

IN THE MATTER OF THE CLAIM OF	* BEFORE JEROME WOODS, II,
GREG GOBLE,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH Case No.: DLR-HIC-02-10-31465
FOR THE ALLEGED ACTS OR	* MHIC Case No.: 07 (90) 454
OMISSIONS OF JOHN R. DOAR	*
t/a RELIABLE PAVING	*

\* \* \* \* \*

**RECOMMENDED DECISION**

STATEMENT OF THE CASE  
ISSUE  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On May 29, 2007, Greg Goble (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$2,770.00 for actual losses allegedly suffered as a result of a home improvement contract with John R. Doar (Respondent), t/a Reliable Paving. After an investigation, the Commission issued an August 25, 2010, Hearing Order and forwarded the case to the Office of Administrative Hearings (OAH) on August 30, 2010.

I held a hearing on April 1, 2011, at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010). Eric London, Assistant Attorney General, Department

of Labor, Licensing and Regulation (DLLR or Department), represented the Fund. The Claimant represented himself. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the OAH Rules of Procedure govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010); Code of Maryland Regulations (COMAR) 09.01.03, COMAR 09.08.02.01; COMAR 28.02.01.

### ISSUE

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

### SUMMARY OF THE EVIDENCE

#### Exhibits

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

- |                 |  |
|-----------------|--|
| Claimant Ex. 1  | May 26, 2005 contract between the Claimant and Respondent                              |
| Claimant Ex. 2  | June 26, 2005 copy of Cashier's check from the Claimant to the Respondent (\$2,300.00) |
| Claimant Ex. 3  | August 26, 2005 copy of Check 2080 from Claimant to the Respondent (\$2,580.00)        |
| Claimant Ex. 4  | August 17, 2008 letter from the Respondent to Hubert Lowery, MHIC                      |
| Claimant Ex. 5A | September 30, 2007 Inspection Results from Frank J. Kaiss and Associates               |
| Claimant Ex. 5B | 13 Color photographs of driveway and surrounding area                                  |
| Claimant Ex. 6  | August 15, 2008 letter from Frank J. Kaiss and Associates to MHIC                      |

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1: November 29, 2010 Notice of Hearing
- Fund Ex. 2: March 11, 2011 Notice of Hearing
- Fund Ex. 3: August 25, 2010 Hearing Order
- Fund Ex. 4: February 10, 2011 Licensing History
- Fund Ex. 5: May 29, 2007 Claim Form
- Fund Ex. 6: June 5, 2007 letter from the Fund to the Respondent
- Fund Ex. 7: September 30, 2007 Amended Complaint
- Fund Ex. 8: March 11, 2009 letter from the Fund to the Respondent
- Fund Ex. 9: Philip M. Pace, Co. Inc. estimate (undated)

No exhibits were submitted on behalf of the Respondent.

#### Testimony

The Claimant testified on his own behalf and presented testimony from his wife, Joan Goble, and Frank J. Kaiss, accepted as an expert in home improvement and driveway paving. The Respondent testified on his own behalf and presented testimony from his son, Gus Petrovitch. The Fund presented argument but no witnesses.

#### **FINDINGS OF FACT**

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

1. At all times relevant to this matter, the Respondent was a licensed home improvement contractor under MHIC license number 01-47479.
2. On May 26, 2005, the Claimant entered into a contract with the Respondent to construct a new asphalt driveway.
3. The Respondent was supposed to do the following:

- demolish and remove existing asphalt and concrete driveway, approximately 57' x 12', and grading and remove all grass from the upper driveway area approximately 1,135 square feet;
  - furnish and install a CR-6 base and fine grade and preparation for asphalt. CR-6 base was to be a minimum thickness of 4" and a maximum thickness of 8";
  - provide a tack coat and a 3" asphalt base course for driveway, with a 3" asphalt surface course rolled with a 3.5 ton roller;
  - all necessary piping to extend to downspouts and a sump pump to be installed prior to placement of asphalt paving.
4. The contract price was \$4,880.00. The Claimant paid the Respondent \$2,300.00 on June 28, 2005. The Claimant made an additional payment in the amount of \$2,580.00 on August 26, 2005, for a total payment to the Respondent under the contract of \$4,880.00.
5. Work started in early August 2005 in accordance with the terms of the contract and was completed August 23, 2005.
6. Upon completion of the work, the Claimant noticed the following defects:
- holes on the driveway surface;
  - soft asphalt in some areas;
  - water not draining into the street but onto neighbors' adjacent property;
  - grass growing on driveway surface.
  - Hump (bulge) in driveway;
  - edge of driveway is crooked.

7. After August 23, 2005 and up until June 15, 2006, the Claimant made numerous phone calls to get the Respondent to come back and correct his work.
8. The Respondent did not return the phone calls, although his son spoke with Mrs. Goble on two occasions.
9. The Respondent refused to return to correct the work.
10. The Claimant obtained an estimate from another licensed contractor to correct the Respondent's work. The cost of the remedial work, which would include repaving and removing the hump, is \$2,770.00.
11. In September 2007, the Fund requested that Frank J. Kaiss inspect the work performed by the Respondent.
12. As of September 28, 2007, the following defects were noted by Mr. Kaiss:
  - surface coat is irregular with numerous temporary patches (Claimant applied temporary patches) in the center of the driveway;
  - driveway graded improperly with water runoff discharging onto adjacent property and not into the street;
  - two downspouts and a sump pump discharge have been extended with PVC piping under the driveway;
  - small hole on surface of the paving in upper driveway that should be cut out and patched;
  - entire edge of driveway is crooked and unsightly;
  - where the concrete apron and driveway meet, grading, sub-grade and asphalt improperly placed and hump present;
  - scrapes from car because of improper height;

- grass growing on driveway (indicating improper depth of asphalt and base);
- asphalt is approximately 8" thick on the left side of the driveway opposite the area where grass is growing (indicating improper grading and no sub-base before paving was placed);

13. The Claimant's actual loss is \$2,770.00.

### DISCUSSION

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) (2010). *See also* COMAR 09.08.03.03B(2). The loss must "arise from an unworkmanlike, inadequate, or incomplete home improvement." Md. Code Ann., Bus. Reg. § 8-401 (2010). The Claimant bears the burden to prove each of the above elements by a preponderance of the evidence. Md. Code Ann., Bus. Reg. § 8-407(e) (2010); COMAR 09.01.02.16C; COMAR 09.08.03.03A(3). For the following reasons, I find that the Claimant has met his burden, establishing his entitlement to an award from the Fund.

First, the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. Second, the Claimant paid the Respondent \$4,880.00 under a home improvement contract. Third, the Respondent performed an unworkmanlike and inadequate home improvement by performing inadequate grading, causing water to run off onto adjacent property, and performing sub-standard work when grading and paving the driveway. Frank J. Kaiss, the Claimant's expert, who examined the Respondent's work at the request of the Fund, convincingly testified that the Respondent did not grade the driveway properly, causing a hump and numerous other defects. Mr. Kaiss offered that the entire edge of driveway is crooked

and unsightly, and that grass is growing on the driveway, which usually indicates that the asphalt was not installed at the proper depth.

The Respondent argued that if there were any defects, it was caused by excess water. He further argued that he properly paved and graded the driveway. In essence, the Respondent offered that at the time the driveway was installed, it rained a lot and the excess rain caused wetness. I do not find the Respondent credible for the following reasons. Mr. Kaiss testified that the driveway was graded improperly, which is causing water to not flow properly but instead, is actually flowing onto the neighbors' adjacent property. He described the Respondent's work as not meeting the standards of the trades and that the entire driveway should be replaced.

The Respondent claimed that the driveway was soft, weak and brittle as a result of the sealer the Claimant installed. I reject this assertion. Mr. Kaiss offered in his detailed report "the asphalt surface is rough and the asphalt mix is questionable" (Claimant Ex. 5A). Mr. Kaiss indicated that the asphalt sealer did not cause the driveway to become soft, but that it was likely due to a poor asphalt mix, or the asphalt not being installed due to improper rolling. Given the numerous defects, I agree with Mr. Kaiss.

After several unavailing attempts to provide an opportunity for the Respondent to correct the deficiencies, the Claimant secured an estimate in the \$2,770.00, i.e., the cost to repair the Claimant's work.

As a result of the Respondent's unworkmanlike performance, the Claimant is potentially eligible for an award from the Fund. I now turn to the amount of the award, if any. MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). One of those formulas, as follows, offers an appropriate measurement in this case:

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 presented unrefuted evidence from a licensed home improvement contractor that the cost to remove and re-construct the contract work would be \$2,770.00. Using the formula set forth in COMAR 09.08.03.03B(3)(c), I calculate the Claimant's actual loss as follows:

\$4,880.00	Amount paid by the Claimant to or in behalf of the Respondent
<u>+2,770.00</u>	Reasonable cost of correction
7,650.00	
<u>-4,880.00</u>	Original contract price
\$2,770.00	<b>Actual loss by the Claimant</b>

#### **CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual loss of \$2,770.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).

#### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$2,770.00, and I further propose that the Maryland Home Improvement Commission,

**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 at least ten percent as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

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

June 21, 2011  
Date Decision Mailed

JW/rbs  
#123957

[REDACTED]  
[REDACTED]  
[REDACTED] bds, II  
Administrative Law Judge [REDACTED]

**IN THE MATTER OF THE CLAIM OF \* BEFORE JEROME WOODS, II,**  
**GREG GOBLE, \* AN ADMINISTRATIVE LAW JUDGE**  
**CLAIMANT \* OF THE MARYLAND OFFICE**  
**AGAINST THE MARYLAND HOME \* OF ADMINISTRATIVE HEARINGS**  
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**FILE EXHIBIT LIST**

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No exhibits were submitted on behalf of the Respondent.

PROPOSED ORDER

*WHEREFORE, this 4th day of August 2011, 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.*

*Marilyn Jumalon*

*Marilyn Jumalon  
Panel B*

*MARYLAND HOME IMPROVEMENT COMMISSION*