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| <p>IN THE MATTER OF THE CLAIM</p> <p>OF KATHRYN DAFFIN,</p> <p style="padding-left: 40px;">CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF STEVEN</p> <p>MORELAND T/A MORELAND</p> <p>CONTRACTING INC.,</p> <p style="padding-left: 40px;">RESPONDENT</p> | <p>* BEFORE MICHAEL R. OSBORN,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: DLR-HIC-02-18-21692</p> <p>* MHIC No.: 17 (05) 1132</p> <p>*</p> |
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PROPOSED DECISION

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STATEMENT OF THE CASE

On August 17, 2017, Kathryn Daffin (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$52,765.00 in actual losses allegedly suffered as a result of a home improvement contract with Steven Moreland, trading as Moreland Contracting Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹ On July 9, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

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

I held a hearing on January 8, 2019 at the Talbot County Public Library in Easton, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e). Eric B. London, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. Andrea E. Colender, Esquire, represented the Claimant, who was present. After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.²

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. 2018); 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 the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

I have attached a complete Exhibit List as an Appendix.

Testimony

The Claimant testified and presented the testimony of:

- Ronald Daffin, the Claimant's son
- Gregory Price, Owner, A-Team Construction

The Respondent did not appear.

The Fund did not present any witnesses.

² Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on October 9, 2018, COMAR 09.08.03.03A(2), and returned as undeliverable on October 30, 2018. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Respondent had received proper notice, and proceeded to hear the captioned matter.

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 130077. The Respondent's home improvement contractor's license expired June 13, 2016 and was not renewed.

2. The Claimant and her husband are of advanced age, and both live at 29700 Rabbit Hill Road in Easton, where they have lived for over fifty years. The Claimant's husband is afflicted with disabling medical conditions.

3. On July 13, 2015, the Claimant's Talbot County home was damaged by fire.

4. After the fire the Claimant and her husband moved next door to live with their son, Ronald Daffin.

5. The Claimant entrusted Ronald Daffin with dealing with the homeowner's insurance company, and entrusted him with making arrangements for repair and restoration of their home.

6. Ronald Daffin obtained recommendations and references and obtained estimates for restoration from three of the recommended contractors. Following this process the Claimant selected the Respondent to repair and restore her home.³

7. On January 28, 2016, the Claimant and the Respondent entered into a contract (Contract) to do the following work:

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|---------|--|-------------|
| Drywall | Furnish and install drywall, ready for paint | \$12,975.00 |
| Trim | Furnish and install 3½ inch base trim | \$2,975.00 |
| Windows | Supply and install casings on doors and windows. | \$3,255.00 |

³ There was little direct contact between the Claimant and the Respondent, although the Claimant personally entered the contract and signed some checks. Unless otherwise indicated, all further references to the Claimant making payments or the Claimant having any conversations or contact with the Respondent means Ronald Daffin, acting on behalf of the Claimant.

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| | Furnish and install four double-hung windows to match existing | \$2,000.00 |
| Flooring | Furnish and install 1,570 square feet of flooring in bathrooms, click-down Pergo hardwood flooring, and carpet in bedrooms to clients' choosing | \$12,056.00 |
| Framing | Reframe soffit and fascia in front of house to widen to three feet, install new oak railing, stain and finish coat | \$5,750.00 |
| | Reframe fire-damaged rafters | \$870.00 |
| Paint | Repaint all wall surfaces with primer | \$2,475.00 |
| | Paint two coats in walls, color choice by Claimants | \$7,500.00 |
| Doors | Furnish and install eight six-panel interior doors | \$1,600.00 |
| | Furnish and install one exterior door | \$1,000.00 |
| Roofing | Furnish and install complete roof system with thirty-year shingles, ice and water shields, pipe collars. | \$9,400.00 |
| Interior doors and hardware | Furnish and install hardware for eight interior doors, three exterior doors | \$580.00 |
| Siding | Furnish and install thirty-five squares of exterior siding | \$14,250.00 ⁴ |
| Floor framing | Re-level existing upstairs room, reframe floor joists in one room, install joist and beam | \$3,450.00 |
| Insulation | Furnish and install insulation throughout house, walls and ceilings, per Talbot County Code | \$7,950.00 |
| Electric | Furnish and install vanity lights in bathrooms, \$100.00 maximum per light, Claimants to pay any amount over \$100.00 | \$655.00 |
| | Furnish and install fourteen recessed lights in downstairs | \$5,200.00 |
| | Furnish and install three light-fan combinations in upstairs bathrooms | \$1,050.00 |
| | Furnish and install bath fans in two upstairs bathrooms, vent with six-inch flex pipe and vent with exterior housing | \$1,280.00 |
| | Furnish and install two recessed lights, one in steps ceiling and one in upstairs | \$744.00 |

⁴ A "square" is a unit of area measurement used in House Siding (specifically Vinyl Siding) that equals one hundred (100) square feet. 1 Square (of House Siding) = 10 feet X 10 feet = 100 Square Feet. See <http://www.squarefootage.org/siding-squares-calculator.php>

| | | |
|---------------------|---|------------|
| | bathroom, including housing, bulbs and trim | |
| | Furnish and install two hall lights in upstairs | \$500.00 |
| | Furnish and install forty standard household outlets throughout house | \$7,000.00 |
| | Furnish and install two ground-fault-interrupter outlets in bathrooms | \$600.00 |
| | Furnish and install seven light switches – six two-way | \$1,375.00 |
| | Furnish and install eight circuits in main panel, supply wiring for all electrical work | \$2,150.00 |
| | Furnish and install ten smoke detectors, per code, hardwired | \$1,500.00 |
| Plumbing | Furnish and install two bath vanities, install sink top and faucet | \$2,950.00 |
| | Supply hot/cold water pipes from main supply line and from water heater to two bathrooms | \$5,500.00 |
| | Furnish and install shower head and diverter for downstairs bathroom | \$1,250.00 |
| | Furnish and install tub and faucet, upstairs bathroom | \$1,450.00 |
| | Furnish and install 100 gallon water heater | \$7,350.00 |
| | Furnish and install two toilets, upstairs bathroom | \$450.00 |
| | Furnish and install six-inch PVC septic piping for two showers, two sinks, two toilets, vent same | \$6,100.00 |
| | Washer/dryer hook-up | \$450.00 |
| Architectural plans | Draw and submit architectural plans | \$5,000.00 |
| Permits and fees | | \$2,000.00 |

8. The original agreed-upon Contract price was \$134,090.00. The Contract stated work would begin on a date to be determined, and would be completed on a date to be determined.

9. Under the Contract, \$44,696.00 was due before work was to commence in order for the Respondent to purchase materials. A second payment of \$41,947.00 was due on the fifth

day of work, and a payment of \$41,947.00 was due when drywall work was completed. A final payment of \$5,000.00 was due when all work was completed.

10. Work under the Contract began on an unknown date.

11. On November 18, 2015,⁵ the Claimant paid the Respondent \$40,000.00. On December 1, 2015, the Claimant paid the Respondent \$42,010.00.

12. Immediately after work began the Respondent told the Claimant he needed more money for materials. Although little work other than demolition had been done to this point, on February 1, 2016, the Claimant paid the Respondent \$20,000.00.

13. On February 1, 2016, a Talbot County building inspector put a Stop Order in place and directed no further work be done.

14. In order to address issues identified by a Talbot County building inspector, on March 16, 2016, the parties amended the Contract, as follows:

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| Rafter support | Furnish and install collar ties to all existing rafters | \$1,500.00 |
| Framing | Reframe and support upstairs and downstairs floors | \$2,750.00 |
| Insulation | Remove and replace insulation from walls, replace kitchen drywall | \$3,500.00 |
| | Install fire-blocking in air holes with wood or stop-fire foam | \$575.00 |

15. The amendment to the Contract was \$8,325.00, making the total agreed-upon Contract price \$142,415.00.

16. On March 25, 2016, the Claimant paid the Respondent \$4,000.00.

17. After the March 25, 2016 payment, the Claimant communicated with the Respondent several times in an effort to get him to resume work.

⁵ No evidence was presented as to why the Claimant paid any monies to the Respondent before the Contract was executed.

18. On or about late April 2016, the Respondent told the Claimant that Stop Orders had been issued by Talbot County at two other of his work sites, and that he was not getting paid at those sites. The Respondent suggested that filing for bankruptcy protection may be his only recourse.

19. The Claimant, with over \$100,000.00 paid to the Respondent and a home nowhere near ready for occupancy, agreed to pay the Respondent's subcontractors directly as they performed work on the home.

20. The Claimant paid the Respondent or his subcontractors as follows⁶:

| | | |
|-----------|--|------------|
| 5/9/2016 | Bailey & Chippe Electric | \$1,500.00 |
| 7/26/2016 | DeVere Insulation | \$784.25 |
| 7/27/2016 | Josh Moreland (work unknown) | \$200.00 |
| 8/5/2016 | Ron (framing materials) | \$85.00 |
| 8/11/2016 | Leonides Aguirre (drywall) | \$3,600.00 |
| 8/15/2016 | RH Perkinson (plumbing) | \$2,850.00 |
| 8/23/2016 | Leonides Aguirre (drywall and roofing) | \$4,300.00 |
| 8/23/2016 | Leonides Aguirre (painting) | \$900.00 |
| 8/29/2016 | Josh Moreland (painting) | \$900.00 |
| 9/8/2016 | Respondent (flooring materials) | \$500.00 |
| 9/16/2016 | Home Depot, through Respondent's assistant (materials) | \$1,393.40 |
| 9/27/2016 | Respondent (plumbing) | \$1,000.00 |

⁶ The Claimant's payments also included a July 20, 2016 cash payment of \$550.00 for unknown architectural work, \$40.00 in fees paid August 4, 2016 to the Talbot County building permits office, and \$136.00 paid October 11, 2016 to reimburse Josh Moreland for gas and tolls. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. See Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). I consider each of these payments as consequential costs and thus, none of these payments, a total of \$726.00, are compensable by the Fund.

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|------------|--------------------|-------------|
| 10/4/2016 | Respondent (labor) | \$2,400.00 |
| 10/7/2016 | Respondent (labor) | \$1,287.50 |
| 10/14/2016 | Respondent (labor) | \$1,054.00 |
| 11/4/2016 | Respondent (labor) | \$2,400.00 |
| 11/7/2016 | Action Carpet | \$5,725.00 |
| 11/11/2016 | Respondent (labor) | \$3,010.00 |
| 11/17/2016 | Respondent (labor) | \$2,450.00 |
| 11/23/2016 | Respondent (labor) | \$1,470.00 |
| 12/1/2016 | Respondent (labor) | \$1,830.00 |
| Total | | \$39,639.15 |

21. From April 2016 through November 2016, the Respondent or his office staff placed orders for materials and told the Claimant what was purchased and where. Following each purchase the Claimant contacted the vendor to pay for the materials by credit card. Using this method the Claimant paid \$19,004.61 for materials.

22. By December 1, 2016, the amounts paid to the Respondent, his subcontractors, and various supply vendors exceeded the Claimant's homeowner's insurance policy recovery for restoration following the July 2015 house fire. The Respondent approached the Claimant shortly after this date with a request for additional funds to continue work under the Contract. The Claimant refused to make any further payments under the Contract until the work under the Contract was completed.

23. During the first week of December 2016, the Respondent abandoned the Contract and did not respond to any effort by the Claimant to convince him to resume work. The Claimant's home was, when the Respondent abandoned the Contract, uninhabitable.

24. The Claimant paid the Respondent directly \$106,010.00 (\$40,000.00 + \$42,010.00 + \$20,000.00 + \$4,000.00). The Claimant paid the Respondent and/or his subcontractors an additional \$39,639.15, for a total of \$145,549.15. The Claimant paid \$19,004.61 for materials, such purchases arranged by the Respondent, all of which were purchases the Respondent agreed to make under the Contract. The total amount paid by the Claimant to the Respondent under the Contract was \$164,653.76.

25. The Respondent's work was unworkmanlike and incomplete on December 1, 2016. Demolition material was in heaps piled in the screened-in rear porch. Exterior siding and soffits under eaves were removed and not replaced. Ceilings and walls of several rooms had large holes cut in them to run, or to find, electric lines. Bare light bulbs dangled from strand wiring. Electrical junction boxes dangled from wiring in walls and ceilings. Framing lumber was exposed in every room of the house. A sink vent pipe was vented into the cavity between the first and second floor of the home instead of vented to the outside. Adjoining floor surfaces were not on the same level, causing an unsightly trip hazard. Trims and casing around numerous doors and windows were haphazard, incomplete, crooked, or left gaps large enough to see exposed insulation behind the casings. New electrical outlets were installed directly above existing outlets. A newel post at the top of the stairwell to the second floor was not affixed, and the rail was attached to the newel post with a single finish nail. Trim casings on doors had 1/8" to 1/4" gaps at the corners, much too large for caulk to close. Electric lines were run through makeshift PVC conduits on exposed earth in crawl spaces. Metal trims on exterior windows were pounded to fit into place with a mallet or hammer to force them to fit, leaving bent metal trim. Four exterior windows were the wrong size, leaving large gaps in the exterior aluminum siding where the old window came out and the new, smaller windows were installed. Baseboards were cut short yet installed anyway, leaving gaps at interior corners far too large to fill with caulk. Some baseboards were joined to nothing at all and were nailed in place with exposed, flush-cut

ends. Nails on some baseboards were left exposed, with nails yet to be fully driven into place. Drywall at both interior and exterior corners was incomplete. Some horizontal drywall seams were at different levels of standout from the studs on which the drywall was hung.

