IN THE MATTER OF THE CLAIM	*	**BEFORE STEPHEN W. THIBODEAU,**
OF LEE AND LOURDES BURNS,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANTS	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF KRAIG ERIKSEN,	*	
T/A VIKING HOME REPAIRS AND	*	
SERVICES, LLC,	*	**OAH No.: LABOR-HIC-02-19-27596**
RESPONDENT	*	**MHIC No.: 19 (75) 348**

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PROPOSED DECISION

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STATEMENT OF THE CASE

On December 11, 2018, Lee and Lourdes Burns[1] (Claimants) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of $24,253.25 in actual losses allegedly suffered as a result of a home improvement contract with Kraig Eriksen, trading as Viking Home Repairs and Services, LLC

[1] At the time this claim was filed with the Maryland Home Improvement Commission (MHIC), Lee Burns was the sole Claimant. At the hearing, the MHIC, through counsel, consented to the amendment of the claim to allow Lourdes Burns as an additional Claimant. I accepted the amendment of the claim to add Lourdes Burns as a Claimant on the record.

[illegible]

(Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).[2] On August 9, 2019 the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on January 16, 2020 at the Calvert County Public Library, 850 Costley Way, Prince Frederick, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e). Shara Hendler, Assistant Attorney General, Department of Labor (Department),[3] represented the Fund. The Claimants represented themselves. 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 OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2019); Code of Maryland Regulations (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 the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

A list of the exhibits offered into evidence is attached to this Decision as an Appendix.

Testimony

The Claimants testified. The Respondent testified. The Fund did not present any testimony.

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

[3] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

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 4977146.

2. The Respondent was not a licensed electrician or plumber.

3. On February 24, 2017, the Claimants and the Respondent entered into a contract to finish the Claimants' basement (Contract).

4. Specifically, the Contract provided the Respondent would perform the following work at the Claimants' home at 545 Sonoma Lane, Prince Frederick, Maryland (Property):

- Frame complete basement, to include two utility closets, one bedroom, and one bathroom;
- Install electrical switches and outlets;
- Install three vents;
- Install and finish drywall throughout basement to include the ceiling with Prime drywall;
- Install four pre-hung doors;
- Install trim;
- Install complete flooring throughout basement, with a tile entrance;
- Install complete and finished bathroom to include sink, toilet, and shower; and
- Install new door at top of stairs.

5. The Contract also provided that the Respondent would provide all major materials for the Contract, with a basic contractor grade, unless otherwise noted by the Contract or approved as an upgrade by the Claimants.

6. The Contract further provided that the Respondent was responsible for securing any permits necessary to complete the work "within the parameters of the laws of Maryland."

7. The Contract stated that work would begin on March 12, 2017 and would be completed by April 9, 2017.

8. The original agreed-upon Contract price was $20,000.00.

9. The Claimants paid the Respondent on the Contract with the following payments for a total of $20,848.98:

- $6,666.66 on February 27, 2017
- $6,666.66 on March 26, 2017
- $4,000.00 on May 7, 2017
- $3,515.66 on May 13, 2017

10. The extra $848.98 above the Contract price was due to a change made by the Claimants for a different door for the entry to the basement that was added to the final price.

11. The Respondent completed the work on the Contract sometime in May 2017.

12. In September 2017, the Claimants had guests in their home who stayed in the completed basement. During their guests' stay, the shower was used for the first time and experienced a significant leak that left a pool of water on the basement floor.

13. The Claimants examined the shower and found a lack of caulking around the shower drain and shower valve.

14. The Claimants paid $433.59 for cleanup and remediation of the water damage to ServPro, and $187.50 to Paul C. Hayden Jr. & Sons Plumbing & Heating, Inc. (Hayden) to reassemble the shower valve.

15. On or about September 27, 2017, the Claimants contacted the Respondent to see if he was willing to resolve the issues regarding the basement shower.

16. The Respondent replied that he was willing to return to the Property at a discounted rate to recaulk the shower, but otherwise accepted no other responsibility for issues related to the shower.

17. Following the incident with the shower, the Claimants contacted the Calvert County Division of Inspections and Permits to find out whether the Respondent ever obtained the necessary permits for the project. In early 2018, the Claimants discovered that the Respondent

never obtained a general building permit, electrical permit, or plumbing permit necessary for the project.

18. In addition, on March 8, 2018, the Claimants were informed by the Calvert County Health Department's Division of Environmental Health that the plans to finish the basement at the Property could not be approved due to non-compliance with regulations relating to the on-site sewage disposal system on the Property.

19. The Claimants began contracting with Affordable Solutions, LLC (Affordable) to remedy issues with the basement project at the Property, including obtaining the necessary permits for the project and bringing the project into compliance with local building codes.

20. From March 2018 through July 2018, Affordable obtained the necessary permits, completed all the necessary electrical work on the project, and also completed framing and drywall for the project after it was torn out to complete the electrical work, for a total cost of $13,962.00.

21. The Claimants also hired Hayden to obtain the required plumbing permits for the project, repair the basement shower, and correct other plumbing issues with respect to the project.

22. Hayden performed this work between May 2018 and July 2018, and the Claimants paid Hayden a total of $3,976.25 for this work.

23. The Claimants also hired Bright Exteriors to complete the painting on the project after all the electrical and plumbing repair work was completed. This work occurred in August 2018, and the Claimants paid Bright Exteriors $3,290.00 for this work.

24. All told, between payment to remediate initial issues with the Respondent's work to ServPro and Hayden, as well as payment to Affordable, Hayden, and Bright Exteriors to bring

the contract in compliance with local code pursuant to the necessary permits, the Claimants paid $21,849.34 to other contractors to correct the Respondent's work.

DISCUSSION

In this case, the Claimants have the burden of proving the validity of the Claim by a preponderance of the evidence. 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." 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. For the following reasons, I find that the Claimants have proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimants. As such, the Claimants' first requirement to obtain compensation from the fund is met.

I further find the Respondent, in completing the basement project for the Claimants, performed unworkmanlike, inadequate or incomplete home improvements. Specifically, the Respondent's failure to obtain the necessary permits from Calvert County for the project demonstrate the Respondent performed inadequate and incomplete home improvements.

The Contract called for the Respondent to obtain the necessary permits pursuant to the laws of Maryland. The Respondent testified that he did not think he needed to obtain them because the basement already had electrical and plumbing rough-ins present, and by not pulling the permits he would save the Claimants money on the Contract. By not obtaining those permits, as required by both the Contract and local law, the Respondent's work is both inadequate and incomplete because it was not done in conformity with the requirements of the Contract or local law.

Even if the Respondent had pulled the permits as required by the Contract resulting in inadequate or incomplete work, the Respondent's work would be deemed to be unworkmanlike because he performed electrical and plumbing work on the Property without the proper licensing. In addition, the individual he hired to help him with the work was not a licensed electrician or plumber. Despite this, the Respondent stated he thought his work was up to code, but presented no evidence as to how he arrived at this understanding.

The Respondent readily admitted he was fairly inexperienced at the time of this job, being one of the first home improvement projects he undertook as a contractor. In addition, he testified that he thought he could make a fair amount of money off this project and assumed everything was fine at the completion of the project because the Claimants seemed satisfied with the work. Of course, at the time the work was completed, the Claimants were unaware that the Respondent had not pulled the permits for the work and had electrical and plumbing work performed by unlicensed individuals. Therefore, because the Contractor's work qualifies as unworkmanlike, inadequate, and incomplete, I find that the Claimants are eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimants' actual loss and the amount, if any, that the Claimants are 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.

In this case, the Respondent performed work under the contract, and the Claimants retained other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimants' 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 Claimants paid a total of $20,848.98 for the Respondent's work pursuant to the Contract. The Respondent argued at the hearing that this price demonstrates that the Claimants did not suffer an actual loss under the Contract, because the Respondent's price was vastly under the amount for a typical finished basement. This, however, is not the measure of an actual loss pursuant to Maryland law. The actual loss, as noted above, is calculated by taking the price the Claimants paid to the Respondent, added to the amount paid to other contractors to repair the Respondent's poor work, and then subtracting the original amount paid to the Respondent.

Therefore, in applying the required formula, the Claimants paid the Respondent $20,848.98 under the Contract. Then, the Claimants hired contractors to remedy the Respondent's poor work for a total of $21,849.34. Adding that amount to the original amount

paid to the Respondent results in a total of $42,698.32 ($20,848.98 + $21,849.34 = $42,698.32). From that amount, the original amount of the Contract is subtracted to calculate the Respondent's actual loss, which is $21,849.34 ($42,698.32 - $20,848.98 = $21,849.34).

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 $21,849.34 exceeds $20,000.00. Therefore, the Claimant's recovery is limited to $20,000.00. Md. Code Ann., Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants sustained an actual and compensable loss of $20,000 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)(c). I further conclude that the Claimants are entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c), D(2)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimants $20,000.00; 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;[4] and

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

April 7, 2020
Date Decision Issued

Stephen W. Thibodeau
Administrative Law Judge

SWT/dlm
#185447

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

PROPOSED ORDER

WHEREFORE, this 8th day of May, 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.

Jim Berndt

Jim Berndt
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION