IN THE MATTER OF THE CLAIM	*	**BEFORE JAMES T. MURRAY,**
OF CAROL SCOVENS-SANDERS,	*	**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 LLOYD WILLIAMS,	*	
T/A THE ALEXIS LLC,	*	**OAH No.: DLR-HIC-02-17-02757**
RESPONDENT	*	**MHIC No.: 16 (05) 1141**

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PROPOSED DECISION

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STATEMENT OF THE CASE

On June 14, 2016, Carol Scovens-Sanders (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of $12,800 in alleged actual losses suffered as a result of a home improvement contract with Lloyd Williams, trading as The Alexis LLC (Respondent).

I held a hearing on July 26, 2017 at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). John Bratt, Esquire, represented the Claimant, who was present. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. After

waiting twenty minutes for the Respondent or someone to represent him to appear, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.[1]

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, 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; COMAR 09.01.03; COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondents' acts or omissions?

2. If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

Claimant Ex. 1 – Construction Company Contract, April 3, 2015

Claimant Ex. 2 – Check 0091, April 3, 2015

Claimant Ex. 3 – Copies of seven photographs, undated

Claimant Ex. 4 – Letters from John B. Bratt to the Respondent, July 15 and September 24, 2015

I admitted the following exhibits on the Respondent's behalf:[2]

Resp. Ex. 1 – Email to the OAH, July 25, 2017

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 – Hearing Notice, June 8, 2017 and Hearing Order, January 20, 2017

Fund Ex. 2 – Licensing information for the Respondent as of July 24, 2017

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[1]The Respondent contacted the OAH on July 25, 2017 and requested a postponement, which was denied.

[2] The Respondent was not present but I admitted this document on his behalf because his postponement request is addressed in my decision.

Fund Ex. 3 – Letter from Joseph Tunney to Contractors, June 24, 2016 with attached Claim Form, June 7, 2016

Testimony

The Claimant testified in her own behalf. She was the only witness.

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 130160.

2. On April 3, 2015, the Claimant and the Respondent entered into a contract whereby the Respondent was to repair water damage to a home the Claimant owned at 5008 Norwood Road in Baltimore (the Contract). The Contract did not indicate a starting date, but stated that work under the Contract was to take thirty to forty-five days and be substantially complete by July 3, 2015.

3. The Respondent told the Claimant that work under the Contract would begin about April 6, 2015.

4. The agreed-upon contract price was $37,795.00.

5. On April 3, 2015, the Claimant paid the Respondent a deposit of $12,800.00.

6. When work under the Contract did not begin within four to six weeks after April 3, 2015, the Claimant began contacting the Respondent by telephone and text message.

7. The Respondent sent texts and left voice messages for the Respondent. The Respondent initially responded to the Claimant's messages but never explained to her why he had not started work under the Contract or when he would start work. The Respondent ignored the Claimant's requests that he refund her deposit.

8. The Respondent performed no work under the Contract and did not refund the Claimant's deposit.

9. The Claimant is not a spouse or other immediate relative of the Respondent; an employee, officer, or partner of the Respondent; or an immediate relative of an employee, officer, or partner of the Respondent.

10. The Claimant owns the property where the Contract was to be performed but does not live there. The property where the Contract was to be performed and her primary residence are the only residential properties the Claimant owns in Maryland.

11. The Claimant's actual loss is $12, 800.00.

12. On July 25, 2017, the Respondent requested a postponement of the July 26, 2017 hearing, which was denied for lack of documentation.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of her claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3). "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true." *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

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);[3] *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."

[3] Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

Preliminary Matters

As a preliminary matter, I determined that the Respondent's July 25, 2017 postponement request was properly denied. Regarding postponements, OAH Rules of Procedure provide:

> A. Except as provided in §D of this regulation, a request for postponement shall be made in writing and filed not less than 5 days before the scheduled hearing.
> B. Documentation of the reasons for the postponement shall be required from the party making the request.
> C. A request for postponement shall be granted only if the party requesting the postponement establishes good cause for the postponement.
> D. Emergency Request for Postponement.
> (1) For purposes of this section, "emergency" means a sudden, unforeseen occurrence requiring immediate attention which arises within 5 days of the hearing.
> (2) In an emergency, a request for postponement may be made by telephone.
> E. When practicable, all parties to a proceeding shall be contacted before a ruling on a postponement request is made.

COMAR 28.02.01.16.

Although the Respondent ultimately requested his postponement in writing, the request stated only "I am in Ohio and will not be able to fly back until Sunday." The OAH called the Respondent and informed him within minutes of his request that it was denied due to lack of documentation, but the Respondent did not contact the OAH again regarding his postponement request. The Respondent did not provide any documentation of why he could not fly back or otherwise return to Maryland for the hearing, did not mention any emergency or other unforeseen circumstance that prevented his return, and did not explain why he filed the postponement request the day before the hearing. Accordingly, the postponement request was properly denied and the hearing proceeded in the Respondent's absence.

Merits

The Respondent is not currently licensed, but was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. He was first licensed in 2012, renewed his license in 2014, and his license did not expire until 2016.

The Respondent took a $12,800.00 deposit from the Claimant but performed no work under the Contract. The uncontroverted evidence demonstrates that on April 3, 2015, the Claimant and the Respondent entered into a contract whereby the Respondent agreed to perform substantial home improvements to the Claimant's house on Norwood Road in Baltimore. On the day the Contract was signed, the Claimant paid the Respondent an initial payment of $12,800.00, with the balance of $24,995.00 to be paid as work under the Contract progressed. However, although the Claimant diligently contacted the Respondent about beginning work under the Contract, the Respondent never began work. The Fund did not oppose an award from the Fund. I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I now turn to the amount of the award 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: "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). For the reasons mentioned above, in this case that amount was $12, 800.00.

Pursuant to the applicable law, the maximum recovery from the Fund is limited to the lesser of $20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Md.

Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015). In this case, the Respondent abandoned the Contract without doing any work. Accordingly, the Claimant is entitled to reimbursement from the Fund in the amount of $12,800.00, the amount the Claimant actually paid to the Respondent. *Id.* § 8-405(e)(5); COMAR 09.08.03.03B(3)(a).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $12,800.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $12,800.00; 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 ten percent as set by the Maryland Home Improvement Commission; and[4]

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

Signature on File

August 2, 2017
Date Decision Issued

James T. Murray
Administrative Law Judge

JTM/cmg
#169218

[4] *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

[illegible]

PROPOSED ORDER

WHEREFORE, this 12th day of September, 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.

Sachchida Gupta

Sachchida Gupta
Panel B

MARYLAND HOME IMPROVEMENT COMMISSION