

IN THE MATTER OF THE PETITION OF *
MICHELLE JONES *
FOR JUDICIAL REVIEW OF *
THE DECISION OF THE MARYLAND *
HOME IMPROVEMENT COMMISSION *

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

IN THE CASE OF: *
Michelle Jones *
v. Maryland Home Improvement *
Guaranty Fund *

Case No.: 03-C-18-009657

* * * * *

ORDER

For the reasons stated in this Court's Memorandum Opinion dated March 25, 2019, the Judgment of the Maryland Home Improvement Commission in favor of the Maryland Home Improvement Guaranty Fund against Michelle Jones is AFFIRMED.

Signature on File

3/25/19
Date

Judge Kathleen Gallogly Cox

Entered: Clerk, Circuit Court for
Baltimore County, MD
March 27, 2019

Clerk, please send copies to all parties.

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ADMINISTRATIVE HEARINGS

<p>IN THE MATTER OF THE CLAIM</p> <p>OF MICHELLE JONES,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF GARY BOUTHNER,</p> <p>T/A UNIQUE REMODELING,</p> <p>RESPONDENT</p>	<p>* BEFORE DAVID HOFSTETTER,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH No.: DLR-HIC-02-18-07568</p> <p>* MHIC No.: 16 (75) 188</p> <p>* REMAND OF</p> <p>* OAH No.: DLR-HIC-02-15-42723</p> <p>* MHIC No.: 16 (75) 188</p>
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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSION OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On October 21, 2015, Michelle Jones (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$13,800.00 in actual losses allegedly suffered as a result of a home improvement contract with Gary Bouthner, trading as Unique Remodeling (Respondent).

By order dated December 4, 2015, the MHIC referred the matter to the Office of Administrative Hearings (OAH) for a hearing on the Claim. The matter was assigned the docket number DLR-HIC-02-15-42723. By letter dated April 21, 2016, the OAH issued a Notice of Hearing to the Claimant and Respondent via certified and first class mail to their addresses of

record. The hearing was scheduled for June 9, 2016 at 9:30 a.m. at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland.

The U.S. Postal Service returned the signed "green card" evidencing certified mail delivery to the Claimant. The OAH did not receive any requests for postponements.

On June 9, 2106, I convened the hearing as scheduled. The Respondent was present. Assistant Attorney General Hope Sachs, Department of Labor, Licensing, and Regulation (Department), represented the Fund. After waiting approximately twenty-five minutes during which the Claimant failed to appear, the Fund moved to dismiss the Claim.

On June 13, 2016, I issued a Proposed Default Order.

On October 4, 2017, the MHIC adopted the Recommended Default Order.

On November 3, 2017, the Claimant filed case number 03-C-17-10788 in the Circuit Court for Baltimore County appealing the MHIC's decision defaulting the Claimant.

On January 4, 2018, the parties filed in the Circuit Court a Stipulation of Dismissal of the Petition for Judicial Review, whereby the MHIC agreed to grant the Claimant a hearing on her claim. Thereafter, the MHIC transmitted the case to the OAH where it was docketed under case number DLR-HIC-02-18-07568.

Pursuant to the Stipulation of Dismissal, I held a hearing on April 6, 2018 at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented herself. Andrew J. Brouwer, Assistant Attorney General, represented the Fund. The Respondent represented himself.

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. 2017); 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 have attached a complete Exhibit List as an Appendix.

Testimony

The Claimant testified on her own behalf and presented no other witnesses.

The Respondent testified on his own behalf and presented no other witnesses.

The Fund did not present any witnesses.

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 home improvement contractor licensed by the MHIC.
2. At all times relevant, the Claimant lived in a residence on Wild Cherry Road, Windsor Mill, Maryland.
3. In July 2013, the Claimant was seeking home improvement work to improve the appearance and functionality of her home as well as to rent out an upstairs suite.
4. In or around July 2013, the Claimant applied for and thereafter received a loan for home improvement work from the Baltimore County housing rehabilitation agency (Baltimore County). The terms of the loan provided that the loan would not require periodic payments and would be forgiven if the Claimant remained living in the home for twenty years. The terms of

the loan provided that if the Claimant did not stay in the home for twenty years, she or her estate would be liable for the repayment of the full amount of the loan.

5. On July 22, 2013, the Claimant and the Respondent entered into a contract (Contract) for home improvement work. The Contract provided that the Respondent would:

- Repair or replace all metal fascia on the exterior of the home
- Replace all gutters and downspouts
- Replace deteriorated bricks on chimney and check flashing.
- Re-point all deteriorated mortar on chimney
- Professionally clean the chimney
- Replace ten gas slider and 6 atrium windows with insulated Energy Star-rated units; all windows to be Low E and Argone gas filled
- Install hardwired smoke detectors and carbon monoxide detectors with battery back-up in all bedrooms and on each level to code.
- Install GFI receptacles in bathrooms and kitchen
- Replace closet light fixture and switch with a fluorescent fixture and properly wired and mounted switch
- Replace ceiling light fixtures and switches in bedrooms
- Repair drywall damaged by electrician, with owner to paint drywall.

6. The agreed-upon Contract price was \$17,800.00.

7. The Respondent received payments of \$13,800.00 under the Contract.

8. The \$13,800 received by the Respondent was paid by Baltimore County, on behalf of the Claimant, under the terms of the loan.

9. The Respondent began work under the Contract in August 2013.

10. The Respondent last performed work under the Contract in April or May 2014.

11. Sometime after the Respondent completed work under the Contract, the Claimant made a claim against the Respondent's business insurer, Erie Insurance, for damage allegedly caused to her property by the Respondent.

12. On or about March 26, 2015, the Claimant signed a Property Damage Release (Release) discharging the Respondent from all claims for property damage caused by the Respondent.

13. Shortly after March 26, 2015 Erie Insurance paid the Claimant \$2,123.53 under the claim.

14. In March 2014, the property was inspected by Gutter Guys, a gutter construction and repair contractor.

15. On February 20, 2014, the windows installed by the Respondent were inspected by an employee of Home Depot.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1) (2015); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).¹ “[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)).

¹ As noted above, “COMAR” refers to the Code of Maryland Regulations.

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);² 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 not proven eligibility for compensation.

Issue Relating to the Baltimore County Loan

The Claimant received a loan from Baltimore County for the home improvement work set out in the Contract. The terms of the loan provide that it be forgiven if the Claimant stays in the home for twenty years. The Respondent was paid directly by Baltimore County under the loan; the Claimant did not directly pay any money to the Respondent.³ Although it could therefore be argued that Claimant could not therefore suffer an “out of pocket” or actual loss, I disagree. Whether the Claimant will actually remain in the home for twenty years is unknowable. She may very well become responsible for the full amount of the loan at some point. Moreover, if she were to hire contractors to perform work improperly done under the Contract, she would be responsible for paying those contractors. I therefore conclude that the unusual circumstances occasioned by the Baltimore County loan do not bar recovery.

Issue Related to the Release

The next question to be addressed is whether the Claimant’s claim is barred by the Release the Claimant signed as part of the settlement of her claim with Erie. The Claimant

² Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume of the Maryland Annotated Code.

³ The Claimant and the Respondent agreed that Baltimore County paid him \$13,800.00 under the Contract. The testimony and exhibits are unclear as to why the full Contract amount of \$17,800.00 was not paid, but that fact is not relevant to my conclusions in this decision.

argued that this payment was for damage caused by the Respondent but not for poor workmanship or inadequate or incomplete work. She was unable to state with any specificity, however, what damage she believed was covered by the settlement with Erie. The terms of the Release itself state that the Claimant discharges the Respondent from any claim of liability for "any and all property damage" sustained. Cl. Ex. 3. I agree that the term "property damage" does not include unworkmanlike, inadequate, or incomplete work and, therefore, the Claimant's present claim before the Home Improvement Commission is not barred by the Release.

Analysis of the evidence

Although her claim is not barred by the Release, the Claimant, of course still bears the burden of proof. Her testimony was confused, meandering, self-contradicting, and unsupported by relevant documentation. She acknowledged that much of the work under the contract was performed properly. Her main complaints concerned an allegedly leaking roof, problems with window installation, and electrical work.

As to complaints about the roof, I note that the Contract does not call for any work regarding the roof. Therefore, the Claimant's complaints about roof leaks are simply not relevant to this matter and I do not consider them. I discuss her other complaints below.

Windows

The Claimant testified that the windows were not installed properly and that air leaks in through the windows. She presented a document from John Gescheidle, a sales consultant at Home Depot. Cl. Ex. 3. The Home Depot document, dated February 20, 2015, contains a handwritten entry, presumably from Mr. Gescheidle, stating that the windows were installed improperly as "caulking is sloppy and damage to casing not repaired." He further stated that he believes "that the openings were not insulated." Cl. Ex. 3. Neither the document itself, nor the Claimant's testimony, provides any information about Mr. Gescheidle's qualifications to opine

regarding the quality of the window installation work. Moreover, the document, despite being labeled as a "price quote," provides no dollar amount as to the cost to repair or replace the allegedly improper work. For these reasons, I give Cl. Ex. 3 little or no weight. The Claimant has not contracted with Home Depot or any other contractor to repair or replace the windows installed by the Respondent.

Gutters

The Claimant testified that the gutters were improperly installed by the Respondent and that, as a result, they have leaked since the installation. The Claimant testified In March 2014, the property was inspected by Gutter Guys, a gutter repair and replacement contractor. An employee of Gutter Guys provided the Claimant with photographs and a statement that the pictures show "there being a gap between the gutter and fascia due to the wrong hangers being used." Cl. Ex. 4. The document does not identify the person making this statement or give the name of the person or persons who inspected the property. The Claimant was unable to provide this information. As in the case with the windows inspection noted above, the Cl. Ex. 4 does not contain a price quote to repair or replace the allegedly defective work, nor does it provide the qualifications of the person opining about the problems with the work. For these reasons, I give Cl. Ex. 4 little or no weight. The Claimant has not contracted with Gutter Guys or any other contractor to repair the Respondent's gutter work.

Electrical Work

The Claimant testified that the electrical work performed by the Respondent was "a mess" and "a nightmare," but was able to provide minimal information as to the basis of her unhappiness. Her only specific claim was that the GFI outlet in the bathroom was "half sticking out" and that the GFI outlet in the kitchen did not work. She provided no further evidence of

these alleged deficiencies. She testified that she had not sought another contractor to inspect, repair or replace the Respondent's work.

The Respondent testified that he performed all work under the Contract properly, that the Claimant was impossible to satisfy, and that he attempted to respond to all of her complaints.

I conclude that the Claimant has failed to prove that the Respondent's work under the Contract was unworkmanlike, inadequate, or incomplete. Although she testified generally about some of the alleged problems, her testimony was vague and unclear. She presented no expert witnesses or corroborating witnesses. The documents she provided from other contractors were inadequate and deficient in the respects noted above. Although the Claimant was clearly unsatisfied with the Respondent's work, her evidence was insufficient as a legal matter to establish by a preponderance that his performance was unworkmanlike, inadequate, or incomplete.

Moreover, even were I to find that the Respondent's work was unworkmanlike, inadequate, or incomplete, the Claimant has not established the amount of an actual loss. The Home Depot and Gutter Guys documents (Cl. Exs. 3 and 4) do not state a cost to repair or replace the Respondent's work. The Claimant testified that she had not sought any other home improvement contractors to inspect the work or offer a proposal and quote. There is simply no evidence in the record by which to determine the dollar amount of any loss suffered by the Claimant. As this is a necessary, statutory element of any claim, it alone is a basis to find against the Claimant.

I thus find that the Claimant is not eligible for compensation from the Fund.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's alleged acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty 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

June 28, 2018
Date Decision Issued

David Hofstetter
Administrative Law Judge

DH/cj
#174029

**IN THE MATTER OF THE CLAIM
OF MICHELLE JONES,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF GARY BOUTHNER,
T/A UNIQUE REMODELING,
RESPONDENT**

*** BEFORE DAVID HOFSTETTER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DLR-HIC-02-18-07568
* MHIC No.: 16 (75) 188
* REMAND OF
* OAH No.: DLR-HIC-02-15-42723
* MHIC No.: 16 (75) 188**

* * * * *

FILE EXHIBIT LIST

Claimant's Exhibits:

1. Proposal from Unique Remodeling, June 3, 2013
2. Contract, July 22, 2013
3. Home Depot sales slip, February 20, 2015
4. Flickr page, March 18, 2014
5. Letter to the Respondent, May 1, 2014
6. Letter to the Baltimore County Department of Planning, May 1, 2014
7. Complaint For Pre Arbitration Meeting, May 12, 2014
8. E-mail, July 29, 2014
9. Pre-Arbitration Notes, October 24, 2014
10. E-mail, March 24, 2014
11. Letter from the Respondent, March 14, 2014
12. Directions from Google Maps
13. Printout from the Better Business Bureau (BBB) website, March 21, 2015
14. Letter from the Respondent, April 15, 2015
15. Printout from BBB website, Complaint #36109170
16. Printout from BBB website, Complaint #36109170
17. E-mail, March 11, 2015
18. E-mail, March 12, 2015
19. Not Admitted, marked for identification only
20. Not Admitted, marked for identification only
21. Not Admitted, marked for identification only
22. Not Admitted, marked for identification only



DEPARTMENT OF THE ARMY
 OFFICE OF THE ADJUTANT GENERAL
 WASHINGTON, D. C.
 1950

THE ADJUTANT GENERAL
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ADJUTANT GENERAL

1950

The Adjutant General is the
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23. Not Admitted, marked for identification only
24. Not Admitted, marked for identification only
25. Not Admitted, marked for identification only

Respondent's Exhibits:

1. Letter from Elizabeth S. Glenn to the Claimant, February 10, 2015
2. Liberty Windows proposal, January 16, 2015
3. Property Damage Release, March 26, 2015
4. Report of Findings, March 2, 2015

Fund Exhibits:

1. DLLR's Hearing Order, December 4, 2015
2. Remand Order, February 16, 2018
3. OAH's Notice of Hearing, March 14, 2018
4. Letter from the DLLR to the Respondent, October 22, 2015
5. HIC information about the Respondent

PROPOSED ORDER

WHEREFORE, this 8th day of August, 2018, 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.

Andrew Snyder

***Andrew Snyder
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION