

IN THE MATTER OF THE CLAIM	* BEFORE JOHN T. HENDERSON, JR.,
OF MANOUCHEHR FARKHONDEH	* ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF	*
MONICA STANLEY, T/A	*
TRIPLE A PAVING &	*
SEALCOATING, LLC	* OAH No.: DLR-HIC-02-17-09284
RESPONDENT	* MHIC NO.: 17 (90) 263
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**RECOMMENDED DECISION**

STATEMENT OF THE CASE  
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RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On November 18, 2016, Manouchehr Farkhondeh (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for the reimbursement of \$4,200.00 of actual losses allegedly suffered because of a home improvement contract with Monica Stanley, t/a Triple A Paving & Sealcoating, LLC (Respondent).

On April 17, 2017, the Office of Administrative Hearings (OAH) mailed notice of the hearing to the Respondent by certified and regular mail to her address of record on file with the MHIC. Md. Code Ann., Bus. Reg. § 8-312(d) (2015).<sup>1</sup> The notice advised the Respondent of the time, place, and date of the hearing. On May 9, 2017, the United States Postal Service (USPS) returned the mail addressed to the Respondent as being unclaimed.

On June 13, 2017, the OAH clerk received from the Respondent the following email:

From: Monica Stanley <[monica1798@gmail.com](mailto:monica1798@gmail.com)>  
Date: Tue, Jun 13, 2017 at 9:45 AM  
Subject: Case # DLR-HIC -02-17-09284  
To: [sandra.sykes@maryland.gov](mailto:sandra.sykes@maryland.gov)

Sent from my iPhone. Hi its Monica Stanley from triple a paving, sorry for the late notice my uncle past away last night out of town. I would like to reschedule please?

The Respondent sent the email from her iPhone fifteen minutes before the start of the scheduled hearing. I treated the email as a request for a postponement, which I denied, because it was requested too late with no documentation and there was not good cause. In addition, there was no emergency articulated requiring the Respondent's immediate attention. COMAR 28.02.01.16.

Since the Respondent apparently had notice of the hearing as evidenced from the email, I determined that the Respondent was properly notified but failed to appear for the hearing. As a result, I found it appropriate to proceed in the Respondent's absence.

I held the hearing on June 13, 2017, at the OAH, 10400 Connecticut Avenue, Suite 208, Kensington, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(a) and (e) (2015). The Claimant appeared and represented himself. The Respondent did not appear.

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<sup>1</sup> "The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission." Md. Code Ann., Bus. Reg. § 8-312(d) (2015).

Andrew J. Brouwer, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the DLLR, 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. 2016); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 09.08.02; COMAR 28.02.01.

### ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund because of the Respondent's acts or omissions?
2. If so, how much is the Claimant entitled to receive from the Fund?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted exhibits on behalf of the Claimant as follows:

- Cl. Ex. 1 MHIC Hearing Order, dated March 23, 2017
- Cl. Ex. 2 Contract between Claimant and Respondent, dated August 8, 2016
- Cl. Ex. 3 Statement of Claimant, undated
- Cl. Ex. 4 Complaint form, dated August 28, 2016
- Cl. Ex. 5 Claimant's check number 1081 payable to Steve Stanley, in the sum of \$1,300.00, dated August 11, 2016
- Cl. Ex. 6 Claimant's check number 1080 payable to the Respondent, in the sum of \$700.00, dated August 11, 2016
- Cl. Ex. 7 Work Agreement proposal from Keith Allison dated November 5, 2016
- Cl. Ex. 8 Four photographs of Claimant's driveway taken August 11, 2016; two photographs of Claimant's driveway taken August 12, 2016; photograph of Claimant's driveway taken April 2017; five photographs of Claimant's driveway taken May 2017; three photographs of Claimant's driveway taken June 2017

I admitted exhibits on behalf of the Fund as follows:

- GF Ex. 1 MHIC Hearing Order, dated March 23, 2017
- GF Ex. 2 Notice of Hearing from the OAH, dated April 17, 2017
- GF Ex. 3 Letter from HIC to the Respondent, dated November 28, 2016 with Claim form, dated November 6, 2016
- GF Ex. 4 The Respondent's DLLR license history, as of June 2, 2017
- GF Ex. 5 Affidavit of Kevin Niebuhr, Investigator, dated June 8, 2017
- GF Ex. 6 DLLR license history for Keith Allison, as of June 2, 2017

Testimony

The Claimant testified in his behalf. The Fund did not present any witness testimony.

**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 contractor's license number 67243 and was trading as Triple A Paving & Sealcoating, LLC.
2. The Claimant is not related to the Respondent.
3. The Claimant's property subject to this matter is located at 14413 Kings Crossing Boulevard, Boyds, Maryland 20841 (the Property).
4. The Property is the Claimant's primary residence.
5. The Claimant has not filed other claims against the Respondent outside of these proceedings.
6. On August 8, 2016, the Claimant and the Respondent entered into an agreement (the Contract) whereby the Respondent agreed to widen the Property's asphalt driveway.

7. On August 8, 2016, the Claimant met with Steve Stanley,<sup>2</sup> who held himself out as an agent of the Respondent's company and who negotiated the terms of the Contract with the Respondent. The Claimant signed the Contract with the Respondent.

8. The scope of work agreed upon is summarized as follows:

1. Install approximately 275 square feet of driveway
2. Excavate and prepare area
3. Install four inches of binder base
4. Apply weed killer to vegetation
5. Pave area with two and one-half inches of machine laid asphalt and roll for compaction; asphalt will be laid in nine and one-half courses grade of fine asphalt

9. The fee for the scope of work agreed upon pursuant to the Contract was \$2,000.00.

10. The payment terms required an initial deposit of \$700.00 and the balance of \$1,300.00 due upon completion.

11. The Contract required that checks for the payments were to be made payable to Monica Stanley.

12. On August 11, 2016, the Claimant paid the \$700.00 deposit with his check number 1080. The check was made payable to Triple A Paving.

13. Also on August 11, 2016, the Claimant paid the balance of \$1,300.00 with his check number 1081. That check was made payable to Steve Stanley.

14. The top layer of asphalt laid by the Respondent included coarse rocks as large as one inch.

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<sup>2</sup> Steve Stanley was the only person the Claimant dealt with from the Respondent's company. The Claimant presumed that Steve Stanley was the husband of Monica Stanley who is listed as the principal owner of the Respondent's company. The Respondent did not provide any evidence to refute Steve Stanley was an agent or employee of the Respondent.

15. The Respondent used coarse asphalt as the base layer instead of crushed stones and installed a fine layer on top of the base layer.

16. The driveway as constructed by the Respondent resulted in the rock material being too big on the top layer, which created gaps in the surface and resulted in loose rock debris.

17. The driveway as constructed by the Respondent was not aesthetically pleasing.

18. The Respondent did not make any good faith efforts to correct or repair the driveway construction.

19. On November 4, 2016, the Claimant received from Keith Allison (Allison) a proposal to repair the driveway for the sum of \$4,200.00.

20. Allison did not do the repair work as of the date of the hearing.

21. The Claimant did not contract with another contractor to repair the project.

### DISCUSSION

In 1985, the Maryland General Assembly enacted legislation that first established the Fund. By this means, the legislature sought to create a readily available reserve of money from which homeowners could seek relief for actual losses sustained because of an unworkmanlike, inadequate, or incomplete home improvement performed by a licensed home improvement contractor. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411 (2015).<sup>3</sup> Under this statutory scheme, licensed contractors are assessed fees, which subsidize the Fund. Homeowners who sustain losses by the actions of licensed contractors may seek reimbursement for their “actual losses” from this pool of money, subject to a maximum of the lesser of \$20,000.00 or the amount paid by or on behalf of the claimant to the contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(1) and (5). A homeowner is authorized to recover from the Fund when he or she sustains an actual loss

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<sup>3</sup> Unless otherwise indicated, all references are to the 2015 version.

that results from an act or omission by a licensed contractor. Md. Code Ann., Bus. Reg. § 8-405(a). When the Fund reimburses a homeowner as a result of an actual loss caused by a licensed contractor, the responsible contractor is obligated to reimburse the Fund. Md. Code Ann., Bus. Reg. § 8-410. The MHIC may suspend the license of any such contractor until he or she reimburses the Fund in full, with annual interest as set by law. Md. Code Ann., Bus. Reg. § 8-411(a).

Recovery against the Fund is based on “actual loss,” as defined by statute and regulation. “[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. “By employing the word ‘means,’ as opposed to ‘includes,’ the legislature intended to limit the scope of ‘actual loss’ to the items listed in section 8-401.” *Brzowski v. Md. Home Improvement Comm’n*, 114 Md. App. 615, 629 (1997). The Fund may only compensate claimants for actual losses incurred as a result of misconduct by a licensed contractor. COMAR 09.08.03.03B(2). At a hearing on a claim, the Claimant has the burden of proving the validity of the 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).

There is no dispute that the Respondent held a valid contractor’s license in 2016 when he entered into the Contract with the Claimant. Md. Code Ann., Bus. Reg. § 8-405(a). There is no dispute that the Claimant is the owner of the subject property and that there is no procedural impediment barring him from recovering from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a),

(f). The next issue is whether the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement due to misconduct, and if so, whether the Respondent made good faith efforts to resolve the claim. A claim may be denied if the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim. Md. Code Ann., Bus. Reg. § 8-405(d). For the following reasons, I find that the Claimant has proven eligibility for compensation and has not unreasonably rejected good faith efforts by the Respondent to resolve the claim.

On August 8, 2016, the Respondent agreed to widen the Claimant's asphalt driveway. Among other things as identified within findings of fact eight, the Respondent agreed to pave the driveway area with two and one-half inches of machine laid asphalt. In addition, he was to roll the material for compaction and the top layer was to be applied with nine and one-half inch course grade of fine asphalt.

The Claimant testified that Steve Stanley told him that his Bobcat<sup>4</sup> front loader was with the mechanic for repairs, so the separation of the coarse material from the fine material would be done by laborers with hand shovels. The Claimant observed two piles of asphalt material on the Respondent's truck; one was big rock to be used for the bottom layer and the second was fine grain rock for the top layer. According to the Claimant, the truck hauling the material deposited the material onto the ground at the same time resulting in the mixing of the two materials, causing the Claimant to have concern for the quality of the final product.

The Claimant's photographs admitted into evidence show that the finished driveway surface had exposed large rock pieces as big as one and one-half inches. There were holes around the rock where the material degraded and was loose.

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<sup>4</sup> Bobcat is a brand name for a front-end material loader.



The Claimant testified that he complained to Steven Stanley on the telephone, who replied to him that it was "not [his] problem" that the driveway as laid began to degrade. He blamed the problem on the supplier of the material.

The Claimant made further attempts to have Steven Stanley return to his home and view the driveway. Steven Stanley never responded to the Claimant's voicemail or his requests to return and fix the problem with the driveway.

The Claimant testified that he sought another contractor, Allison, to fix the problem created by the Respondent. Allison provided a proposal to redo the driveway for the sum of \$4,200.00. As of the date of the hearing, the Claimant did not have the work done by Allison, although he testified he planned to use Allison after the Fund's decision.

The Fund argued that the credible evidence shows that the Claimant's driveway was not constructed by the Respondent in a workmanlike manner and that the materials used were inadequate. The evidence shows that the size of the rock material used was too big, resulting in gaps, causing loose material; and that the rocks were coming loose as the driveway was being used.

The Fund argued that Steven Stanley seemingly agreed, according to the testimony of the Claimant, that the rock sizes were too big for the top layer; and that Stanley blamed the loss of the Bobcat as one reason he could not sort the different size rock adequately. Again, according to the Claimant, he also blamed the supplier of the rock material.

The Fund further argued that the contract spoke to different rock size materials and the Claimant has shown the large rock material was to form the base layer and the fine grade rock material was to form the top layer, after compaction, forming a smooth surface.

Finally, the Fund argued there is no issue of good faith efforts to repair or replace the work by the Respondent, as the Claimant was not able to get the Respondent to communicate

with him about repairing or replacing the driveway. The Fund recommended an award of \$2,000.00 to the Claimant.

I do find that by failing to properly construct the driveway and separate the two different rock materials before applying the correct material as a base layer and top layer, the Respondent did an unworkmanlike home improvement for which he was contracted. Thus, the misconduct in this case lies in his performing the agreed upon work in an unworkmanlike manner. The Claimant sustained an actual monetary loss. He is eligible for compensation from the Fund. I now turn to the amount of the award, if any.

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 offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3) sets forth the various formulas for determining an "actual loss." According to the Fund, and I agree, the appropriate formula is the following:

- (3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:
  - ...
  - (c) 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.

Using the formula in COMAR 09.08.03.03B(3)(c), the following calculations apply:

	\$2,000.00	Payment made to the Respondent by Claimant under the Contract
Plus	<u>\$4,200.00</u>	The amount to pay Allison to redo the home improvement
Total	\$6,200.00	
Less	<u>\$2,000.00</u>	The original contract price
	\$4,200.00	To be considered as actual loss

The fund may not pay a Claimant an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed. Md. Code Ann., Bus. Reg. § 8-405(e)(1) and (5). The Claimant has an “actual loss” of \$2,000.00 because he paid the Respondent only \$2,000.00.

### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual loss of \$2,000.00 as a result of the Respondent’s acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(e)(1) and (5) (2015); COMAR 09.08.03.03B(3)(b).

### **RECOMMENDED ORDER**

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

**ORDER** that the Claimant sustained an actual loss; and

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$2,000.00; and

**ORDER** that the Respondent is ineligible for a Maryland Home Improvement Commission license until he reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent as set by the Maryland Home Improvement Commission;<sup>5</sup> and

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<sup>5</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**

August 22, 2017

Date Issued

JTH/emh  
#169523

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John T. Henderson, Jr.  
Administrative Law Judge

(JTH)

**PROPOSED ORDER**

***WHEREFORE, this 10<sup>th</sup> 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.***

***Bruce Quackenbush***

***Bruce Quackenbush  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**