IN THE MATTER OF THE CLAIM OF ROBIN PRINTIS	*	**MARYLAND HOME IMPROVEMENT COMMISSION**
	*	
AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMMISSIONS OF KIRK LAFONTAINE t/a CHAMPION QUALITY CONSTRUCTION, LLC	*	**MHIC CASE NO. 17(75)627** **OAH CASE NO. DLR-HIC-02-17-32249**
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FINAL ORDER

This matter was originally heard before an Administrative Law Judge ("ALJ") of the Office of Administrative Hearings ("OAH") on January 10, 2018. Following the evidentiary hearing, the ALJ issued a Recommended Decision on March 27, 2018, concluding that the homeowner Robin Printis ("Claimant") sustained an actual and compensable loss of $15,125.00 as a result of the acts and omissions of Kirk LaFontaine t/a Champion Quality Construction, LLC ("Contractor"). *ALJ Recommended Decision* p. 11. In a Proposed Order dated May 7, 2018, the Maryland Home Improvement Commission ("MHIC") affirmed the Recommended Decision of the ALJ to award the Claimant $15,125.00 from the MHIC Guaranty Fund. The Contractor subsequently filed exceptions of the MHIC Proposed Order.

On July 19, 2018, a hearing on the exceptions filed in the above-captioned matter was held before a three-member panel ("Panel") of the MHIC. The Claimant and the Contractor were present without counsel. Hope Sachs, Assistant Attorney General, appeared at the exceptions hearing to present evidence on behalf of the MHIC. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ, and therefore the Panel's review was limited to the ALJ's recommended decision and the exhibits introduced into evidence at the OAH hearing. COMAR 09.01.03.09(G) - (I).

In his written exceptions, the Contractor argues that he intended to complete the work,

but that the "sole reason" he has not returned to complete the job was that he believed that a representative of DLLR directed him to wait for further instruction after the Claimant filed her complaint. The Contractor has not pointed to any evidence admitted at the hearing before the ALJ that supports his contention that he was directed by a DLLR investigator to not complete the job, nor has he provided a transcript of the hearing below showing that he testified to that effect at the hearing before the ALJ. Moreover, the ALJ found that the Contractor stopped work on October 18, 2016 and made no effort to remedy the incomplete work, "despite intermittent communication between the Claimant and the [Contractor] via email, and requests by the Claimant to have the [Contractor] complete the project." *ALJ Recommended Decision* p. 5. Therefore, the ALJ found that the Contractor abandoned the project in October 2016, which is prior to the Contractor's communication with a DLLR investigator in December 2016 where he claims he was told to wait until further instruction.

The Contractor also argues in his written exceptions that the delays in the job were the fault of the Claimant and not his company. The ALJ, however, did not base his recommended award on the delays in the work, but rather found that it was the Contractor's failure to complete the job in the end that was the basis for the award, stating that "[r]egardless of the changes the Claimant was requesting on the project, or the perceived difficulty in accommodating the requested changes, it was not a legitimate basis to abandon the project altogether, which is what the Respondent did." *ALJ Recommended Decision* p. 8.

The Panel agrees with the ALJ's analysis and finds no error in his decision. The ALJ's decision is thorough, supported by the evidence in the record and correct as a matter of law. Having considered the parties' arguments, the exhibits submitted into evidence before OAH and the ALJ's Recommended Decision, it is this **15th** day of **October 2018 ORDERED:**

A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;

B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**; AND

C. That the Recommended Decision and Order of the Administrative Law Judge is **AFFIRMED;**

D. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Jeffrey Ross
Chairperson –Panel
Maryland Home Improvement Commission

IN THE MATTER OF THE CLAIM	*	**BEFORE STEPHEN W. THIBODEAU,**
OF ROBIN PRINTIS,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF KIRK LAFONTAINE,	*	
T/A CHAMPION QUALITY	*	**OAH No.: DLR-HIC-02-17-32249**
CONSTRUCTION, LLC,	*	**MHIC No.: 17 (75) 627**
RESPONDENT	*	

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PROPOSED DECISION

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STATEMENT OF THE CASE

On January 26, 2017, Robin Printis (Claimant) filed a claim with the Maryland Home Improvement Commission's (MHIC) Guaranty Fund (Fund) for reimbursement of $15,125.00 in actual losses allegedly suffered as a result of a home improvement contract with Kirk LaFontaine, trading as Champion Quality Construction, LLC (Respondent).

I held a hearing on January 10, 2018 at the Prince George's County, Maryland Government Center in Largo, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented herself. Jessica B. Kaufman, Assistant Attorney General, Department of

Labor, Licensing, and Regulation (Department), represented the Fund. The Respondent represented himself. The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); Code of Maryland Regulations (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:

Clmt. Ex. 1 - Contract between the Claimant and the Respondent, dated June 10, 2016

Clmt. Ex. 2 - Summary and notes regarding the Contract, written by the Claimant, undated

Clmt. Ex. 3 - Photo of the rear of the Claimant's home, taken by the Claimant, January 2017

Clmt. Ex. 4 - Estimate by Long Fence for work on the Claimant's home, dated November 22, 2016

Clmt. Ex. 5 - Permit for Contract work, issued by Prince George's County on August 22, 2016

Clmt. Ex. 6 - Notes from Prince George's County Inspector Selvester Colvert, undated; Survey of the Claimant's home dated August 22, 2016

Clmt. Ex. 7 - Check for $2,500.00 written by the Claimant to the Respondent, dated June 10, 2016; Check for $5,400.00 written by the Claimant to the Respondent, dated August 22, 2016; Check for $5,000.00 written by the Claimant to the Respondent, dated August 22, 2016; Check for $1,575.00 written by the Claimant to the Respondent, posted September 9, 2016; Check for $650.00 written by the Claimant to the Respondent, dated September 28, 2016

Clmt. Ex. 8 - Photo of the Claimant's deck, taken by the Claimant, January 10, 2018

Clmt. Ex. 9 - Receipt from the Prince George's County Department of Environmental Resources for $335.50 for fees related to the Contract, dated August 22, 2016

Clmt. Ex. 10 - MHIC Complaint Form, completed by the Claimant on November 17, 2016

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

Resp. Ex. 1 - Notice of Dismissal of the case of *Robin S. Printis v. Kirk LaFontaine*, District Court of Maryland for Prince George's County, Civil Case Number 0502-0015414-2017, on July 6, 2017, dated July 10, 2017

Resp. Ex. 2 - Series of photos of the Claimant's home, taken January 8, 2018 by Ryan Devine, employee of the Respondent, which included the following:

Ex. 2a View of deck area in center of deck
Ex. 2b View of gazebo area
Ex. 2c Side shot of the gazebo and deck area
Ex. 2d Full view of the decking area
Ex. 2e Wide shot of the whole area, including the deck and gazebo

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Notice of Hearing, dated October 24, 2017

Fund Ex. 2 - Transmittal and Hearing Order, dated October 2, 2017; Fund Claim form completed by the Claimant, January 26, 2017

Fund Ex. 3 - Department MHIC I.D. Registration and Database information regarding the Respondent, dated January 2, 2018

Fund Ex. 4 - Letter from MHIC to the Respondent dated February 6, 2017

Testimony

The Claimant testified in her own behalf.

The Respondent testified in his own behalf and presented the testimony of Collin Corkum, business partner of the Respondent, and Ryan Devine, employee of the Respondent.

The Fund presented no 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 license number 4846689.

2. On June 10, 2016, the Claimant and the Respondent entered into a contract to install 550 square feet of Trex[1] decking at the Claimant's home in Cheltenham, Prince George's County, Maryland. In addition, the parties agreed that the Respondent would install white vinyl railings with block spindles; a twelve feet by twelve feet vinyl gazebo with a screen, pre-wired for electricity; and a hot tub deck for a six person hot tub. The contract stated that work would begin "24 to 34 days" from the date of the contract, "weather permitting." The completion date was to be August 15, 2016. The original agreed-upon contract price was $19,950.00. Per the contract's terms, a down payment of $2,500.00 was to be made at the time of the contract, with an additional payment of $10,450.00 made at the time of the Respondent's arrival for work, and an additional $7,000.00 made at completion of the contract.

3. The Claimant made a down payment of $2,500.00 on June 10, 2016.

4. Despite an estimated July 2016 start date, work on the project started August 22, 2016. This was due to a delay in approvals from the Claimant's homeowner's association (HOA) as well as a delay in obtaining a building permit from Prince George's County (County).

5. The County issued its permit for the project on August 22, 2016. The permit did not contain approval for a gazebo, but it did approve the deck plans.

[1] "Trex" is a brand name for a type of deck board material.

6. The Claimant paid the Respondent $10,400.00[2] on August 22, 2016 via separate checks for $5,400.00 and $5,000.00.

7. On or around September 9, 2016, the Claimant and the Respondent agreed to a change order to the original contract to expand the deck near the hot tub area from eight feet by eight feet to nine-and-a-half feet by twelve feet. The Claimant paid the Respondent $1,575.00 for the change.

8. The Claimant paid the Respondent an additional $650.00 on September 28, 2016 for new Trex porch board for the decking for the gazebo, based on another change to the contract.

9. Overall progress on the project was slow. In some cases, this was due to changes the Claimant made after seeing the Trex boarding on the deck and not being satisfied with the look of the deck. In other cases, delays were due to the Respondent only working a few hours at a time, a few days a week in October 2016.

10. The Respondent stopped work on the project on October 18, 2016. At the time the Respondent stopped work on the project, the deck and gazebo were incomplete. Portions of the deck had not been installed and building materials, including boards, were left on the Claimant's property without being installed and remain there to this day. The only work done on the gazebo was the installation of the columns.

11. Since leaving the project on October 18, 2016, despite intermittent communication between the Claimant and Respondent via email, and requests by the Claimant to have the Respondent complete the project, the Respondent made no effort to remedy the incomplete work.

[2] No explanation was provided as to why the amount paid ($10,400.00) was $50.00 less than the amount for the initial payment due in the contract ($10,450.00).

12. On November 22, 2016, the Claimant solicited an estimate from Long Fence Company, Inc. (Long Fence) to remedy the incomplete project and provide for the deck and gazebo for the Claimant. Long Fence estimated the cost of the project to be $26,995.00.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of her claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); Md. Code Ann., Bus. Reg. 8-407(e) (2015); 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 Claimant has proven eligibility for compensation.

The Respondent's Incomplete Work

There is no dispute that the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. In order to determine whether the Claimant is eligible for compensation from the Fund, I must decide whether the Respondent

[3] Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume of the Maryland Annotated Code.

performed an unworkmanlike, inadequate or incomplete home improvement. For the reasons stated below, I find the Respondent performed an incomplete home improvement.

There is little in dispute regarding the issue of the Respondent's incomplete work. The Claimant contracted with the Respondent for the construction of a deck and a gazebo at her home. The contract was executed June 10, 2016, with the work to begin in July 2016 and an estimated completion date of August 15, 2016. Construction did not begin until August 22, 2016, however, due to delays involving permit approvals and approvals from the Claimant's HOA. Given the estimated completion time, and the August 22nd start date, the project should have been completed in late September or early October 2016.

Instead, the Respondent performed no work on the project after October 18, 2016. The deck and gazebo were unfinished at that time and remain unfinished. After October 18, 2016, the Respondent's last day of work on the contract, the Respondent never returned to complete the work on the deck and gazebo. Photos taken January 2018, introduced into evidence by both the Claimant and the Respondent, showed a deck at the Claimant's home that was partially completed, but still required a substantial amount of work to complete, including several areas of the deck that had no boards. (Clmt. Ex. 8 and Resp. Exs. 2a – 2e). Loose boards that needed to be installed or otherwise removed remained strewn about the deck. The gazebo area had four columns installed, but nothing else. Simply stated, well over a year from the last work on the contract, the project remains incomplete.

There is a dispute between the Claimant and the Respondent regarding what caused the delays, and ultimately, why the project was not finished. The Claimant testified that it was due to the Respondent only showing up a few days a week to do work and ultimately not showing up at all; the Respondent, through the testimony of Collin Corkum, claims it was due to unreasonable demands by the Claimant to make constant changes to the project, in particular

because of the Claimant's dissatisfaction with the look of the Trex boarding as it was installed on the deck.

Ryan Devine, a witness for the Respondent who worked on the contract, confirmed both the Claimant's and the Respondent's positions regarding the delays. Mr. Devine testified that beginning in October 2016, he would show up to work on the project only a couple of times a week on a Monday and Friday; for a period prior to October 2016, he worked on the project five days a week. Mr. Devine testified he would only work when Mr. Corkum told him to report to the Claimant's home. Mr. Devine's understanding of why he was working only a few days a week in October 2016 was based on Mr. Corkum telling him that the Claimant was constantly changing the project and they were waiting on approvals from the Claimant for certain changes.

Regardless of the changes the Claimant was requesting on the project, or the perceived difficulty in accommodating the requested changes, it was not a legitimate basis to abandon the project altogether, which is what the Respondent did. The Respondent made no good faith efforts to complete the project. Even after the last day of work on October 18, 2016, the Claimant communicated with the Respondent sporadically for about a month in an attempt to get the Respondent to complete the project. The Respondent never did, and was never prevented by the Claimant from completing the project. Indeed, the Respondent apologized to the Claimant at the hearing for the incomplete work. As such, I find that the Respondent performed work resulting in an incomplete home improvement.

The Claimant's Eligibility 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. 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. COMAR 09.08.03.03B(3).

In this case, the Respondent performed some work under the contract, and the Claimant intends to retain other contractors 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 made the following payments on the contract to the Respondent:

- $2,500.00 on June 10, 2016
- $5,400.00 on August 22, 2016
- $5,000.00 on August 22, 2016
- $1,575.00 on September 9, 2016
- $650.00 on September 28, 2016

Thus, the total payment the Claimant made to the Respondent was $15,125.00 ($2,500.00 + $5,400.00 + $5,000.00 + $1,575.00 + $650.00 = $15,125.00).

Following the Respondent's abandonment of the contract, the Claimant solicited estimates for the project from other contractors. She received an estimate from Long Fence, a licensed home improvement contractor in Maryland. The November 22, 2016 estimate provided for the construction of a 144 square foot Trex deck, an upgrade to the existing framing of the

deck, and a twelve foot octagon shaped white vinyl gazebo with a cupola, as well as a white vinyl railing with aluminum balusters. The estimate provided for remedying the incomplete work of the Respondent and completing the work the Claimant had originally contracted with the Respondent. The total cost of the Long Fence estimate is $26,995.00.

The Claimant and Respondent signed the contract on July 10, 2016, for a total price of $19,950.00. On September 10, 2016, the parties agreed to a change order for expansion of the deck that added an addition $1,575.00 to the contract price, and additional Trex porch board was ordered on September 28, 2016, for $650.00. Therefore, the total contract price was $22,175.00 ($19,950.00 + $1,575.00 + $650.00 = $22,175.00).

Therefore, applying the formula as provided for in COMAR 09.08.03.03B(3)(c), the Claimant's actual loss is calculated as follows:

Amount Claimant has paid to or on behalf of the contractor under the original contract		$15,125.00
Plus reasonable amount Claimant has paid or will be required to pay another contractor to repair poor work done by original contractor under the original contract and complete original contract		+$26,995.00
		$42,120.00
Minus original contract price		-$22,175.00
	Total:	$19,945.00

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. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss of $19,945.00 exceeds the amount paid to the Respondent. Therefore, the Claimant's recovery is limited to $15,125.00, the amount paid to the Respondent. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $15,125.00 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(2), (3)(c), (4). I further conclude that the Claimant is entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a) (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $15,125.00; 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; and

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

Signature on File

March 27, 2018
Date Decision Issued

Stephen W. Thibodeau
Administrative Law Judge

SWT/dlm
#171876

PROPOSED ORDER

WHEREFORE, this 7th day of May, 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.

Joseph Tunney

Joseph Tunney

Panel B

MARYLAND HOME IMPROVEMENT COMMISSION