

<p>IN THE MATTER OF THE CLAIM</p> <p>OF MONTY RAHMAN,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF DAVID FINAN,</p> <p>T/A WHEATON DOOR & WINDOW,</p> <p>D/B/A DECK WIZARD,</p> <p>RESPONDENT</p>	<p>* BEFORE LEIGH WALDER,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: DLR-HIC-02-19-12895</p> <p>* MHIC No.: 18 (90) 403</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On January 23, 2018, Monty Rahman (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$15,600.00 in actual losses allegedly suffered as a result of a home improvement contract with David Finan, trading as Wheaton Door & Window, doing business as Deck Wizard (Respondent).¹ Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On April 10, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

¹ The Claimant amended his Claim by filing a new claim form on April 20, 2018. The Claimant sought \$22,850.00 in his original filing. In the amended claim, the Claimant seeks \$15,600.00.

I held a hearing on July 18, 2019, at the OAH in Hunt Valley, Maryland. Bus. Reg. § 8-407(e). Eric B. London, Assistant Attorney General, Department of Labor (Department),² represented the Fund. The Claimant represented himself. After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.³

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. 2018); 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 the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

Clmt. Ex. 1 – Explanation of Complaint, undated

Clmt. Ex. 2 – Contract, dated August 24, 2015

Clmt. Ex. 3 – Authorization, dated August 24, 2015, with the following attachment:

- Loan approval, dated August 27, 2015

Clmt. Ex. 4 – Letter from the Respondent to the MHIC, dated October 18, 2017, with the following attachments:

- Data, Text, and Talk Logs, dated March 4 and 14, 2016

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

³ Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on May 5, 2019, COMAR 09.08.03.03A(2), and returned as unclaimed on June 14, 2019. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Respondent had received proper notice, and proceeded to hear the captioned matter.

Clmt. Ex. 5 – Emails from the Claimant to the Respondent, dated: May 25, 2017; June 7, 2017; and June 22, 2017

Clmt. Ex. 6 – Photographs, taken April and July 2019

Clmt. Ex. 7 – Paint chips, undated

Clmt. Ex. 8 – Deck Helmet Estimate, received February 28, 2019, with the following attachment:
• Modern Home Design Contract Proposal, dated April 17, 2018

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

Fund Ex. 1 – Notice of Hearing, dated May 3, 2019

Fund Ex. 2 – Registration information, dated June 28, 2019

Fund Ex. 3 – Hearing Order, dated April 19, 2019

Fund Ex. 4 – Home Improvement Claim Form, received January 23, 2018

Fund Ex. 5 – Home Improvement Claim Form, received April 24, 2018

No documents were submitted on behalf of the Respondent.

Testimony

The Claimant testified on his own behalf.

The Respondent was not present to testify or offer any witnesses.

The Fund did not offer 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 license number 5298309.
2. On August 24, 2015, the Claimant and the Respondent entered into a contract whereby, in exchange for \$7,000.00, the Respondent agreed to refurbish the Claimant's outside deck by sanding the wood bare, recessing all screws, replacing any bad wood, sealing the surface

of the wood using a synthetic filler, sanding everything smooth, and painting the deck using a fabricated plastic-based composite which would seal the wood.

3. The Respondent informed the Claimant that the plastic-based composite used to seal the wood would be applied to be the same thickness and sturdiness as a credit card.

4. The contract specified a limited warranty in which the Respondent warranted its deck seal application against manufacturing or labor defects for one year after the date of application.

5. On August 24, 2015, the Claimant paid the Respondent a \$500.00 deposit.

6. Shortly thereafter, the Respondent spent two days refurbishing the Claimant's outside deck.

7. On August 28, 2015, the Claimant paid the Respondent the remaining balance, \$6,500.00.

8. The paint the Respondent used to finish the deck was not the same plastic-based composite as promised, nor was it applied to be as thick or sturdy as a credit card.

9. In March 2016, the paint on the deck started to bubble and crack.

10. On March 4, 2016, the Claimant called the Respondent and left a voice message about the issues he was experiencing with the paint cracking.

