IN THE MATTER OF THE CLAIM	*	**BEFORE EILEEN C. SWEENEY,**
OF SHAWNA JORDAN,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF ERIC SANDERS,	*	
T/A SANDERS QUALITY HOME	*	
IMPROVEMENTS,	*	**OAH No.: LABOR-HIC-02-19-25005**
RESPONDENT	*	**MHIC No.: 19 (75) 546**

* * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE

On January 30, 2019, Shawna Jordan (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of $7,135.00 in actual losses allegedly suffered as a result of a home improvement contract with Eric Sanders, trading as Sanders Quality Home Improvements (Respondent). Md. Code Ann.,

[illegible]

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.

I held a hearing on January 28, 2020 at the OAH in Hunt Valley, Maryland. Bus. Reg. § 8-407(e). Robert McCray, Assistant Attorney General, Department of Labor (Department),[2] represented the Fund. The Claimant represented herself. 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 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 MHIC Complaint Form, signed October 13, 2018; Home Improvement Claim Form, signed January 30, 2019, with attachment; November 19, 2016 email from Claimant to Respondent, with attachments; unsigned November 19, 2016 contract between Claimant and Respondent; December 30, 2016 email from Claimant to HomeAdvisor, with attachments

Clmt. Ex. 2 December 30, 2016 emails from Appellant to HomeAdvisor, with attachments

Clmt. Ex. 3 December 30, 2016 emails from Appellant to HomeAdvisor, with attachments

Clmt. Ex. 4 December 30, 2016 emails from Appellant to HomeAdvisor, with attachments

[1] Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.
[2] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

Clmt. Ex. 5 December 30, 2016 emails from Appellant to HomeAdvisor, with attachments

Clmt. Ex. 6 December 31, 2016 emails from Appellant to HomeAdvisor, with attachments

Clmt. Ex. 7 December 31, 2016 emails from Appellant to HomeAdvisor, with attachments

Clmt. Ex. 8 December 31, 2016 emails from Appellant to HomeAdvisor, with attachments

Clmt. Ex. 9 December 30, 2016 emails from Appellant to HomeAdvisor, with attachments

Clmt. Ex. 10 April 29, 2018 Invoice from Hands on Painters, Inc. (Hands On Painters); April 2, 2018 Estimate from Hands On Painters; April 13, 2018 and May 2, 2018 Bank of America Account Activity Transaction Details

Clmt. Ex. 11 November 14, 2016 – December 8, 2016 texts between Claimant and Respondent; January 9, 10, and 26, 2017, February 10, 2017, and March 17, 2017[3] emails among Claimant, Respondent and HomeAdvisor, with attachments; November 19, 2016 Quote from Respondent; undated photographs; November 19, 28, and 30, 2016 cancelled checks; March 17, 2017, April 12 and 24, 2017 and May 5, 18, 19, 22, 23-26, 2017 emails among Claimant, Respondent and HomeAdvisor; photographs

Clmt. Ex. 12 December 30, 2016 emails from Claimant to HomeAdvisor, with attachments

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

Resp. Ex. 1 December 1, 2018 letter from Respondent to MHIC

I admitted the following exhibit on behalf of the Fund:

Fund Ex. 1 August 5, 2019 Hearing Order; October 22, 2019 Notice of Hearing; January 30, 2019 letter from MHIC to Respondent; Home Improvement Claim Form, received January 30, 2019, with attachment; January 24, 2020 License History

Testimony

The Claimant testified on her own behalf.

The Respondent testified on his own behalf.

The Fund presented the testimony of the Claimant as its witness.

[3] A page appears to be missing from the exhibit submitted into evidence

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 110342.

2. On November 9, 2015, the Claimant contacted HomeAdvisor about work she wanted done on her home located at 7510 Bettys Way, Windsor Mill, Maryland (Home). HomeAdvisor referred the Claimant to the Respondent.