26. Anywhere the Respondent or a subcontractor encountered the smallest problem, the problem was left for resolution later by someone who knew what he or she was doing.⁷

27. On December 6, 2016, the Claimant obtained an estimate of \$30,965.00 from Gregory Price, d/b/a A-Team Construction, an MHIC licensed home improvement contractor, for completion of the work under the Contract, including tear-out and replacement of work already performed by the Respondent but performed in an unworkmanlike manner. This estimate included \$28,200.00 in labor on the interior, \$1,325.00 for materials on the exterior, and \$1,440.00 for labor on the exterior. The estimate included a provision that if the labor estimates proved to be low A-Team Construction would bill the Claimant at an hourly rate for all labor costs exceeding the estimate.

28. On December 8, 2016, the Claimant paid A-Team Construction \$8,000.00 as a deposit to get work to complete the Contract under way. On December 19, 2016, the Claimant paid A-Team Construction \$10,029.17 for labor and materials. On January 2, 2017, the Claimant paid A-Team construction a final payment of \$7,275.00. The total of all payments to A-Team construction to complete the Respondent's incomplete and unworkmanlike work was \$25,304.17.

⁷ Claimant's exhibit 4 is several photographs taken December 8, 2016 by Gregory Price, of A-Team Construction. For many of these photographs, Mr. Price testified what was depicted was such an extreme departure from competent home improvement work that he had no idea why the Respondent had done the work in such fashion. A typical exchange was, for instance, related to the lower left photograph in exhibit 4i, which depicts an electrical outlet mounted on the wall directly above and touching an existing outlet. When asked "why would anyone do that?" Mr. Price simply responded "I have no idea." This type of exchange was common for many of the photographs in exhibit 4.

29. The Claimant's actual and compensable damages are calculated as follows:

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|--|--------------------------------------|
| Amount paid to Respondent under the original Contract, with amendment: | \$164,653.76 |
| PLUS Amount paid to A-Team Construction to repair and complete the Respondent's work: | \$ <u>25,304.17</u> \$189,957.93 |
| MINUS amended Contract price: | \$ <u>142,415.00</u> \$ 47,542.93 |

DISCUSSION

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) ; 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 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); *see also* COMAR 09.08.03.03B(2) ("actual losses . . . incurred as a result of misconduct by a licensed contractor"). "[A]ctual 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. 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 and incomplete home improvements. Gregory Price, the Claimant's witness, testified about the photographs he took on December 8, 2016, which were admitted as Claimant's exhibit #4. Mr. Price testified there was much more

wrong with the Respondent's work than depicted in the photographs, but the photographs were a representative sampling of the low quality of the work. Even an unskilled eye, let alone the eye of a licensed home improvement contractor, would have no trouble seeing the slipshod quality of the Respondent's work. There are few adjectives to explain this work because it was so unimaginably bad. The Respondent knew he had the Claimant over a barrel and took full advantage of it, returning to her time after time for money without producing results. When the Claimant made clear she was not going to pay the Respondent any more money until the work was done, the Respondent left and never came back. The Claimant had to pay another contractor to fix and finish the Respondent's work, and the repairs were done and the home made habitable within a month.

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. Md. Code Ann., 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.

In this case, the Respondent performed some work under the Contract, and the Claimant retained Gregory Price and A-Team Construction to complete or remedy that work.

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).

The Claimant's actual loss is as follows:

| | |
|--|---------------------|
| Amount paid to Respondent under the original Contract, with amendment: | \$164,653.76 |
| PLUS Amount paid to A-Team Construction to repair and complete the Respondent's work: | \$ <u>25,304.17</u> |
| | \$189,957.93 |
| MINUS Original Contract price: | <u>\$142,415.00</u> |
| | \$ 47,542.93 |

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. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant paid the Respondent more than \$20,000.00, and her actual loss is over \$20,000.00. Therefore, the Claimant's compensable loss is \$20,000.00. Md. Code Ann., Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$20,000.00 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 \$20,000.00 from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant

\$20,000.00; 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;⁸ and

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

Signature on File

February 6, 2019
Date Decision Issued

Michael R. Osborn
Administrative Law Judge

MRO/kdp
177817

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

PROPOSED ORDER

WHEREFORE, this 25th day of March, 2019, 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