11. On March 14, 2016, the Respondent returned the Claimant's telephone call and told the Claimant to call back in "the warmer months" and at that time the Respondent would send someone out to investigate any issues with the deck.

12. In July or August 2016, the Claimant called the Respondent, requesting the Respondent send someone to investigate the issue. The Respondent informed the Claimant its employees were too busy and to call back in April or May 2017, when weather conditions would be more optimal to make any repairs.

13. In April 2017, the Claimant called the Respondent and requested it send someone out to fix the issues with the deck. The Respondent did not investigate, and instead offered the Claimant a few cans of paint.

14. In May and June 2017, the Claimant sent multiple emails to the Respondent requesting that the Respondent send someone to fix the issue with the deck. The Respondent did not deploy any of its workers to investigate.

15. Without a proper seal, water seeped into the Claimant's wooden deck, causing major deterioration, whereby the wood is eroding, rotting, breaking away from the nails, and holes are forming and expanding.

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) (2015); 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.” Bus. Reg. § 8-405(a) (2015)⁴; *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. For the following reasons, I find that the Claimant has proven eligibility for compensation.

⁴ Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

Statutory Eligibility

The evidence in this case establishes there are no impediments barring the Claimant from recovering from the Fund. The home improvement work was to be performed on the Claimant's residence in Maryland. The Claimant is not a relative, employee, officer, or partner of the Respondent; the Claimant is not related to any of the Respondent's employees, officers, or partners. The Claimant did not reject any efforts by the Respondent to resolve the claim. The Claimant timely filed his Claim with the MHIC on January 23, 2018. Finally, the Claimant has not taken any other legal action to recover monies from the Respondent.

Inadequate Home Improvement

In this matter, the Respondent performed an inadequate home improvement when it did not properly apply a seal to the Claimant's deck. The Respondent was supposed to use a plastic-based composite to seal the wood, applied to be the thickness and sturdiness of a credit card; however, this was not done. The Claimant convincingly testified that within seven months after the Respondent completed work, the paint used to seal the deck started to bubble and crack. Once he noticed the issue, the Claimant immediately contacted the Respondent so that it could remediate the situation, as required by the warranty in the contract. The Claimant attempted, on multiple occasions, to get the Respondent to send someone out to investigate the issue. Despite these multiple attempts, the Respondent continuously procrastinated by telling the Claimant to call back on a much later date. In the end, the only remedy the Respondent offered was a few cans of paint for the Claimant to apply to the deck. Meanwhile, the Claimant's deck progressively deteriorated.

The Claimant's testimony was supported by photographs which depict that once the seal prematurely eroded, water was able to seep into the wooden deck, causing major deterioration. (Clmt. Ex. 6). As demonstrated in the photographs, the deterioration includes the wood rotting

and eroding, the wood breaking away from the nails, and holes appearing and expanding. The photographs depict the deck in a state of total disrepair. To further bolster the Claimant's testimony, the Claimant submitted samples of the paint that has peeled off of the wood. (Clmt. Ex. 7). The paint is razor-thin, and has a similar consistency to a dried-out leaf, whereby it breaks into fragments when any pressure is exerted on it. It is unknown if the Respondent used a poor quality sealer, or if the Respondent did not properly apply the sealer. Nevertheless, it is apparent, based on the Claimant's testimony and documentary evidence, that the Respondent performed an inadequate home repair as the sealer it applied to the deck quickly eroded. Had the Respondent used and appropriately applied the proper product, the sealer should have lasted a lot longer than seven months.

Although the Respondent failed to appear to the hearing, its position on this matter is clearly stated in a letter it submitted to the MHIC on October 18, 2017. (Clmt. Ex. 4). In this letter, the Respondent denied ever being contacted by the Claimant within the twelve-month warranty period, and categorized the Claim as a "warranty issue and therefore is outside the scope of the MHIC." (*Id.*). Both of these assertions are inaccurate. The Claimant provided evidence, in the form of a call log, which establishes that he called the Respondent to report the issue with his deck on March 4, 2016, and on March 14, 2016, the Respondent returned his call. (*Id.*). Despite being contacted within the warranty period, the Respondent failed to send someone out to investigate the issue with the Claimant's deck. The Respondent is also incorrect in its statement that this issue is "outside the scope of the MHIC" as the matter to be decided is whether the Claimant experienced an actual loss that arises from an unworkmanlike, inadequate, or incomplete home improvement. As discussed above, I find the Respondent performed an inadequate home improvement. I thus find the Claimant is eligible for compensation from the Fund.

