

<p>IN THE MATTER OF THE CLAIM</p> <p>OF ANGELA A. WHITE,</p> <p>CLAIMANT,</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF</p> <p>FERDINAND MAGALLANES,</p> <p>MCC GENERAL CONTRACTORS</p> <p>INC.,</p> <p>RESPONDENT</p>	<p>* BEFORE ZUBERI BAKARI WILLIAMS,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH NO.: DLR-HIC-02-13-16533</p> <p>* MHIC NO.: 10 (75) 337</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>
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RECOMMENDED DECISION

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 DISCUSSION
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 RECOMMENDED ORDER

STATEMENT OF THE CASE

On January 25, 2010, Angela White (Claimant), filed a claim with the Maryland Home Improvement Commission (MHIC or Commission) Guaranty Fund (Fund) for reimbursement of \$24,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Ferdinand Magallanes t/a MCC General Contractors, Inc., (Respondent) to “bump out” the car garage to fit three cars and to add an addition to the upstairs bedroom.

I held a hearing on July 25, 2013, at Calvert County Library in Prince Frederick Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2012). Eric London, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented herself. The Respondent did not appear at the hearing.

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. 2013), Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; and 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:

Claim. Ex. #1 – Contract, dated October 19, 2008

Claim. Ex. #2 – Photograph and Architectural Rendering Showing Scope of Work

Claim. Ex. #3 – Document of itemized documents used by the Respondent at his
Bankruptcy Proceedings

Claim. Ex. #4 – Copies of Checks Showing Payments to the Respondent, totaling
\$63,303.72

Claim. Ex. #5 – Photographs of Construction

Claim. Ex. #6 – Infinity Restoration Estimate

Claim. Ex. #7 – MHIC Registration No. for Infinity Restoration

Claim. Ex. #8 – Receipts from Remedial Work Done

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

Fund Ex. #1 – Notice of Hearing from OAH to the parties, dated June 7, 2013

Fund Ex. #2 – Letter from Administrative Law Judge (ALJ) Williams, dated June 6, 2013

Fund Ex. #3 – Notice of Hearing from OAH to the parties with attachments,
dated April 30, 2013

Fund Ex. #4 – Affidavit of Thomas Marr, IV, dated May 9, 2013

Fund Ex. #5 – Letter from MHIC, dated May 10, 2013

Fund Ex. #6 – Letter from MHIC to the Respondent, dated February 4, 2010

The Respondent did not submit any exhibits.

Testimony

The Claimant testified on her own behalf.

The Fund did not present any witnesses.

The Respondent did not testify.

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 #01-93971. He held the MHIC license for MCC General Contractors, Inc.

2. At all times relevant to this matter, the Claimant lived in a house located at 140 Miss Sams Way, Huntingtown, MD 20639.

3. On or about October 19, 2008, the Claimant and the Respondent entered into a contract to "bump out" the car garage to fit three cars and to add an addition to the upstairs bedroom.

4. Under the contract, the Respondent agreed to obtain the necessary permits and complete the following: excavation/demolition, framing, electrical rough-in, plumbing rough-in, drywall, and installation of a floor.

5. The original contract price agreed upon was \$72,000.00.

6. On or about February 18, 2009, the Respondent started the construction work.

7. During the course of the work performed, the Claimant gave the Respondent the following checks as payment, totaling \$62,303.72:

- February 18, 2009 – \$8,000.00 (deposit)
- March 12, 2009 – \$11,000.00
- April 3, 2009 – \$5,000.00
- April 3, 2009 – \$5,000.00
- April 29, 2009 – \$5,000.00
- April 29, 2009 – \$5,000.00
- May 29, 2009 – \$5,000.00
- May 29, 2009 – \$5,000.00
- June 12, 2009 – \$5,000.00
- June 12, 2009 – \$5,000.00
- July 8, 2009 – \$3,303.72

8. In August 2009, the Respondent began to have financial problems and fell significantly behind on the project timeline. Specifically, parts of the house were left uncovered and exposed, the bathroom tub area was unfinished with exposed wood beams, and the garage was incomplete with no concrete poured as the floor. (*See Photos, Claim. Ex. #5*)

9. On August 20, 2009, the Claimant was confronted by one of the Respondent's subcontractors who told her that he had not been paid by the Respondent. The subcontractor threatened to place a lien on her house unless she paid the money owed by the Respondent.

10. That same day, the Claimant contacted the Respondent to tell him what the subcontractor had threatened. The Respondent told her that there was a mistake and not to worry about it.

11. On August 21, 2009, the next day, the Respondent went to the Claimant's house to deliver trim. While at her house, he told the Claimant and her husband that he was having money problems. The Respondent asked her for additional money to purchase the HVAC unit.

12. The Claimant refused to pay the Respondent anymore money until he "got caught up" with the project.

13. The Respondent never returned to the house after that day and abandoned the project.

14. The Claimant sued the Respondent and won a \$10,756.73 garnishment judgment against him.

15. The Claimant contacted Infinity Restoration, Inc. (Infinity) to complete the Respondent's work. Infinity quoted the Claimant an estimate of \$32,247.75. The Claimant could not afford that amount and decided that they would do some of the work on their own and hire contractors for specific tasks, where needed.

16. The Claimant paid a total of \$23,982.87 to finish the work left undone by the Respondent. Specifically, the Claimant spent the following (*See Receipts, Claim Ex. #8.*):

Closet	
Walmart	\$62.57
Home Depot	\$128.32
Snead	\$132.90
Total	\$323.79
plus 6% Tax	\$343.22

Bathroom (Master Bathroom)	
Home Depot	\$2,167.69
Vanity Wholesaler	\$1,375.00
Window 84 Lumber	\$ 522.52
Boring Stuff	\$5,800.00
Total	\$9,865.21

Electrician	
Mackey Electrical	\$1,950.00

HVAC	
Calvert Mechanical	\$6,102.00

Garage Door	
Access Garage Door	\$ 975.00
Payton Homes (Install Windows)	\$ 300.00
J Calvin Wood Jr. (Gravel)	\$ 151.62
Larry Henson (poured concrete)	\$1,500.00
Total	\$2,926.62

Flooring	
Abbey Bedroom	\$ 943.66
K & K Floors (Hallway)	\$ 100.00
Tiles (88 sqft \$2.00)	\$ 176.00
	\$1,219.66

No Receipts	
Master Bedroom double doors	\$ 275.54
Door knobs Master Bathroom	\$ 66.20
Shower Head	\$ 80.00
Toilet	\$ 301.69
Toilet Seat	\$ 39.75
Shower Door	\$ 677.97
4 Shutters	\$ 416.00
Laundry Room Light	\$ 85.89
Mulch	\$ 925.00
Total	\$2,868.04

17. The Claimant had an actual loss of \$3,529.86.

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) (Supp. 2012). *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.

A. The Respondent’s Failure to Appear

Section 8-312(a) of the Business Regulation Article provides that the Commission shall give the person against whom the action is contemplated an opportunity for a hearing. Md. Code Ann., Bus. Reg. § 8-312(a) (2010). On June 6, 2013, the OAH sent each party a notice stating that a hearing on the merits of the case was to be held on June 6, 2013 at 10:00 am at the Calvert County Public Library, 850 Costley Way, Prince Frederick, Maryland 20678.

On June 6, 2013, I convened the hearing at the Calvert County Public Library. The Claimant appeared with her husband and the HIC Fund’s Attorney Eric London appeared as well. Both parties were ready to proceed. However, the Respondent failed to appear. At approximately 10:05 am, I received a call from the OAH Clerk’s Office stating that the Respondent had appeared at the OAH offices in Hunt Valley, Maryland instead of the Calvert County Public Library, as set forth in the notice. I granted the postponement of the hearing over the Claimant’s objection. On June 6, 2013, I sent a detailed letter to all of the parties directing the OAH Clerk’s office to schedule a new hearing for the next available day.

On June 7, 2013, the OAH sent each party a second notice stating that a hearing on the merits of the case was to be held on July 25, 2013 at 10:00 am at the Calvert County Public Library, 850 Costley Way, Prince Frederick, Maryland 20678.

A hearing was scheduled for July 25, 2013 at 10:00 a.m.; however, the Respondent failed to appear for the hearing. Under Md. Code Ann., Bus. Reg. § 8-312(h) (2010), “[i]f, after due notice, the person against whom the action is contemplated does not appear . . . the Commission may hear and determine the matter.”

Based upon the record before me, I am satisfied that the Respondent was properly notified of the date, time, and location of the scheduled hearing in this matter. The hearing was convened as scheduled on July 25, 2013, at which time neither the Respondent nor anyone authorized to represent him appeared, therefore, the hearing proceeded in the Respondent's absence. The Respondent simply failed to appear.

B. Merit Claim

First, the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant.

Second, the Respondent abandoned the project on August 21, 2009 because he left the Claimant's house incomplete and never returned. Further, Claimant presented compelling photographic evidence showing the state of house when the Respondent left. *See Photos, Claim. Ex. No. 5* (showing exposed wooden beams, open walls, and no concrete poured on the floor of the garage).

Third, the Claimant and her husband called the Respondent several times to complete the project but the Respondent never returned the calls or returned to her house. Based on this evidence, I find that the Respondent was given a reasonable opportunity to complete project, but did not to do so.

As such, I find that the Claimant is eligible for compensation.

C. Award Amount

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). 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:

(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. 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.

COMAR 09.08.03.03B(3)(c). Although the Claimant and her husband did some of the work to complete the project, the majority of the work was done by contractors that they hired in an attempt to cut their out-of-pocket cost and mitigate the damages caused by the Respondent. As such, I believe that this formula most fairly represents what occurred in this matter.

Here, the original contract price was \$72,000.00. The Claimant paid the Respondent a total of \$62,303.72 under the contract. As stated above, the Respondent abandoned the project and the Claimant and her husband decided to do some of the work on their own and hire contractors for specific tasks, where needed. However, the Claimant won a garnishment in the amount of \$10,756.73 against the Respondent in a lawsuit. That compensation must be subtracted from any amount paid to the Respondent because the Claimant was already reimbursed.

As such, I find the Claimant is entitled to the following:

Amount Paid Under Original Contract		\$62,303.72
Amount Paid by the Claimant to complete work	+	<u>\$23,982.87</u>
		\$86,286.59
Garnishment Judgment	-	<u>\$10,756.73</u>
		\$75,529.86
Original Contract Price	-	<u>\$72,000.00</u>
Actual Loss		\$ 3,529.86

CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$3,529.86 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 \$3,529.86; 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.

Signature on File

October 21, 2013
Date Decision Mailed

ZW/emh
#145663

Zuberi Bakari Williams
Administrative Law Judge

IN THE MATTER OF THE CLAIM	* BEFORE ZUBERI BAKARI WILLIAMS,
OF ANGELA A. WHITE ,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH NO.: DLR-HIC-02-13-16533
FOR THE ALLEGED ACTS OR	* MHIC NO.: 10 (75) 337
OMISSIONS OF	*
FERDINAND MAGALLANES,	*
MCC GENERAL CONTRACTORS	*
INC.,	*
RESPONDENT	*
* * * * *	* * * * *

FILE EXHIBIT LIST

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The Respondent did not submit any exhibits.

PROPOSED ORDER

WHEREFORE, this 14th of January 2014, Panel B of the Maryland Home Improvement Commission approves the Recommended Decision 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