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| IN THE MATTER OF THE CLAIM | * BEFORE RICHARD O'CONNOR, |
| OF JEFFREY FINKEL, | * ADMINISTRATIVE LAW JUDGE, |
| CLAIMANT | * THE MARYLAND OFFICE |
| AGAINST THE MARYLAND HOME | * OF ADMINISTRATIVE HEARINGS |
| IMPROVEMENT GUARANTY FUND | * |
| FOR THE ALLEGED ACTS OR | * |
| OMISSIONS OF KEVIN TAYLOR, | * |
| T/A COASTAL INVESTORS AND | * OAH No.: LABOR-HIC-02-19-00450 |
| CONTRACTORS LLC | * MHIC No.: 16 (90) 654 |
| RESPONDENT | * |

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PROPOSED DECISION

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

STATEMENT OF THE CASE

On March 5, 2018, Jeffrey Finkel (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$45,258.19 in actual losses allegedly suffered as a result of a home improvement contract with Kevin Taylor, trading as Coastal Investors and Contractors LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹ On

¹ Unless otherwise noted, all references to the Business Regulation Article cite the 2015 Replacement Volume of the Maryland Annotated Code.

December 31, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on April 26, 2019 at the OAH in Hunt Valley, Maryland. Bus. Reg. § 8-407(e). Eric. B. London, Assistant Attorney General, Department of Labor (Department),² represented the Fund. The Claimant represented himself. The Respondent did not appear for the hearing. After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.³

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. 2018); 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 Respondent's acts or omissions?
2. If so, what is the amount of the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

1. Contract between the Claimant and the Respondent, undated.
2. Photograph of a space heater.

² On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.
³ Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on February 27, 2019, COMAR 09.08.03.03A(2), and not returned as unclaimed or undeliverable. A receipt for certified mail shows that the notice was delivered to the Appellant's address on March 2, 2019. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Respondent had received proper notice and chosen not to appear for the hearing and proceeded to hear the captioned matter.

3. Photograph of the siding on the Claimant's house.
4. Photograph of two pieces of siding lying on the Claimant's lawn.
5. Photograph of a strip of detached siding trim.
6. Photograph of the handle of the front storm door.
7. Photograph of part of the front door.
8. Photograph of part of the front door.
9. Photograph of towels around the bottom of the front door.
10. Photograph of part of the front door.
11. Photograph of part of the front door.
12. Photograph of the floor next to the front door.
13. Photograph of wood trim around the garage door.
14. Photograph of wood trim around the garage door.
- 15-24. Photographs of wood trim around the rear door.
- 25-29. Photographs of trim around the bay window.
30. Proposal from Top Quality Remodeling (TQR) to replace siding and caulk all windows and doors, undated.
31. Proposal from TQR to replace the front door and storm door, undated.
32. Proposals from Kent Ohlis to replace the rear door, front door, and roof,⁴ undated.

I admitted the following exhibits into evidence on behalf of the Fund:

1. Notice of Hearing, February 27, 2019.
2. Hearing Order, December 21, 2018.
3. The Respondent's MHIC licensing history.
4. Letter from the MHIC to the Respondent, March 15, 2018.

⁴ The proposal for the roof is not related to this claim.

5. Home Improvement Claim Form, signed November 27, 2017; received March 5, 2018.
6. Letter from the Respondent to the MHIC, December 1, 2015.
7. MHIC Complaint Form from the Claimant with supporting documents and photographs, November 9, 2015.
8. Invoice from the Respondent to the Claimant, September 17, 2015.

Testimony

The Claimant was the only witness to testify.

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 numbers 01-101830 and 05-129828.
2. In 2014, the house next to the Claimant's burned, causing some damage to the Claimant's residence. The neighbor's homeowner's insurance covered the damage to the Claimant's house.
3. On July 8, 2015, the Claimant and the Respondent entered into a contract as follows:
 - Remove and replace the siding on the west side of the Claimant's home, including inspecting the sheathing and insulation for water damage and replacing them as necessary, at a cost of \$4,650.00;
 - Remove and replace the front entry door at a cost of \$3,400.00;
 - Replace rotted wood trim around the garage door at a cost of \$565.00;
 - Replace rotted wood trim around the bay window⁵;
 - Remove and replace the rear door at a cost of \$2,860.00;
 - Caulk and seal all windows at a cost of \$820.00;
 - Paint the foundation at a cost of \$925.00; and
 - Paint (interior and exterior) the back wall, casings, and trims at a cost of \$975.00.

⁵ The cost for this work was not broken out, but is probably included in "caulk and seal all windows."

4. The contract price was \$14,495.00,⁶ payable in three equal draws.
5. The Claimant paid the Respondent \$11,663.00 under the contract but refused to pay the final \$2,832.00.
6. The replacement front door included a glass transom above the door and windows on each side of the door, all of which came as a single unit. A storm door was also included but was installed separately.
7. The Respondent performed all the work called for in the contract.
8. The interior handle of the front storm door interferes with the operation of the entry door.
9. Water leaks into the house around the front door every time it rains.
10. The boards above the rear door were installed incorrectly; they are not aligned properly and water gets in behind them. Trim around the door was poorly installed.
11. The Respondent installed textured boards under the bay window, which do not match the rest of the house. The rotted wood was not completely replaced and the joints of the trim around the window do not mate evenly.
12. The Respondent did not replace all the rotten wood around the garage door. The replacement trim he installed is uneven and poorly sealed.
13. The Respondent did not replace any insulation or sheathing underneath the new siding on the west wall of the house.
14. A piece of the new siding fell off the house in 2016. A piece of the new siding trim became partially detached in 2019.

⁶ The enumerated costs add up to \$14,195.00 (Fund Ex. 8), but the contract price was \$14,495.00 (Claimant Ex. 1). The difference was not explained.

15. Since the fire next door, the Claimant's water pipes have frozen in one bathroom whenever the outdoor temperature dips below twenty degrees Fahrenheit. The Claimant uses a space heater to keep the pipes from freezing.

16. The Claimant pointed out the problem with the rear door to the Respondent in 2015. The Respondent came to the home four times to replace the board over the top of the door, paint, and caulk.

17. The Claimant remained unsatisfied with the rear door and let the Respondent know on September 11, 2015. The Respondent refused to do any more work on the door.

18. The Claimant filed a complaint with the MHIC on or about November 9, 2015. The complaint alleged that the Respondent failed to replace the sheathing and insulation, did not fix the problems with the rear door, and charged for additional time and materials when he returned to address those problems.

19. The Respondent replied to the complaint on or about December 1, 2015.

20. The Claimant did not become aware of the problems with the front door until 2016.

21. The Claimant did not complain about the front door, the siding, the bay window, or the garage trim to the Respondent until the Respondent demanded the final contract payment in 2016.

22. The Claimant did not ask the Respondent to return to the job and deal with those issues, and the Respondent did not offer to return and repair anything.

23. The Claimant has received a proposal from TQR to replace the west wall siding and install foam insulation, as well as caulk all windows and doors, for \$5,800.00.

24. The Claimant has received a proposal from TQR to install a new steel front door with transom and side glass for \$12,200.19, with a possible twenty-five percent discount that would make the price \$9,150.00.

25. The Claimant's existing front door is wood.

26. The Claimant has received a proposal from Keith Ohlis to furnish and install a ProVia brand front door for \$16,877.00 and a rear door for \$14,240.00.

27. As of the date of the hearing, the Claimant had not engaged any contractors to repair or replace the Respondent's work.

DISCUSSION

The Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. Bus. Reg. §8-407(e)(1); 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.” 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”). “[A]ctual 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, although not in the amount claimed.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant and performed the work at the Claimant's home. Some of the Respondent's work was unworkmanlike or inadequate.

Siding

The Claimant has not proven that the Respondent's work on the siding was inadequate. The contract called for the Respondent to remove the existing siding, inspect the underlying sheathing and insulation for water damage and replace as necessary, and install new siding. The Respondent removed the existing siding. His response to the Claimant's MHIC complaint was that he found no water damage to the sheathing or insulation, so he replaced the siding for the price stated in the contract.

The Claimant contends that the fact that his pipes freeze in cold weather proves that the insulation was damaged and should have been replaced. This argument is based on the logical fallacy "after this, therefore because of this." The Claimant testified that his pipes never froze before the fire next door in 2014, but the fact that they have frozen after the fire does not prove that the insulation was damaged or that the Respondent did not fulfill this part of the contract. The Claimant would have to provide actual evidence of damaged insulation to prevail on this point, but his testimony and exhibits did not contain any such evidence.

Front Door

The Claimant has two complaints about the front door. First, he testified that the front entryway is "almost unusable" because the handle of the storm door abuts the deadbolt of the entry door when both are closed, which prevents the storm door from being properly latched. Second, water leaks in around the transom over the door. The door, transom, and side windows are all part of a one-piece unit that the Respondent installed. The Claimant's testimony and

several photographs leave no doubt that the door is leaking. The photographs show mold on the outside of the door and water and towels on the floor inside.

The Claimant never informed the Respondent about the problems with the front door, nor were they mentioned in his complaint to the MHIC. He testified that he did not become aware of them until 2016. He also stated that, after the Respondent refused to do any more work to fix the rear door, he wanted nothing more to do with the Respondent, so he did not try to have him come back to deal with the front door.

According to the Respondent's invoice, the price to furnish and install the front door was \$3,400.00. In contrast to this reasonable sum, the Claimant received two exorbitant proposals to replace the door: \$12,200.19⁷ from TQR for a steel door and \$16,877.00 from Kent Ohlis for a ProVia brand door.⁸

From this evidence, I cannot find that either the TQR or the Kent Ohlis proposals are for the "costs of restoration, repair, replacement, or completion" of the door the Respondent installed. The prices alone indicate that either proposal would provide a significant upgrade. Also, the Claimant testified that he believes he received these proposals in 2017 and has not engaged another contractor to replace the door, nor has he undertaken any efforts to adjust the storm door or prevent the water leaks. Nevertheless, water leakage is strong evidence of poor workmanship, and I conclude that the Claimant is entitled to have the front door replaced with an equivalent unit at the price quoted in the contract.

Rear Door

The Claimant's main complaint with the rear door has been the wooden trim around the door. He testified, and the photographs show, that the trim pieces are not flush, do not fit

⁷ The proposal has a handwritten notation "Disc. 25% \$9,150.00." The author is unknown, and the Claimant did not mention whether the discount is actually available and, if so, under what circumstances.

⁸ Information on the ProVia website suggests that the TQR proposal may also be for a ProVia door.

together properly, and are poorly caulked. The Claimant testified that this allows water to get behind the board above the door, causing the wood to swell. Photographs of the area show mold growing on the exterior around the door.

The Claimant was unhappy with the workmanship of the rear door as soon as it was installed, and complained to the Respondent. The Claimant testified that the Respondent came back four times to replace wood, caulk, and paint. When the Claimant still was not satisfied, the Respondent said, "I don't care, I'm done" and walked off the job. This was on September 11, 2015, and the Claimant made no further efforts to have him return.

The Claimant received a bid from Kent Ohlis to replace the rear door for \$14,240.00. The cost in the Respondent's contract was \$2,860.00, leading me to believe that Mr. Ohlis's proposal is either to furnish a significantly better door or is inflated far beyond the value of the work. Again, the Claimant has not hired another contractor to replace the rear door. I conclude that the Claimant is entitled to have the rear door replaced, but at the price stated in the contract.

Garage

The Claimant contracted to have the Respondent replace rotten wood around the garage doors at a cost of \$565.00. The Respondent replaced some, but not all, the rotten wood, and the trim he installed did not look much better than what he removed. The photographs show that the area around the garage door is unsightly and poorly fit together. I find that the Claimant's claim to have this work re-done is valid. Since he has not received a proposal for this work from another contractor, the Claimant is entitled to the contract price of \$565.00.

Bay Window

The same is true for the trim around the bay window. The Respondent used textured boards under the window that do not match any of the other trim on the house. The fit and finish of the trim the Respondent installed is very poor.

The Respondent's invoice (Fund Ex. 8) does not break out a cost to replace the trim around the bay window. It does have the following entry: "Caulking/sealing existing windows around perimeter" for \$820.00. The contract includes the following provision: "Pull and replace wood rot around bay window with PT 3/4".⁹ The contract also includes "Caulk all windows around house," so I conclude that the \$820.00 to caulk all windows included the work on the bay window, which was not done satisfactorily. I shall recommend that half the \$820.00 be included in the award.

Good Faith Efforts by the Respondent

Section 8-405(e) of the Business Regulation Article states: "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." Similarly, COMAR 09.08.03.02D(3)(c) provides: "The hearing board may dismiss a claim as legally insufficient if the claimant has unreasonably rejected good faith efforts by the contractor to resolve the claim." The Respondent's answer to the Claimant's MHIC complaint includes the following statement: "I would like to come to some kind of resolution to this issue and I look forward to a response on this issue." Fund Ex. 6. Although this might be construed as a good faith effort to resolve the claim, the "issue" the Respondent was referring to was the Claimant's failure to pay the final \$2,832.00 due under the contract, which the Respondent discussed in the paragraph preceding the above-quoted statement.

⁹ The evidence does not reveal the meaning of "PT."

I do not find that the Respondent's statement to the MHIC is a good faith effort to resolve the claim. The Respondent made no offer to return to the job site or repair his inadequate work. Additionally, in 2015 the Respondent had refused to make further repairs to the rear door and had walked off the job. The Claimant knew at that time that the Respondent had performed unworkmanlike home improvements and his decision not to make further complaints to the Respondent was reasonable.

Actual Loss

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Respondent performed work under the contract and the Claimant is not seeking other contractors to complete or remedy that work. For the reasons discussed previously, I do not consider the proposals from TQR and Kent Ohlis valid offers to repair or replace the Respondent's work. Also, there is no evidence that the Claimant has actually sought another contractor to remedy the defects. Accordingly, the following formula appropriately measures the Claimant's actual loss: "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 paid the Respondent \$11,663.00. I shall value the work performed by the Respondent by subtracting from the contract price the cost of the front door, the rear door, the garage trim, and half the caulking of the windows. These sums are, respectively, \$3,400.00, \$2,860.00, \$565.00, and \$410.00, a total of \$7,235.00. Subtracting this amount from the contract price of \$14,495.00 leaves \$7,260.00 as the value of the Respondent's work. Subtracting \$7,260.00 from the amount paid of \$11,663.00 provides an actual loss of \$4,403.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$4,403.00 as a result of the Respondent's acts or omissions. Bus. Reg. §§ 8-401, 8-405; COMAR 09.08.03.03B(3)(b). I further conclude that the Claimant is entitled to recover \$4,403.00 from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$4,403.00; 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 (10%) as set by the Maryland Home Improvement Commission;¹⁰ and

¹⁰ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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

Signature on File

July 25, 2019
Date Decision Issued

Richard O'Connor
Administrative Law Judge

ROC/kdp
181132

PROPOSED ORDER

WHEREFORE, this 10th day of September, 2019, 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.

Wm. Bruce

Quackenbush

***Wm. Bruce Quackenbush
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION

RECEIVED
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PROPOSED ORDER

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