The Amount of the Claimant's Actual Loss

Having found eligibility for compensation, I must determine the amount of the Claimant's actual loss and the amount, if any, 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). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Fund recommended an award under COMAR 09.08.03.03B(3)(b), which sets out: "If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor." COMAR 09.08.03.03B(3)(b). While the Claimant has solicited two other contractors – Deck Helmet and Modern Home Design – to rebuild the deck, the Fund argued I should not consider these estimates as Deck Helmet is not licensed under the MHIC, and Modern Home Design's estimate includes different work than what was provided under the Respondent's contract. I agree with the Fund, performing a home improvement in this State without being properly licensed by the MHIC is a criminal misdemeanor. Bus. Reg. § 8-601 (2015); *see Baltimore Street Builders v. Stewart*, 186 Md. App. 684, 697 (2009) (a person may not act as contractor in this State without a contractor's license). As such, I will not consider Deck Helmet's estimate. The Fund is correct in that the Modern Home Design estimate is for a new deck, which is different from the contract the Claimant entered into with the Respondent. The Respondent was responsible for refurbishing the Claimant's deck, not building a new deck. For this reason, I will not consider the Modern Home Design estimate to be comparable to the original contract with the Respondent.

The Fund agreed with the Claimant in that the Respondent provided the Claimant with \$0.00 in value of any materials or services contributed towards the deck. The Fund and Claimant base this \$0.00 value on the fact that the Respondent's inadequate workmanship prematurely left the deck in a completely dilapidated state. I agree with the Fund and Claimant. As such, utilizing the formula provided in COMAR 09.08.03.03B(3)(b), the Claimant's actual loss is calculated as the amount paid to the Respondent (\$7,000.00) less the value of any materials or services provided by the Respondent (\$0.00). For this reason, the Claimant is entitled to recover \$7,000.00 as the amount of his actual loss. *Id.*; Bus. Reg. § 8-405(a).

The Respondent requested that I award him a sum greater than what he paid the Respondent as he anticipates it will cost him a lot more money to remediate the situation. The Business Regulation Article states a claimant may not recover "an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed." Bus. Reg. § 8-405(e)(5); *see also* COMAR 09.08.03.03B(4). The total amount the Claimant paid the Respondent was \$7,000.00 and, as discussed above, the Claimant is entitled to recover this sum. As any amount above this would be "an amount in excess of the amount paid by . . . the claimant to the contractor," the Claimant is not entitled to any additional recovery. *Id.*

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$7,000.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(b). I further conclude that the Claimant is entitled to recover \$7,000.00 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 \$7,000.00; 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;⁵ and

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

Signature on File

September 30, 2019
Date Decision Issued

Leigh Walder
Administrative Law Judge

LW/cmg
#182220

⁵ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 22nd day of November, 2019, 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.

Robert Altieri

Robert Altieri
Panel B

MARYLAND HOME IMPROVEMENT COMMISSION

SECRET

1. The purpose of this document is to provide information regarding the activities of the [redacted] in the [redacted] area. This information is being provided to you for your information only and is not to be disseminated outside of your organization.

2. The [redacted] has been identified as a [redacted] and is currently active in the [redacted] area. The [redacted] is believed to be involved in [redacted] activities and is currently operating in the [redacted] area.

3. The [redacted] is believed to be involved in [redacted] activities and is currently operating in the [redacted] area. The [redacted] is believed to be involved in [redacted] activities and is currently operating in the [redacted] area.

4. The [redacted] is believed to be involved in [redacted] activities and is currently operating in the [redacted] area. The [redacted] is believed to be involved in [redacted] activities and is currently operating in the [redacted] area.

5. The [redacted] is believed to be involved in [redacted] activities and is currently operating in the [redacted] area. The [redacted] is believed to be involved in [redacted] activities and is currently operating in the [redacted] area.

SECRET