

IN THE MATTER OF THE CLAIM
OF SIXUN YANG,
CLAIMANT,
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF MARTIN DILLON,
T/A HOME DECK, INC.,
RESPONDENT.

* BEFORE EMILY DANEKER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
* OAH No.: LABOR-HIC-02-19-27584
* MHIC No.: 19 (75) 396
*
*

* * * * *

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 December 12, 2018, the Maryland Home Improvement Commission (MHIC) received a claim filed by Sixun Yang (Claimant) seeking reimbursement from the Maryland Home Improvement Guaranty Fund (Fund) for \$12,990.00 in actual losses allegedly sustained as a result of the acts or omissions of home improvement contractor Martin Dillon, trading as Home Deck, Inc., (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹ On August 9, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

¹ Unless otherwise indicated, all citations to the Business Regulation article of the Annotated Code of Maryland are to the 2015 Replacement Volume.

On January 30, 2020, I held the requested hearing at the OAH's office in Rockville, Maryland. Bus. Reg. § 8-407(e). The Claimant represented himself. The Respondent represented himself. Eric B. London, Assistant Attorney General, Department of Labor (Department),² 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 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 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

The Claimant offered the following exhibits, which I admitted into evidence:

- Clmt. Ex. A - Contract between Respondent and Claimant, February 12, 2018
- Clmt. Ex. B - Building Permit, expiration March 7, 2019
- Clmt. Ex. C - Photograph, undated
- Clmt. Ex. D - Email from Claimant to Respondent, March 22, 2018
- Clmt. Ex. E - Montgomery County Department of Permitting Services Inspection Disapproval, March 29, 2018
- Clmt. Ex. F - Photograph, undated
- Clmt. Ex. G - Text messages between Claimant and Respondent, May 21, 2018 through September 5, 2018

² Prior to July 1, 2019, the Department of Labor was known as the Maryland Department of Labor, Licensing, and Regulation.

- Clmt. Ex. H - Checks payable to Respondent by Claimant, dated February 12, 2018 and April 25, 2018; Invoices from Respondent to Claimant, dated May 22 and 25, 2018
- Clmt. Ex. I - Envelope addressed to Respondent from Claimant, marked "Return to Sender, Refused, Unable to Forward," September 6, 2018
- Clmt. Ex. J - Contract between Claimant and Sunny LLC, March 11, 2019
- Clmt. Ex. K - Estimate from Velazquez Contractors, LLC, undated
- Clmt. Ex. L - Estimate from Classic Design Group, Inc., undated
- Clmt. Ex. M - Estimate from North American Deck and Patio, LLC, undated
- Clmt. Ex. N - Montgomery County Department of Permitting Services Building Permit, expiration March 7, 2020
- Clmt. Ex. O - Checks payable to Sunny LLC by Claimant, dated March 11, 2019, June 30, 2019, October 2, 2019, October 23, 2019, December 24, 2019, and December 30, 2019
- Clmt. Ex. P - Home Improvement Claim Form, undated

Along with his exhibits, the Claimant submitted a written statement summarizing his testimony. That statement was not admitted into the evidentiary record but is retained as part of the administrative record. COMAR 28.02.01.22C. It is marked, for identification purposes, as Claimant Ex. Q.

The Respondent did not introduce any exhibits at the hearing.

The Fund offered the following exhibits, which I admitted into evidence:

- GF Ex. 1 - Notice of Hearing, December 19, 2019
- GF Ex. 2 - Notice of Hearing, October 10, 2019
- GF Ex. 3 - Hearing Order, August 6, 2019
- GF Ex. 4 - Home Improvement Claim Form, December 12, 2018
- GF Ex. 5 - Letter from the MHIC to the Respondent, January 8, 2019
- GF Ex. 6 - MHIC Registration and License History for the Respondent, December 18, 2019

Testimony

The Claimant testified in his own behalf.

The Respondent testified in his own behalf.

The Fund did not present any witnesses.

PROPOSED FINDINGS OF FACT

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

1. At all relevant times, the Respondent was a licensed home improvement contractor under MHIC license number 01-88935.
2. At all relevant times, the Claimant owned and resided in a home located on Heartwood Circle (the Residence) in Rockville, Maryland.
3. On February 12, 2018, the Claimant and the Respondent entered into a contract (Contract) to add a deck with a screened porch onto the Residence. The open portion of the deck was to be 12 feet by 14 feet, and the enclosed portion, the screened porch, was to be 16 feet by 14 feet. The enclosed area was to include a knee wall, finished with siding and wainscoting, a screen door, and a vinyl soffit ceiling. The deck was to be elevated four feet off the ground and include stairs.
4. The original Contract price was \$28,000.00.
5. At the time of contracting, the Claimant paid the Respondent \$9,000.00 toward the Contract price.
6. On March 7, 2018, Montgomery County issued the necessary permit for the Contract work.
7. At some point prior to March 22, 2018, the Respondent dug holes for the footings to support the deck and poured the concrete footers; a Montgomery County building inspector approved the footings.

8. By March 22, 2018, the Claimant was voicing concerns to the Respondent about the work that had been done, including whether the amount of concrete used in the footings complied with the plans, whether the support posts were submerged in the concrete, and whether the footings were deep enough to support the load of the screened porch.

9. In response, the Respondent represented that it would replace several short posts, and otherwise denied that there was any problem with the framing work.

10. On March 29, 2018, at the Claimant's request, a Montgomery County building inspector re-inspected the Respondent's work and determined that the deck footings were not to code because footers located within five feet of a house must be as deep as the footers for the house. An Inspection Disapproval notice was issued by the inspector.

11. On April 25, 2018, the Claimant paid the Respondent \$4,500.00 toward the Contract price.

12. On May 21, 2018, the Respondent advised the Claimant that it would be at the Residence to work the following day.

13. On May 22, 2018, the Respondent invoiced the Claimant, requesting payment that same day, and the Claimant paid the Respondent \$2,500.00 (the amount invoiced) toward the Contract price.

14. On May 25, 2018, the Respondent again invoiced the Claimant, requesting payment that same day, and Claimant paid the Respondent \$2,000.00 (the amount invoiced) toward the Contract price.

15. The Respondent did not perform any work at the Residence after May 25, 2018. At that time, the footers and deck floor had been installed, but there were no railings along any part of the deck, the stairs had not been installed, and the enclosed area had not been framed or constructed. The footers had not yet passed inspection.

16. Between June 1, 2018 and September 6, 2018, the Claimant contacted the Respondent by mail, text, and phone to inquire about the resumption of the Contract work.

17. Throughout June, the Respondent told the Claimant that the crew needed to build the walls and roof was currently unavailable; he eventually told the Claimant that the crew would be available in September. On September 5, 2018, the Respondent told the Claimant that the Claimant would need to find another company to finish the deck.

18. The Claimant obtained estimates from four different companies to complete the Contract work. Sunny LLC (Sunny), an MHIC-licensed contractor, estimated that it could complete the work for \$22,500.00. The other estimates for completing the work ranged between \$23,400 and \$26,500.00.

19. On March 11, 2019, the Claimant entered into a contract with Sunny to complete the deck project at the Residence. The Claimant's contract with Sunny was consistent with the scope of work that the Respondent had agreed to perform under the Contract.

20. The Claimant paid Sunny a total of \$22,500.00 to complete the deck project at his Residence.

21. The Claimant has not filed any legal proceedings against the Respondent arising from the Contract and has not filed any insurance claim related to the Respondent's work.

DISCUSSION

Applicable Law

The Maryland General Assembly created the Fund to provide an available pool of money from which homeowners could seek relief for losses sustained at the hands of incompetent or unscrupulous home improvement contractors. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411. A homeowner is authorized to "recover compensation from the Fund for an actual loss that results from an act or omission by a licensed contractor" *Id.* § 8-405(a); *see also* COMAR

09.08.03.03B(2). The governing statute defines “actual loss” as “the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401.

At a hearing on a claim, the claimant has the burden of proof. Bus. Reg. § 8-407(e)(1); COMAR 09.08.03.03A(3). The claimant’s burden is by a preponderance of the evidence. Md. Code Ann., State Gov’t § 10-217 (2014). To prove something by a “preponderance of the evidence” means “to prove that something is more likely so than not so[,]” when all of the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). For the reasons explained below, I find that the Claimant has proven eligibility for compensation from the Fund.

Analysis

The operative facts were largely undisputed: the Respondent was a licensed home improvement contractor, the Claimant paid the Respondent \$18,000.00 for the construction of a deck, the Respondent failed to complete the Contract work, and the footings built by the Respondent ultimately were disapproved by the Montgomery County building inspector. The Respondent’s licensing history is in evidence, (Fund Ex. 6), as is the Contract, (Clmt. Ex. A). There was no dispute raised about the scope of the work or the Contract price. The Claimant submitted cancelled checks and paid invoices to document his payments, (Clmt. Ex. H), and the Respondent acknowledged that the Claimant paid \$18,000.00 toward the Contract price.

In terms of the work, the Claimant testified that the Contract work was never completed by the Respondent. The Claimant submitted a photograph and text messages that support his testimony. (Clmt. Exs. F & G.) The Respondent agreed that he did not complete the deck project, but explained that he and his brother, who was performing the work, were worried that

they would not get paid for the job because the Claimant was complaining about their work. I found the Respondent's excuse to be specious.

To the contrary, the Claimant made two payments to the Respondent, in the full amount invoiced and on the same day as he was invoiced, on May 22 and May 25, 2018. The Respondent performed no work on the project after May 25, 2018. By the time the Respondent stopped working, the Claimant had already paid \$18,000.00 toward a total contract price of \$28,000.00, even though the bulk of the project was incomplete and an Inspection Disapproval had been issued for the footings. The Claimant continued making payments to the Respondent in April and May 2018, beyond the value of the work actually performed by the Respondent.³ In these circumstances, any payment concerns were not a valid justification for the Respondent to cease work on the project. The deck project was, thus, an incomplete home improvement. Bus. Reg. § 8-401.

Further, the footings installed by the Respondent did not comply with the building code. The Montgomery County inspector determined, at a March 29, 2018 inspection, that the footings violated the building code because "footer's [sic] within 5 feet of house must go as deep as house." (Clmt. Ex. E.) This item was specified as still requiring correction in the Claimant's contract with Sunny. In his testimony, the Respondent was clearly peeved over the issue with the footers, as they originally passed inspection and were only failed after the Claimant requested a reinspection. Nonetheless, the evidence established that the footings installed by the Respondent were not in compliance with the Montgomery County building code and still needed to be corrected and pass inspection. For this further reason, the home improvement was unworkmanlike, inadequate, and incomplete. Bus. Reg. § 8-401.

³ The Claimant paid \$18,000.00 on a \$28,000.00 contract but, per the estimates the Claimant subsequently obtained, there remained more than \$20,000.00 worth of work to be done.

The statute governing the Fund precludes certain claimants from recovering from the Fund. *See* Md. Code Ann., Bus. Reg. §§ 8-405(c), (d), (f), and (g), 8-408(b)(1). The Claimant testified that he is not an employee or officer of the Respondent company and is not related to the Respondent. He has no other claims or actions arising out of the Respondent's work. The Residence, located in Maryland, is the Claimant's primary residence. The Contract did not contain an arbitration provision, (*see* Clmt. Ex A), and the claim was filed within three years of discovery of the actual loss, (*see* GF Ex. 4). The Claimant testified that he made repeated attempts to get the Respondent to complete the Contract work in a good and workmanlike manner, and he submitted documentation to support his testimony. (Clmt. Exs. D & G.) The Respondent acknowledged the text message exchanges he had with the Claimant, in which he advised the Claimant to find another contractor to finish the deck project. (Clmt. Ex. G.) The Claimant did not reject any good faith efforts by the Respondent to resolve the claim. There are no statutory impediments to the Claimant's recovery from the Fund.

The Respondent performed an unworkmanlike, inadequate, and incomplete home improvement and the Claimant is eligible to recover from the Fund. Therefore, I turn to the amount of the Claimant's actual loss, if any, that is compensable from the Fund.

The 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 some work under the contract, and the Claimant retained another contractor to remedy and complete 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). In applying this formula, I also consider that 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).

The Claimant paid the Respondent \$18,000.00 under the Contract, which was for a total amount of \$28,000.00. The Claimant paid Sunny \$22,500.00 to remedy and complete the deck project; documentation of those payments is in evidence. (Clmt. Ex. O.) The Claimant's actual loss is computed as follows:

\$18,000.00	paid to the Respondent
+ \$22,500.00	paid to complete & repair the Respondent's work
\$40,500.00	total paid by Claimant
- \$28,000.00	original Contract price
\$12,500.00	actual loss

The Claimant's actual loss, \$12,500.00, does not exceed the amount he paid to the Respondent and does not exceed the statutory cap on recovery from the Fund. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). Thus, the Claimant may recover his entire actual loss from the Fund.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$12,500.00 as a result of the Respondent's acts or omissions and is 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).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$12,500.00; and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the 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 17, 2020
Date Decision Issued

CONFIDENTIAL


Emily Daneker
Administrative Law Judge

ED/kdp
185586

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

PROPOSED ORDER

WHEREFORE, this 26th 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.

J Jean White

I Jean White

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***