

**IN THE MATTER OF THE CLAIM
OF ANUP RAJPARA,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF TYRONE
ANDERSON,
T/A DECK RENOVATIONS,
RESPONDENT**

*** BEFORE STEPHEN W. THIBODEAU,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-19-34251
* MHIC No.: 19 (75) 863**

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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 February 27, 2019, Anup Rajpara (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$4,734.00 in actual losses allegedly suffered as a result of a home improvement contract with Tyrone Anderson, trading as Deck Renovations (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On October 17, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on July 7, 2020 at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland. Bus. Reg. § 8-407(e). Nicholas C. Sokolow, Assistant Attorney General, Department of Labor (Department),¹ represented the Fund. The Claimant represented himself. On the morning of the hearing, the Respondent contacted the OAH and reported he was running late but did not indicate when he would arrive. I informed the parties that I would wait at least fifteen minutes for the Respondent to arrive. While waiting for the Respondent to arrive, he contacted the OAH and reported that he would not attend the hearing. After waiting twenty 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.²

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); 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 - Contract between the Claimant and the Respondent, May 10, 2018

Clmt. Ex. 2 - Cabin Branch Homeowners Association Architectural Change Application, with attached diagrams and photographs, undated

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

² 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. 3 - Email string between the Claimant, the Respondent, and the Association, May 17, 2018; Email string between the Claimant, the Respondent, and the Association, June 7, 2018 through August 13, 2018
- Clmt. Ex. 4 - Photograph of the Claimant's driveway, taken by the Claimant in July 2018
- Clmt. Ex. 5 - Claimant's Bank Statement for April 24, 2018 through May 23, 2018
- Clmt. Ex. 6 - Claimant's Bank Statement for June 23, 2018 through July 24, 2018
- Clmt. Ex. 7 - Email between the Claimant and the Montgomery County Officer of Consumer Protection, September 18, 2018, with attached complaint dated September 13, 2018
- Clmt. Ex. 8 - Revised estimate from the Respondent to the Claimant
- Clmt. Ex. 9 - Email string between the Claimant and the Respondent, October 1, 2018 through October 9, 2018
- Clmt. Ex. 10 - Email string between the Claimant and Kevin Benjamin of Elite Decks and Patios, April 15, 2019 through April 25, 2019, with attached estimate of work and diagrams; Email from Oscar Serrano of Serrano Master Deck to the Claimant, March 4, 2020

I did not admit any exhibits on the Respondent's behalf.

I admitted the following exhibits on behalf of the Fund:

- GF Ex. 1 - Notice of Hearing, March 19, 2020
- GF Ex. 2 - Hearing Order, October 17, 2019
- GF Ex. 3 - Certification of the Respondent's HIC Licensing History, March 5, 2020
- GF Ex. 4 - Letter from the HIC to the Respondent, March 6, 2019; copy of Claimant's Fund Claim, February 27, 2019

Testimony

The Claimant testified on his own behalf.

The Respondent and the Fund did not present 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 01-113379.
2. On May 10, 2018, the Claimant and the Respondent entered into a contract to build a twenty-by-fourteen foot freestanding deck, with railing, at the Claimant's home in Clarksburg, Maryland (Contract).
3. The original agreed-upon Contract price was \$7,679.00.
4. The Claimant paid the Respondent \$2,569.00 on May 10, 2018 as an initial installment on the Contract.
5. After the initial payment, the Claimant contacted the Cabin Branch Homeowners Association (Association), the homeowners' association where he lives, to obtain approval for the building of the deck. The Association approved the Claimant's request on June 7, 2018.
6. Following receipt of the Association's approval for his deck plans, the Claimant contacted the Respondent to begin work on the Contract. On June 7, 2018, the Respondent told the Claimant that because the Association approved his deck plans, the Respondent would begin the process of obtaining the necessary permits for the deck from Montgomery County.
7. After approximately a month, the Respondent began work on the Contract on July 12, 2018, at which time the Respondent dug footers for the deck support beams. The Respondent informed the Claimant that the initial work was completed, and the Claimant would need to pay a second installment on the Contract in the amount of \$2,550.00, which the Claimant paid on July 16, 2018.
8. The Claimant paid a total of \$5,119.00 to the Respondent.

9. No work occurred on the Contract following the second payment, despite attempts by the Claimant to reach out to the Respondent to determine when work would resume.

10. In September 2018, a Montgomery County inspector came to the Claimant's home for the initial inspection of the deck and failed the project's inspection.

11. The Claimant discovered several of his neighbors had similar projects with the Respondent and similar issues of non-responsiveness from the Respondent. As such, the Claimant and his neighbors filed a complaint against the Respondent with the Montgomery County Office of Consumer Protection on September 13, 2018.

12. After the consumer protection complaint was forwarded to the Respondent, the Respondent contacted the Claimant to resume work on the Contract. In October 2018, the Respondent indicated to the Claimant that he would return to work on the Contract but would need an additional \$4,800.00 in addition the original agreed upon contract price in order to complete the project.

13. The Respondent claimed the additional \$4,800.00 was due to changes in the color of the decking material due to a rejection of the original plans by the Association. However, the Association never rescinded the approval for the Claimant's project.

14. The Claimant objected to the additional \$4,800.00 cost without a breakdown of what the additional cost of materials entailed. The Claimant contacted the Respondent to provide a breakdown of the additional cost, but the Respondent refused to provide the breakdown, citing that such a breakdown would be too detailed and involve disclosing confidential information.

15. The Claimant made one final attempt to have the Respondent return to complete the work on the Contract in December 2018. However, at that time the Respondent indicated

that the project had gotten too costly for him and he would not complete the work without additional money.

16. The Claimant received two estimates from other contractors in April 2019 to complete his deck. Both estimates indicate that the footers dug by the Respondent are of no value and would need to be redone in order to complete the project.

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).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) (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.

The undisputed facts show that the Respondent, a licensed home improvement contractor at the time of the Contract, did not complete the project as outlined in the Contract.. After

³ As noted above, “COMAR” refers to the Code of Maryland Regulations.

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

collecting the initial payment on the Contract, the Respondent performed one day of work, on July 12, 2018, by digging two footers for the purposes of installing the deck. After that, the Respondent collected a second payment, but never returned to complete the project. The Respondent claimed that more money was needed to finish the project, and further claimed the money was needed for changes to the color of the decking required by the Association in order to gain Association approval. This was not true. The Association had previously approved the Claimant's deck project and never rescinded approval. Moreover, when the Claimant pressed the Respondent for an itemized breakdown of the additional cost, the Respondent refused, citing "confidential" information, without any further explanation. At that point, after a last attempt to get the Respondent to complete the Contract, the Respondent refused to do so. As such, the home improvement Contract was left abandoned as of December 2018, resulting in an incomplete home improvement, and 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 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). 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 abandoned the Contract after performing minimal work by digging two footers. Those footers were left unprotected and rendered to of no useful purpose, meaning the value of the work performed has been rendered to have no value and requires to be redone. Therefore, the Respondent essentially did no work on the Contract because the "work" he did July 12, 2018 is of no value.

Accordingly, the following formula appropriately measures the Claimant's actual loss:
"If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract." COMAR 09.08.03.03B(3)(a).

Here, the Claimant paid a total of \$5,119.00 to the Respondent on the Contract: an initial \$2,569.00 payment on May 10, 2018, and a second payment of \$2,550.00 on July 16, 2018 after the Respondent dug the footings. Therefore, the Claimant is entitled recover his actual loss of \$5,119.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$5,119.00 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)(a). I further conclude that the Claimant is entitled to recover that amount from the Fund. COMAR 09.08.03.03B(3)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,119.00; 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

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

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

September 24, 2020
Date Decision Issued

CONFIDENTIAL

Stephen W. Thibodeau *SLG*
Administrative Law Judge

SWT/cmg
186921

PROPOSED ORDER

WHEREFORE, this 13th day of November, 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.

Lauren Lake

Lauren Lake

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***