

IN THE MATTER OF THE CLAIM OF	*	BEFORE CHARLES R. BOUTIN,
JOSEPH WHITE	*	AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND HOME	*	OF THE MARYLAND OFFICE
IMPROVEMENT GUARANTY FUND	*	OF ADMINISTRATIVE HEARINGS
FOR THE VIOLATIONS OF	*	OAH NO.: DLR-HIC-02-10-30703
BARBARA LONG, <i>t/a</i> ADVANCED	*	MHIC NO.: 09 (05) 1259
WOODWORKS REMODELING, LLC	*	

* * * * *

RECOMMENDED DECISION

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STATEMENT OF THE CASE

On September 11, 2009, Joseph White (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of an actual loss he alleges that he suffered as a result of home improvement work performed by Barbara Long, *t/a* Advanced Woodworks Remodeling LLC (Respondent).

A hearing was held on January 19, 2011, at the Office of Administrative Hearings (OAH), Hunt Valley, Maryland before Charles R. Boutin, Administrative Law Judge (ALJ), on behalf of the MHIC. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2)(i) (2010). The Claimant represented himself. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the Fund. The Respondent failed to appear after due notice to her address of record.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations of the DLLR, and the Rules of Procedure of the OAH. 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, and 09.08.03; COMAR 28.02.01.

ISSUE

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

SUMMARY OF THE EVIDENCE

Exhibits

The Fund submitted the following exhibits, which were admitted into evidence:

Fund #1 – October 1, 2010 Notice of Hearing

Fund #2 – Respondent licensing History

Fund #3 – Hearing Order

Fund #4 – Letter to Respondent dated October 9, 2009 and Home Improvement Claim Form

The Claimant submitted the following exhibits, which were admitted into evidence:

Cl. #1 – Proposed Order dated February 3, 2010

Cl. #2 – Set of seven photographs of work performed by the Respondent.

Cl. #3 – Proposal dated June 30, 2008

Cl. #4 – Three pages of bank statements and copy of check payable to Respondent

Cl. #5 – Receipts for purchase of building materials from Home Depot.

Testimony

The Claimant testified in support of the claim. No additional witnesses were offered.

FINDINGS OF FACT

Having considered the evidence, I make the following findings of fact 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 with the MHIC.
2. At all times relevant to the subject of the hearing, the Claimant owned the property known as 7108 Martell Avenue, Baltimore County, Maryland (the Property).
3. On June 30, 2008, the Claimant contracted with the Respondent to construct a sunroom on his home to be completed in two weeks. The contract provided for the installation of a 12 X 18 foot enhanced roof, one sliding glass door, one regular entry door, lower windows and channels for electric lines.
4. The total contract price was \$5,000.00.
5. The Claimant paid the Respondent \$3,760.00 on July 2, 2008.
6. The Claimant paid the Respondent \$1,240.00 on July 4, 2008.
7. From July 4, 2008 the Respondent did not return to the job site for one month.
8. On July 4, 2008 the Respondent said she could not start the job unless the Claimant purchased certain necessary materials.
9. The Claimant immediately purchased the required materials at Home Depot; the cost was \$751.13.
10. On August 4, 2008, the Respondent began work on the job.
11. The Respondent built a platform. A platform is the subfloor of the sunroom.
12. The Respondent stated that the room would "be here tomorrow."
13. In the Spring of 2009 the Claimant purchased new materials to rebuild the platform that had rotted.

14. The Respondent never returned to do the job.
15. The Respondent abandoned the job.
16. When the Claimant complained to the Respondent she returned \$1,000.00 to him.
17. The Respondent never completed the job or refunded the additional money that was paid.
18. On September 11, 2009, the Claimant filed a claim with the MHIC.

DISCUSSION

Section 8-405(a) of the Business Regulation article provides that an owner may recover compensation from the Guaranty Fund, "for an actual loss that results from an act or omission 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 (2010). The Claimant bears the burden of proving the amount of the actual loss.

The Claimant has established through his testimony and the documentary evidence that he suffered an actual loss as a result of the Respondent's unworkmanlike home improvement. The photographs submitted into evidence establish the many deficiencies with the Respondent's work. See Cl. #2. Furthermore, Respondent's work was unworkmanlike and needed to be torn out and replaced. (Cl. #2). The partially completed platform had rotted due to exposure to the weather. The Respondent failed to appear to dispute any of the Claimant's contentions. She received proper notice at her address of record which is 1807 West Avenue, Dundalk, Maryland 21222.

The Claimant presented sufficient evidence to establish that the work performed by the Respondent was unworkmanlike and needed to be replaced; the evidence that he presented regarding the actual loss was clear and unambiguous. The contracts between the Claimant and

the Respondent totaled \$5,000.00. On the Home Improvement Claim Form (CI. #5), the Claimant lists the amount of his claim as \$5,000.00 and indicates that he paid the Respondent \$5,000.00 and also purchased materials himself on behalf of the Respondent for \$751.13. The Claimant also lists the \$1,000.00 that the Respondent refunded to him when he asked for his money back. The cancelled check and bank statements submitted into evidence by the Claimant establish that he paid the Respondent \$5,000.00 towards the \$5,000.00 contract.

As to the appropriate award in this case, the Fund agreed that the Claimant is entitled to an award from the Fund. The Fund asserted that in this case, COMAR 09.08.03.03B(3)(b) governs the calculation of the award from the Fund. This provision states:

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

Applying the formula set forth in COMAR 09.08.03.03B(3)(b), I have calculated the Claimant's actual loss as follows:

Amount paid on the original contract	\$5,000.00
Plus cost of replacement materials	<u>751.13</u>
	5,751.13
Less amount refunded	<u>- 1,000.00</u>
Actual loss	\$4,751.13

The actual loss suffered by the Claimant is \$4,751.13. Accordingly, recovery from the Fund in the amount of \$4,751.13 is appropriate.

CONCLUSION OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Claimant has sustained an actual loss in the amount of \$4,751.13 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 and 8-405(b) (2010).

RECOMMENDED ORDER

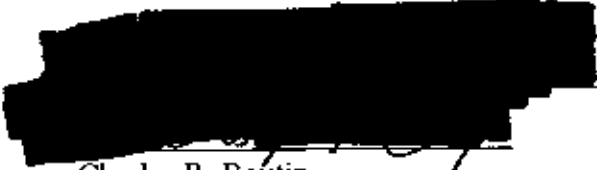
I **RECOMMEND** that the Maryland Home Improvement Commission:

ORDER that the Claimant be awarded \$4,751.13 from the Maryland Home Improvement Commission Guaranty Fund; and

ORDER that the Respondent be 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 Commission, Md. Code Ann., Bus. Reg. § 8-411 (2010); and

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

April 7, 2011
Date Decision Mailed



Charles R. Boutin
Administrative Law Judge

CRB# 121735

PROPOSED ORDER

WHEREFORE, this 3rd day of June 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.

Rossana Marsh

*Rossana Marsh
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION