

<p>IN THE MATTER OF THE CLAIM</p> <p>OF JARRET MICHAEL,</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 GLENN MASON, T/A</p> <p>GOOD NEWS IMPROVEMENTS,</p> <p>REMODELING AND HANDYMAN</p> <p>SERVICES, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE BRIAN ZLOTNICK,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>* OAH No.: DLR-HIC-02-17-08962</p> <p>* MHIC No.: 16 (05) 889</p> <p>*</p> <p>*</p>
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PROPOSED DECISION¹

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¹ The Code of Maryland Regulations (COMAR) 09.08.02.01B provides that “[a]ll contested case hearings delegated to the Office of Administrative Hearings shall be governed by COMAR 09.01.03.” COMAR 09.01.03.08 states:

A. Upon completion of the hearing, the ALJ shall submit a proposed decision to the administrative unit.

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C. The proposed decision shall comply with the requirements of the Administrative Procedure Act and COMAR 28.02.01.22, and shall include:

- (1) Written findings of fact;
- (2) Proposed conclusions of law; and
- (3) A recommended order.

STATEMENT OF THE CASE

On May 17, 2016, Jarret Michael (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$16,871.37 in alleged actual losses suffered as a result of a home improvement contract with Glenn Mason (Respondent), trading as Good News Improvements, Remodeling and Handyman Services, LLC (GN).

I held a hearing on June 26, 2017, at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).² The Claimant appeared and represented himself. The Respondent did not appear for the hearing. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), appeared as counsel to the Fund.

The contested case provisions of the Administrative Procedure Act, the MHIC procedural 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, 09.08.02.01B, and 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?

² Unless otherwise noted, all references hereinafter to the Business Regulation Article in the Annotated Code of Maryland are to the 2015 Replacement Volume.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Fund:

- GF Ex. 1 Notice of Hearing, dated April 17, 2017, with attached Hearing Order and certified mail envelope stamped, "return to sender – unclaimed – unable to forward"
- GF Ex. 2 MHIC Licensing Information for the Respondent and GN, showing licensing status that was valid from June 17, 2014 to June 17, 2016
- GF Ex. 3 Letter from the Department to the Respondent, dated May 31, 2016 with attached Home Improvement Claim Form

I admitted the following exhibits on behalf of the Claimant:

- Cl. Ex. 1 Contract between Claimant and GN, dated November 15, 2015
- Cl. Ex. 1-A Claimant's Timeline
- Cl. Ex. 2 Credit card statement showing payment of \$8,000.00 from Claimant to Respondent, dated December 1, 2015
- Cl. Ex. 3 Canceled check from Claimant to Respondent for \$7,000.00, dated January 5, 2016
- Cl. Ex. 4 Cancelled check from Claimant to Respondent for \$2,500.00, dated January 8, 2016
- Cl. Ex. 5 Photographs of the Claimant's basement bathroom, basement foyer, master bathroom and master bedroom, taken on January 11, 2016
- Cl. Ex. 6 Contract with R. Hamilton Improvement, undated
- Cl. Ex. 7 Email from Respondent to Claimant, dated January 19, 2016

No exhibits were offered by the Respondent.

Testimony

The Claimant testified on his own behalf.

The Respondent was not present to testify or present witnesses.

The Fund did not present any witnesses.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to the subject matter of this hearing, the Respondent, who traded as GN, was licensed as a home improvement contractor under MHIC license number 4564579.
2. The Respondent's current address obtained by the MHIC is 1223 Rodgers Drive, Tarboro, North Carolina, 27886.
3. On or about November 15, 2015, the Claimant and GN entered into a contract for the remodeling of the Claimant's master bathroom, basement and basement bathroom (Contract). The Contract price was \$27,014.48.
4. The Claimant paid GN \$17,500.00 as follows:
 - \$8,000.00 on December 1, 2015 (Credit card transaction)
 - \$7,000.00 on January 5, 2016 (Tower Federal Credit Union Check)
 - \$2,500.00 on January 8, 2016 (Check #603)
5. On January 4, 2016, GN arrived at the Claimant's home and began work on the Contract, which consisted of demolition work in the three rooms that were being remodeled. GN workers worked on the Contract from January 4, 2016 through January 7, 2017. No further work on the Contract was performed by GN.
6. On January 11, 2016, a GN worker arrived at the Claimant's home and informed the Claimant that the Respondent was admitted to a hospital and that GN would not be able to complete the Contract.
7. The Claimant made several calls to the Respondent after January 11, 2016 but those calls went directly to the Respondent's voice mail. The Claimant left the Respondent several messages on his voicemail until the voicemail box became full.

8. On January 13, 2016, the Claimant called the Respondent and his wife, Ivy, answered the phone. Ivy informed the Claimant that the Respondent was entering a drug and alcohol rehabilitation facility and that the money the Claimant paid to the Respondent was gone.

9. On January 19, 2016, the Respondent e-mailed the Claimant and informed him that he was in a truck accident and that he was getting back to work and would contact the Claimant in the near future. The Claimant responded to this email on the same date, stating that he was looking forward to speaking with the Respondent.

10. The Respondent never contacted the Claimant after his January 19, 2016 e-mail.

11. The Respondent left the Claimant's basement, basement bathroom and master bathroom in disarray with holes in the walls, flooring and toilets removed and tile work unfinished.

12. On or about January 15, 2016, the Claimant received an estimate from R. Hamilton Improvement to complete the Contract for \$23,266.00. All of the work specified in this estimate was the same work specified in the Contract.

13. On May 17, 2016, the Claimant filed the Claim with the MHIC.

14. On May 31, 2016, the Fund notified the Respondent that the Claim had been filed against him by the Claimant.

15. On March 23, 2017, the MHIC issued a Hearing Order stating that it was referring the Claim to the OAH for a hearing.

16. On April 17, 2017, the OAH mailed a Notice of Hearing (Notice) by United States Postal Service (USPS) Certified Mail Return Receipt to the Respondent's MHIC address. This Notice advised the Respondent that a hearing was scheduled for June 26, 2017, at 9:30 a.m., at the OAH in Hunt Valley, Maryland.

17. The Certified Mail Return Receipt for the Notice mailed to the Respondent was returned to the OAH by the USPS and marked, "Return to Sender, Unclaimed, Unable to Forward."

18. No party made a request to postpone the June 26, 2017 hearing.

19. The Claimant is not: a spouse or other immediate relative of the Respondent; an employee, officer, or partner of the Respondent; or an immediate relative of an employee, officer, or partner of the Respondent.

20. The Claimant has not taken any action to recover money for the Respondent's or GN's failure to complete the Contract work, other than the instant Claim.

21. The property where the Contract work was performed is the only residential property the Claimant owns in Maryland and it is his primary residence.

DISCUSSION

The Respondent's failure to appear

As discussed in the Findings of Fact above, the OAH mailed the Notice regarding the date, time and location of this hearing to the Respondent to his MHIC Address of record, via Certified Mail. The Certified Mail Notice was returned unsigned and labeled, "unclaimed/return to sender/unable to forward."

On June 26, 2017, at 9:30 a.m., I convened a hearing in this case at the OAH. By 10:00 a.m., neither the Respondent, nor anyone claiming to represent the Respondent, appeared for the hearing. The OAH did not receive any request for postponement of the hearing.

The Respondent was properly notified of the date, time and location of this hearing. The Notice was mailed more than two months before the scheduled hearing by Certified Mail to the address obtained by the MHIC. Md. Code Ann., Bus. Reg. § 8-312(d) (the hearing notice shall be sent at least ten days before the hearing by certified mail to the business address of the licensee

on record with the MHIC); *see also id* § 8-407(a). Despite proper notice being sent, the Respondent failed to appear for the hearing. As a result, I proceeded with the hearing in the Respondent's absence. COMAR 28.02.01.23A.

Merits of the Claim

A claimant bears the burden of proof, by a preponderance of the evidence, that it is entitled to an award from the Fund. Md. Code Ann., Bus. Reg. § 8-407(e)(1); COMAR 09.08.03.03A(3); Md. Code Ann., State Gov't § 10-217 (2014). A claimant 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); *see also* COMAR 09.08.03.03B(2). ("The Fund may only compensate claimants for 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." Md. Code Ann., Bus. Reg. § 8-401. The Fund may not, however, compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest, COMAR 09.08.03.03B(1), and may not compensate a claimant for more than was paid to the original contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(5).³

³ A claimant must also prove that at all relevant times: (a) the owner owned fewer than three dwelling places or resides in the home as to which the claim is made; (b) the owner was not an employee, officer or partner of the contractor or the spouse or other immediate relative of the contractor or the contractor's employees, officers or partners; (c) the work at issue did not involve new home construction; (d) the owner did not unreasonably reject the contractor's good faith effort to resolve the claim; (e) there is no pending claim for the same loss in any court of competent jurisdiction and the owner did not recover for the actual loss from any source; and (f) the owner filed the claim with the MHIC within three years of the date the owner knew or with reasonable diligence should have known of the loss or damage. Md. Code Ann., Bus. Reg. §§ 8-405(d), (f), and (g), 8-408(b)(1); *id.* § 8-101(g)(3)(i) (Supp. 2016).

The Claimant provided uncontroverted evidence that he meets all of the above-enumerated requirements, and the Fund did not challenge any of the Claimant's evidence.

Actual Loss and Amount of Award

The uncontroverted evidence is that the Respondent abandoned the Contract after performing only some of the Contract work and therefore left the Claimant with an incomplete home improvement. On January 4, 2016, the Respondent began demolishing the Claimant's master bathroom, basement, and basement bathroom to prepare those rooms for remodeling in accordance with the Contract. After January 7, 2016, however, no further work was performed by the Respondent and those rooms were left in complete disarray with removed toilets, flooring, and tile work as evidenced by the photographs taken by the Claimant. (Claim Ex. #5). By January 8, 2016, the Claimant had paid the Respondent \$17,500.00 towards the \$27,014.48 Contract price.

On January 11, 2016, a GN worker arrived at the Claimant's home and informed him that the Respondent was in a hospital and that GN would not complete the Contract. After January 11, 2016, the Claimant called the Respondent several times but was only able to leave voicemail messages. On January 13, 2016, the Claimant was able to reach the Respondent's wife, Ivy, who informed him that the money the Claimant paid to the Respondent was gone and that the Respondent was entering a drug and alcohol rehabilitation facility. On January 19, 2016, the Respondent e-mailed the Claimant informing him that he was returning to work and would contact him in the near future. The Claimant immediately responded to this e-mail informing the Respondent that he was looking forward to speaking with him. The Respondent, however, never contacted the Claimant after January 19, 2016.

The Claimant suffered an actual loss because the Respondent abandoned the Contract leaving the Claimant with no choice but to solicit another contractor to complete the work. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(a). The Claimant obtained an estimate from R. Hamilton Improvement for \$23,266.00 to complete the Contract. It is undisputed that the R. Hamilton

Improvement's estimate did not specify any work beyond the scope of the Contract. I therefore find that the \$23,266.00 estimate provided by R. Hamilton Improvement was reasonable.

COMAR 09.08.03.03B(3)(c) provides the following formula as an appropriate measure of 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.

Paid to GN	\$17,500.00
<u>R. Hamilton Improvement Estimate</u>	<u>+\$23,266.00</u>
Total	\$40,766.00
<u>Minus Contract Price</u>	<u>-\$27,014.48</u>
Actual Loss	\$13,751.52

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. Bus. Reg. § 8-405(e)(1), (5). The Claimant's actual loss of \$13,751.52 is not limited by this provision of law.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss as a result of the Respondent's acts and omissions, and that an appropriate award in this case is \$13,751.52. Md. Code Ann., Bus. Reg. §§ 8-401, 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 award the Claimant \$13,751.52; 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 at least ten percent (10%) as set by the Maryland Home Improvement Commission;⁴ and

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

Signature on File

September 15, 2017
Date Decision Issued

Brian Zlotnick
Administrative Law Judge

BMZ/emh
#169914

⁴ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 25th day of October 2017, 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.

Andrew Snyder

***Andrew Snyder
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION