

IN THE MATTER OF THE CLAIM
OF ELMA BENNETT,
CLAIMANT,
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF DANNY B. HARRISON,
T/A DANNY B. HARRISON ASPHALT
PAVING,
RESPONDENT

* BEFORE LORRAINE E. FRASER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH NO.: DLR-HIC-02-13-25833
* MHIC NO.: 12(90)484
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RECOMMENDED DECISION

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STATEMENT OF THE CASE

On September 11, 2012, Elma Bennett (Claimant), filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$1,400.00 for actual losses allegedly suffered as a result of a home improvement contract with Danny B. Harrison t/a Danny B. Harrison Asphalt Paving (Respondent).

I held a hearing on July 10, 2014, at the Talbot County Public Library in Easton, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2013). Eric B. London,

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 (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2014), 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:

- Cl. Ex. 1 Estimate from the Respondent, 5/7/09
- Cl. Ex. 2 Photograph of driveway edge (right side facing the street from the house), taken before repair work done in July 2012¹
- Cl. Ex. 3 Photograph of driveway edge (right side facing the street from the house), taken before repair work done in July 2012
- Cl. Ex. 4 Photograph of driveway edge (right side facing the street from the house), taken before repair work done in July 2012
- Cl. Ex. 5 Photograph of driveway edge (right side facing the street from the house), taken before repair work done in July 2012
- Cl. Ex. 6 Photograph of culvert under driveway (right side facing the street from the house), taken before repair work done in July 2012

¹ The Claimant was unsure when the photographs were taken, perhaps the summer of 2011 or 2012.

- Cl. Ex. 7 Photograph of culvert under driveway (right side facing the street from the house), taken before repair work done in July 2012
- Cl. Ex. 8 Photograph of driveway edge (right side facing the street from the house), taken before repair work done in July 2012
- Cl. Ex. 9 Photograph of cracks across center of driveway, taken after repair work done in July 2012
- Cl. Ex. 10 Photograph of cracks across center of driveway, taken after repair work done in July 2012
- Cl. Ex. 11 Invoice from Asphalt by Julie for repair work to driveway for \$2,000.00, 7/23/12

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

- Fund Ex. 1 Notice of Hearing, 5/13/14
- Fund Ex. 2 Hearing Order, 6/24/13
- Fund Ex. 3 The Respondent's Licensing History, 6/4/14
- Fund Ex. 4 Home Improvement Claim Form, 9/11/12
- Fund Ex. 5 Proposal from Asphalt by Julie, 7/20/12
- Fund Ex. 6 Photograph of driveway edge (right side facing the street from the house), taken before repair work done in July 2012
- Fund Ex. 7 The Respondent's response to the Claimant's HIC complaint, 10/29/11

The Respondent did not offer any exhibits into evidence.

Testimony

The Claimant testified and presented the testimony of her niece, Pat Whitbey.

The Respondent testified. The Fund did not present any testimony.

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 01-90114.

2. On May 7, 2009, the Claimant and the Respondent entered into a contract to pave the Claimant's driveway with asphalt.
3. The original agreed upon contract price was \$3,100.00.
4. The Claimant paid the Respondent a total of \$3,100.00.
5. The Respondent paved the Claimant's driveway, completing the work in May 2009.
6. In October 2011, the Claimant contacted the Respondent about cracks on the driveway. The Respondent went to the Claimant's home and she showed him cracks in two spots on the edge of the asphalt on the right hand side of the driveway (as viewed from the house facing the street). The Respondent offered to patch the cracks, but explained that that it would look different from the original asphalt.
7. The Claimant refused the Respondent's offer to patch the cracks.
8. On July 23, 2012, the Claimant contracted with Asphalt by Julie to repair both sides of the driveway. Specifically, asphalt was removed on the right and left edges along the entire length of the driveway and the driveway was re-paved twenty-four inches on the left side and eighteen inches on the right side.
9. Sometime after July 2012, cracks appeared across the center of the driveway.

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. 2014). *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). A claim against the Fund may be

Finally, the paving work performed by Asphalt by Julie along the entire right and left sides of the driveway far exceeds the work required to patch the two small cracks on the right side of the driveway.

CONCLUSIONS OF LAW

I conclude that the Claimant did not sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (a) (2010 & Supp. 2014); COMAR 09.08.03.03B(3)(c). The Claimant is not entitled to an award from the Fund. Md. Code Ann., Bus. Reg. § 8-405 (d) (Supp. 2014).

RECOMMENDED ORDER

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

ORDER that the Claimant's September 11, 2012 claim against the Respondent for \$1,400.00, be **DENIED** and **DISMISSED**; and

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

Signature on File

October 1, 2014
Date Decision issued

LEF
#151937

Lorraine E. Fraser
Administrative Law Judge

denied if a claimant has “unreasonably rejected good faith efforts by the contractor to resolve the claim.” Md. Code Ann., Bus. Reg. § 8-405(d) (Supp. 2014). For the following reasons, I find that the Claimant has not proven eligibility for compensation.

First, I find that the Claimant did not prove that the cracks in the driveway resulted from unworkmanlike work performed by the Respondent. The Claimant’s photographs show two small cracked areas on the edge of the right side of the driveway. The Claimant testified that neither she nor anyone else had driven off the edge of the driveway causing the damage. However, the Claimant cannot make such a statement with certainty. The Claimant struggled during the hearing to remember dates and unfortunately her memory seemed to be failing at times. It is possible that the Claimant drove off the edge herself and does not recall doing so or she may have not been aware that she did so. Moreover, someone else could have driven over the edge without the Claimant noticing it or being at home to witness it. Further, the cracks were small and limited to two spots. If the Respondent’s workmanship were poor, it is likely cracks would have appeared in more locations. The Claimant alleged additional cracks, but her allegation was not supported by her photographs. She had a large number of photographs of the same two small cracks. Finally, the photographs show the large crack across the center of the driveway that appeared after the paving work was performed by Asphalt by Julie in July 2012. It is quite likely that Asphalt by Julie’s paving equipment caused those cracks.

Second, the Claimant did not give the Respondent an opportunity to repair the work she found unsatisfactory. The Claimant and the Respondent agreed at the hearing that the Respondent offered to patch the two cracked areas and that the Claimant declined his offer. As a result, the Claimant is not entitled to an award from the Fund.