

**IN THE MATTER OF THE CLAIM  
OF ELVIE EBERT,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF MATTHEW  
NEEDHAM,  
T/A MATTHEW NEEDHAM  
RESIDENTIAL SERVICES,  
RESPONDENT**

**\* BEFORE WILLIS GUNTHER BAKER,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: DLR-HIC-02-17-21608  
\* MHIC No.: 16 (90) 1053**

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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 March 28, 2017, Elvie Ebert (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$18,569.52 in actual losses allegedly suffered as a result of a home improvement contract with Matthew Needham, trading as Matthew Needham residential Services (Respondent).

I held a hearing on October 16, 2017 at Largo Government Center, 9201 Basil Court, Largo, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented

herself. Jessica Kaufman, 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 Office of Administrative Hearings (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); 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 the Claimant's behalf:

- Clmt. Ex. 1 - November 10, 2014 Proposal from the Respondent to the Claimant
- Clmt. Ex. 2 - Forty Three Photographs labeled A-QQ of the condition of the home taken December 30, 2015
- Clmt. Ex. 3 - Copies of eight checks showing payments made by the Claimant to the Respondent between November 25, 2014 and July 15, 2015
- Clmt. Ex. 4 - Emails between the Claimant and the Respondent from November 2014 through November 2015, including invoices dated December 29, 2014 and January 6, 2015
- Clmt. Ex. 5 - January 22, 2016 Estimate from Jose Lopez Enterprises, Inc.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - OAH Notice of Hearing, dated July 17, 2017
- Fund Ex. 2 - Transmittal from MHIC to OAH including the MHIC Hearing Order and the Claimant's Claim Form, dated July 3, 2017
- Fund Ex. 3 - Respondent's MHIC Licensure Information, printed October 11, 2017

Fund Ex. 4 - April 4, 2017 letter from MHIC to the Respondent advising of the claim

Fund Ex. 5 - Jose Lopez's MHIC Licensure Information, printed October 11, 2017

The Respondent did not offer any exhibits.

Testimony

The Claimant testified on her own behalf. The Respondent testified on his own behalf.

No other witnesses were presented.

**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 numbers 4530417 (3/19/14 – 3/20/16) and 4835708 (3/27/16 – 3/20/18).

2. On or about November 26, 2014, the Claimant and the Respondent entered into a contract for renovations at 3735 Wells Avenue, Mt. Rainier, Maryland (Property). There was a written contract signed by the parties, but neither party could produce it. The contract included the following items that had been in the original written Proposal (Proposal):

Interior demolition	\$3,700.00
Plans and Permits	\$ 600.00
Insulation	\$7,680.00
Hang, tape and finish new drywall	\$6,262.50
Rework and rehang existing trim	\$1,522.50
Move and install new basement doorway	<u>\$1,150.00</u>
TOTAL	\$20,915.00

3. The Proposal price was \$ 23,195.00. The Proposal included an estimate of \$2,280.00 to remove and sandblast radiators, but this became unnecessary and was eliminated by the parties from the scope of the work. It was neither billed nor paid.

4. On December 29, 2014, the Respondent invoiced the Claimant \$4,909.52 (Invoice # 474) for additional repairs agreed upon by the parties, including termite damage, roofline support, exterior siding issues, studs, and replacement windows.

5. On February 9, 2015, the Respondent invoiced the Claimant \$37,667.52 (Invoice #479, dated 1/6/15) for:

a.	Demolition	\$3,700.00
b.	Plans and permits	\$1,600.00
c.	Moving basement door	\$1,150.00
d.	Central heat/AC	\$9,800.00
e.	Hot water heater	\$1,875.00
f.	Demo chimney	\$1,985.00
g.	Roof repair	\$ 550.00
h.	Items listed on invoice #474	\$4,909.52
i.	Crushed stone parking area and walkway	\$ 605.00
j.	Framing kitchen, installing inset for kitchen and knee wall	\$1,393.00
k.	Reworking plumbing	\$4,300.00
l.	Electrical and lighting	<u>\$5,800.00</u>
	<b>TOTAL</b>	<b>\$37,667.52</b>

6. Invoice #479 included items that had previously been included in the Proposal and in Invoice #474 that had already been paid, including items a, c, h, and \$600.00 of item b. The cost of the new items that were not contained in the Proposal or Invoice #474, but were included in the revised scope of work, as agreed upon by the parties, totaled \$27,308.00.

7. The total contract price was \$53,132.52, derived as follows:

Proposal:	\$23,195.00
Invoice #474:	\$ 4,909.52
Invoice #479 additional items:	\$27,308.00
Radiator work removed from agreement:	<u>\$ (2,280.00)</u>
<b>TOTAL</b>	<b>\$53,132.52</b>

8. The Claimant made payments to the Respondent totaling \$56,009.52, which included:

Check #126, dated November 25, 2014	\$ 5,000.00
Check #130, dated December 23, 2014	\$ 5,000.00
Check #131, dated January 2, 2015	\$15,309.52
Check #132, dated January 2, 2015	\$ 2,500.00

Check #134, dated February 9, 2015	\$ 3,500.00
Check #136, dated February 13, 2015	\$16,000.00
Check #140, dated July 16, 2015	\$ 6,700.00
Check #269, dated July 15, 2015	\$ 2,000.00

9. There were many delays in performance of the work from the time the Claimant contracted with the Respondent in November 2014. After many communications, the Respondent promised completion in March of 2015. The work was not complete at that time and on November 28, 2015, the Claimant advised the Respondent that he had effectively abandoned the job, she was terminating the contract and she would need to have someone else finish the work.

10. The Respondent did not complete the drywall finishing, did not rework and reinstall the existing trim throughout the house, did not hang the drywall in the stairwell to the attic, did not reinstall the handrail to the attic and did not complete the repairs to the hardwood floors as agreed upon by the parties and paid for by the Claimant. Due to the delay, the Claimant will need to get new electrical and building "postcard" permits.

11. The reasonable cost to finish the items left unfinished by the Respondent is \$7,500.50. The breakdown is as follows:

Drywall finishing	\$4,990.50
Rework and reinstall the existing trim	\$1,100.00
Hang the drywall in the stairwell to the attic	\$ 600.00
Reinstall the handrail to the attic	\$ 280.00
Complete the repairs to the hardwood floors	\$ 200.00
New electrical and postcard permits	<u>\$ 330.00</u>
TOTAL	\$7,500.50

12. The Claimant's actual loss is \$10,377.50.

### DISCUSSION

In this case, the Claimant has the burden of proving the validity of her claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR

09.08.03.03A(3).<sup>1</sup> “[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 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);<sup>2</sup> *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 Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. The Claimant initially hired the Respondent to gut her newly purchased older home and rehang drywall and trim. The repairs evolved into a much larger job and the Respondent admitted he took on more than he could handle and underbid the job. The Respondent performed some of the job, but eventually abandoned it, leaving incomplete home improvements. The Claimant provided a binder full of photographs, communications with the Respondent and financial documents. She testified about how the work took much longer than originally contemplated, is unfinished in every part of the house and that she has never been able to inhabit the home since she purchased it. The Claimant gave the Respondent every opportunity

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<sup>1</sup> As noted above, “COMAR” refers to the Code of Maryland Regulations.

<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

to complete the work, but finally she gave up and terminated the contract. She provided an estimate from Jose Lopez Enterprises, Inc. (Estimate), a licensed contractor, for completion of the work. The Estimate also included many other items not within the scope of the original contract, which will not be considered.

The Respondent does not dispute that he left the job incomplete and that the contract was paid, but questioned the amount of damages being claimed. He testified that although things looked incomplete, he had in fact completed most of the work and that the water and electrical were complete and had passed inspection. He stated that there was no need to remove any of the drywall work that he had done; it just needed finishing. He agreed that the Claimant paid him \$56,009.52 and that he did not fully complete the contract. I thus 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 original contract amount was \$53,132.52. The Claimant paid the Respondent \$56,009.52, which was \$2,877 above the contract price because the Respondent provided invoices that included double billing and also because the Respondent made representations that he needed money to pay his workers to get the job completed.

The Claimant provided the Estimate for items she claims were left incomplete by the Respondent for which she seeks recovery. I find nothing in the Respondent's Proposal or invoices that covers some of the items in the Estimate, so there will be no recovery related to them. Under "Drywall," I find that \$600.00 for the installation of six sheets of drywall on the stairwell to the attic is reasonable, and Respondent conceded that this was a fair amount. I find the amount of \$10,500.00 to tape block and finish the walls throughout the house unreasonable. The original contract price for the entire drywall work, including providing the drywall, hanging, taping, finishing and priming was \$6,262.50. It is undisputed that the Respondent provided and hung the drywall and installed insulation. It is also undisputed that the taping, finishing and priming was left incomplete. The Respondent testified that the amount to complete would be \$2,200. However, the Respondent provided the Claimant with Invoice #479 that notes on page 2 "additional funds required for insulation, drywall, finishing and primer coat, \$12,670.50." The Respondent's Proposal indicated that insulation would cost \$7,680.00, so if that is subtracted from the total, it would cost \$4,990.50 to finish the drywall work, by the Respondent's own admission. The Claimant provided no evidence as to the value of the work already completed by the Respondent, nor any explanation of why it would cost almost \$4,000.00 more to complete the Respondent's unfinished drywall work than the original contract price of \$6,262.50 for the entire drywall job. Therefore, I am accepting the amount of \$4,990.50 as the reasonable cost to complete the drywall work.



Under "Flooring," the Estimate includes subfloor in the attic, Durra Rock in the bathroom and kitchen and baseboard throughout the house. I find that there was no evidence that the Respondent agreed to provide these items and the cost may not, therefore, be included in calculating the Claimant's loss. The Claimant's Estimate of \$700.00 to "provide and install new hardwood flooring to repair necessary floor" is too vague to directly correlate to items left incomplete by the Respondent. The Respondent did testify there were two areas of floor in need of repair that he left unfinished. I do find that repairs to the hardwood were necessary in two spots and accept the Respondent's testimony that these items would cost \$200 to repair.

The Claimant argued that the Respondent failed to complete the plumbing work and left her with an unusable bathroom. The photographs show that the Respondent completed roughed in new plumbing in the bathroom, although it is not connected to a sink or bathtub. There is no evidence that the Respondent agreed to supply a sink and bathtub. The Estimate includes a new vinyl enclosure shower and faucet with drain and supply lines not originally included in the Respondent's work, so I find that the Claimant cannot recover for plumbing.

The contract between the parties clearly included the reworking and reinstallation of trim at a cost of \$1,522.50, which was never done. The Estimate provided that the trim work can be done for \$1,100, which I find to be reasonable and recoverable.

The Respondent testified that he removed the handrail on the attic stairs and would need to replace it, but had not. The Estimate included the attic handrail at a cost of \$280.00, which I find to be reasonable and recoverable. Even though the Estimate did not state anything about permits, the Respondent offered that the Claimant would need to update the electrical and postcard permits, which had already been purchased, but expired. Respondent testified they would cost \$330.00, which I find reasonable and recoverable. Therefore, the Claimant has demonstrated that the cost to complete the Respondent's work is \$7,500.50.

Applying the formula set forth in COMAR 09.08.03.03B(3)(c): Amount Paid Under the Contract (\$56,009.52) plus Reasonable Cost to Complete (\$7,500.50) minus Original Contract Price (\$53,132.52) leaves \$10,377.50. Claimant's actual loss is \$10,377.50.

Pursuant to the applicable law, 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. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015). The Claimant may only recover her actual damages. Since the Claimant's recovery is less than the Fund's limit, the Claimant is entitled to reimbursement of \$10,377.50. Bus Reg. § 8-405(a).

#### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015). The amount of that loss is \$10,377.50. 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 award the Claimant \$10,377.50; 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;<sup>3</sup> and

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<sup>3</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**ORDER** that the records and publications of the Maryland Home Improvement

Commission reflect this decision.

**Signature on File**

November 15, 2017  
Date Decision Issued

\_\_\_\_\_  
Willis Gunther Baker  
Administrative Law Judge

WGB/cj  
#170539

**PROPOSED ORDER**

***WHEREFORE, this 25<sup>th</sup> day of January, 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.***

***Joseph Tunney***

***Joseph Tunney  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**