IN THE MATTER OF THE CLAIM	*	**BEFORE JENNIFER M. CARTER JONES,**
OF BAKTIAR KARIM	*	**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	*	
TYRONE ANDERSON	*	**OAH No.: LABOR-HIC-02-21-00983**
T/A DECK RENOVATIONS,	*	**MHIC No.: 19 (90) 1455**
RESPONDENT	*	
	*	

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

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 or about April 22, 2020, Baktiar Karim (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) under the jurisdiction of the Department of Labor (DOL)[1] for reimbursement of $8,886.41 in alleged actual losses suffered as a result of a home improvement contract with Tyrone Anderson, T/A Deck

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

Renovations (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).[2] On November 2, 2020, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing. Bus. Reg. §§ 8-407(a), 8-312.

I held a hearing on March 2, 2021, using the Webex videoconferencing platform. Bus. Reg. § 8-407(e); Code of Maryland Regulations (COMAR) 28.02.01.20B. John Hart, DOL Assistant Attorney General, represented the Fund. The Claimant represented himself. The Respondent failed to appear for the hearing.

After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. 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. On January 28, 2021, the OAH mailed, by regular and certified mail, a Notice of Remote Hearing (Notice) to the Respondent at his address of record with the MHIC on Trentworth Way in Clarksburg, Maryland. COMAR 09.08.03.03A(2). The regular mailing sent to the Respondent was not returned by the United States Postal Service (USPS) as undeliverable. Furthermore, the USPS forwarded to the OAH the green certified mailing card signed by the Respondent, verifying that the Respondent received the certified copy of the Notice. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter.

The contested case provisions of the Administrative Procedure Act, the DOL'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. 2020); COMAR 09.01.03; and COMAR 28.02.01.

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

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 that loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

CL #1 Invoice, dated March 2, 2019, with attached payment summary, notes, and photographs of the back of the Claimant's home/deck

CL #2 Various Receipts, Orders, Invoices, Checks and Pick up Confirmations, including the following:

- Receipt from Home Depot for $1,336.32, dated March 22, 2019
- Home Depot Pick up Confirmation, dated May 20, 2019
- Receipt from Home Depot for $437.15, dated April 15, 2019
- Home Depot Pick up Confirmation, dated May 20, 2019
- Order from TW Perry for $1,711.70, dated April 15, 2019
- Invoice from TW Perry for $1,000.94, dated March 28, 2019
- Emails between the Claimant and the Respondent, dated March 24 and 27, 2019
- Check for $3,500.00 from the Claimant to the Respondent, dated March 2, 2019

CL #3 Various Receipts, Orders, Invoices, Checks and Pick up Confirmations, including the following:

- Home Depot Merchandise and Service Summary for $6,244.25, dated July 25, 2019
- Charge Summary from Outdoor Specialties for $1,405.58, dated August 6, 2019
- Permit Invoice for $165.00, Frederick County Division of Planning and Permitting, Department of Permits and Inspections, dated July 2, 2019
- Sales Order from Outdoor Specialties for $71.62, stamped paid, dated August 14, 2019
- Twelve Home Depot receipts, various dates
- Copy of a check from the Claimant to Elmer Damian for $1,000.00, dated July 10, 2019

- Copy of a check from the Claimant to Elmer Damian, for $500.00, dated July 17, 2019
- Copy of a check from the Claimant to Elmer Damian for $400.00, dated August 3, 2019
- Copy of a check from the Claimant to Elmer Damian for $1,000.00, dated August 4, 2019
- Copy of a check from the Claimant to Elmer Damian for $500.00, dated August 4, 2019
- Copy of a check from the Claimant to Elmer Damian for $500.00, dated August 16, 2019

CL #4 Receipts for refunds the Claimant received from PNC Bank, Home Depot, and Lowe's, various dates

CL #5 Building Permit 196879, Frederick County Building Department, with an expiration date of July 3, 2020

Cl. #6 Estimate from Yovany H. Contractor, LLC, dated July 1, 2019

CL #7 Inspection Report, Frederick County Department of Planning and Permitting, dated April 9, 2019

CL #8 Screenshot from the Claimant's cell phone of an outgoing call to the Respondent, undated

CL #9 Estimate from Robert Altendorf, RJ Construction and Remodeling of Maryland, Inc., dated June 26, 2019

CL #10 Eight photographs of various elements of deck construction, taken in May 2019

CL #11 List of Expenses and Refunds created by the Claimant, undated

CL #12 Letter from the Claimant addressed to "Dear Honorable Judge," dated February 8, 2021

I admitted the following exhibits on behalf of the Fund:

Fund #1 Notice, dated January 28, 2021

Fund #2 MHIC Fund Hearing Order, dated January 7, 2021

Fund #3 Home Improvement Claim Form, dated April 22, 2020, and letter from the MHIC to the Respondent, dated April 29, 2020

Fund #4 Licensing History, dated February 28, 2021

Testimony

The Claimant testified on his own behalf.

No one appeared to testify on behalf of the Respondent.

The Fund presented no witnesses.

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 113379.

2. As of March 2, 2019, the Claimant's home had a small back deck.

3. On or about March 2, 2019, the Claimant and the Respondent entered into a contract (Contract) for the Respondent to build a deck on the back of the Claimant's home. The scope of work for the project included the following:

> 26x14 deck with railing built as a Free standing deck.
> Approximate height from ground is 3-5 feet.
> Girder and joists to be pressure-treated with blocking over girder and joist hangers at ends.
> Decking to be 5/4" x 6 lumber with wood grain.
> Stairway for exit down and exit up.
> Deck with notch with old deck and extend.

CL #1.

4. The agreed-upon price for the deck construction was $15,029.00.

5. The Claimant paid the Respondent $3,500.00 on March 2, 2019.

6. After the Claimant paid the Respondent $3,500.00, the Respondent asked for an additional $1,500.00 to buy materials. The Claimant gave the Respondent his credit card number over the phone so he could buy the necessary materials.

7. The Licensee charged $1,500.00 on the Claimant's credit card.

8. On March 22, 2019, the Respondent charged $1,336.32 at Home Depot on the Claimant's credit card without authorization from the Claimant.

9. After learning of the unauthorized $1,336.32 the Respondent charged to his credit card, the Claimant contacted the Respondent, who reported he charged that amount for small materials necessary to build the deck.

10. The Claimant told the Respondent not to charge his credit card again without the Claimant's authorization.

11. The Respondent made three more purchases, charging them to the Claimant's credit card; one on March 27 or 28, 2019 for 1,000.94 at TW Perry, a construction materials provider; one on April 15, 2019 for $437.15 at Home Depot; and one on April 15, 2019 for $1,711.70 at TW Perry.

12. After the Respondent charged $1,000.94 on March 27, 2019 at TW Perry using the Claimant's credit card, the Claimant sent the Respondent an email noting the charge and directing him again not to use his credit card without authorization.

13. Much of the materials the Respondent purchased was not for constructing the Claimant's deck.

14. In April 2019, the Respondent sent three different crews to work on the deck construction.

15. There were problems with the deck construction. At least one of the brackets joining the wood for the deck was broken; the Respondent did not fill footings for the deck support beams and did not properly cut and join some of deck foundation wood.

16. On April 9 and May 10, 2019, the Frederick County Division of Planning and Permitting inspected the deck framing. The deck framing failed both of the inspections.

17. On May 14 and 15, 2019, the Claimant sent text messages to the Respondent, asking him when he would come and finish the deck construction. The Respondent told the Claimant by text that he would return to work on the deck on May 17, 2019.

18. The Respondent never returned to the Claimant's home.

19. The Respondent left wood and other supplies lying in the Claimant's yard. Some of the pieces of wood had nails protruding from them.

20. The Claimant paid the Respondent a total of $9,486.11 to complete the deck, by check and by unauthorized charges to the Claimant's credit card.

21. The value of the work the Respondent completed on the deck was $600.00.

22. The Claimant sought an estimate from licensed contractor Robert Altendorf, who determined the cost to complete the deck would be $22,000.00.

23. The Claimant completed deck construction himself, with the assistance of a handyman. The Claimant was only able to use about ten percent of the materials the Respondent originally used for the deck construction.

24. The Claimant spent $9,488.27 to purchase the materials necessary to complete the deck.

25. The Claimant paid the handyman $3,900.00 for his assistance.

26. The handyman was not a licensed contractor.

27. The Claimant obtained a permit to complete the deck construction on his own. This permit cost the Claimant $165.00.

28. The Claimant received a refund of $4,985.17 for some of the charges the Respondent made to his credit card.

29. The Claimant received $1,342.99 in refunds from Home Depot for materials he returned.

DISCUSSION

The Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3); COMAR 28.02.01.21K(1). "[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).

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 contractor"). Actual loss "means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Md. Code Ann., Bus. Reg. § 8-401 (2015 & Supp. 2020). For the following reasons, I find that the Claimant has proven eligibility for compensation.

Based on the unrefuted evidence, the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Claimant paid the Respondent $9,486.42 to construct a deck on the back of his home. Of this amount, the Claimant paid the Respondent $3,500.00 by check; the balance is comprised of charges the Respondent made on the Claimant's credit card – ostensibly, for the purchase of materials necessary to complete the Claimant's deck.

According to the Claimant, in May 2019, the Respondent stopped working on the deck and never contacted the Claimant again. The Claimant further asserted that the work the Respondent did complete was unworkmanlike. In support of his position, the Claimant submitted photographs of the Respondent's work, which depicted a broken brace, wood installation that

appears to be unstable, and copies of two inspection reports stating that the deck framing the Respondent installed was insufficient to pass inspection. Additionally, the Claimant submitted an estimate from a licensed contractor, Yovany H Contractor LLC, which estimated the value of the work the Claimant completed was $600.00. The Claimant also submitted an estimate from licensed contractor Robert Altendorf, who determined it would cost $22,000.00 to complete the deck.

I conclude that the Respondent failed to complete the construction of the deck and the work he did complete was unworkmanlike and unusable. Accordingly, any amounts the Claimant paid the Respondent constitutes an actual loss. Furthermore, as a result of the Respondent's incomplete and unworkmanlike work on the deck, the Claimant had to pay an additional $9,488,27 to obtain the materials necessary to complete the deck and $3,900.00 to pay a handyman to assist him with the deck construction. The Claimant concedes that he obtained a refund for $4,985.17 in purchases the Respondent made on the Claimant's credit card. He was also able to obtain $1,342.99 in refunds from Home Depot by returning some of the materials the Respondent purchased. The Claimant was able to recoup $6,328.16 of the $9,486.11 he paid to the Respondent and the Respondent charged to his credit card. Accordingly, the amount the Claimant paid to or on behalf of the Respondent was $3,157.95.

The Respondent stopped working on the deck and never returned to the Claimant's property to complete the project. The Claimant obtained an estimate from another contractor, Robert Altendorf, who estimated that the cost to complete the deck in a workmanlike fashion would be $22,000.00. The Claimant testified, without challenge, that Mr. Altendorf told him that it is much more expensive to complete such a job when the initial contractor's work is unworkmanlike and requires removal of the inadequate work and materials. Accordingly, I conclude that 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." COMAR 09.08.03.03B(3)(c).

The Claimant paid the Respondent $3,157.95. Although the Claimant ultimately completed the deck at his own expense with the help of a handyman, neither the Claimant nor the handyman are licensed contractors. According to the estimate the Claimant obtained from Mr. Altendorf, the Claimant would have been required to pay $22,000.00 to demolish the existing inadequate deck and complete the installation of a new deck. Thus, the Claimant's actual loss is calculated as follows:

Amount Paid to the Respondent	$ 3,157.95
Amount required for a licensed contractor to repair the poor work and complete the contract	+$22,000.00
	$25,157.95
Original Contract Price	-$15,029.00
Actual Loss	**$10,128.95**

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). As the Claimant paid the Respondent $3,157.95, that is the amount of his actual loss and he is entitled to recover that amount from the Fund.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $3,157.95 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 Claimant is entitled to recover that amount from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $3,157.95; 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;[3] and

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

May 5, 2021
Date Decision Issued

Jennifer M. Carter Jones
Administrative Law Judge

JCJ/emh
#191941

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

PROPOSED ORDER

WHEREFORE, this 28th day of June, 2021, 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.

Joseph Tunney

Joseph Tunney
Chairman
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION