

IN THE MATTER OF THE CLAIM	* BEFORE MARY R. CRAIG,
OF SIDNEY BROOKS,	* 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 HAYRIYE GUR,	*
T/A HAINES REMODELING LLC,	* OAH No.: DLR-HIC-02-15-02003
RESPONDENT	* MHIC No.: 14 (05) 928

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On August 24, 2014, Sidney Brooks (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$10,000.00 in alleged actual losses suffered as a result of a home improvement contract with Hayriye Gur, trading as Haynes Remodeling LLC (Respondent). On January 7, 2015, the MHIC issued a Hearing Order against the Respondent. The MHIC transmitted the case to the Office of Administrative Hearings (OAH) for a hearing. The OAH received the case on January 12, 2015.

I held a hearing on July 16, 2015,¹ at OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. Bernard Cook, Esquire, represented the Claimant, who was present. I waited fifteen minutes, during which time neither the Respondent nor anyone authorized to represent her appeared.

On May 13, 2015, the OAH mailed a Notice of Hearing by certified and regular mail to the Respondent at her last business address on file with the MHIC, advising her of the time, place, and date of the scheduled hearing. The U. S. Postal Service returned a receipt for the certified mailing, indicating that prior to May 19, 2015, it was received and signed for at that address. (OAH file.) The U. S. Postal Service did not return the Notice sent by regular mail as undeliverable.

“If, after due notice, the person against whom the action is contemplated does not appear, nevertheless the Commission may hear and determine the matter.” Md. Code Ann., Bus. Reg. § 8-312(h) (2015). Since the Respondent had received proper notification but did not appear, I directed the hearing to proceed in the Respondent’s absence.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation (DLLR or the Department) and the MHIC, 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), 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?

¹ The hearing previously scheduled for April 29, 2015, was postponed at the Claimant’s request.

2. Is the Claimant eligible for an award from the Fund?
3. If so, what amount should be awarded for the Claimant's loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

Clmt. Ex. 1 – Certified Letter To Whom It May Concern, from D. Finneran, MHIC, dated July 15, 2015

Clmt. Ex. 2 – Unsigned copy of an itemized proposal for work at 2114 E. Cold Spring Lane, Baltimore, MD, totaling \$34,965.00, dated December 19, 2013 (3 pages)

Clmt. Ex. 3 – Enlarged copy of check to Haines Remodeling LLC for \$10,000.00, signed by Marilyn H. Brooks, dated January 15, 2014

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 – Notice of Hearing, dated May 13, 2015, attaching Hearing Order, dated January 7, 2015 (4 pages)

Fund Ex. 2 – DLLR HIC license and registration printout, dated July 10, 2015 (3 pages)

Fund Ex. 3 – MHIC Home Improvement Claim Form, dated August 21, 2014, attaching copy of same itemized proposal in Clmt. Ex. 2 and check in Clmt. Ex. 3 (5 pages)

The Respondent failed to appear and no exhibits into evidence were offered in her behalf.

Testimony

The Claimant testified.

The Fund presented no witnesses.

The Respondent failed to appear and presented no witnesses.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Respondent was licensed as a Home Improvement Contractor under license number 4000094 as of June 24, 2010. That license expired on June 24, 2014.

2. At all times relevant to the subject of this hearing, the Respondent traded as a licensed home improvement contractor under the name of Haines Remodeling LLC (Haines).

3. The Claimant and his wife own three residential properties in Fayetteville, North Carolina: his primary residence, a condominium, and one other home. Along with his wife and son, he also owns the home at 2114 E. Cold Spring Lane in Baltimore, Maryland, where his mother resides.

4. Sometime in 2013, the Claimant spoke with the Respondent about certain home improvement work to be performed on the Baltimore home (Property).

5. On or about December 19, 2013, the Respondent sent the Claimant a detailed proposal to perform that work for a total of \$34,965.00.

6. On January 15, 2014, the Claimant's wife wrote a check to Haines for a deposit in the amount of \$10,000.00.

7. That check, number 239 drawn on the Security Service Federal Credit Union, was endorsed and deposited. It cleared on January 17, 2014.

8. No later than January 17, 2014, the Claimant and the Respondent entered into a contract for performance of the work specified in the December 19, 2013, proposal for the price of \$34,965.00.

9. Respondent failed to do any work for the Claimant, and failed to return or refund the \$10,000.00 deposit when the Claimant demanded that she do so.

10. The Claimant's actual loss is \$10,000.00.

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) (2015). *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 (2015). For the following reasons, I find that the Claimant has proven that he sustained an actual loss of \$10,000.00.

The Claimant’s uncontradicted testimony and various documents introduced into evidence establish the following material facts: The Claimant and his wife own four residential properties: three in Fayetteville, North Carolina, and one in Baltimore, Maryland, where his mother lives and of which their son also is a part owner. In late 2013, the Claimant wished to have some improvements made to the Baltimore home (Property). Because Haines had previously done some work on his son’s residence, the Claimant contacted the Respondent to discuss the renovations he had in mind. The Claimant later received a proposal from Haines dated December 15, 2013, listing the work to be done² for a total cost of \$34,965.00 (Proposal). Clmt. Ex. 2 at 1-2. Among other things, the Proposal stated that “[a] 30% deposit of \$10,490.00 is due upon estimate signing.” *Id.* at 3. The Claimant subsequently sent the Respondent a deposit check for \$10,000.00.³ The check, dated January 15, 2014, and made out to Haines, was endorsed and deposited; the deposit cleared on January 17, 2014.

Thereafter, the Claimant’s son told him that he believed something strange was going on, and recommended that he not do business with the Respondent. The Claimant sent an email to the Respondent asking that any work on the Property be stopped, and that his deposit money be returned. He also telephoned the Respondent, but the Respondent did not respond to his calls or emails and did not return the \$10,000.00 deposit.

² The work included replacing the kitchen and two bathrooms, renovating the basement, and repairing damage to a bedroom closet.

³ The Claimant testified that the same day or the next day he paid the Respondent \$2,500.00 to cover the rest of the deposit under the Proposal as well as a deposit for some additional work on the garage. The Respondent later returned the \$2,500.00, however, and that amount is not at issue here.

Md. Code Ann., Bus. Reg. § 8-405(d) provides that "The Commission may deny a claim if the Commission finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim." The Respondent did not appear, however, to contest the Claimant's testimony. There is thus no evidence that she made any good faith effort to resolve the Claimant's concerns or to perform the work.

Based on the evidence before me, therefore, I conclude that the Claimant's tender of a \$10,000.00 deposit check constituted acceptance of the Respondent's offer to perform the work stated in the Proposal under the terms set forth therein. I further conclude that by negotiating the check and retaining the funds the Respondent agreed to perform that work under those terms. I thus find that no later than January 17, 2014, when the Claimant's check cleared, the Claimant and the Respondent entered into a contract for the work indicated and at the price stated in the Proposal.

The Respondent has never attempted to perform any home improvements for the Claimant. Instead, she simply cashed the \$10,000.00 deposit check and walked away. As a result, the Claimant suffered an actual loss of \$10,000.00 and, if otherwise eligible for reimbursement from the Fund, would be entitled to receive that amount. Md. Code Ann., Bus. Reg. § 8-405(a)-(b) (2015); COMAR 09.08.03.03B(2). However, I do not believe that the Claimant is otherwise eligible under the applicable law.

Section 8-405 of the Business Regulation Article states in pertinent part that "[a]n owner may make a claim against the Fund only if the owner: (i) resides in the home as to which the claim is made; or (ii) does not own more than three residences or dwelling places." Md. Code Ann., Bus. Reg. § 8-405(f)(2) (2015). Unfortunately, based on the Claimant's testimony he meets neither of those requirements: his mother lives in the Property but he does not, and he owns four residences—the one in Baltimore and three others in North Carolina.

The Fund's representative acknowledged those facts, but indicated that the Fund believes the Claimant is not disqualified from reimbursement under section 8-405(f)(2). Without any persuasive rationale to support that position, however, I cannot agree. I, therefore, find that the Claimant is not eligible for compensation from the Fund. Md. Code Ann., Bus. Reg. § 8-405(f)(2) (2015).

Should the Fund decide otherwise, the regulations clearly indicate an appropriate amount of compensation: "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." COMAR 09.08.03.03B(3)(a). The Respondent did abandon the contract without doing any work after the Claimant paid her \$10,000.00. That money was not returned or refunded. If the Fund determines that the Claimant meets the applicable requirements, therefore, the Claimant is entitled to reimbursement in the amount of \$10,000.00, the amount he actually paid to the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2015); COMAR 09.08.03.03B(3)(a).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$10,000.00 as a result of the Respondent's acts and omissions, Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(a)-(b) (2015), but further conclude that the loss is not compensable, Md. Code Ann., Bus. Reg. § 8-405(f)(2) (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guarantee Fund deny the Claimant's claim; and

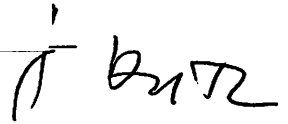
ORDER that the records and publications of the Maryland Home Improvement

Commission reflect this decision.

Signature on File

August 6, 2015
Date Decision Issued

Mary R. Craig
Administrative Law Judge



MRC/cj
#157338