

IN THE MATTER OF THE CLAIM	* BEFORE MICHELLE W. COLE,
OF THOMAS W. FOLK,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT COMMISSION	* OAH No.: DLR-HIC-02-14-37130
GUARANTY FUND FOR THE	* MHIC No.: 14 (90) 487
ALLEGED ACTS OR OMISSIONS OF	*
CHARLES H. EVERS, JR.,	*
t/a EVERS HOME IMPROVEMENTS,	*
RESPONDENT	*

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On June 11, 2014, Thomas W. Folk (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$2,500 for actual losses allegedly suffered as a result of a home improvement contract with Charles H. Evers, Jr., t/a Evers Home Improvements (Respondent).

I held a hearing on March 10, 2015 at the Office of Administrative Hearings (OAH), in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407 (2015).

John Hart, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the Fund. Tim Coffman, Esquire, represented the Claimant, who was present. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of DLLR, and the Office of Administrative Hearings (OAH) Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014), Code of Maryland Regulations (COMAR) 09.01.03.01; 09.08.02.01; and 28.02.01.01.

### **ISSUE**

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

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits on the Claimant's behalf, except where noted:

- Claimant Ex. 1: Contract between Claimant and Respondent, dated August 30, 2013
- Claimant Ex. 2: Two photographs of the Claimant's porch and one photograph of the Claimant's sidewalk, both taken before the Respondent started working
- Claimant Ex. 3: Photographs 3A-3G, undated:
- 3A Photograph of porch steps after concrete was poured
  - 3B Photograph of porch steps after forms were removed
  - 3C Photograph of rise of first porch step
  - 3D Photograph of rise of first porch step and sidewalk
  - 3E Photograph of rise of first porch step and sidewalk
  - 3F Photograph of rise of first porch step and sidewalk
  - 3G Photograph of sidewalk edge to grass
- Claimant Ex. 4: Photographs 4A-4D, undated:
- 4A Photograph of finished sidewalk and porch steps
  - 4B Photograph of finished sidewalk to side gate

- 4C Photograph of finished porch steps
- 4D Photograph of Phase 3 sidewalk to front gate

Claimant Ex. 5: Photographs 5A-5C, undated:

- 5A Photograph of edge of porch deck
- 5B Photograph of porch post and rail
- 5C Photograph of porch rail

Claimant Ex. 6: Order and Contract with Domenico Parravano, dated June 28, 2014

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

- GF Ex. 1: Notice of Hearing, dated January 8, 2015
- GF Ex. 2: Hearing Order, dated October 3, 2014
- GF Ex. 3: Computer Inquiry Information, dated March 4, 2015
- GF Ex. 4: Letter from MHIC to the Respondent, dated June 12, 2014; Home Improvement Claim Form, received June 11, 2014

I admitted the following exhibits on behalf of the Respondent.

- Respondent Ex. 1: Photographs 1A-1B, undated
  - 1A Photograph of forms for porch steps
  - 1B Photograph of sidewalk area before concrete was poured
- Respondent Ex. 2: Photographs 2A-2B, undated
  - 2A Photograph of rail, bracket, and caps
  - 2B Photograph of rail, bracket, and caps
- Respondent Ex. 3: Photographs 3A-3C, undated
  - 3A Photograph of finished porch railings
  - 3B Photograph of finished porch railings
  - 3C Photograph of finished porch railings

## **Testimony**

The Claimant testified on his own behalf. Dennis Trace, Jr., the Respondent's lead carpenter on the Claimant's contract, testified for the Respondent. The Fund did not present any witnesses.

### **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 licensed by the MHIC as a home improvement contractor, License No. 83053.
2. On August 30, 2013, the Claimant and the Respondent entered into a contract to perform the following work at the Claimant's primary residence at 2505 Canterbury Road, Parkville, Maryland 21234:
  - a. Remove steps from the front of the house and remove six sections of sidewalk;
  - b. Pour a concrete footer for the front steps, build a foundation for three steps, and pour concrete for three solid steps and sections of sidewalk;
  - c. Remove all rod-iron railing from the porch and shore up;
  - d. Install vinyl railing and two stair railings;
  - e. Parge and stucco the parameter of the porch;
  - f. Prep porch by shooting down liquid nails; and
  - g. Install vinyl decking and wrap the soldier bricks.
3. The cost to perform the work under the contract was \$4,500.00, which included all materials except the decking boards and Azec. The cost of labor was \$700.

