

IN THE MATTER OF THE CLAIM
OF KEVIN JONES,

* BEFORE JEROME WOODS, II,
* AN ADMINISTRATIVE LAW JUDGE

CLAIMANT

* OF THE MARYLAND OFFICE

AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND

* OF ADMINISTRATIVE HEARINGS

FOR THE ALLEGED ACTS OR

*

OMISSIONS OF STEVEN

*

MORELAND

* OAH No.: DLR-HIC-02-18-16804

T/A MORELAND CONTRACTING,

* MHIC No.: 17 (05) 259

INC.

*

RESPONDENT

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On November 16, 2017, Kevin Jones (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$9,200.00 in alleged actual losses suffered as a result of a home improvement contract with Steven Moreland, T/A Moreland Contracting, Inc., (Respondent).

I held a hearing on August 13, 2018, at the Tawes State Office Building in Annapolis, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented himself. Eric London, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. After waiting at least fifteen minutes for the Respondent or someone to represent him to appear, I proceeded with the hearing without the Respondent. Code of Maryland Regulations (COMAR) 28.02.01.23A.¹

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 that loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

- | | |
|---------|---|
| Cl. #1 | Contract, January 14, 2016 |
| Cl. #2 | Checks #1064, #1065, #1005, #1066 |
| Cl. #3 | Three color photographs of Claimant's steps, September 10, 2016 |
| Cl. #4a | Estimate, John Krause Construction, October 25, 2017 |
| Cl. #4b | Blueprints for project, undated |

¹ Notice of the hearing was mailed to the Respondent at the address of record by certified mail and regular mail through the United States Postal Service (USPS), on July 13, 2018. COMAR 09.08.03.03A(2).

I admitted the following exhibits on behalf of the Fund:

- Fund #1 Notice of Hearing, May 30, 2018
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- Fund #2 ~~Maryland Motor Vehicle Administration Driving Record, July 9, 2018~~
- Fund #3 Notice of Hearing, July 13, 2018
- Fund #4 Hearing Order, May 15, 2018
- Fund #5 Letter to whom it may concern, from the MHIC, June 22, 2018
- Fund #6 Home Improvement Claim Form and Summary, received November 16, 2017
- Fund #7 Letter to the Respondent, from the MHIC, November 21, 2017

Testimony

The Claimant testified on his own behalf.

No one appeared to testify on behalf of the Respondent.

The Fund presented no 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 a licensed home improvement contractor under MHIC license numbers 01-104780 and 130077.
2. On January 14, 2016, the Claimant and the Respondent entered into a contract (Contract) for the Respondent to demolish his existing ten steps at the front of his home, and prepare the site for new slate. Additionally, the Respondent was to install risers, add lighting, furnish and install grey slate and build a gable awning.
3. The agreed-upon contract price for the project was \$12,950.00.
4. The Claimant paid the Respondent \$12,450.00.
5. Work began on the project on March 10, 2016 and ended April 4, 2016.
6. The Respondent did not demolish the existing steps.

7. The Respondent poured concrete over the existing steps and fashioned new (risers) steps.
8. The Respondent did not install slate.
9. The Respondent did not build a gable awning.
10. The Respondent did not install lighting.
11. The Claimant attempted to contact the Respondent numerous times after April 4, 2016, in order to get the Respondent to complete the project as required by the Contract.
12. The Respondent did not contact the Claimant or return any of his phone calls.
13. On October 25, 2017, John Krause Construction performed a valuation of the Respondent's work.
14. The value of the Respondent's work is \$3,500.00.
15. The value of the Respondent's work does not include the \$250.00 cost of the estimate/valuation performed by John Krause Construction.
16. The Respondent did not return any of the funds the Claimant paid him for the work.

DISCUSSION

Preliminary Issue

The Respondent's Failure to Appear

On July 13, 2018, the OAH sent a Notice of Hearing (Notice) by certified and first class USPS mail to the Respondent's last address of record, 748 Ticonderoga Avenue, Severna Park, Maryland 21146. The Notice advised the Respondent of the time, place and date of the hearing. The certified mail receipt was not signed. The Notice sent by first class mail was not returned to the OAH by the USPS. The statutory provisions governing disciplinary proceedings against MHIC licensees state that notice shall be sent by certified mail to "the business address of the

licensee on record with the Commission.” Md. Code Ann., Bus. Reg. § 8-312(d) (2015).² The procedures for notice applicable to disciplinary proceedings also apply to claims against the Fund. *Id.* § 8-407(a).

There is no dispute that the OAH properly sent the Notice by certified mail to the Respondent’s business address of record, as required by section 8-312(d), and that the Notice was not returned by the USPS. *See also* Md. Code Ann., State Gov’t § 10-209(c) (2014) (reasonable notice is presumed for licensees under certain circumstances); COMAR 28.02.01.05C(2)³ (notice is effective at the end of the fifth day after it was mailed). Consequently, after waiting for 15 minutes for the Respondent or a representative to appear, I directed that the hearing proceed in the Respondent’s absence. Md. Code Ann., Bus. Reg. § 8-312(h); COMAR 28.02.01.23A.

In this case, the Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. 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) (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

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

³ As noted above, “COMAR” refers to the Code of Maryland Regulations.

completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401 (2015). 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.

Based on the unrefuted evidence, the Respondent performed an incomplete home improvement. Md. Code Ann., Bus. Reg. § 8-101 (Supp. 2018). The Respondent essentially fashioned new steps around the existing steps but did not demolish the steps as required and had not performed the work specified in the Contract when he abandoned the job. The Claimant made attempts to contact the Respondent so that the Respondent could complete the work as required. The Respondent did not contact the Claimant nor did he return the payments made to him by the Claimant.

The Claimant obtained a valuation of the Respondent’s work (\$3,500.00). The valuation does not include the amount paid to perform the valuation.

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). This is why the amount paid to obtain the value of the Respondent’s work cannot be awarded to the Claimant. 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 is not soliciting another contractor to complete the contract, the claimant’s actual loss

shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

COMAR 09.08.03.03B(3)(b).

COMAR 09.08.03.03B(3)(b), as set forth above, establishes the methods for determining actual loss when the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract. In this case, the Claimant's actual loss shall be the amount which the Claimant paid to the original contractor less the value of any materials or services provided by the contractor.

Thus, the calculations under COMAR 09.08.03.03B(3)(b) establish the Claimant's loss as follows:

Paid to Respondent under contract	\$12,450.00
Value of materials or services provided by the Respondent	- \$3,500.00
	<u>\$8,950.00</u>

Accordingly, the Claimant's award from the Fund is \$8,950.00.

PROPOSED CONCLUSION OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant has sustained an actual loss in the amount of \$8,950.00 compensable by the MHIC Fund as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(b).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$8,950.00; and

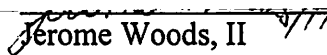
ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed

under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;⁴ and

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

Signature on File

October 25, 2018
Date Decision Issued


Jerome Woods, II
Administrative Law Judge

JW/cj
#176507

⁴ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 20th day of November, 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.

Jeffrey Ross

***Jeffrey Ross
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION