

IN THE MATTER OF THE CLAIM OF	*	BEFORE LATONYA B. DARGAN,
SELAH TIBBS-GILES,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND	*	OF ADMINISTRATIVE HEARINGS
HOME IMPROVEMENT	*	
COMMISSION GUARANTY FUND	*	
FOR THE ACTS OR OMISSIONS OF	*	
RODNEY HAMLETT,	*	
t/a BALTIMORE HOUSE OF STYLE,	*	OAH No.: DLR-HIC-02-19-18701
RESPONDENT	*	MHIC No.: 18 (90) 1220

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**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On June 27, 2018, Selah Tibbs-Giles (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$3,200.00 in actual losses allegedly suffered as a result of a home improvement contract with Rodney Hamlett, trading as Baltimore House of Style (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).<sup>1</sup> On June 4, 2019, the MHIC ordered that the Claimant should have a

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<sup>1</sup> Unless otherwise noted, all references to the Business Regulation Article of the Maryland Annotated Code are to the version contained in the 2015 Replacement Volume and 2019 Supplement.

hearing to establish her eligibility for an award from the Fund. On June 7, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on September 24, 2019 at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e). The Claimant represented herself. The Respondent represented himself. Eric B. London, Assistant Attorney General, Department of Labor (Department),<sup>2</sup> represented the Fund.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2019); Code of Maryland Regulations (COMAR) 09.01.03 and 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 the compensable loss?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits<sup>3</sup> for the Claimant:

- CL Ex. 1: Estimate, Baltimore House of Style, April 21, 2018
- CL Ex. 2: Copy of Negotiated check, Point Breeze Credit Union, May 7, 2018
- CL Ex. 4: Photocopy, Negotiated check, May 16, 2018
- CL Ex. 5: Photograph, Sanitation pipe, date unknown
- CL Ex. 6: Home Inspection Report, J&P Home Inspection Services, inspection performed on June 22, 2018
- CL Ex. 7: Photograph, Kitchen countertop, taken in late May 2018
- CL Ex. 8: Photograph, Main kitchen wall, taken in late May 2018, work in progress
- CL Ex. 9: Photograph, Main kitchen wall, taken in late May 2018, after work completed
- CL Ex. 10: Photograph, Kitchen cabinet, taken in late May 2018, after work completed
- CL Ex. 11: Photograph, Crack in the kitchen cabinet by the window, taken in late May 2018, after work completed

<sup>2</sup> On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

<sup>3</sup> Claimant Exhibit 3 was marked for identification, but it was not offered for admission into evidence.

- CL Ex. 12: Photograph, Kitchen cabinets, taken in late May 2018, work in progress
- CL Ex. 13: Photograph, Backsplash and cabinet, taken in late May 2018, work in progress
- CL Ex. 14: Photograph, Ceiling, taken in late May 2018, after work completed
- CL Ex. 15: Photograph, Cabinet base, taken in late May 2018, after work completed
- CL Ex. 16: Photograph, Countertop, taken in mid-May 2018, first phase of work
- CL Ex. 17: Photograph, Cabinet toe kicks, taken in late May 2018, after work completed

I admitted the following exhibits<sup>4</sup> for the Respondent:

- R. Ex. 2: Email exchange between the Respondent and William Banks, June 27, 2018
- R. Ex. 3: Narrative, prepared by the Respondent, June 6, 2018

I admitted the following exhibits for the Fund:

- Fund Ex. 1: OAH Notice of Hearing, issued July 23, 2019
- Fund Ex. 2: MHIC Hearing Order, issued June 4, 2019
- Fund Ex. 3: The Respondent's MHIC licensing history, printed September 23, 2019
- Fund Ex. 4: Home Improvement Claim Form, signed June 26, 2018
- Fund Ex. 5: MHIC's letter to the Respondent, June 27, 2018
- Fund Ex. 6: Photograph, Kitchen ceiling and wall, taken on May 16, 2018
- Fund Ex. 7: Photographs, Kitchen ceiling, wall, and floor, taken on May 17, 2018
- Fund Ex. 8: Photograph, Electrical outlet, taken on May 21, 2018

### Testimony

The Claimant and the Respondent both testified and they did not present other witnesses.

The Fund presented the Respondent as a witness.

### **PROPOSED FINDINGS OF FACT**

I find the following facts by a preponderance of the evidence:

1. At all relevant times, the Respondent was a home improvement contractor licensed by the MHIC.
2. Prior to April 21, 2018, the Claimant hired a different home improvement contractor to perform renovation work on the kitchen at the Claimant's primary residence on Dogwood Road in Gwynn Oak, Maryland (Property). The Claimant eventually terminated that contract and, at the recommendation of one of her co-workers, met with the Respondent about the Respondent completing the renovation.

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<sup>4</sup> Respondent Exhibit 1 was marked for identification, but it was not offered for admission into evidence.

3. On April 21, 2018, the Claimant and Respondent entered into a contract (Contract) for the Respondent to perform the following work at the Property:

- Replace an existing section of concrete floor, directly under the base of the lower cabinets, with county code-regulated flooring material
- Open section of kitchen wall to diagnose the condition of the existing kitchen plumbing drain line
- Furnish and install new sheetrock for the kitchen walls and ceiling
- Tape, sand, prime and paint new sheetrock
- Install customer-provided kitchen cabinets, countertop, sink and faucet
- Install all electrical and plumbing connections in a manner consistent with county code.

4. The Contract price was \$4,870.00, with a deposit totaling \$1,607.10 due prior to the commencement of the work.

5. The Respondent advised the Claimant he would likely be able to complete the job in approximately five business days, working approximately eight hours per day. The Claimant did not want work performed at the Property while she was not at home. As a result, the work schedule was from approximately 5:00 p.m. to 8:00 p.m.

6. There was miscommunication between the Claimant and the Respondent about the Respondent's work schedule, as the Claimant did not know, and the Respondent did not clearly convey to her at the start of the project, that the Respondent did not typically work on the weekends.

7. The Claimant paid the Respondent \$1,600.00 by check dated May 7, 2018.

8. The Respondent began work at the Property on or around May 8, 2018, but it became immediately apparent there was a problem with the plumbing, specifically, a sanitation pipe had cracks in it and required replacement.

9. The Respondent brought the issue with the sanitation pipe to the Claimant's attention, at which time the Claimant advised the Respondent she had a contract with BGE<sup>5</sup>

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<sup>5</sup> "BGE" stands for Baltimore Gas & Electric. Neither the Claimant nor the Respondent clarified for me whether the contract was with BGE, the regulated utility company, or with BGE Home, a separate entity from the utility company.

which covered the sanitation pipe and she had to determine if BGE was responsible for repairing or replacing the pipe under that contract. Eventually, after it was determined BGE was not responsible for repairing or replacing the sanitation pipe, the Claimant entered into a side contract with one of the Respondent's subcontractors for the subcontractor to repair the sanitation pipe.

10. The sanitation pipe repair occurred on or around May 15, 2018, at which time the Respondent proceeded with the remainder of the project.

11. The Claimant paid a second installment of \$1,600.00 to the Respondent via check dated May 16, 2018.

12. The Respondent performed work at the Property between May 16, 2018 and May 22, 2018.

13. As of May 22, 2018, the Respondent had completed the following work under the Contract:

- Cabinet installation
- Sheetrock replacement on kitchen wall and ceiling
- Floor repair
- Sanitation pipe (plumbing) repair.<sup>6</sup>

14. As of May 22, 2018, the Claimant was not satisfied with the work performed by the Respondent, particularly work related to the cabinets and the sheetrock installation for the kitchen wall and ceiling.

15. At some point after May 22, 2018, the Claimant refused to give the Respondent access to the Property as a result of conduct engaged in towards her by the person who referred her to the Respondent.

16. On or around June 22, 2018, the Claimant hired James T. Brown, a home inspector with J&P Home Inspection Services, to inspect the Property. Mr. Brown advised the Claimant that "corrective renovation work" to "make [the Claimant] whole" would cost approximately

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<sup>6</sup> As noted above, this repair was actually performed by one of the Respondent's subcontractors.

\$10,000.00 to \$15,000.00, but he provided no breakdown of the labor and materials costs.

(CL Ex. 6, p. 2.)

17. On June 26, 2018, the Claimant filed the instant claim with the MHIC, seeking an award in the amount of \$3,200.00.

### DISCUSSION

In this case, the Claimant has the burden of proving the validity of the claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1); 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); *see also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401. The MHIC may deny a claim if it finds 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 not proven eligibility for compensation.

There is no dispute between the parties about the following facts: (i) the Respondent was a home improvement contractor licensed by the MHIC at all stages of the project; (ii) the parties entered into the Contract on or around April 21, 2018, for the Respondent to essentially complete a job started by another contractor; (iii) under the Contract, all materials were to be provided by

the Claimant and the condition of the materials was as they were presented to the Respondent; and (iv) the last day on which the Respondent performed any work at the Property was on or around May 22, 2018. The parties' dispute centers on the quality of the work performed by the Respondent as of May 22, 2018, and whether the Claimant denied the Respondent's good faith offer to resolve the claim.

The Claimant argued she was dissatisfied with the Respondent's work with the exception of the kitchen floor modification, which she felt was done well. She asserted the sheetrock installation for the kitchen wall and ceiling was "not neat", the installation of one of the kitchen cabinets was done incorrectly because the cabinet was installed upside down, the countertop was not properly leveled, and the kitchen backsplash was "not neat." The Claimant acknowledged that she ultimately refused to give the Respondent the opportunity to return to the Property because she was being "harassed" by the co-worker who referred her to the Respondent, and she believed the Respondent and the co-worker "conspired" together to take advantage of her.

The Respondent argued the Claimant was satisfied with the job until he asked her to pay the remaining approximately \$1,600.00 balance under the Contract, at which point she began to complain about workmanship. The Respondent explained that he was initially wary of taking on the job because it involved correcting and completing work that was started by another contractor. He decided to move forward because the person who referred the Claimant to him was a good prior customer. According to the Respondent, he explained to the Claimant that in light of the work she wanted done, he should have been called on to perform a total renovation of the kitchen, but the Claimant did not have the necessary funds for a project of that scope. As a result, they reached an agreement that became the Contract, which called for work that was significantly less than a complete renovation. The Respondent further testified the project would have required a relatively short time to complete if he had been allowed to work eight-hour days for approximately

one work week. The Claimant, however, would only allow access to the Property for three hours in the evenings. The Respondent argued he did the work called for under the Contract and the work he performed was satisfactory, but to the extent certain items required touching up, the Claimant denied him the opportunity to do so.

The Fund argued against an award to the Claimant. The Fund noted that based on the pictures presented by the Claimant and included with Mr. Brown's report, there is nothing to suggest the cabinetry is inadequate or unworkmanlike, and there is also no persuasive evidence demonstrating the sheetrock on the wall was inadequately installed or is faulty in any way. The Fund further argued I should give no weight to Mr. Brown's recommended estimate of the cost to correct the Respondent's work because Mr. Brown did not provide a detailed breakdown of how and why he reached the \$10,000.00 to \$15,000.00 range for the cost of correction.

Based upon my review of the evidence, I agree with the Respondent and the Fund that the record does not demonstrate the work that was completed by the Respondent as of May 22, 2018 was inadequate or unworkmanlike. The Claimant produced several photographs, some of which depicted the project as it was in progress and some of which depicted completed work. Of the photographs which depict completed work, I am not, as a layperson, able to discern anything substandard or inadequate about the work. (CL Exs. 7, 9, 10, 14.)

At least one of the photographs, Claimant Exhibit 15, depicts the base of the lower cabinets. It is clear that the toe kicks, which the Respondent explained are the pieces of wood used to essentially camouflage the section of the floor that meets the cabinet base, were not installed. According to the Respondent, he was not aware the Claimant was in possession of the toe kicks until the hearing before me. He acknowledged that if he had known the Claimant was in possession of the toe kicks, it would have been his responsibility to install them. The Claimant did not challenge the Respondent's testimony on this point. Several of the Claimant's remaining



photographs depict the work as it was in progress and, therefore, I cannot judge whether the work was inadequate or unworkmanlike because the work was not complete.

The Claimant sought to bolster her argument that the work the Respondent did complete was inadequate or unworkmanlike through the report prepared by Mr. Brown, which was admitted as Claimant Exhibit 6. I give no weight to the report because Mr. Brown was not present as a witness to explain how he reached the conclusions contained in his report. I find this problematic, as many of his assertions about the workmanship are conclusory in nature, without any provided specifics. For example, he asserts the kitchen cabinet “was somehow damage [sic] during the install,” but he does not explain the nature of the damage and none of the photographs of the cabinets depict the alleged damage. (CL Ex. 6, pp. 1, 3, 5.) I do not find Mr. Brown’s report to be reliable on the issue of the adequacy or lack thereof of the work performed by the Respondent.

The parties disputed whether the Respondent was given a reasonable opportunity to return to the Property to correct any issues the Claimant asserted she had with his work. According to the Respondent, he was willing to come back to the Property to address any outstanding concerns the Claimant had but she declined to allow him to do so. According to the Claimant, she was initially willing to give the Respondent the opportunity to come back to the Property, but then decided against it because the co-worker who referred her to the Respondent began to act towards her in what she characterized as a harassing manner. The Claimant conceded, however, the Respondent never said anything harassing or threatening to her.

I am mindful of the Claimant’s discomfort with her co-worker, but she acknowledged the Respondent did not treat her in a harassing or threatening manner. Whatever her issues with her co-worker were, the Claimant did not act reasonably in refusing to allow the Respondent to return to the Property to evaluate and address any outstanding issues she may have had with the

work done on the project. For these reasons, I recommend against an award to the Claimant from the Fund.

**PROPOSED CONCLUSIONS OF LAW**

Based on the Proposed Findings of Fact and Discussion, I conclude as a matter of law that the Claimant did not sustain an actual monetary loss compensable by the Fund as a result of the Respondent's acts or omissions, and the Claimant is not entitled to an award from the Maryland Home Improvement Commission Guaranty Fund because she unreasonably rejected the Respondent's good faith effort to resolve the claim. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(d) (2015).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

December 16, 2019  
Date Decision Issued

LBD/cmg  
#183406

**CONFIDENTIAL**

Latonya B. Dargan  
Administrative Law Judge

**PROPOSED ORDER**

***WHEREFORE, this 29<sup>th</sup> day of January, 2020, 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***

***Chairman***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***

