



DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
MARYLAND HOME IMPROVEMENT COMMISSION
500 N. Calvert Street, Room 306
Baltimore, MD 21202-3651

October 9, 2018

Stephanie Halloran
10812 Lorain Avenue
Silver Spring, MD 20901

RE: Complaint/Claim: 17 (05) 289

Dear Stephanie Halloran:

The Maryland Home Improvement Commission has completed adjudication of a total of 11 Guaranty Fund claims against contractor Richard Stearns t/a Honest Exteriors. The awards in those 11 cases total \$106,008.14.

As you were previously advised, under the Maryland Home Improvement Law, the Commission may not pay a total of more than \$100,000.00 in Guaranty Fund Claims against any one contractor. Because the total of the approved claims exceeds the \$100,000.00 limit, it is necessary for the Commission to pay the claims on a "pro-rated" percentage basis. Based on the total award amount of \$106,008.14 and the \$100,000.00 payment limit under the law, the Commission may pay 93.85% of each approved claim award.

You will receive a *pro-rated* payment from the Guaranty Fund totaling 93.85% of your approved claim award. Therefore, you will receive a payment in the amount of \$14,351.18.

Please allow six (6) to eight (8) weeks from the date of this letter to receive the award from the State Treasury. If you have any questions concerning this matter, please feel free to contact this office at 410-230-6178.

Very truly yours,

Keyonna Penick

Keyonna Penick
Panel Specialist
Maryland Home Improvement Commission

IN THE MATTER OF THE CLAIM
OF STEPHANIE HALLORAN, et al.
CLAIMANTS
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF RICHARD A.
STEARNS,
T/A HONEST EXTERIORS,
RESPONDENT

* BEFORE STUART G. BRESLOW,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-17-15615
* MHIC No.: 17 (05) 289
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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 November 6, 2016, Stephanie Halloran (Claimant)¹ filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$15,291.00 in alleged actual losses suffered as a result of a home improvement contract with Richard A. Stearns, trading as Honest Exteriors (Respondent).

¹ The Claimant's husband, Joel Sparks, who, along with the Claimant, signed the home improvement contract with the Respondent, was added as an additional Claimant at the hearing without objection of the Assistant Attorney General representing the Maryland Home Improvement Commission Guaranty Fund.

I held a hearing on August 7, 2017, at the Office of Administrative Hearings (OAH) in Kensington, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant, Joel Sparks, appeared on his own behalf. Andrew Brouwer, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. After waiting twenty minutes for the Respondent or someone authorized to represent him to appear, I proceeded with the hearing without the Respondent. Code of Maryland Regulations (COMAR) 28.02.01.23A.

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. 2017); COMAR 09.01.03; COMAR 28.02.01.

ISSUES

1. Did the Claimants 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 Claimants' behalf:

- Claimant Ex. 1 Proposal, dated November 14, 2014
- Claimant Ex. 2 Check number 1500, dated December 17, 2014 in the amount of \$15,291.00 payable to Respondent
- Claimant Ex. 3 Email from Claimant Joel Sparks to Respondent, dated June 23, 2015
- Claimant Ex. 4 Email from Respondent to Claimant Halloran, dated March 22, 2016
- Claimant Ex. 5 Letter from Claimants to Consumer Protection Division, dated August 4, 2015

Claimant Ex. 6 Gmail call messages to William Watts from Claimant Joel Sparks, from June 23, 2015 through August 3, 2015

Claimant Ex. 7 Email from Claimant Sparks to William Watts and Respondent, dated July 25, 2015

Claimant Ex. 8 Signed contract between Claimants and Respondent, dated December 17, 2014²

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 Hearing Order, dated March 23, 2017

Fund Ex. 2 Notice of Hearing, dated May 23, 2017

Fund Ex. 3 Letter from Kevin Niebuhr, Investigator, MHIC to Respondent with attached Claim Form, dated December 9, 2016

Fund Ex. 4 Licensing Record for Respondent, current expiration date July 29, 2017

Testimony

The Claimant, Joel Sparks, testified in his own behalf. He was the only witness.

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 103677.

2. On or about November 14, 2014, the Respondent's Director, Project Management, William Watts, and the Respondent presented the Claimants with a contract proposal to construct a four season room onto the existing deck (Project) of their residence located at 10812 Lorain Avenue, Silver Spring, Maryland.

3. The price to complete the Project was \$34,875.00.

4. The Claimants and the Respondent executed a contract based on the terms of the proposal on December 17, 2014 (Contract).

² The record was left open until August 11, 2017 to give the Claimant an opportunity to provide a copy of the signed proposal. This document was submitted on August 9, 2017 and the record was closed on that date.

5. Along with the Contract, the Claimants provided the Respondent with a check in the amount of \$15,291.00 as a deposit for the Respondent to begin work on the Project. The check was deposited to the Respondent's account. The Project was anticipated to be completed within ten weeks from the anticipated start date in February 2015.

6. The Respondent never began work on the Project despite repeated requests from the Claimants asking the Respondent to begin work.

7. The Claimants cancelled the Contract on June 23, 2015 by notifying the Respondent by email that they no longer planned to go forward with the Project due to the delay in the construction start by the Respondent.

8. On March 22, 2016, the Claimant, Stephanie Halloran, asked the Respondent to provide an update on the status of the Project and the Respondent responded that same day notifying her that due to financial difficulties, the Respondent would not be able to complete the Project and acknowledging that he would refund the deposit to her.

9. The Claimant, Joel Sparks, repeatedly left messages for the Respondent and Mr. Watts to return the deposit, but neither the Respondent nor Mr. Watts returned the Claimant's calls.

10. The deposit in the amount of \$15,291.00 was never returned to the Claimants and the Respondent performed no work on the Project.

11. The Claimants are not related to the Respondent; nor is either Claimant an employee, officer, or partner of the Respondent; or an immediate relative of an employee, officer, or partner of the Respondent.

12. The Claimants own the property where the Contract was to be performed, which is their primary residence. Their residence is the only real property owned by them in Maryland.

DISCUSSION

In this case, the Claimants have the burden of proving the validity of their 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);³ *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 Claimants have proven eligibility for compensation.

The Respondent is not currently licensed, but was a licensed home improvement contractor at the time he entered into the Contract with the Claimants.

The Respondent took a \$15,291.00 deposit from the Claimants but performed no work under the Contract. The uncontroverted evidence demonstrates that on December 17, 2014, the Claimants and the Respondent entered into a contract whereby the Respondent agreed to construct a four season room on the existing deck of the Claimants' house, located on Lorain Avenue in Silver Spring, Maryland. On the day the Contract was signed, the Claimants paid the

³ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

Respondent an initial deposit payment of \$15,291.00. However, although the Claimants diligently contacted the Respondent about beginning work under the Contract, the Respondent never began work and ultimately the Claimants cancelled the Contract. The Fund did not oppose an award from the Fund. I thus find that the Claimants are eligible for compensation from the Fund.

Having found eligibility for compensation I now turn to the amount of the award to which the Claimants are 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 abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract." COMAR 09.08.03.03B(3)(a). For the reasons mentioned above, in this case that amount was \$15,291.00.

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 Claimants to the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015). In this case, the Respondent abandoned the Contract without doing any work. Accordingly, the Claimants are entitled to reimbursement from the Fund in the amount of \$15,291.00, the amount the Claimants actually paid to the Respondent. *Id.* § 8-405(e)(5); COMAR 09.08.03.03B(3)(a).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$15,291.00 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)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimants \$15,291.00; 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 as set by the Maryland Home Improvement Commission; and⁴

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

Signature on File

October 13, 2017
Date Decision Issued

Stuart G. Breslow
Administrative Law Judge

SGB/cj
#169367

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

PROPOSED ORDER

WHEREFORE, this 3rd day of November, 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.

J. Jean White

***I. Jean White
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION