

IN THE MATTER OF THE CLAIM OF	*	BEFORE DANIEL ANDREWS,
GREGORY AND NICOLE EARLY	*	AN ADMINISTRATIVE LAW JUDGE
AGAINST THE	*	OF THE MARYLAND OFFICE
MARYLAND HOME IMPROVEMENT	*	OF ADMINISTRATIVE HEARINGS
GUARANTY FUND FOR THE	*	OAH NO.: DLR-HIC-02-10-30782
ALLEGED ACTS OR OMISSIONS OF	*	MHIC NO.: 08(90)2418
CURT SKIDMORE,	*	
t/a BLUE COLLAR CONSTRUCTION,	*	
RESPONDENT	*	

* * * * *

RECOMMENDED DECISION

STATEMENT OF THE CASE
ISSUE
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RECOMMENDED ORDER

STATEMENT OF THE CASE

On September 12, 2008, Gregory and Nicole Early (Claimants) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement for actual losses allegedly suffered as a result of a home improvement contract with Curt Skidmore, t/a Blue Collar Construction (Respondent).

I held a hearing on November 3, 2010 at the LaPlata Public Library, 2 Garrett Avenue, LaPlata, Maryland 20646. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010). Victor Varga, Esquire, represented the Claimants. Jessica Kaufmann, Assistant Attorney General, Department

of Labor, Licensing and Regulation (DLLR or Department), represented the Fund. The Respondent failed to appear after notice of the hearing was properly sent to him.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the Office of Administrative Hearings (OAH) govern 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; 09.08.02.01; and 28.02.01.

ISSUE

Did the Claimants 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 Claimants' behalf:

- Cl. Ex. #1: Contract between Claimants and Respondent, dated November 28, 2007
- Cl. Ex. #2: Claimants' check number 1025, in the amount of \$8,000.00, payable to Respondent, dated December 1, 2007.
- Cl. Ex. #3: Claimants' check number 1026, in the amount of \$7,500.00, payable to Respondent, dated December 12, 2007
- Cl. Ex. #4: Claimants' check number 1049, in the amount of \$3,725.00, payable to Respondent, dated March 13, 2008
- Cl. Ex. #5: Series of photographs taken on April 25, 2008 depicting Claimants' basement and work performed by Respondent
- Cl. Ex. #6: DLLR's internet page, Results for Active Licensed Home Improvement for Joe Smith, Upper Construction, Inc. (UCI), dated November 3, 2010
- Cl. Ex. #7: Proposal by UCI, dated May 9, 2008

Cl. Ex. #8: Proposal by Grandstaff, May 13, 2008

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

Fund Ex. #1: Notice of Hearing, mailed August 27, 2010, for hearing date of November 3, 2010, with copy sent by certified mail marked as Unclaimed

Fund Ex. #2: Transmittal from DLLR with Hearing Order, August 13, 2010

Fund Ex. #3: DLLR, HIC License History for Respondent

Fund Ex. #4: DLLR letter to Respondent, October 8, 2008

Testimony

The Claimants testified on their own behalf. The Fund did not present any witnesses.

FINDINGS OF FACT

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

1. At all times relevant to this hearing, the Respondent was a licensed home improvement contractor under MHIC registration number 01-88448.
2. Since November 28, 2007, the Respondent's address of record with the MHIC has been 3019 Walnut Lane, Waldorf, Maryland 20601.
3. On November 28, 2007, the Claimants entered into a contract with the Respondent for the purpose of installing drywall in the Claimants' basement; painting the drywall; building a bar with a granite countertop; installing electrical plugs and recess lighting; framing the furnace area including bulkheads and support beams; installing five doors, building wine shelves, tearing out and moving an existing bathroom and then installing a new standup shower, toilet, vanity and ceramic floor; and finally, installing new baseboard throughout the basement.
4. The contract total was \$22,950.00. The contract required an initial down payment of \$8,000.00 for materials; a second payment of \$7,500.00 when the basement was framed, the old

bathroom removed, concrete floor torn up, and plumbing pipe installed; and a third payment of \$7,450.00 when the job was complete.

5. On December 1, 2007, the Claimants paid the Respondent \$8,000.00.

6. The Respondent began the home improvement work on December 1, 2007.

7. On December 12, 2007, the Claimants paid the Respondent a second installment in the amount of \$7,500.00.

8. Although the Respondent promptly started to work on the project, after a week or two, the Respondent's work became sporadic.

9. During the first two weeks of January 2008 the Respondent promised to return to the worksite but failed to do so.

10. After several telephone calls by the Claimants to get the Respondent back to work, the Respondent finally returned to the worksite on February 4, 2008.

11. After returning to work, the Respondent's work schedule dropped from working five days to three days per week.

12. From February 25, 2008 through March 20, 2008, the Respondent was working on the project but the Respondent started to complain that the cost was becoming too expensive.

13. During this time frame, the work on the basement did not appear to be progressing at all except for the installation of the drywall.

14. On March 13, 2008, the Claimants paid the Respondent \$3,725.00.

15. As of March 13, 2008, the Claimant's had paid the Respondent a total of \$19,225.00.

16. During March through April of 2008, the relationship between the Claimants and Respondent deteriorated to the point where the Respondent would not return any telephone calls.

17. April 25, 2008 was the last time the Claimants had any contact with the Respondent.

18. As of April 25, 2008, the Respondent had left the Claimants' home improvement incomplete and never returned or offered to return to work.

19. As of April 25, 2008, the Respondent had installed only the basement drywall, which was installed with significant gaps between drywall panels, uneven cuts throughout the drywall paneling, and holes in portions of drywall paneling.

20. The Claimants contacted two contractors, UCI and Grandstaff, to obtain estimates on finishing their basement renovation project.

21. Both contractors submitted estimates requiring the removal of all existing work performed by the Respondent. Each estimate also provided a cost to complete the Claimants' basement renovation.

22. The UCI estimate was \$66,650.36; however, after deducting expenses related to the installation of flooring, the estimate total is \$48,622.88.

23. The Grandstaff estimate was \$65,000.00.

24. On August 27, 2010, the OAH sent a Notice of Hearing and a copy of the MHIC's Hearing Order to the Respondent using his address of record with the MHIC. The Notice of Hearing was mailed to the Respondent by certified and regular mail.

25. On September 21, 2010, the Notice of Hearing delivered by certified mail was returned to the OAH as being unclaimed.

26. The Notice of Hearing sent by regular was never returned as undelivered to the OAH.

DISCUSSION

Respondent's Failure to Appear:

A contractor is required to notify the MHIC within ten days of any change in address. Md. Code Ann., Bus. Reg. § 8-309 (2010). Notice of a hearing must be sent to the contractor at

least ten days "before the hearing by certified mail to the business address of the licensee on record with the Commission." Md. Code Ann., Bus. Reg. § 8-312(d) (2010). On August 27, 2010, the OAH sent a Notice of Hearing (by both certified mail and regular mail) to the Respondent at his last business address on record with the MHIC. The hearing was scheduled for November 3, 2010. A hearing may proceed in the absence of a contractor after being provided proper notice. Md. Code Ann., Bus. Reg. § 8-312(h) (2010); COMAR 09.01.02.09.

In this case, the Respondent was provided proper notice of the hearing when he was mailed timely notice of the hearing scheduled for November 3, 2010 to his address of record with the MHIC. The Notice of Hearing was mailed to the Respondent by both certified and regular mail. Although the certified mail was returned as unclaimed; the notice sent by regular mail was never returned to the OAH by the postal authorities. Pursuant to COMAR 09.01.02.07, a document served by mail under this regulation is presumed to have been received by the addressee three days after the date the document was mailed. However, the Respondent failed to appear on the scheduled hearing date. Based on the foregoing discussion, I conclude that the Respondent was provided due notice of the hearing and the hearing properly proceeded in his absence.

Merits of Claim:

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). 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 (2010). A claimant has the burdens of production and persuasion to establish the "inadequate, incomplete or unworkmanlike" work product of the

contractor, as well as to establish the amount of the "actual loss". Md. Code Ann., Bus. Reg. § 8-407 (2010). For the following reasons, I find that the Claimants have proven eligibility for compensation.

The uncontested evidence is that the Respondent entered into a contract with the Claimants to perform a home improvement by renovating the Claimants' basement. On December 1, 2007, the Respondent started work on this project. However, in January of 2008 and afterwards, the Respondent's work became very sporadic. During this time period, the Claimants made several telephone calls to the Respondent in an attempt to get him back to work on the project. Many of these telephone calls would go unanswered without any return telephone calls or messages. By April 25, 2008, the Respondent had abandoned the job and never returned to finish the contract.

The Respondent did perform some work on the project. However, the work performed by the Respondent amounted to installing drywall throughout the Claimants' basement. Based on the photographic evidence presented, the drywall installed by the Respondent had significant gaps between drywall panels. The panels exhibited uneven cuts and did not appear to be adequately cut and attached to existing wood framing. Additional un-rebutted testimony established that the drywall had several holes in several places.

Despite the foregoing facts, the Claimants paid the Respondent in the following manner: \$8,000.00 on December 1, 2007; \$7,500.00 on December 12, 2007; and \$3,725.00 on March 13, 2008. In total, the Claimants paid the Respondent \$19,225.00.

In an attempt to have their basement renovation completed, the Claimants sought estimates from two contractors, UCI and Grandstaff. Both contractors provided estimates based on the same scope of work as required by the contract between the Respondent and the

Claimants; however, based upon the Claimants' written contract with the Respondent, there was no specific estimate for the installation of flooring in the basement. Nevertheless, both estimates by each new contractor provided a cost to remove all work installed by the Respondent and complete the renovation. Both estimates were significantly higher than the original contract, however. The UCI estimate was for \$66,650.36 and, after deducting expenses for the installation of a floor, the estimate total was \$48,622.88. The Grandstaff estimate was for \$65,000.00.

Based on the foregoing facts, counsel for the Fund agreed that the Claimants have established that the Respondent performed a home improvement in an inadequate, unworkmanlike, and incomplete manner. The Fund asserted, however, that the reasonable cost to correct or complete the Respondent's work should be based on the UCI estimate, after deducting the cost of installing a floor, or \$48,622.88.

After considering all the evidence presented, particularly after reviewing the work performed by the Respondent as shown through the photographic evidence, I agree that the Claimants have established an actual loss arising from an unworkmanlike, inadequate, or incomplete home improvement. Md. Code Ann., Bus. Reg. § 8-401 (2010). Consequently, I find that the Claimants are eligible for compensation from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a) (2010).

Having found eligibility for compensation, I now turn to the amount of the award, if any. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). Also, the Fund may not award any individual claimant more than \$20,000.00 for the acts or omissions of one contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(1) (Supp. 2010). Finally, the MHIC may not award from the Fund an amount in excess of the amount paid by or on behalf of the claimant to

the contractor against whom the claim is filed. Md. Code Ann., Bus. Reg. § 8-405(e)(5) (Supp. 2010).

At the hearing, counsel for the Fund argued that the formula used in COMAR 09.08.03.03B(3)(c) should determine the Claimants' award. This regulation provides:

(c) 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.

In this case, the Claimants have sought another contractor to complete the contract started by the Respondent. Accordingly, the award calculation starts with determining the amount paid to the original contractor, which is the Respondent. As noted earlier, the Claimants made three payments to the Respondent for a total of \$19,225.00. Next, this amount is added to any reasonable amount the Claimants will pay another contractor to repair the work done by the Respondent and complete the original contract. As discussed previously, the UCI estimate was for a total of \$66,650.36 and included costs to repair the Respondent's work by removing it and estimates to complete the contract. However, the Claimants admitted that that the original contract was silent on the installation of a floor and the UCI estimate contained a cost for flooring. After deducting the itemized cost for flooring contained in the UCI estimate, the total cost of repair and completion was \$48,622.88. This amount is reasonable by comparison to the original contract and the Grandstaff estimate of \$65,000.00. Therefore, by adding the amount paid to the Respondent, \$19,255.00, to the reasonable amount to repair and complete, \$48,622.88, the subtotal award figure is \$67,847.88. The final calculation to perform is to deduct the original contract price of \$22,950.00 from \$67,847.88 for a total award to the

Claimants from the Fund in the amount of \$44,897.88. As noted above, however, the Fund is not permitted to make an award in an amount in excess of the amount paid by the Claimants to the Respondent. Thus, the total award compensable by the Fund to the Claimants for their actual loss is \$19,255.00.

CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual loss of \$19,255.00 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 Claimants \$19,255.00; 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 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.

February 1, 2011
Date decision mailed


Daniel Andrews
Administrative Law Judge

DA/ch
117897

IN THE MATTER OF THE CLAIM OF	*	BEFORE DANIEL ANDREWS,
GREGORY AND NICOLE EARLY	*	AN ADMINISTRATIVE LAW JUDGE
AGAINST THE	*	OF THE MARYLAND OFFICE
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W/a BLUE COLLAR CONSTRUCTION,	*	
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FILE EXHIBIT LIST

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PROPOSED ORDER

WHEREFORE, this 21st day of March 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.

Andrew Snyder

***Andrew Snyder
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION