that the Claimant was difficult to satisfy and that he rebuilt the laundry and television cabinets for her. He claimed he had a conversation with the Claimant during which he told her he could not keep coming back and redoing work. He said that the Claimant responded that if that was how he felt than they did not want him there either. He stated that the last time he worked at the Claimant's home was in the end of 2010 and denied working there in January 2011.

Notably, the Respondent admitted that he did not obtain a construction permit, or an electrical permit, for the work on the Claimant's home, and as a result, he did not have the electrical or plumbing work inspected by the county, as required, prior to hanging dry wall over the work. The Respondent's electrician, Craig Spence, testified that he did not get an electrical permit because there was no construction permit. Mr. Spence is licensed but admitted he was not present the entire time his unlicensed employees were working and admitted he may not have inspected all of their work. He agreed the electrical work was incomplete. The Respondent agreed that the work at the Claimant's home was incomplete and that she could not hire another contractor to complete the work for the \$14,000.00 remaining to be paid to him under the original contract. He acknowledged that he was discharged from bankruptcy March 22, 2012. He did not recall when he filed for bankruptcy.

I found the Claimant's and her husband's testimony credible. They were detailed in their descriptions of the work performed and the problems with it and had numerous pictures and receipts to substantiate their testimony. In addition, the Claimant presented estimates to complete the work that were consistent with the work described in the Respondent's original contract. In contrast, the Respondent's testimony was vague, generalized, and was not substantiated by any documentation. I found it very troubling that the Respondent did not get the permits and inspections that he knew were required. Had the Respondent had the electrical work inspected, for example, he would have had proof that the work was completed properly. Instead, I am left to wonder why the Respondent did not get the required permits. Further, I do not agree with the Respondent's assertion that the Claimant and he mutually agreed to terminate the contract at the end of 2010. The Claimant continued to ask the Respondent to return to the

property after that date. I find that the Respondent abandoned the job and left the work incomplete. Thus, I find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I now turn to the amount of the award, if any, to which the Claimant is entitled. 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 provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss 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).

The Claimant's actual loss is calculated as follows:

Amount paid to the Respondent	\$57,000.00
Cost to complete/repair	<u>+81,507.00</u>
	138,507.00
Amount of the original contract	<u>-68,000.00</u>
Actual loss	\$70,507.00

Pursuant to the Business Regulation Article, the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Bus. Reg. § 8-405 (e)(1), (5) (Supp. 2014). The actual loss computed above is \$70,507.00, which exceeds \$20,000.00 by \$50,507.00. Accordingly, the Claimant is entitled to

TIMOTHY SHAW
t/a TWO POINT CONSTRUCTION, LLC

Petitioner

v.

MARYLAND HOME IMPROVEMENT
COMMISSION

and

JANICE SCHAFFER

Respondents

* IN THE CIRCUIT COURT
* FOR SAINT MARY'S COUNTY

* Case No. 18-C-15-001168 AA

* * * * *

ORDER

On this *18th* day of *March*, 2016, this Court **ORDERS** that the decision of the Maryland Home Improvement Commission dated July 22, 2015 is **AFFIRMED**.

Signature on File

JUDGE

True Copy Test

Signature on File *Clerk*

Joan W. Williams, Clerk of the Circuit
Court for St. Mary's County, Maryland

COMMUNICATIONS SECTION
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

TO : DIRECTOR, FBI (100-441100)
FROM : SAC, NEW YORK (100-100000)
SUBJECT: [Illegible]

RE: [Illegible]

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