

My copy

IN THE MATTER OF THE CLAIM	* BEFORE NICOLE PASTORE KLEIN,
OF BLESSING B. EKAMKI,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF MICHAEL	*
WILSON, T/A ACTUAL	* OAH NO.: DLR-HIC-02-12-28283
RENOVATIONS CORP.,	* MHIC NO.: 11 (90) 554
RESPONDENT	*

* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On July 13, 2011, Blessing B. Ekamki (Claimant) filed a complaint with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$22,356.36 for actual losses allegedly suffered as a result of the acts or omissions of Michael Wilson, t/a Actual Renovations Corp. (Respondent).

I conducted a hearing on May 14, 2013, at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312 and 8-407 (2010 & Supp. 2012).

Jessica Kaufman, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the MHIC Fund. Mark R. Millstein, Esquire, represented the Claimant, who was present. The Respondent did not appear, although the record shows that the Respondent received notice of the hearing on January 25, 2013 by certified mail. GF. Ex. #1. I proceeded in his absence.¹

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the DLLR, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2012); Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; 28.02.01.

ISSUES

1. Did the Respondent perform an unworkmanlike, inadequate and/or incomplete home improvement?
2. If so, did the Claimant sustain an actual loss compensable by the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Claimant:

Cl. Ex. #1- Respondent Estimate, dated June 17, 2009

Cl. Ex. #2- Valuation Report Completed by Price Contractors, LLC, undated

Cl. Ex. #3- Photocopies of Checks from Claimant to Respondent, from September 23, 2009 through January 13, 2010

¹ Section 8-312(d) of the Business Regulation Article states: "The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission [MHIC]." At the hearing, I determined that proper notice had been made on January 25, 2013 and proceeded with the hearing in the Respondent's absence. (GF. Ex. #1); Md. Code Ann, Bus. Reg. §§ 8-309 and 8-312(h) (2010 & Supp. 2012); COMAR 28.02.01.20.

Cl. Ex. #4- Complaint Activity Report, from June 20, 2010 through August 28, 2010

Cl. Ex. #5- Emails between Anthony Myers (Real Estate Agent), Claimant, and Respondent, from November 2009 through December 2009

Cl. Ex. #6- Contract, signed by Claimant on June 24, 2009

Cl. Ex. #7- Emails between Respondent and Claimant, dated October 25, 2009 and November 2, 2009

Cl. Ex. #8- Notice of Intention to Claim a Lien from Wholesale Cabinet Distributors to Claimant, dated April 8, 2010

I admitted the following exhibits on behalf of the Fund:

GF. Ex. #1- Notice of Hearing to Respondent, delivered January 25, 2013

GF. Ex. #2- Hearing Order and MHIC Form, dated July 3, 2012 and July 13, 2011 respectively

GF. Ex. #3- Respondent's Licensing Record, dated April 23, 2013

GF. Ex. #4- Notice of Claim to Respondent, dated July 19, 2011

GF. Ex. #5- MHIC v. Goodman, Order Granting Relief from Stay, dated August 28, 1987

GF. Ex. #6- Price Contractors, LLC, Licensing Record, dated April 23, 2013

Testimony

The Claimant testified and presented the testimony of Richard Price t/a Price Contractors, LLC, who was qualified as an expert in the area of general construction.

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 125951. His license expires February 28, 2014. GF. Ex. #3.

2. On June 26, 2009, the Claimant and the Respondent entered into a contract for the Respondent to renovate the Claimant's home at 4122 Brookside Oaks, Owings Mills, Maryland, 21117, and to make extensive water damage repairs to the first and second floors (Contract). Cl. Ex. #6.
3. The Contract price was set at \$47,819.00. An additional \$5,377.53 was added to the Contract price to cover cabinet replacement. Cl. Ex. #1.
4. On September 23, 2009, in accordance with the Contract, the Claimant paid the Respondent \$3,150.03. Cl. Ex. #3.
5. On October 3, 2009, in accordance with the Contract, the Claimant paid the Respondent \$10,084.86. Cl. Ex. #3.
6. On October 28, 2009, in accordance with the Contract, the Claimant paid the Respondent \$19,520.00. Cl. Ex. #3.
7. On January 13, 2010, in accordance with the Contract, the Claimant paid the Respondent \$6,798.00. Cl. Ex. #3.
8. The Respondent abandoned the project December 31, 2009. The Claimant repeatedly tried to contact the Respondent to complete the job but the Respondent stopped returning the Claimant's telephone calls on January 4, 2010.
9. Some of the work that the Respondent performed was substandard including, but not limited to, floors buckling, drywall cracks, and work not being performed to code.
10. The Claimant's home renovation, as described in the Contract, remains incomplete.
11. The Claimant hired Price Contractors, LLC, who estimated that completing the scope of the Contract will cost \$40,890.00.

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) (Supp. 2012); 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.

First, the Respondent was a licensed home improvement contractor at the time he and the Claimant entered into the Contract. Second, the Respondent performed an unworkmanlike, inadequate, and incomplete home improvement. Third, the Claimant suffered an actual loss as the Respondent took the Claimant’s money and failed to fulfill his obligations under the terms of the Contract.

The Claimant testified and provided documentary evidence that she paid the Respondent a total of \$39,532.89 for the renovations. Cl. Ex. #3. She provided documentation evidencing that the value of the Respondent’s work after the Respondent abandoned the project was \$18,400.00. Cl. Ex. #2. The Claimant made numerous attempts to contact and work with the Respondent to complete the scope of work under the Contract, but the Respondent failed to respond or complete the work.

The Claimant presented Richard B. Price of Price Contractors, LLC, who was qualified as an expert in construction and testified that the work completed by the Respondent was subpar, unworkmanlike and not up to code. He noted that a good amount of the Respondent’s work had to be undone before it could be redone; for example, buckling in the floors, cracks in drywall, and all gas and electrical lines needed to be drained and checked. The expert went through 72

photographs further explaining the unworkmanlike work. He testified that redoing and finishing the contracted work would cost \$40,890.00. Cl. Ex. #2.

As the Respondent failed to appear for the hearing, the Claimant's case was uncontested.

In light of the evidence presented by the Claimant, the Fund agreed that the Claimant is entitled to an award, but differed as to the amount alleged in the Claimant's MHIC Form. At the hearing, the Fund presented two alternate ways in which the Claimant's award could be calculated in this case: one formula where the Claimant has proven only the value of the work performed by the Respondent and another where the Claimant has obtained an estimate to complete the Respondent's unfinished work. As the evidence supports the use of either formula, both are laid out below. Accordingly, I find that the Respondent failed to complete the scope of work under the Contract and performed unworkmanlike work pursuant to the Contract.

Having proven eligibility for compensation, I now turn to the amount of the award.

COMAR 09.08.03.03 states in pertinent part:

B. Measure of Awards from Guaranty Fund.

(1) The Commission may not award from the Fund any amount for:

- (a) Consequential or punitive damages;
- (b) Personal injury;
- (c) Attorney's fees;
- (d) Court costs; or
- (e) Interest.

...

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

- (a) If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract.

- (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.
- (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 measurements accordingly.

The calculations under subsections (b) and (c) are:

Subsection (b) Calculation:

Amount paid by or on behalf of Claimant to Respondent	\$39,532.89
Value of the work completed by Respondent	<u>-\$18,400.00</u>
Actual Loss	\$21,132.89

Subsection (c) Calculation:

Amount paid by or on behalf of Claimant to Respondent	\$39,532.89
Amount required to pay another Contractor to Complete Original Contract	+\$40,890.00
Additional Cost added to Original Contract	<u>-\$47,819.00</u>
Actual Loss	<u>-\$ 5,377.53</u> \$27,226.36

Either calculation is supported by the evidence in this case. However, the Commission may not award from the Fund more than \$20,000.00 to one claimant for acts or omissions of one contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(1)(2013). Therefore, although the Claimant has established an actual loss of \$21,132.89 and/or \$27,226.36, she can only recover up to \$20,000.00 from the Fund for the claim.

CONCLUSIONS OF LAW

I conclude as a matter of law that the Claimant has sustained an actual loss of \$21,132.89 and/or \$27,226.36 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus Reg. § 8-401 (2013); COMAR 09.08.03.03(B)(3)(b) and (c). I further conclude as a matter of law that the Claimant is entitled to an award of \$20,000.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1)(2013).

RECOMMENDED ORDER

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

ORDER that the Claimant be awarded \$20,000.00 from the Maryland Home Improvement Commission Guaranty Fund.

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 Maryland Home Improvement Commission. (Md. Code Ann., Bus. Reg. §8-411(a) (2013)); and

ORDER that the records and publications of the Maryland Home Improvement Commission reflect the final decision in this case

Signature on File

July 29, 2013
Date decision mailed

Nicole Pastore Klein
Administrative Law Judge

NPK/DS/lh
143196