

CLAIM OF JEAN F. RAZULIS	* BEFORE WILLIAM SOMERVILLE,
AGAINST THE MARYLAND HOME	* AN ADMINISTRATIVE LAW JUDGE
IMPROVEMENT GUARANTY FUND	* OF THE MARYLAND OFFICE
FOR VIOLATIONS ALLEGED	* OF ADMINISTRATIVE HEARINGS
AGAINST JONATHAN FREDENRICH	* OAH NO.: DLR-HIC-02-13-46806
T/A	* MHIC NO.: 12 (05) 1014
J & S CONTRACTING SERVICES	*
	*

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
 ISSUE
 SUMMARY OF THE EVIDENCE
 FINDINGS OF FACT
 DISCUSSION
 CONCLUSIONS OF LAW
 PROPOSED ORDER

STATEMENT OF THE CASE

On September 20, 2013, Jean F. Razulis (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of funds for actual losses suffered as a result of home improvement work performed by Jonathan Fredenrich (Respondent), a contractor who holds an MHIC license.

I held a hearing on May 7, 2014 at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-407 (2010). Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented herself. The Respondent represented himself.

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 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, 09.08.02.01, and 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, and if so, what is the amount of the compensable "actual loss"?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted into evidence the following exhibits offered by the Claimant:

1. Claim form with attachments, tabbed 1 through 8

I admitted into evidence the following exhibits offered by the Respondent:

1. Layout diagram, printed 6-4-11, showing 96 inches of cabinet space

I admitted into evidence the following exhibits offered by the Fund:

1. Hearing notice
2. Hearing Order
3. License history
4. Claim form

Testimony

The Claimant testified in the Claimant's case.

The Respondent testified in his case.

The Fund called no witnesses.

FINDINGS OF FACT

Upon considering demeanor evidence, testimony, and other evidence offered, I find the following facts by a preponderance of the evidence:

1. At all times relevant, the Respondent held an MHIC contractor license. He traded as “J & S Contracting Services.”
2. On May 26, 2011, in the course of composing a proposal for the Claimant, the Respondent drafted, or had drafted by someone else, a kitchen design layout of the Claimant’s kitchen showing one possible configuration of cabinets and appliances. The interior wall of the layout accurately showed 96 inches of wall space being used for 66 inches of cabinets and a 30-inch appliance.
3. On June 9, 2011, the Respondent gave the proposal to the Claimant. The proposal contemplated the existing design layout dated May 26, 2011.
4. On October 6, 2011, the Respondent measured the Claimant’s kitchen again and had another design layout drafted. This layout inaccurately showed usable wall space on the interior wall to be 102 inches.
5. On October 17, 2011, the Claimant’s husband signed the inaccurate design layout dated October 6, 2011; by his signature, he confirmed that all measurements were accurate.
6. On October 30, 2011, the Claimant and the Respondent entered into a contract; the Claimant signed the contract document that was drafted in June. Under the agreement, the Respondent was to remodel the kitchen in the Claimant’s residence, including: removal of the old cabinets; install new appliances and three new electrical outlets; supply and install five ceiling lights; install some plumbing connections for the new appliances and a new sink; install some drywall; prime and paint the drywall; re-trim two widows and four doorways with 2 ½ inch molding; stain new molding to match existing

- molding; and install customer-supplied kitchen cabinets “per layout.” The Claimant was to pay \$13,200.00. On that day, the Claimant paid the first draw payment of \$4,400.00.
7. Countertops were to be supplied and installed by a separate countertop company.
 8. On November 21, 2011, the parties entered into another contract for home improvement work. Under that contract, the Respondent was to remodel a bathroom by removing walls down to the wall studs; install a new exhaust fan light in the ceiling; install a new bathtub; install a new shower diverter; install green board type wallboard; install concrete board on the floor; install customer-supplied tile on the floor and walls; prime and paint exposed wallboard; install baseboard; install vanity, vanity top, and medicine cabinet supplied by the customer; install a faucet on the vanity; and install a new toilet and toilet seat. The Claimant was to pay \$9,930.00. On that day, the Claimant paid to the Respondent the first draw payment of \$3,310.00.
 9. Both agreements evolved over time with verbal changes, some of which resulted in credits to the Claimant.
 10. On or about November 29, 2011, the Claimant and her husband moved out of the house to allow the Respondent’s workers to work on the project.
 11. On November 30, 2011, the Respondent began working on the project. The kitchen cabinets that were supplied by the Claimant arrived at the site. Most were eventually installed but an 18-inch wall cabinet and an 18-inch base cabinet, which were included on the inaccurate layout, could not be installed because they would not fit on the mis-measured interior wall. The Respondent did not install those two cabinets; he took them away from the worksite.
 12. One kitchen cabinet that was installed had a manufacturer’s defect with regard to mismatched shelf peg holes.

13. The kitchen project had these sub-standard items: the paint work was sloppy and unworkmanlike; trim stain did not match the existing trim; the flooring did not meet up to some door trim in one spot; and the mis-measuring mistake caused two cabinets not to be able to be installed as planned.
14. The bathroom project had this substandard item: the paint work was sloppy and unworkmanlike.
15. The cost to repair or restore substandard items in the kitchen was as follows: \$412.00 for paint; \$1,745.00 for trim; \$485.00 for painting or staining an exterior door and threshold; and \$689.00 for the two missing cabinets.
16. The cost to repair or restore a substandard item in the bathroom was as follows: \$628.00 for paint.
17. In addition to the payments noted above, the Claimant paid to the Respondent these amounts on these dates: \$7,710.00 on December 10, 2011; and \$7,035.00 on December 27, 2011.
18. The Respondent credited the Claimant these amounts for not installing these items: \$100.00 for two outlets; \$250.00 for a 220-volt line; \$100.00 for a disposal unit; \$600.00 for the two missing kitchen cabinets; and \$200.00 for a new toilet.
19. On January 5, 2012, the Claimant and her husband moved back into the house.
20. The Respondent's last day of work on the project was February 11, 2012.
21. On September 19, 2013, the Claimant filed a claim against the Fund.

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. 2013); 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 cost of the "actual loss." Md. Code Ann., Bus. Reg. § 8-407 (2010).

A trier of fact can properly accept all, some, or none of the evidence offered. *Silfrit v. State*, 383 Md. 116, 135 (2004); *Edsall v. Huffaker*, 159 Md. App. 337, 341-43 (2004).

The Claimant alleges that much of the work was “unworkmanlike.” “Unworkmanlike” means not in a workmanlike manner. *See Webster’s New Universal Dictionary* 1984-88 (2d ed. 1983). The Court of Appeals has defined “workmanlike manner” as that term applies to building and construction contracts. In *Gaybis v. Palm*, 201 Md. 78, 85 (1952) the Court held, “The obligation to perform with skill and care is implied by law and need not be stated in any contract.” That rule was reaffirmed in *Worthington Constr. Co. v Moore*, 266 Md. 19, 22 (1972). In *K & G Constr. Co. v. Harris*, 223 Md. 305, 314 (1960) the Court compared the express standard “workmanlike manner” with the implied standard of performance discussed in the *Gaybis* case. The *Harris* Court cited the *Gaybis* case for authority that the “workmanlike-manner” wording was equivalent to the “skill-and-care” wording in the *Gaybis* case.

In the instant case, the Claimant offered no expert opinion evidence. Some of the items about which she complains,¹ as set forth in the findings of fact, need no expert testimony to demonstrate unworkmanlike work in the industry. (Findings of Fact 13 and 14.) Based upon the photographs and fact-witness testimony, I can conclude that the painting and staining did not meet industry standards of skill and care. In addition, the flooring gap at the door casing in the

¹ Some of the items about which the Claimant complains appear to be breach-of-contract type complaints. I note that the contracts involved were minimal and without detail, and this case is not a breach-of-contract action.

kitchen and the problems caused by mis-measuring the usable wall space² on the interior wall of the kitchen are attributable to lack of the minimum required amount of skill and care in the home improvement industry. The Claimant has shown sub-standard work.

The Claimant not only needs to prove the inadequate, incomplete, or unworkmanlike work product, but she must also prove the “actual loss.” Md. Code Ann., Bus. Reg. § 8-401 (2010). “Actual loss” includes the cost to restore or repair. *Id.* In the instant case, the Claimant offered some credible evidence of some of those costs. (Cl. Ex. 1, table 1.) I gleaned from the evidence the necessary costs. (Findings of Fact 15 and 16.)

Having determined that the Claimant has shown that the Respondent is responsible for unworkmanlike, inadequate, or incomplete home improvement work with regard to the project, further analysis of an amount of “actual loss” is appropriate. A claimant may not be compensated for consequential or punitive damages, personal injury, attorney’s fees, court costs, or interest. COMAR 09.08.03.03B(1). Unless a claim requires a unique measurement, actual loss is measured by one of the three following formulas:

(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

² The old saw, “measure twice, cut once” comes to mind. *Fla. Dept. of Ag. & Consumer Servs v. Lopez-Brignoni*, 114 So. 3d 1135 (2013) (dissent).

proper basis for measuring actual loss, the Commission may adjust its measurements accordingly.

COMAR 09.08.03.03B(3).

In the instant case, the third option is an appropriate measure of “actual loss.” Based on the credible evidence offered, as described above, I calculate the Claimant’s actual loss using the formula in COMAR 09.08.03.03B(3)(c) as follows:

\$22,455.00	paid toward original contract prices
+\$3,959.00	cost to repair and complete poor work
<u>-\$21,880.00</u>	original contract prices combined with credits
\$4,534.00	actual loss

The “actual loss,” as that term is defined in the statutory scheme, is \$4,534.00.

CONCLUSIONS OF LAW

I conclude that the Claimant has proven that she has sustained a compensable “actual loss” of \$4,534.00 as a result of the Respondent’s acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).

PROPOSED ORDER

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

ORDER that the Claimant be awarded \$4,534.00 from the Maryland Home Improvement Guaranty Fund; and further

ORDER that the Respondent be deemed 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 further

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

Signature on File

July 22, 2014

Date Decision Mailed

William J/D. Somerville III
Administrative Law Judge

WS/emh
#150384

CLAIM OF JEAN F. RAZULIS	* BEFORE WILLIAM SOMERVILLE,
AGAINST THE MARYLAND HOME	* AN ADMINISTRATIVE LAW JUDGE
IMPROVEMENT GUARANTY FUND	* OF THE MARYLAND OFFICE
FOR VIOLATIONS ALLEGED	* OF ADMINISTRATIVE HEARINGS
AGAINST JONATHAN FREDENRICH	*
T/A	* OAH NO.: DLR-HIC-02-13-46806
J & S CONTRACTING SERVICES	* MHIC NO.: 12 (05) 1014

* * * * *

FILE EXHIBIT LIST

I admitted into evidence the following exhibits offered by the Claimant:

1. Claim form with attachments, tabbed 1 through 8

I admitted into evidence the following exhibits offered by the Respondent:

1. Layout diagram, printed 6-4-11, showing 96 inches of cabinet space

I admitted into evidence the following exhibits offered by the Fund:

1. Hearing notice
2. Hearing Order
3. License history
4. Claim form