4. The claimant paid \$2,000 when the contract was signed with the remaining \$2,500 due at the completion of the project.
5. Shortly after the contract was signed, the Respondent started working. The Respondent and his employees removed the existing steps and sidewalk. After demolition, much of the remaining work was conducted by the Respondent's employees. However, the Respondent came to the work site every day to check on the progress.
6. The lead carpenter constructed the vinyl railings, new deck boards, and formed the steps. Another employee poured the cement for the steps and sidewalk.
7. When the Respondent finished the work set forth in the contract, the Claimant raised several complaints about the work, including that the railings were not level, the decking boards were uneven, and the concrete work was unsatisfactory.
8. Dennis Trace, Jr., the Respondent's lead carpenter, leveled the railings after he completed the installation.
9. The Claimant gave to the Respondent several telephone numbers of contractors who the Claimant believed could correct problems that he found with the steps and sidewalk.
10. The Respondent paid one of the contractors from the Claimant's list to return and do additional work on the steps and sidewalk.
11. The Claimant believed that the contractor sent by the Respondent made the problems with the steps and sidewalk worse.
12. The Claimant did not pay the \$2,500 remaining balance to the Respondent.

13. On June 28, 2014, the Claimant contracted with Domenico Parravano<sup>1</sup> to remove and replace the concrete steps and sidewalk and to reinstall the front step railings. The Claimant paid \$4,500 to Domenico Parravano when he signed the contract.

### DISCUSSION

Section 8-405 of the Business Regulation Article provides that an owner may recover compensation of up to \$20,000.00 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 (2015). Section 8-401 defines “actual loss” as “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 Claimant bears the burden of proof by a preponderance of the evidence to establish entitlement to an award from the Fund. COMAR 09.08.03.03A(3). Maryland law provides that a claim against the Fund may be denied if the claimant has “unreasonably rejected good faith efforts by the contractor to resolve the claim.” Md. Code Ann. Bus. Reg. § 8-405(d) (2015). If I determine that the Claimant has suffered an actual loss, COMAR 09.08.03.03B governs the calculation of an award from the Fund.

The record establishes that the parties entered into a contract to remove and replace the Claimant’s porch deck, railings, porch steps and sidewalk. The Claimant asserts that the Respondent performed unworkmanlike home improvements. Specifically, he claims that the porch deck boards were cut unevenly, the railings were not level and were not properly anchored, and the concrete used for the steps and sidewalk was substandard. He also claimed

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<sup>1</sup> The Claimant believed that Domenico Parravano was a licensed contractor, but did not know if the company was licensed through MHIC. The contract submitted by the Claimant identified the company as follows: “Domenico Parravano & Sons Co., Inc., License No. 8990, with its principal office located at 11120 Philadelphia Road.” Claimant’s Ex. 6.

that the person who poured the concrete did not know what he was doing. In support of these arguments, he submitted photographs and a copy of a contract which provided for another contractor to remove and replace the steps and sidewalks and reinstall the stair railings.

The Respondent counters that he completed the renovations to the Claimant's property in a workmanlike fashion and that the Claimant is not entitled to reimbursement from the Fund. He also submitted photographs and presented testimony from his lead carpenter on the project regarding the work that was completed.

Section 8-401 of Maryland's Business Regulation Article defines "actual loss" as "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). In order for the Claimant to establish an actual loss, he must prove that the costs he incurred to complete the Project were a result of an unworkmanlike, inadequate or incomplete home improvement on the part of the Respondent. Having reviewed the record, the Claimant has failed to meet his burden in this case.

The Claimant raised several general complaints about the Respondent's work, but failed to show that these complaints constituted a deviation from accepted standards or that the finished home improvement was unworkmanlike, incomplete, or inadequate. The Claimant relied largely on undated photographs taken throughout the project. Although some of the Claimant's photographs show flaws,<sup>2</sup> these photographs were taken before the work was complete. The Claimant testified that Claimant's Exhibits 3A through 3G show the steps and sidewalk in "somewhat" finished condition. This testimony is supported by the presence of form boards and

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<sup>2</sup> Claimant's Exhibits 3B-3G show areas of the cement steps and sidewalk that are rough or crumbling and areas where there is excess concrete.

tools in some of the photographs. *See* Claimant's 3A-3B & 4D. When compared with the photographs that the Claimant identified as photographs of finished work, the flaws are not visible. For example, Claimant's Exhibit 4A does not show rough edges or crumbling that are visible in Claimant's Exhibits 3B-3G. Based on my review of the photographs, I find that Exhibits 4A through 4C, which show a finished project, do not portray unworkmanlike, inadequate or incomplete work.<sup>3</sup> Without testimony that the home improvement was structurally incompetent, in violation of the terms of the contract, or inconsistent with accepted practices in the field, I cannot find that the Claimant is entitled to reimbursement from the Fund based on the Respondent's home improvement.

The Claimant did not offer expert testimony regarding standard practices in the home improvement field or on the competence of the Respondent's work. Absent such testimony, I must rely on my evaluation of the photographs and testimony. I do not find the photographs of the finished home improvement to establish an inadequate, incomplete, or unworkmanlike home improvement.

The Claimant testified that he was forced to pay another contractor, Domenico Parravano, to redo the steps and sidewalk because the Respondent's work was incompetent. He submitted the contract, Claimant's Exhibit 6, which showed that he paid \$4,500 to Domenico Parravano to remove the existing steps and sidewalk, replace the steps and sidewalk, and reinstall the railings on the steps. The evidence failed to prove, however, that the additional work was necessary based on the Respondent's work. Indeed, the Claimant did not present any witnesses or photographs to support this argument. Although the Claimant testified that an inspector took

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<sup>3</sup> Exhibit 4D is a photograph of the sidewalk with form board visible. I do not accept this photograph as a representation of the finished product.



photographs of the Respondent's work, he did not provide a report prepared by that inspector or present testimony regarding the inspector's assessment of the competency of the home improvement. The Claimant testified that, in response to his complaints when the Respondent finished the renovation, the Respondent sent someone to fix the problems that the Claimant raised regarding the concrete work, and that the new contractor made the problems worse. However, the Claimant did not offer photographs or testimony to establish the condition of the steps and sidewalk before Domenico Parravano started his work, and no testimony was presented by anyone from Domenico Parravano.

The Claimant asserted that one section of the sidewalk was sloped toward the side gate. The contract does not address whether the side extension was supposed to be slanted or flat. I do not find that the sloped extension constitutes a violation of the terms of the contract or renders the work incompetent. He also complained that the Respondent used an inferior grade of cement and maintained that the person who poured the cement did not know what he was doing. Absent expert testimony on the quality of cement or common practices related to this area, I cannot find that the cement used in the present case was substandard or that it caused the home improvement to be incompetent.<sup>4</sup> The photographs and testimony do not support such a finding. As previously stated, the only visible flaws that may be observed are in the photographs of the

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<sup>4</sup> Based on my review of the photographs of the finished steps and sidewalk, I cannot see any infirmity in the cement. The Claimant did not allege any specific complaints of crumbling or instability once the steps and sidewalk were finished, and did not suggest that future problems may result from the grade of cement selected. If the Claimant's argument was based in knowledge outside of the average person, it would be the subject of expert testimony, which was not offered in this case. *See Sippio v. State*, 350 Md. 633, 649 (1997) (stating standard that expert testimony is appropriate when such testimony will help the trier of fact to understand a fact in evidence or decide a fact in issue); *Titan Custom Cabinet, Inc. v. Advance Contracting, Inc.*, 178 Md. App. 209, 229-30 (2008) (finding that expert testimony was not required where records were not complicated or outside the ordinary layperson's knowledge).

“almost” finished sidewalk and steps. From a lay perspective, the photographs of the finished porch, steps, and sidewalk show a professional home improvement.

The Claimant also argued that the railings were not level and that the brackets were not properly anchored. Again, the evidence fails to support the Claimant’s allegations that the railing installation was inadequate or unworkmanlike. Dennis Trace, Jr., the Respondent’s lead carpenter, testified that he leveled each railing individually, and that they were level when he finished that part of the project. While the Claimant’s Exhibit 5B shows that the railing was not level at some point,<sup>5</sup> there was no testimony regarding when the photograph was taken. The photographs of the finished project show railings that appear to be level and straight. Further, Mr. Trace testified that he observed a crack in a railing bracket upon returning to the Claimant’s property that was not visible when he left the property the prior evening. It is plausible that the same stress that cracked the bracket caused the railing to become unlevel. In any event, I find that the railing was level when the Respondent finished the project. This conclusion is supported by the fact that the Claimant did not include any adjustment to the railing as part of the subsequent home improvement performed by Domenico Parravano. For these reasons, I do not find the railing installation to be unworkmanlike or inadequate.<sup>6</sup>

Based on the Claimant’s testimony, it was clear that he was unhappy with the Respondent’s work. However, the Claimant has not established through testimony or documentary evidence that any of the work performed by the Respondent was incomplete, inadequate or unworkmanlike. Accordingly, he is not entitled to the relief that he seeks.

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<sup>5</sup> Claimant’s Ex. 5B is a photograph of the railing with a level in the forefront that shows that the railing is not level.

<sup>6</sup> Even if I were to find that the railing installation was incompetent because the railing was not level, the Claimant has not established the cost to repair the railing, as he did not seek any repairs of the porch railing.

**PROPOSED CONCLUSIONS OF LAW**

Based upon the foregoing Proposed Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant has not sustained an actual loss compensable by the MHIC Fund as a result of the Respondent's alleged acts and omissions. For the reasons stated above, I am unable to recommend an award. Md. Code Ann., Bus. Reg. §§ 8-401 and 8-405 (2015); COMAR 09.08.03.03B(3)(c).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim originally filed on June 11, 2014; and

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

**Signature on File**

June 8, 2015  
Date Decision Issued

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Michelle W. Cole  
Administrative Law Judge

MWC/dlm  
#156472

**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**