

IN THE MATTER OF THE CLAIM	*	BEFORE LORRAINE E. FRASER,
OF DANNA MEDLAY,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	OAH No.: DLR-HIC-02-17-18409
FOR THE ALLEGED ACTS OR	*	MHIC No.: 17 (75) 909
OMISSIONS OF RANDY E. STULL,	*	
T/A R.E. STULL CONTRACTORS,	*	
RESPONDENT	*	

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On April 17, 2017, Danna Medlay (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$9,825.00 in actual losses allegedly suffered as a result of a home improvement contract with Randy E. Stull, trading as R.E. Stull Contractors (Respondent).

I held a hearing on September 14, 2017, at the Largo Government Center in Largo, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented herself. Eric London, 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:

- Claimant 1 The Claimant's timeline of events
- Claimant 2 Three contracts between the Claimant and the Respondent, 1/2/17: remove and replace gutter and fascia on front gutter; remove and replace damaged drywall on rear wall in basement and basement windows; remove and replace patio
- Claimant 3 Checks the Claimant paid to the Respondent: \$3,000.00 on 1/13/17; \$1,125.00 on 1/11/17; \$5,700.00 on 1/3/17
- Claimant 4 Claimant's MHIC Complaint Form, 2/9/17
- Claimant 5 Two photographs of interior basement wall and window; two photographs of exterior patio area
- Claimant 6 Black and white print out of paver colors
- Claimant 7 Emails between the Claimant and the Respondent, 2/21/17-3/7/17

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

- Resp. Ex. 1 - The Respondent's response to the Claimant's claim

I admitted the following exhibits on behalf of the Fund:

- Fund 1 Notice of Hearing, 7/3/17
- Fund 2 Hearing Order, 6/9/17
- Fund 3 The Respondent's licensing history, 9/6/17
- Fund 4 The Claimant's Claim Form, 4/17/17
- Fund 5 Letter from the MHIC to the Respondent, 4/25/17
- Fund 6 Photograph of exterior patio area
- Fund 7 Photograph of exterior patio area
- Fund 8 Estimate Karma Home Designs, 3/17/17

Testimony

The Claimant testified in her own behalf and presented the testimony of Jamie Medlay, her daughter.

The Respondent testified in his own behalf and presented the testimony of Cheryl Ridenour, his wife.

The Fund did not offer any 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 number 01-86401.
2. On January 2, 2017, the Claimant and the Respondent entered into three contracts. Contract 1 was for removing and replacing damaged drywall on the rear wall and division wall between the family room and laundry room in the basement, installing a new pressure treated plate on the floor between the family room and laundry room, repairing the door between the family room and laundry room, insulating the rear wall where the drywall was replaced,

removing and replacing four basement windows, and removing and replacing two window screens on dormer windows. Contract 2 was for demolishing the concrete patio, installing patio pavers for a new patio, scraping and painting steel deck and stairs, installing drainage runoffs for front and rear downspouts, dry-locking the rear exterior wall, and repairing and painting the front concrete steps. Contract 3 was for removing and replacing the gutter and fascia on the front gutter.

3. The original agreed-upon contract prices were: \$3,500.00 for Contract 1 (basement drywall/windows), \$9,500.00 for Contract 2 (patio), and \$950.00 for Contract 3 (gutter).

4. On January 3, 2017, the Claimant paid the Respondent \$5,700.00 (\$1,250.00 toward Contract 1, \$3,500.00 toward Contract 2, and \$950.00 for Contract 3. On January 11, 2017, the Claimant paid the Respondent \$1,125.00 toward Contract 1. On January 13, 2017, the Claimant paid the Respondent \$3,000.00 toward Contract 2.

5. During the hearing, the Claimant modified her claim to the \$6,500.00 she paid the Respondent toward Contract 2 (patio).

6. The Respondent did not remove the existing concrete patio, as stated in the contract. Instead, the Respondent placed wood framing on the existing concrete. The Respondent did not install patio pavers. The Respondent power washed the rear exterior wall, but he did not paint dry-lock on the rear exterior wall. The Respondent did not install drainage runoffs for the front and rear downspouts. The Respondent did not scrape and paint the steel deck and stairs.

7. On March 8, 2017, the Prince George's County Department of Permitting, Inspections, and Enforcement issued a stop work order on the patio. The Respondent did not have a permit for the patio and downspout work and the work needed to be re-done.

8. The Respondent did not perform any work on the Claimant's home after March 8, 2017.

9. On March 17, 2017, Karma Home Designs estimated the cost of removing and replacing the patio to be \$11,000.00.

10. The Claimant's actual loss is \$8,000.00; however, she may only recover \$6,500.00 of that loss.

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); 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);¹ *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." Md. Code Ann., Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

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

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. The Respondent performed unworkmanlike, inadequate or incomplete home improvements. The Respondent hired a subcontractor to remove and replace the patio as stated in Contract 2. At some point, the subcontractor told the Claimant that it would be better to build a wood deck rather than a patio with concrete pavers. The subcontractor did not remove the existing concrete patio but simply placed wood framing on top of the concrete. On March 8, 2017, the Prince George's County Department of Permitting, Inspections, and Enforcement issued a stop work order on the patio. The inspector explained that the Respondent did not have a permit for the patio and downspout work and the work needed to be re-done. Pictures introduced into evidence show wood framing on top of concrete and a trench dug around the concrete. The Claimant testified that the pictures show the current state of the patio. The Respondent agreed that the work on the patio was incomplete. The Respondent did not return to the Claimant's home to complete the work or offer to do so after March 8, 2017. On July 20, 2017, the subcontractor texted the Claimant asking if the Claimant still wanted the subcontractor to complete the job. There was no indication that the subcontractor was acting on the Respondent's behalf in offering to complete the work or on her own behalf. Further, there was no evidence presented that the Respondent ever applied for a permit or got the stop work order lifted. Thus, I 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. 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's actual loss is calculated as follows:

Amount paid under original contract	\$6,500.00
Amount to repair the work	+11,000.00
Original contract price	<u>-9,500.00</u>
Actual loss	\$8,000.00

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. Md. Code Ann., 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 \$8,000.00 exceeds \$6,500.00, the amount she paid to the Respondent under Contract 2. Therefore, the Claimant's recovery is limited to \$6,500.00, the amount she paid to the Respondent for the patio work. Md. Code Ann., Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4). The amounts the Claimant paid to the Respondent for the work on the gutter and the interior work on the basement drywall and windows were under separate contracts and were paid for separately. Thus, the Claimant's payments under Contracts 1 and 3 cannot be used in the calculation of the Claimant's loss and recoverable amount under Contract 2.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$6,500.00 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)(c). I further conclude that the Claimant is entitled to recover \$6,500.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$6,500.00; 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;² and

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

Signature on File

December 5, 2017
Date Decision Issued

Lorraine E. Fraser
Administrative Law Judge

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#171079

² See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 25th day of January, 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