

The Maryland Home
 Improvement Commission

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**BEFORE THE
 MARYLAND HOME IMPROVEMENT
 COMMISSION**

v. Dennis Michael Manion
 t/a Comfortable Home Improvements
 (Contractor)
 and the Claim of
 Donna Bradshaw-Pelote
 (Claimant)

MHIC No.: 09 (90) 694

FINAL ORDER

WHEREFORE, this 26th of July 2011, Panel B of the Maryland Home Improvement
 Commission **ORDERS** that:

1. The Findings of Fact set forth in the Proposed Order dated April 25, 2011 are **AFFIRMED.**
2. The Conclusions of Law set forth in the Proposed Order dated April 25, 2011 are **AFFIRMED.**
3. The Proposed Order dated April 25, 2011 is **AFFIRMED.**
4. This Final Order shall become effective thirty (30) days from this date. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.

I. Jean White
 I. Jean White, Chairperson
 PANEL B

MARYLAND HOME IMPROVEMENT COMMISSION

IN THE MATTER OF THE CLAIM * BEFORE GERALDINE A. KLAUBER,
OF DONNA L. BRADSHAW-PELOTE * AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND HOME * OF THE MARYLAND OFFICE
IMPROVEMENT GUARANTY FUND * OF ADMINISTRATIVE HEARINGS
FOR THE ALLEGED ACTS OR * OAH NO.: DLR-HIC-02-10-35722
OMISSIONS OF DENNIS MANION, * MHIC NO.: 09 (90) 694
T/A COMFORTABLE HOME *
IMPROVEMENTS *

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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 January 21, 2009, Donna Bradshaw-Pelote (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$60,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Dennis Michael Manion, t/a Comfortable Home Improvements (Respondent).

I held a hearing on March 2, 2011 at Largo Government Center, 902 Basil Court, Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010). Jessica Kaufman, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR or Department),

represented the Fund. The Claimant represented herself. The Respondent failed to appear after due notice to his addresses of record.¹

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the DLLR, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010), Code of Maryland Regulations (COMAR) 09.01.03.01–09.01.03.10; 09.08.02.01–09.08.01.02; and 28.02.01.01–28.02.01.27.

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 Fund's behalf:

GF #1 – Notice of hearing addressed to the Respondent returned by the U.S. postal service as "not deliverable as addressed" and as "unclaimed."

GF #2 – DLLR, MHIC Transmittal to the Office of Administrative Hearings; September 17, 2010 Hearing Order; January 10, 2009 Claim form completed by Claimant

GF #3 – DLLR's licensing history of the Respondent

GF #4 February 3, 2009 letter from MHIC to Respondent with attached Claim form

GF #5 – DLLR licensing history of Hail M. Halecm

¹ A threshold question in this case is whether the Respondent received timely notice of the hearing. If the Respondent was properly notified of the hearing, the case could proceed in his absence. A Notice of Hearing was mailed to the Respondent by certified and regular mail on November 15, 2010 to two separate addresses that the MHIC had on record for the Respondent. The Notices of Hearing sent by certified mail were returned to the Office of Administrative Hearings as "unclaimed" and "not deliverable as addressed." The Notices of Hearing sent by regular mail were not returned by the U.S. postal service. I therefore conclude that due notice was sent to the Respondent. See Md. Code Ann., Bus. Reg. §§ 8-312(b) (2010).

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

CL #1 - January 30, 2008 contract

CL #2 - July 22, 2008 addendum to the contract

CL #3 - April 11, 2008 addendum to the contract²

CL #4 - April 17, 2008 addendum to the contract³

CL #5 - Three checks made payable to the Respondent totaling \$74,000.00

CL #6 - Two photographs of work performed by the Respondent

CL #7 - October 15, 2008 estimate from K& L Professional Framing Systems

CL #8 - December 22, 2008 estimate from Jeff Morat

CL #9 - November 5, 2008 estimate from McLellan & Company, Inc. and September 29, 2008 estimate from Shay Construction

CL #10 - Estimate from Woods Carpentry

CL #11 - Materials list from Woods Carpentry

CL #12 - Invoice from Dunkirk Supply

CL #13 - May 10, 2010 proposal from Orlando Marin

CL #14 - June 5, 2009 Invoice from Jerry's Electric; August 8, 2009 invoice from Jerry's Electric; December 15, 2010 Invoice from Jerry's Electric

CL #15 - Job invoice from Leonard M. McDonald, II; July 24, 2009 Proposal from M. McDonald, II; March 24, 2008 Smoyer Home Improvement proposal

CL #16 - Invoice from Maisel Bros. Inc.

CL #17 - 84 Lumber Invoice

CL #18 - April 24, 2009 Home Depot Merchandise and Service Summary

CL #19 - May 7, 2009 Home Depot Merchandise and Service Summary

CL #20 - May 8, 2009 Home Depot Receipt and Merchandise and Service Summary

² The document reflects a date of April 11, 2009. The Claimant confirmed that the 2009 date was a typographical error and should reflect the date of April 11, 2008.

³ The Claimant confirmed that the 2009 date was a typographical error and that this addendum is identical to the April 11, 2008 addendum.

CL #21 – December 22, 2008 evaluation of property by Jeff Morat and Proposal dated January 12, 2009; November 3, 2008 letter to Claimant from the Better Business Bureau

Testimony

The Claimant testified in support of her claim. No testimony was presented on behalf of the Respondent or the Fund.

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 # 41487.
2. On January 30, 2008, the Claimant and the Respondent entered into a contract for the construction of an addition to the Claimant's home, which included a new dining room, bathroom, and small office, as well as the extension of an existing bedroom and reconfiguration of an existing bathroom. The contract stated that work would begin on or about April 28, 2008 and would be completed by September 17, 2008.
3. The original agreed upon contract price was \$117,000.00.
4. On April 11, 2008, the Claimant and the Respondent signed an addendum to the original contract. The addendum called for the construction of a garage. The new contract price was \$139,000.00.
5. On July 22, 2008, the Claimant and the Respondent entered into a second addendum to the contract in which the construction of the garage was removed and the new total contract price was \$125,000.00.
6. The Claimant paid the Respondent a total of \$74,000.00. (CI #5)
7. The Respondent did not begin work on the contract until May 30, 2008.

8. Between May 30, 2008 and September 2008, the Respondent completed the concrete foundation, some framing and a subfloor.
9. On September 22, 2008, a representative of the Respondent informed the Claimant that the business had filed for bankruptcy and no further work would be performed.
10. The Claimant contracted with Robert Woods, t/a Woods Carpentry (Woods), to remove and replace the framing and subfloor constructed by the Respondent and to construct the roof. The framing and subfloor had to be removed because they were left exposed to the elements and were damaged. (CL #10)
11. Robert Woods represented to the Claimant that he was licensed by the MHIC. (CL #10)
12. The Claimant paid Woods \$11,700.00 for the demolition and installation of the framing.
13. The Claimant purchased the roof trusses at a cost of \$1,645.92. (CL #12)
14. The Claimant contracted with Orlando Marin (Marin) to remove two walls, hang doors, redo a powder room, install a tile floor, and install insulation, plumbing, and handrail on the patio. The Claimant paid Marin \$9,995.00. Marin is not a licensed home improvement contractor.
15. The Claimant paid Jerry's Electric \$4,750.00 for the electrical work called for in the contract with the Respondent. (CL #14)
16. The Claimant paid Leonard McDonald, II \$5,800.00 for the completion and installation of a heat pump system. (CL #15)
17. The Claimant paid Maisel Bros., Inc. \$122.26 for brick and materials. (CL #16)
18. The Claimant purchased \$7,710.96 in materials from Home Depot for the completion of the work called for in the contract with the Respondent.
19. On December 22, 2008, Jeff Morat, Project Manager of Executive Painting and Contracting, provided to the Claimant an estimate of the value of the work done by the

Respondent. Mr. Morat valued the work done, which included the foundation and partial framing, at \$10,000.00. He estimated the cost of the finishing the work called for in the contract between the Claimant and the Respondent at \$110,000.00.

20. Jeff Morat represented his MHIC # as 45112, which belongs to Hail Haleem of Executive Painting and Contracting. (GF #5)
21. The Claimant did not sustain an actual loss.

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). 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). For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Claimant established the facts necessary in order to be eligible for compensation from the Fund. First, the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. Second, it is clear from the Claimant’s testimony and documentation that the Respondent failed to complete the home improvement contracted for and that the majority of the work he actually performed was inadequate because it was left exposed and was damaged by the elements, ultimately needing to be removed and replaced. The necessity of removing and replacing the Respondent’s work was corroborated by the proposals that the Claimant submitted from Woods Carpentry, Shay Construction and Jeff Morat, all of which indicated that their costs included the removal of the framing.

Having found the Claimant eligible for compensation from the Fund, 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). MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The Claimant hired other contractors to repair and complete the home improvement and therefore, the appropriate formula in this case is set forth in COMAR 09.08.03.03B(3)(c), which states "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. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly."

In this case the Claimant paid the Respondent \$74,000.00 toward the contract price of \$125,000.00. The Claimant's evidence regarding the amounts that she has paid other contractors to repair and complete the work under the original were problematic when applied to a calculation for actual loss. The Claimant presented testimony and documentation that she paid Woods Carpentry \$11,700.00 for the demolition and installation of the framing and roofing. She also presented documentation that she purchased the roof trusses at a price of \$1,645.92 (CL #12). The Claimant contracted with Orlando Marin to remove two walls, hand doors, redo a powder room, install a tile floor, and install insulation, plumbing, and handrail on the patio. The Claimant paid Mr. Marin \$9,995.00 (CL #13). The Claimant admitted that Mr. Marin was not a licensed home improvement contractor. Additionally, although Mr. Woods represented to the Claimant that he was license by the MHIC, he never provided a MHIC license number to the

Claimant and there is no evidence in the record of such a license. The Claimant offered an estimate from Jeff Morat of Executive Painting and Contracting that indicated the cost of repair and replacement was \$110,000.00. DLLR presented evidence that the MHIC license number represented by Mr. Morat actually belonged to another individual. Implicit in the MHIC regulations regarding calculation of actual loss is that the contractor who repairs or completes the work is a licensed contractor. Since the Claimant had the work done by other contractors, in order to prove actual loss, the Claimant needed to submit a valid contract from a licensed contractor that states the cost of repairs and replacement. Similarly, the estimate for the cost of repair and replacement must be generated by a licensed contractor. Unfortunately, the Claimant has not done so. Thus, I have given no weight to the Morat estimate of the cost of completion of the home improvement or amounts paid for the work performed by the unlicensed contractors retained by the Claimant.

Even if I included the cost of repairs and completion of work performed by the unlicensed contractors, the Claimant has still not presented sufficient evidence to prove that she sustained an actual loss. In addition to the above mentioned unlicensed contractors, the Claimant paid Jerry's Electric \$4,750.00 to perform the electrical work called for in the contract with the Respondent (CL#14) and she paid Leonard McDonald, II \$5,800.00 for the completion and installation of a heat pump system. (CL #15) The Claimant submitted receipts from Maisel Bros for the brick materials she purchased totaling \$122.26 and from Home Depot for \$7,710.96 other construction materials. The Claimant had no other evidence to submit regarding the cost of repair and completion of the home improvement. Adding the costs that the Claimant proved, the total costs of repair and completion was \$41,724.24. Pursuant to the applicable formula for the calculation of actual loss, this cost of repair and completion should be added to the amount the Claimant paid to the Respondent under the original contract, which is \$74,000.00. The sum of

those two figures totals \$115,724.00. The original contract price was \$125,000.00, which when subtracted from \$115,724.00, results in a negative number, theoretically leaving the Claimant ahead by approximately \$9,000.00. For the reasons articulated, the Claimant failed to present sufficient evidence to prove that she sustained an actual loss as the result of the Respondent's acts and omissions.


CONCLUSIONS OF LAW

I conclude that the Claimant has not sustained an actual loss 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 Claimant's claim against the MHIC Fund be **DISMISSED**; and
ORDER that the records and publications of the Maryland Home Improvement Commission reflect this decision.

April 5, 2011
Date Decision Issued



Geraldine A. Klauber
Administrative Law Judge

GAK/fe
#120863

IN THE MATTER OF THE CLAIM * **BEFORE GERALDINE A. KLAUBER,**
OF DONNA L. BRADSHAW-PELOTE * **AN ADMINISTRATIVE LAW JUDGE**
AGAINST THE MARYLAND HOME * **OF THE MARYLAND OFFICE**
IMPROVEMENT GUARANTY FUND * **OF ADMINISTRATIVE HEARINGS**
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IMPROVEMENTS *

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FILE EXHIBIT LIST

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PROPOSED ORDER

WHEREFORE, this 25th day of April 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