

**IN THE MATTER OF THE CLAIM
OF MELISSA A. FRYDRYCH,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF STEPHEN TATE,
T/A REAL ESTATE FOR LIFE
ORGANIZATION, LLC,
RESPONDENT**

*** BEFORE MICHAEL J. WALLACE,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-16-20061
* MHIC No.: 14(75)373

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PROPOSED DECISION

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STATEMENT OF THE CASE

On November 24, 2015, Melissa A. Frydrych (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) in the amount of \$16,240.00 for reimbursement for alleged actual losses suffered as a result of a home improvement contract with Stephen Tate, trading as Real Estate for Life Organization, LLC (Respondent).

I convened a hearing on December 5, 2016, at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).¹ The Claimant was present and represented herself. The Respondent failed to appear for the hearing. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), MHIC, represented the Fund.

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 (2014 & Supp. 2016), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of any acts or omissions committed by the Respondent?
2. If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Claimant:

- Cl. Ex. 1 Building Evaluation Report compiled by Ross A. Gibson, dated March 29, 2016
- Cl. Ex. 2 Curriculum Vitae of Ross Gibson, dated November 4, 2013

No documents were submitted on behalf of the Respondent.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 Notice of Hearing, dated September 1, 2016, with certified mail receipts
- Fund Ex. 2 The Respondent's licensing history, dated November 28, 2016
- Fund Ex. 3 Claim Transmittal Letter from DLLR to the Respondent, dated November 24, 2015

¹ All citations of the Business Regulation Article refer to the 2015 Volume.

Fund Ex. 4 Series of four cancelled checks written by the Claimant to the Respondent on July 2, 2013, July 16, 2013, July 23, 2013 and August 10, 2013 in the total amount of \$7,150.00

Testimony

The Claimant testified on her own behalf and she presented the expert testimony of Ross A. Gibson, Building Inspector. Mr. Gibson was qualified as an expert in home inspections and home improvement construction. There was no testimony presented on behalf of the Respondent or the Guaranty Fund.

PROPOSED 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 01-99498. His license will expire on February 28, 2017.

2. In June 2013, the Claimant entered an oral contract with the Respondent to provide home improvement services at the Claimant's home located on Dorchester Road in Baltimore, Maryland. The contract called for various home improvements including:

- Sand, stain and apply polyurethane to 1400 sq. ft. of wood floors
- Tile 71 sq. ft. of bathroom walls
- Tile 75 sq. ft. of bathroom floors
- Paint bedroom walls using three gallons of paint
- Paint bathroom walls using two gallons of paint
- Primer bathroom walls using 1.5 gallons of primer
- Install a tub and fixtures
- Supply one dumpster
- Remove and replace molding in the living room, den, foyer, and second story hallway and bedrooms
- Expand the existing master bedroom closet from three feet by three feet to ten feet by three feet
- Install an additional light fixture
- Install sliding closet doors and door frame

3. The contract price for the entire project including the above work was \$7,050.00 to be paid in three installments of \$2,350.00 each.

4. The Respondent began work on the project in June 2013 and worked until August 2013.

5. The Claimant paid the Respondent a total of \$7,150.00 in a series of four checks dated July 2, July 16, July 23, and August 10, 2013.

6. In August 2013, the Respondent felt that he completed all of the work but the Claimant still felt that work was left unfinished.

7. The Claimant contacted the Respondent at that time and he stated to her that he needed more money for additional supplies.

8. The Claimant then paid the Respondent an additional \$450.00 for supplies but the Respondent failed to return and perform any additional work.

9. The Respondent's work was poor or incomplete in the following respects:

- Sanded floors were not properly prepared for staining and polyurethane application. Specks and rough spots are on the finished floors.
- The floor was not properly finished where the closet addition and new doors/jamb were installed in the bedroom. The transition from where the old jamb was located was not properly smoothed and finished creating a rough, ridged appearance.
- Numerous areas on the floor revealed that stain was unevenly applied or missing in some spots.
- Areas under radiators were not stained at all and no molding was installed behind radiators.
- Areas along the floor/wall junction revealed that old molding was used with new molding that did not match in size or style. Miter joints were poor and uneven with gaps.
- Numerous areas revealed that molding and door jambs were improperly installed showing gaps at the floor measuring as much as a half inch.
- Master bedroom closet sliding doors and hardware were not properly installed or secured.
- Bath floor tiles were improperly installed. Some floor tiles were uneven by as much as 3/16 inch and full tiles were not used in highly visible areas such as at the threshold into the bathroom, creating a gap.
- Tile installation was unworkmanlike in that cuts made around fixtures and pipes were not properly scored but were instead rough cut with a saw. Ragged edges were filled with grout creating an unsightly appearance.
- Grout was missing or showed voids in various areas on the floor and wall.

- Shower tile was placed over drywall and not backer board as required. Grout was not cleaned off of the shower tile surface.
- The tub was gouged and scratched during installation and tub hardware did not match.

10. On November 24, 2016, the Claimant filed a claim for reimbursement from the Fund in the amount of \$16,240.00.

11. In August 2016, the Claimant obtained a default judgment in the amount of \$22,000.00 against the Respondent in the Circuit Court for Baltimore County. This was assigned to the MHIC but has not been collected.

12. The Claimant obtained estimates from two separate licensed home improvement contractors to repair and complete the Respondent's work at costs of \$15,200.00 and \$16,240.00 respectively.

13. The Claimant hired neither to perform the repair work and has since sold the house without any repair work being done.

DISCUSSION

Respondent's Failure to Appear

Section 8-312 of the Business Regulation Article provides that the MHIC shall give the person against whom the action is contemplated an opportunity for a hearing. Md. Code Ann., Bus Reg. § 8-312(a), § 8-407(a). On September 1, 2016, the OAH mailed a Notice to the Respondent via regular and certified mail using his address of record with the MHIC. The Notice advised the Respondent that a hearing on the Claimant's claim against the Fund was scheduled for December 5, 2016, that it would begin at 9:30 a.m., and would be held at the OAH-Hunt Valley, 11101 Gilroy Road, Hunt Valley, Maryland 21031. The address on the Notice is the address in the MHIC database and is the Respondent's address of record and, in fact, the Respondent accepted delivery of the Notice. As such, it was established that the Respondent received adequate notice of the hearing.

On December 5, 2016, I convened the hearing in accordance with the Notice. The Respondent, however, failed to appear for the hearing despite the fact that the hearing was delayed for approximately fifteen minutes to give the Respondent an opportunity to appear. Since the Respondent received due notice of the hearing, I concluded that he was afforded an opportunity to participate in the hearing, but failed to appear. Accordingly, I found it appropriate to proceed in the Respondent's absence. COMAR 09.01.02.09.

Merits of Claimant's Claim

A homeowner 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). *See also* COMAR 09.08.03.03B(2) ("actual losses . . . incurred as a result of misconduct by a licensed contractor"). Actual loss "means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. Furthermore, the Respondent performed unworkmanlike, inadequate or incomplete home improvements on the Claimant's home.

It is undisputed that the Respondent was a licensed home improvement contractor under MHIC license number 01-99498 at all times relevant to this case. His license is currently valid.

The undisputed evidence established that in June 2013, the Claimant entered an oral contract with the Respondent to provide home improvement services on her house in Baltimore. The Respondent was to sand, stain and apply polyurethane to the wood floors, apply tile to bath walls and floor, paint bedroom and bathroom walls, install a tub and fixtures, remove and replace molding throughout the house, expand a bedroom closet, and install a light fixture and sliding

doors. The total cost was set at \$7,050.00 to be paid in three installments of \$2,350.00 each. The Respondent began work on the project in June 2013 and worked until August 2013. The Claimant paid the Respondent a total of \$7,150.00 in a series of four checks. There was no explanation given for why she paid an additional \$100.00 for the work under the original agreement. In August 2013, the Respondent felt that he completed all of the work but the Claimant still felt that work was left unfinished so she contacted the Respondent and he told her that he needed more money for additional supplies. The Claimant then paid the Respondent an additional \$450.00 for supplies but the Respondent failed to return and perform any additional work.

The Claimant testified that she was not satisfied with the quality of the Respondent's work. Despite her attempts to get the Respondent to return to finish and/or repair the faulty work, the Respondent did not return to the Claimant's house. The Claimant then obtained two estimates from other licensed contractors in September and October 2013 in the amounts of \$15,200.00 and \$16,240.00 respectively, but she ultimately elected not to hire them to perform the work.

In March 2016, she contacted Ross Gibson to perform an inspection of her house. On March 22, 2016, Mr. Gibson inspected the house and found the numerous deficiencies detailed above. He opined in his report that the Respondent underbid the cost of the work to be performed at \$7,050.00 and stated that the work under the contract should have been billed at \$10,500.00. His report further reflected that the work performed by the Respondent was, for the most part, unworkmanlike and stated that most of the work had to be removed and replaced or redone in order to make the Claimant whole again. He further stated that the Respondent's drywall and framing work on the closet expansion, however, was sound and carried a value of \$2,300.00.

In August 2016, the Claimant sold the house and also obtained a default judgment in the amount of \$22,000.00 against the Respondent in the Circuit Court for Baltimore County. This judgment was assigned to the MHIC but has not been collected to date. In November 2016, the Claimant filed a claim for reimbursement from the Fund in the amount of \$16,240.00.

The Respondent did not refute the claims of the Claimant as he was not present despite being notified of the hearing. On the other hand, the Claimant testified credibly regarding the circumstances surrounding her discussions with the Respondent and presented the credible testimony of Mr. Gibson. Mr. Gibson testified consistently with the contents of his report. I find, therefore, that the Respondent performed unworkmanlike home improvements on the Claimant's house as detailed above. I also find that the Claimant is eligible for compensation from the Fund for the poor work done by the Respondent.

Having found eligibility for compensation I now turn to the amount of the award, if any, to which the Claimant is entitled. 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 provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss in this case:

(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.

COMAR 09.08.03.03B(3)(b).

The Claimant's actual loss is calculated after considering that she contracted with the Respondent for a total amount of \$7,050.00 but paid him \$7,150.00 in a series of four checks. In addition, she paid an extra \$450.00 to the Respondent for additional supplies for a total of

\$7,600.00. She did not have another contractor perform any additional repair work. The evidence further established that the Respondent's work carried a value of \$2,300.00.

The award from the fund is, therefore, computed as follows:

Amount paid to the Respondent	\$7,600.00
Minus the value of the work performed	<u>-2,300.00</u>
Award amount	\$ 5,300.00

Based on the above considerations, the Claimant is entitled to a reimbursement from the Fund in the amount of \$5,300.00. Md. Code Ann., Bus Reg. §8-405 (e)(1).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$5,300.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401; 8-405.

PROPOSED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,300.00;

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 (10%) as set by the Maryland Home Improvement Commission;² and

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

Signature on File

January 12, 2017
Date Decision Issued

MJW/da
165711

Michael J. Wallace
Administrative Law Judge

² See Md. Code Ann., Bus. Reg. § 8-410(a); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 8th day of March, 2017, Panel B of the Maryland Home Improvement Commission approves the Recommended Order 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.

Joseph Tunney

Joseph Tunney

Panel B

MARYLAND HOME IMPROVEMENT COMMISSION