3. On November 19, 2016, the Claimant and the Respondent entered into a Contract for the Respondent to perform the following work on the Home, including labor and materials:[4]

Air Duct Cleaning Clean all vents, returns, and furnace	$ 300.00
Paint House Paint Whole House Walls and Trim, including basement walls, ceiling, trim and bathroom and staircase area	4,000.00
Carpet Cleaning Clean All Carpeted Area	100.00
Ceramic Tile Remove existing basement carpet and padding, prepare concrete flooring for installation of tile, and fully install ceramic tile in basement	2,800.00
	Total: $7,200.00

[4] I note that the parties did not dispute that on or about November 24, 2016, the Claimant and the Respondent also entered into an oral agreement that the Respondent would remove a broken microwave attached to the kitchen wall in the Home, repair a ceiling light fixture in the basement and wipe down the kitchen cabinets above the oven, for the agreed upon price of $350.00. They also did not dispute that the Respondent subsequently performed that work and that on November 28, 2016, the Claimant paid him that amount.

4. The Contract was never signed. The Claimant electronically signed what she believed was her Contract, but the Respondent erroneously had her sign someone else's contract.[5]

5. The Contract between the Claimant and the Respondent did not state when work would begin, or the date work would be completed. The Respondent told the Claimant that he would work with her schedule and that he would complete the work by December 25, 2016.

6. The Contract provided for a 50% down payment upon signing of the Contract, with the balance due the day of final Contract completion.

7. The Respondent began work on or about November 28, 2016.[6]

8. The Respondent removed all the light switch covers and outlet covers throughout the house (except the master bedroom) in preparation for painting, and removed vent covers, borders, the bathroom mirror and some shelves.

9. The Claimant asked the Respondent to purchase a brand of paint that did not require two coats, but he instead purchased paint that required two coats.

10. On or about November 28, 2016, the Claimant emailed the Respondent that she did not want one of his workers to return to the Home, stating, "[He] did not clean my cabinets properly. For some strange reason, I don't think he likes working in my house, and therefore, I do not feel comfortable with him." (Clmt. Ex. 11.)

11. The Claimant paid the Respondent the following amounts:

11/19/16 (down payment)	$4,400.00
11/30/16 (partial payment for tiles)	1,000.00
Total:	$5,400.00

[5] The parties did not dispute that the terms of the Contract between the Claimant and the Respondent were as set forth in Finding of Fact 3.

[6] This date was gleaned from the Complaint Form and the texts between the parties. (*See* Clmt. Exs. 1 and 11.)

[illegible]

12. On December 2, 2016, the Claimant texted the Respondent for "reassurance of how the project is going" and asking for photographs of his progress with a brief summary.[7] (Clmt. Ex. 11.)

13. On December 5, 2016, the Claimant texted the Respondent asking if it was possible to install the tile floor by December 9, 2016 because Best Buy was coming to assemble a television stand in the basement. The Respondent texted back, "We will try to have it done by then." (Clmt. Ex. 11.) On December 6, 2016, the Claimant asked if she could tell Best Buy to come on December 14, 2016, and the Respondent indicated that date would work.

14. On December 8, 2016, the Claimant texted the Respondent that she would like for the work to be finished by December 17, 2016.[8] The Respondent texted back that he would do his best, to which the Claimant responded, "Okay, because we are not having this conversation again." (Clmt. Ex. 11.)

15. The Respondent applied one coat of paint on the basement walls.

16. On December 8, 2016, the Claimant texted the Respondent directing him to purchase the paint they had agreed upon and that she was very disappointed in the work performed: "[I]t should not take two weeks to paint one room." (Clmt. Ex. 11.)

17. On December 9, 2016, the Respondent picked up his equipment from the Home and informed the Claimant that he would not finish the job.

18. The Respondent failed to complete the following work under the Contract:

- Install ceramic tile in basement
- Paint second coat on walls and trim in basement
- Paint basement foyer

[7] Neither party presented evidence of the Respondent's response to that request.
[8] It is not clear if that date refers to all of the work under the Contract or just the tile work.

- Patch light hole and reinstall light in basement
- Paint basement bathroom and closet
- Reinstall electric switch plates, a mirror, shelves, and baseboards
- Paint all walls, doors and trims
- Clean all carpeted areas

19. On December 12, 2016, the Claimant contracted with Beltway Builders to complete the work the Respondent failed to complete in the basement for $7,500.00.

20. On or about December 31, 2016, the Claimant submitted a complaint to HomeAdvisor about the Respondent's work.

21. The Respondent refused to refund more than $500.00 to the Claimant for the work that was not completed.

22. On April 2, 2018, the Claimant contracted with Hands On Painters to paint three of the second floor bedrooms for $1,085.00.

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

[illegible]

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.

Licensure

The licensing information submitted into evidence by the Fund establishes that the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant.

Unworkmanlike, Inadequate or Incomplete

Although the Claimant complained that the Respondent "performed unacceptable and substandard work," she presented no evidence to that effect. (Clmt. Ex. 1.) She complained that the paint job in the basement was spotty, but her own testimony indicated that condition was related to the Respondent's failure to complete that paint job by applying a second coat. Furthermore, she acknowledged that neither contractor she subsequently hired to complete the work said anything about the Respondent's work being unworkmanlike or inadequate.

However, for the following reasons, I find that a preponderance of the evidence does establish that the Respondent did not complete all the work contracted for.

The Claimant testified that she wanted the work on her Home done before Christmas 2016. Approximately two weeks after the Respondent began work, she became concerned that he would not finish in time. According to the Claimant, the Respondent promised to install the basement tiles by December 8, 2016 but did not install them by that date. When she asked him in a "professional soft manner" for an estimate of the completion date, "it set him off. He got upset, blew up, [and was] hostile and aggressive. He said the work he performed was the new contract and whatever he says he will do is the contract because he knows the law." (Test.

Clmt.) He told the Claimant that he was not finishing the job because she was threatening, stubborn, unreasonable, not willing to negotiate, and "putting him in a box." (*Id.*) When the Claimant asked the Respondent for a refund for the work he had not completed, the Respondent said that the Claimant would get what she deserved.mu Eventually, she asked the Respondent to pick up his equipment, which he did. The Claimant denied that she was ever hostile or bullying to the Respondent.

According to the Claimant, when she complained to HomeAdvisor, through whom she had contacted the Respondent, she was told that the Respondent was working on three other jobs at the same time as the Claimant's job.

The Claimant further testified about the work the Respondent failed to complete. (*See* Finding of Fact 18.) She submitted into evidence multiple photographs showing packages of tiles purchased by the Respondent which he left lying on the basement floor, cans of the paint purchased by him, equipment he left on site until she asked him to remove it, partially painted walls, and a hole in the basement ceiling left by the Respondent for a light fixture. The Claimant also submitted into evidence photographs of areas where the Respondent removed (but did not reinstall) electric switch plates, socket and vent covers, a mirror, shelves, and baseboard, in preparation for painting.

The Respondent described alleged mercurial and unacceptable behaviors on the part of the Claimant that he contended made performance of the Contract at first difficult and then impossible. He testified that the Claimant constantly made conflicting comments about the quality of the work completed and the material used, as well as about what timelines were acceptable to her. She would get very upset with the Respondent and his workers and would yell at them. She called and texted at all hours of the night. The Respondent had to remove one of his workers from the job because the Respondent was unhappy with his work ethic, resulting in

the Respondent having one less worker on the job. The Respondent painted three times because the Claimant was not satisfied. At one point, the Claimant asked that work on a particular area be finished at a particular time so that furniture could be moved into that area, which the Respondent could not do because he was short a worker due to her complaint.

According to the Respondent, the Claimant became more and more aggressive and demanding. In addition, her son, who the Respondent also described as "aggressive," began to come down the stairs while the Respondent's workers were there. (Test. Resp.) Because the Respondent and his workers felt threatened and confused, the Respondent decided it was best to leave, leaving his equipment but "with [hopes] things would get better." (Resp. Ex. 1.) The Respondent testified that he did not return to the job at first because he was waiting to see what happened with regard to communications with HomeAdvisor and then because the Claimant's comments to him indicated that she was "looking to move forward with other sources." (*Id.*) During their last conversation, the Claimant said she would have someone else come in and "whatever the balance is, you'll pay." (*Id.*)

The Respondent believed that he had provided goods and services approximately equal in value to the amount the Claimant had paid up to the date the Respondent left the job. Specifically, the Respondent contended he performed the following work valued at the listed amounts:

1. Air Ducts Cleaned ($300)
2. Removal and Hauling of Basement Carpet and Padding ($950)
3. Prepare Concrete Floor for Installing of New Ceramic Tile ($450)
4. Preparing and Painting of Entire Basement Walls, Ceiling, Trim, and Bathroom with connected Staircase area ($2200)
5. Handling, Acquiring, and Shipping and delivery of all needed materials ($900)
6. Material and Tile ($663.18)

Total ($5463.18)

(Resp. Ex. 1.)

On cross-examination by the Fund, the Respondent testified that he could not recall the exact completion date he gave the Claimant at the time of the November 9, 2016 Contract – he recalled telling her it would be in "a month or two." (Test. Resp.)

The evidence indicates that the bulk of the work to be performed by the Respondent was in the basement and that the Claimant may have had unrealistic expectations as to when the basement would be completed. The contract with Beltway Builders and the attachment to the Claimant's Complaint Form indicates it took Beltway Builders from December 19, 2016[9] to December 30, 2016 (eleven days) to complete the work even though the preparatory work had already been done by the Respondent. The texts between the Claimant and the Respondent prove only that he agreed to try his best to finish the basement not by December 8, 2016, as the Claimant contended, but by December 17, 2016.

Nonetheless, the evidence shows that the Respondent never completed the work on the basement and elsewhere in the Home. The Claimant indicated in her Complaint Form that the last date work was performed was December 7, 2016, and it was undisputed by the Respondent that he did not return to the job after he delivered tile on or about December 8, 2016, except to pick up his equipment.

I find that a preponderance of the evidence does not support the Respondent's testimony that he had good reason for not completing the job. On the one hand, he contended that he stayed away from the job because he felt threatened and, on the other hand, contended that he left his equipment there because he had hopes of working things out. Although the Claimant's very early morning texts indicate she had a preoccupation with the project,[10] they contained no threats or bullying language. I also saw responses from the Respondent to those texts, and saw

[9] That December 12, 2016 contract indicates a start date of one week from the date of the contract.
[10] Clmt Ex. 11 shows a text thread initiated by the Claimant on November 30, 2016 during which she texted the Respondent multiple times between 2:00 a.m. and 6:49 a.m.; on December 1, 2016 at 3:11, 4:25, and 6:36 a.m.; and on December 7, 2016 at 2:59, 3:02, 3:20 and 5:58 a.m.

no requests by him that the Claimant send texts at more reasonable hours. The Respondent never even mentioned the Claimant's son in the Summary he provided to the MHIC. In addition, at the hearing, the Claimant appeared calm and composed.

I thus 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 Claimant testified that she paid Beltway Builders to complete the work in the basement that the Respondent failed to complete and presented a contract with Beltway Builders in the amount of $7,500.00. She further testified that she paid Hands On Painters to complete the painting in the upstairs of the Home that the Respondent failed to complete under the Contract and presented proofs of payment in the amount of $1,085.00.

The Respondent testified that the new contractor overcharged for painting, but the Respondent did not specify whether he was referring to one or both of those contractors and did not demonstrate that the total charged between them for painting exceeded the $4,000.00 amount allotted by the Respondent in the Contract for painting.[11] Furthermore, the Claimant testified that all of the work performed by Beltway Builders and Hands On Painters was within the scope of the work under the original Contract.

The Respondent also contended that the total amount of his Contract with the Claimant increased because the Claimant picked out more expensive tile; however, the Claimant denied it was different than that originally planned for. I find her testimony to be more credible as it is supported by the Respondent's own admission that the original contract amount of $7,200.00 remained the same: in the December 1, 2018 Summary the Respondent provided to the MHIC,

[11] Beltway Builders did not break down the cost for painting the basement under its contract with the Claimant; Hands On Painters charged $1,084.00 for painting three bedrooms.

he acknowledged that the balance owed after the $4,400.00 deposit and the $1,000.00 payment, was $1,800.00

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 other contractors to 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).

Therefore, I have calculated the Claimant's actual loss as follows:

Amounts Claimant paid to Respondent under original Contract	$ 5,400.00
Plus reasonable amounts Claimant paid to another contractor to complete the original Contract	+8,585.00
	$13,985.00
Less the original Contract price	-7,200.00
Total:	$ 6,785.00

In this case, the Claimant's loss of $6,785.00 exceeds the amount paid to the Respondent. The Business Regulation Article provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4). Thus, the Claimant may not recover more than $5,400.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $5,400.00 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)(c), (4). I further conclude that the Claimant is entitled to recover that amount from the Fund. 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 $5,400.00; 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;[12] and

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

March 30, 2020
Date Decision Issued

Eileen C. Sweeney
Administrative Law Judge

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

PROPOSED ORDER

WHEREFORE, this 20th 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.

Wm Bruce Quackenbush

Wm. Bruce Quackenbush
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION