

IN THE MATTER OF THE CLAIM
OF JOHN RUTKOWSKI,
CLAIMANT

AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF JOHN SINGER, T/A
J.C. SINGER & COMPANY, INC.,
RESPONDENT

* BEFORE TAMEIKA LUNN-EXINOR,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-18-06004
* MHIC No.: 15 (90) 670

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PROPOSED DECISION

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STATEMENT OF THE CASE

On July 6, 2017, John Rutkowski (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$21,673.00 in actual losses allegedly suffered as a result of a home improvement contract with John Singer, t/a J.C. Singer & Company, Inc. (Respondent).

I held a hearing on May 31, 2018 at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015)¹. The Claimant represented

¹ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume of the Maryland Annotated Code.

himself. Jessica Kauffman, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, 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 & Supp. 2017); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Claimant:

Cl. #1 Summary of Complaint with the following attachments:

- 1-1 – 1-3. Undated, Summary prepared by Claimant
- 1-4. April 2, 2018, Notice of Hearing
- 1-5 – 1-6. February 15, 2018, Hearing Order
- 1-7 – 1-8. OAH Important Information about Your Hearing and Request for Accommodations Form
- 1-9. February 15, 2018 Letter from MHIC to Claimant
- 1-10. Undated, DLLR Complaint Form

Cl. #2 2-1. "Calculation of Amount Owed by Contractor to Contractee"

Cl. #3. 3-1. "Customer Paid Items in the Contract" Cover Page with the following attachments:

- 3-2 – 3-4. September 30, 2014, Home Depot Receipt for Marble Tile and Grout, advertisement picture of tiles and grout used
- 3-5 – 3-7. October 4, 2014, Sherwin-Williams Receipt for Paint, September 20, 2014, Lowe's Receipt for kitchen faucet, advertisement picture of the paint and the faucet
- 3-8 – 3-12. September 27, 2014, Home Depot Receipt for Kitchen Light and Front Door Lock; October 12, 2014, Lowe's Receipt for Kitchen

- Cabinet Knobs; and advertisement photos of the front door lock, the kitchen light, wall tile and cabinet knobs
- 3-13. "Amount Paid to Buy and Install Front Door" Cover Page
- 3-14 – 3-34. August 30, 2014, Lowe's Receipt, Special Order Invoice, October 16, 2014 Lowe's Receipt, Lowe's Detail Expectation Sheet, November 11, 2014 Lowe's Return Receipt, November 21, 2014 Lowe's Receipt, Special Order Invoice, October 25, 2014 Lowe's Home Centers receipt and Installation Services Customer Contract, Advertising photo of the Larson Signature door and Elan door.
- 3-35. "Two Other Estimates on Installation of Front Door" Cover Page
- 3-36 – 3-37. November 4, 2014, Pyramid Construction, LLC Proposal
- 3-38. November 6, 2014, Hayes Construction
- Cl. #4 4-1. "Amount Needed to Fix Inferior Work" Cover Page
- 4-2 – 4-3. August 22, 2015, Turbin & Sons Home Improvement
- 4-4 – 4-14. April 22, 2015, Brothers Services Company
- Cl. #5 5-1. "Kitchen" Cover Page
- 5-2 – 5-25. Photos of kitchen ceiling light, missing crown molding, missing paint, mismatched wood, backsplash tile, kitchen cabinets, missing wall socket covers, microwave vent, kitchen paint, wire work during construction, cabinet above refrigerator, valance over sink
- Cl. #6 6-1. "House Exterior" Cover Page
- 6-2 – 6-6. Photos of side porch ceiling, front porch ceiling, spliced wood on front porch, back exterior porch
- Cl. #7 7-1. "Garage Exterior" Cover Page
- 7-2 – 7-7. Garage south wall, Garage back wall, Garage north wall, aluminum cover on garage
- Cl. #8 8-1. "Singer Contract" Cover Page
- 8-2 – 8-6. July 3, 2014, Proposal, J.C. Singer & Co., Inc.
- 8-7. List of Payments to Singer
- 8-8. August 15, 2014, Check endorsed to John C. Singer Co Inc in the amount of \$13,000.00
- 8-9. September 5, 2014, Check endorsed to J.C. Singer & Co Inc in the amount of \$15,000.00
- 8-10. September 9, 2014, Check endorsed to J.C. Singer & Co Inc in the amount of \$11,000.00

I admitted the following exhibits on behalf of the Fund:

Fund #1. April 2, 2018 Notice of Hearing

Fund #2. February 15, 2018 Hearing Order

Fund #3. May 15, 2018 licensing history

Fund #4. September 14, 2017 letter from Joseph Tunney, Chairman, MHIC, to Respondent and August 23, 2017 letter from Joseph Tunney, Chairman, MHIC, to Respondent

Fund #5. September 21, 2017 letter from Respondent to DLLR

I admitted the following photos taken on September 14, 2017 on behalf of the Respondent:

Resp. #1. Front door

Resp. #2. Back door

Resp. #3. Garage

Resp. #4. Garage doors

Resp. #5. Left side of Back Porch

Resp. #6. Right side of Back Porch

Resp. #7. Front Walkway and Front Entrance

Resp. #8. Garage

Resp. #9. Side Windows

Resp. #10. Side of Garage

Resp. #11. Side of Garage

Resp. #12. Side of Garage

Resp. #13. Side of House

Testimony

The Claimant testified and presented the testimony of Jeffrey Lee Martin.

The Respondent testified.

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 1-34658.

2. On July 3, 2014, the Respondent submitted a Proposal to the Claimant for substantial remodeling at the Claimant's home. The work included, among other things, the following:

Exterior of House

Power wash the entire house and garage
Stain siding on house
Repair and Replace privacy slates² in front of house
Take out screen door on side of house and screen in area
Replace all screens on both porches
Stain porch framing
Prep and paint all soffits
Paint large panels on the front and back of house
Replace all damaged framing on south side of porch
Rebuild existing door or replace with new door
Paint and stain inside of porch
Install new ceiling fan on porch

Garage

Prep and stain garage and garage doors
Install splash flashing on north side of garage and stain
Install screen doors in front of house

Front Door

Install new fiberglass door system with transom light, side lights, rectangular door light, decorative glass, dead bolt, brass door lock

Kitchen

Gut cabinets, counter top and all appliances in kitchen
Install new recess lights
Install new light over fridge
Do all necessary plumbing and electrical hook ups
Install new under counter LED lights with dimmer
Install new dishwasher, stove, microwave, cabinets (customer supplies all appliances and fixtures)
Install crown molding or build out
Install new hardware handles on cabinets
Install new granite countertop
Install new bath faucet
Haul away all debris from kitchen and other construction
Install new single bowl deep sink
Install new pull out faucet
Install tile backsplash over counter walls
Install cover over wire running along sliding door

² In the proposal, the Respondent misspelled the word slats.

Painting

Prepare and paint kitchen walls, ceiling and trim
Prepare and paint living room and dining room ceilings

3. The original agreed upon price for all contract work was \$40,000.00. The Claimant paid a total of \$39,000.00 to the Respondent.

4. The Respondent began work on the Claimant's home on August 15, 2014.

5. The Claimant noticed the following items which led to the Claimant's claim of unworkmanlike work:

- Need second coat of paint on the side porch, front porch, interior of house and the garage
- Front porch slats installed with gaps
- Cut out and replace rotten wood at the bottom of the garage and cover with aluminum
- Large holes punched in the walls for electrical wiring that were not filled in
- Kitchen light replaced with poor patch work
- Poor interior painting: kitchen
- Kitchen cabinets improperly installed with gaps, no pull outs and improperly installed fillers
- Poor installation of stove and microwave ventilation
- Recessed lights in kitchen are dropping from the ceiling by ½ inch
- Kitchen light switch installed incorrectly
- Kitchen tiles installed incorrectly

6. In October 2014, the Claimant informed Respondent that due to his unworkmanlike work throughout the house, he would not be installing the Claimant's front door.

7. The Respondent left the job on October 17, 2014 once he was told that he would not be installing the front door.

8. The Claimant noticed the following incomplete work by the Respondent after the Respondent abandoned the job:

- Installation of crown molding in kitchen
- Purchase and installation of outlet covers
- Punch list items

9. On November 11, 2014, Lowe's installed the Claimant's front door.

10. The total cost of remedying the Respondent's deficient work and incomplete work is \$20,887.00.

11. The Claimant has not had repairs performed for any of the items the Respondent left incomplete or unworkmanlike.

12. The Claimant's actual loss is \$19,887.00.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1) (2015); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true." *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Civil Pattern Jury Instructions* 1:7 (3d ed. 2000)).

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 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. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Claimant testified that he signed a contract with the Respondent on July 3, 2014 for home improvement repairs throughout his home that he shares with his partner, Jeff Martin. The scope of work included work on the exterior of the home, side porch and front porch, garage, interior and exterior painting, kitchen remodel, and installation of a new front door. The

Claimant testified that he began to notice unworkmanlike repairs and installations by the Respondent and informed the Respondent that he would not allow him to install the front door. The Claimant testified that the Respondent ordered a door for installation at his home but the door would not fit as it needed to be a custom fit, therefore, the Claimant ordered and paid for the installation of a different front door, even though a front door installation was contained in the Contract with the Respondent.

The Claimant testified that the kitchen tiles were installed incorrectly with sloping and inconsistent patterns; the painting of the interior and exterior of the house was unworkmanlike and needed a second coat of paint; the electrical work, stove and microwave ventilation were unworkmanlike with the use of duct tape; the rotten wood around the bottom of the garage was not replaced and covered properly with aluminum to prevent rotting; the recess lighting in the kitchen was falling from the ceiling; and the kitchen cabinet installation had gaps and were uneven. The Claimant testified that it was difficult to obtain estimates to repair another contractor's work. The Claimant testified that he received two estimates to complete and repair the Respondent's work from Turbin & Sons and Brothers Services, for \$17,500.00 and \$20,877.00, respectively.

The Claimant testified that on December 10, 2014, he filed a complaint with the Maryland Home Improvement Commission. The Claimant stated that after he filed the Complaint, the Respondent returned to his home and attempted to repair the following items: the paint on the ceiling and in the kitchen, the backsplash, light fixtures and sealing the side of the garage with aluminum. However, the repairs were not to the Claimant's satisfaction.

The Claimant testified that he paid a total of \$39,000.00 on the contract to the Respondent in three separate checks. He stated that he continued to pay the Respondent despite the unworkmanlike work because he was intimidated by the Respondent. The Claimant testified

that he cannot afford to have another contractor come in and repair the inadequate work performed by the Respondent.

Jeffrey Martin testified that he and the Claimant paid the Respondent \$39,000.00 towards the \$40,000.00 contract and additionally they paid \$3,438.94 out of pocket for the front door and other fixtures that were included in the Contract, but not completed by the Respondent.³ Mr. Martin testified that he chose a front door out of the Respondent's book but when he saw it in person at Home Depot, he did not like that the glass was not clear. He stated that on August 30, 2014, he purchased a door at Lowe's and had every intention of allowing the Respondent to install the door until he saw his other unworkmanlike work on the house. On October 16, 2014, Lowe's came to the Claimant's home and measured for the door. Mr. Martin testified that he told the Respondent that he would not be installing the door on October 17, 2014. Mr. Martin stated that the Respondent walked off the job on October 17, 2014. Mr. Martin testified that \$1,500.00 of the front door was included in the original contract. He also stated that the Respondent threatened to walk off the job numerous times prior to October 17, 2014 but actually left on October 17, 2014. Mr. Martin testified he and the Claimant did not have further contact with the Respondent until the Claimant filed the complaint with the MHIC in December 2014.

Mr. Martin testified that there was nothing in writing regarding adjustments if the Claimant purchased his own items, the agreements were all verbal. Mr. Martin testified that the only incomplete items on October 17, 2014 were the crown molding, the front door and the outlet covers. He testified that if the Respondent wanted to return to complete and make repairs in his home, he is not sure that he would let the Respondent return to his home. Mr. Martin explained that the work the Respondent completed was not satisfactory and the Respondent did not have a permit to perform any of the work he performed at the Claimant's residence.

³ It is unclear from the Claimant and Mr. Martin's testimony what portion of the \$3,438.94 included items contained in the original Contract.

The Respondent testified that on October 17, 2014, he had one day left of work to complete the contract on the Claimant's home when he was informed that Lowe's was installing the door instead of him. He stated that he installed three doors in the Claimant's home and the front door was the last one. Regarding the garage paint job, he testified that he applied three coats of paint to the Claimant's garage and it still looks good in 2018. The Respondent testified that he performed a lot of work in the Claimant's home that was not included in the Contract, such as: repaired window frames in the back of the house, lowered the price on the granite countertop, installed a 4x4 on the front porch, removed timer from the kitchen, installed extra trim around the window frame and the corner of the garage. The Respondent also testified that he did not charge the Claimant for changes with the cabinets that increased the cost. The Respondent testified that the aluminum siding at the bottom of the garage has a gap three years after installation.

The Respondent testified that he did not need permits to complete the electrical work because it was existing work. He stated that the light fixtures hanging in the kitchen just need to be pushed back into the ceiling. He admitted that he failed to install the crowned molding. The Respondent testified that he could not explain the gaps in the cabinetry. The Respondent stated that the duct work in the kitchen was existing so he left it the way it was and added duct tape. He testified that the Claimant wiped down the kitchen tiles before they were set causing them to adjust. The Respondent testified that he received \$39,000.00 for the work in the Claimant's home. He also stated that he felt like he did all that he could do to please the Claimant.

Neither party provided any expert testimony in this matter. Both parties provided photos of the Claimant's home and the Claimant provided estimates for the repair and completion of the Respondent's scope of work. The Claimant's photos clearly show the unworkmanlike repairs performed by the Respondent in the kitchen, the garage and the painting of the interior and

exterior of the home. The photos provided by the Respondent are all exterior photos of the front, back and side of the Claimant's home, including the garage. The Claimant's photos are more detailed and point out specific problems with the Respondent's work while the Respondent's photos have a broad perspective and are not very detailed. The estimates provided by the Claimant are broken down into areas of the home and include the repair of various items included in the Respondent's scope of work. The estimate breakdowns are as follows:

	Turbin & Sons Home Improvement	Brothers Services Company
Kitchen Repairs	\$8,500.00	\$7,491.00
Garage	\$5,750.00	\$8,496.00
House Exterior	\$3,250.00	\$4,900.00
TOTAL:	\$17,500.00	\$20,887.00

Both of these estimates include all of the work that the Claimant claims is unworkmanlike or incomplete. The Respondent admitted that he failed to install the crown molding. However, it is clear that he also failed to install the outlet covers and the front door. It is also clear from the Claimant's photos that there was unworkmanlike or inadequate work performed by the Respondent. The Claimant testified that he was unsure whether Turbin & Sons is a licensed home improvement contractor but he knows that Brothers is a licensed home improvement contractor. The testimony presented by the Claimant and Mr. Martin was credible, I truly believe that they had specific expectation for the \$40,000.00 remodel of their kitchen and other work performed in their home that was not completed to their standards. I find that they were clear and concise in their presentation and the estimates provided gave them a second opinion from an outside contractor of the work performed by the Respondent. The Respondent's testimony was also credible, and he admitted that there were items in his scope of work that were left undone.

However, it is telling that the Claimant and Mr. Martin both testified that the Respondent would get frustrated with their complaints and questions and threaten to walk off of the job.

The photos in this case have led me to the conclusion that some of the work performed by the Respondent was unworkmanlike or inadequate. The photos were taken by Mr. Martin in 2014 and 2015 and clearly show: the kitchen light fixtures falling from the ceiling, gaps at the top of the kitchen cabinets, inadequate painting in the interior and exterior of the property, mismatched wood filler at the top of the kitchen cabinets, uneven tile work in the kitchen, uncovered wall outlets, duct taped microwave vent not vented to the outside, holes in the walls where electrical work was performed, gaps in the wood splicing on the front porch, and covered rotten wood with aluminum. The total cost of remedying the Respondent's deficient work is found in the Brothers Services estimate⁴ which totals \$20,887.00.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract. The Respondent performed unworkmanlike, inadequate or incomplete home improvements. I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover.

The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. COMAR 09.08.03.03B(3).

In this case, the Respondent performed work pursuant to his agreement with the Claimant, and the Claimant obtained estimates to repair and complete the work performed by the

⁴ I chose to use the Brothers Services' estimate based on the Claimant's testimony that he knows the company is a licensed Maryland Home Improvement contractor.

Respondent. Accordingly, the following formula appropriately measures the Claimant's actual loss:

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). Using this formula, the Claimant's actual loss would be calculated as follows:

Amount paid to the Respondent:	\$39,000.00
Plus amount to correct the contract work	<u>\$20,887.00</u> \$59,887.00
Less original contract price	- <u>\$40,000.00</u>
Actual loss	\$19,887.00

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor, and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is less than the amount paid to the Respondent. Therefore, the Claimant is entitled recover \$19,887.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$19,887.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$19,887.00. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$19,887.00; 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 ten percent (10%) as set by the Maryland Home Improvement Commission;⁵ and

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

Signature on File

August 29, 2018
Date Decision Issued

Tameika Lunn-Exinor /
Administrative Law Judge

TLE/cmg
#175469

⁵ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 10th day of October, 2018, 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.

Bruce Quackenbush

***Bruce Quackenbush
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION