

IN THE MATTER OF THE CLAIM
OF KAREN M. BECKER,
CLAIMANT,
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF KENNEY FONSECA
T/A FLINTSTONE MARBLE &
GRANITE, INC.,

* BEFORE ZUBERI BAKARI WILLIAMS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH NO.: DLR-HIC-02-13-46568
* MHIC NO.: 13 (75) 1083
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RESPONDENT

* * * * *

RECOMMENDED DECISION

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STATEMENT OF THE CASE

On July 9, 2013, Karen M. Becker (Claimant), filed a claim with the Maryland Home Improvement Commission (MHIC or Commission) Guaranty Fund (Fund) for reimbursement of \$3,585.00 for actual losses allegedly suffered as a result of a home improvement contract with Kenney Fronseca t/a Flintstone Marble & Granite, Inc., (Respondent) to remodel her kitchen.

I held a hearing on August 4, 2014, at the Office of Administrative Hearings (OAH) office in Kensington, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2012). Kris King, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. The Claimant represented herself. The Respondent did not appear.

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. 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 Department's behalf:

Fund Ex. #1 - Notice of Hearing, dated May 9, 2014

Fund Ex. #2 - Hearing Order, dated November 14, 2013

Fund Ex. #3 - License History for Respondent, dated August 1, 2014

Fund Ex. #4 - Home Improvement Claim Form, dated July 2, 2013

Fund Ex. #5 - Letter from DLLR to Respondent

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

Claim. Ex. #1 - Contract with Flintstone Marble and Granite Inc., dated August 15, 2012

Claim. Ex. #2 - Bank of America Checking Account Statement, dated May 26, 2012 through June 26, 2012

Claim. Ex. #3 - Multiple Check Images

Claim. Ex. #4 - Paid Invoice to Respondent, dated August 15, 2012

Claim. Ex. #5 - Paid Invoice to Respondent, dated August 23, 2012

Claim. Ex. #6 - Bank of America Checking Account Statement,
dated July 27, 2012 through August 28, 2012

Claim. Ex. #7 - Photograph of Under Cabinet lighting

Claim. Ex. #8 - Proposal of Henry Sanchez re: Lighting System, dated March 18, 2013

Claim. Ex. #9 - Letter to Villela from Claimant, dated December 18, 2012

Claim. Ex. #10 - Email from Claimant to Thomas Lawlor re: Exposed Wiring With
Photograph, dated August 3, 2014

Claim. Ex. #11 - Summary of Recess and Under Cabinet Lighting from
Capital A Electric, LLC

Claim. Ex. #12 - Invoice of Capital Electric LLC, dated June 26, 2013

Claim. Ex. #13 - Summary of Charges for Services for Work Not Performed, undated

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 appear and did not present any witnesses.

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 #05-127356. He held the MHIC license for Flintstone Marble & Granite, Inc.

2. At all times relevant to this matter, the Claimant lived in a house located at 500 Beall Avenue, Rockville, Maryland.

3. In May 2012, the Claimant sought to remodel her kitchen. Specifically, she wanted to replace her countertops, install new cabinets, and install recess lighting.

4. The Claimant visited the Respondent's showroom several times and spoke with an employee named Tim. She selected the cabinets and granite countertops she wanted.

5. On or about August 15, 2012, the Claimant and the Respondent entered into a contract to remodel her kitchen (Contract). The Claimant paid the Respondent \$6,085.00, which constituted the full amount of the contract.

6. On or about August 20, 2012, the Respondent began work on the Claimant's kitchen. The project was scheduled to end on, or around, September 10, 2012.

Shoddy and Incomplete Electrical Work¹

7. In late August 2012, the Respondent sent an electrician to the Claimant's house to install electrical switches and wire the kitchen area. However, the electrician was often tardy or did not show up to complete his work. Additionally, the Respondent's electrician left electrical panels uncovered with wires exposed.

8. The Respondent's electrician did not properly install recess lighting under the cabinets or properly wire the house. Specifically, the Respondent's under cabinet lights were connected by taking power from the counter dedicated outlets, in violation of the National Electrical code. Additionally, the Respondent overloaded existing wiring by installing 750 watt lights in 375 watt maximum circuits.

9. After the Respondent's electrician rewired parts of the house, the Claimant's fuses blew frequently for no known reason..

¹ During the Hearing, the Claimant raised several complaints regarding the improper installation of her kitchen cabinets, the mis-measurement of her kitchen pantry, theft of her personal items by a subcontractor, patchy and unpainted areas left by the Respondent's workers, and improper installation of her appliances. However, her request from the Fund centers on the electrical problems that occurred as a result of the Respondent's unworkmanlike or inadequate work. She is not seeking reimbursement for any of those other complaints. As such, I have only included those facts that are relevant to my analysis of the electrical issues.

10. The Claimant contacted the Respondent on several occasions and requested the electrical be redone. The Respondent did not respond to her requests.

Remedial Contractors

11. The Claimant received a proposal from Capital Electric, LLC (Capital Electric) to fix, and bring up to code, the electrical work done by the Respondent. The proposal stated that the electrical wiring in the house can be fixed for \$3,585.00. Included, in the proposal amount was a cost of \$650.00 to patch, finish and paint dry wall.

12. The Claimant's actual loss is \$2,935.00.

DISCUSSION

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 May 9, 2014, the OAH sent each party a notice stating that a hearing on the merits of the case was to be held on August 4, 2014 at 10:00 am at the OAH offices in Kensington, Maryland.

On August 4, 2014, I convened the hearing at the OAH office in Kensington, Maryland. The Claimant appeared and the HIC Fund's Attorney Kris King appeared as well. Both parties were ready to proceed. However, the Respondent failed to appear. The case file contains a green certified mail card bearing a signature and showing receipt of the Notice of Hearing at his address of record.

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 August 4, 2014, 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. Substantive Matter

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). 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 entered into the contract with the Claimant.

Second, the Respondent performed unworkmanlike and incomplete home improvement. As stated above, the Respondent's electrician improperly installed recess lighting under the kitchen cabinets and improperly wired the house. Specifically, the electrician left the front door panels off circuit breakers, left wires exposed, and overloaded the electrical circuits. The Claimant testified that she never had problems with the electricity in her house until after the Respondent's electrician did work to her house. She further testified that fuses and light bulbs blew almost every day afterwards. In support of her testimony, she supplied an inspection summary from Capital Electric which found that the Respondent's electrician violated several provisions of the National Electrical Codes and created a dangerous electrical situation in her house. *See* Claim. Ex. #11.

Although the Claimant did not present expert testimony to support her claim during the hearing, I am nonetheless persuaded after reviewing the photographs she adduced showing exposed wires and the under cabinet lights. When coupled with Capital Electric's inspection report, it is obvious that the Respondent's electrician left the Claimant's house in a dangerous condition.

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).

Here, the Claimant paid the Respondent \$6,085.00, which constituted the full amount of the contract. As stated above, the Respondent's electrical work was unworkmanlike and has to be redone to meet code. Additionally, as stated above, the Claimant plans to pay contractors to complete the electrical work. As such, I find the Claimant is entitled to the following:

Amount Paid Under Original Contract	\$6,085.00
Capital Electric	\$3,585.00
Patchwork and Painting ²	<u>(\$650.00)</u>
	\$9,020.00
Contract Price	<u>\$6,085.00</u>
Actual Loss	\$2,935.00

CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$2,935.00 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 \$2,935.00; 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 31, 2014
Date Decision Issued

Zuberi Bakari Williams
Administrative Law Judge

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ZW/emh
#152619

² During closing, AAG Kris King argued that I should not include the amount for patchwork/painting (\$650.00) in Capital Electric's proposal because the Claimant's testimony was unclear regarding whether it was necessary. Specifically, he relied on her testimony that she had already had her whole house repainted. I agree and will exclude that amount.