

IN THE MATTER OF THE CLAIM
OF ERIC ROME,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF HUGH FORD,
T/A HUGH FORD,
RESPONDENT

* BEFORE NICOLAS ORECHWA,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-17-25268
* MHIC No.: 17 (75) 531

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PROPOSED DECISION

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STATEMENT OF THE CASE

On January 21, 2017, Eric Rome (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$12,000.00¹ in actual losses allegedly suffered as a result of a home improvement contract with Hugh Ford, trading as Hugh Ford (Respondent).

¹ At the hearing, the Claimant reduced this amount to \$1,607.00.

I held a hearing on November 14, 2017, at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015).² The Claimant represented himself. Eric London, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund.

On September 26, 2017, the Office of Administrative Hearings (OAH) mailed notice of the hearing to the Respondent by certified and regular mail to 6030 Marshalee Drive, Elkridge³, Maryland 21075, the last known address of record on file with the MHIC. Md. Code Ann., Bus. Reg. § 8-312(d) (2015).⁴ The notice advised the Respondent of the time, place, and date of the hearing. The United States Postal Service did not return the notice as unclaimed or undeliverable. On October 3, 2017, the OAH received the signed⁵ return receipt for the notice. I received no forwarding order or other correspondence from the Respondent to identify other alternative addresses. Therefore, I determined that the Respondent received proper notification, but failed to appear for the hearing. As a result, I found it appropriate to proceed in the Respondent's absence. After waiting fifteen minutes for the Respondent to appear, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.

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.

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

³ The city in the Respondent's address is spelled "Elridge."

⁴ "The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission." Md. Code Ann., Bus. Reg. § 8-312(d) (2015).

⁵ The return receipt is signed by Kyle Brown.

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 that loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

- Clmt. Ex. 1 - Contract between Claimant and Respondent dated July 7, 2015
- Clmt. Ex. 2 - Photograph of the exterior of the Claimant's residence
- Clmt. Ex. 3 - Photograph of crack on the Claimant's driveway
- Clmt. Ex. 4 - Photograph of crack on the Claimant's driveway
- Clmt. Ex. 5 - Photograph of crack on the Claimant's driveway
- Clmt. Ex. 6 - Proposal from C. Wells Paving dated October 15, 2016
- Clmt. Ex. 7 - Estimate from C. Wells Paving dated January 16, 2017
- Clmt. Ex. 8 - Call detail from Claimant's Verizon account

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - Notice of Hearing from the OAH dated September 26, 2017, with attached signed USPS return receipts
- Fund Ex. 2 - Hearing Order dated August 8, 2017
- Fund Ex. 3 - Correspondence from the Department dated November 9, 2017
- Fund Ex. 4 - Home Improvement Claim Form dated January 21, 2017
- Fund Ex. 5 - Correspondence from the Department dated February 6, 2017
- Fund Ex. 6 - Contractor License search results from the Department dated February 10, 2017

Testimony

The Claimant testified in his own behalf.

The Fund presented no witness testimony.

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 01-106199.
2. On July 7, 2015, the Claimant and the Respondent entered into a contract⁶ for the Respondent to perform work at the Claimant's residence located at 12908 Folly Quarter Road, Ellicott City, Maryland 21042.
3. Per the terms of the contract, the Respondent agreed to:
 - resurface the asphalt over the Claimant's entire driveway and laneway;
 - remove "bad" areas of the existing driveway;
 - prefill low areas of the driveway as needed;
 - base the driveway as needed;
 - provide a new asphalt layer to the driveway with a two inch minimum thickness.
4. The original agreed-upon contract price was \$7,400.00.
5. The Claimant paid the Respondent \$7,400.00.
6. The Respondent started work on the Claimant's driveway on July 7, 2015, and completed the work that day.
7. A couple weeks after the Respondent completed the work, the Claimant noticed cracks going down the side of his driveway.

⁶ The terms of the contract did not provide for a beginning and end date.

8. The sides of the Claimant's driveway cracked because the Respondent did not properly compact the driveway along the edges.

9. The Claimant attempted to contact the Respondent by phone and e-mail on numerous occasions in an attempt to get the Respondent to fix the cracks. The Respondent did not respond to the Claimant's attempts to contact him.

10. The Claimant contacted other contractors to get estimates on the cost of filling and repairing the cracks on the side of the driveway.

11. On January 16, 2017, C. Wells Paving, a Maryland licensed contractor, provided to the Claimant an estimate of \$1,607.00 to fill and repair the cracks on the side of the driveway.

12. The Claimant paid \$1,607.00 to C. Wells Paving to have the cracks on the side of the driveway filled and repaired.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).⁷ “[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); *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

⁷ As noted above, “COMAR” refers to the Code of Maryland Regulations.

completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”

Id. § 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. While the contract did not require that the Respondent replace the entire driveway, it did call for the Respondent to perform, in essence, a complete refurbishment of the entire driveway. Therefore, it is reasonable for the Claimant to have envisioned his driveway to be free of cracks not just initially, but for years after the work’s completion. Instead, the Claimant noticed the cracks within weeks of the Respondent completing the work. While the Claimant did not provide expert testimony concerning what constitutes a workmanlike refurbishment of a driveway, he did submit photographs into evidence which clearly show significant cracks running along the side of the driveway.⁸ (Clmt. Exs. 3, 4 & 5.)

I find the Respondent performed unworkmanlike, inadequate or incomplete home improvements. I received no evidence that the cracks in the Claimant’s driveway occurred as a result of a force of nature or the act of the Claimant or some third party. The Claimant did testify that other contractors he consulted advised him that the Respondent did not adequately compact the driveway along the edges. This conclusion is consistent with the pictures of the cracks submitted into evidence by the Claimant. It is also consistent with the Claimant’s testimony that the cracks occurred within weeks of the Respondent completing his work.

The Claimant paid the Respondent \$7,400.00 per the terms of the contract. However, when he discovered the cracks, he attempted on numerous occasions to contact the Respondent

⁸ The Claimant testified that he took the pictures within three months of the Respondent completing work on the driveway.

by phone and e-mail to have the cracks repaired. The Respondent never called or e-mailed the Claimant back. Left without recourse, the Respondent consulted other contractors in order to repair the cracks. Ultimately, the Respondent paid C. Wells Paving the sum of \$1,607.00 to repair the cracks in the driveway.

The Claimant provided little documentary evidence to support his claims. Notably, he did not provide copies of cancelled checks to support his testimony that he paid the entire contract price of \$7,400.00 to the Respondent or that he paid \$1,607.00 to C. Wells Paving to repair the cracks. I listened to the Claimant's testimony and found it to be credible. The Claimant consistently testified throughout the hearing with regard to the facts of the case. While he did not have documentary evidence to corroborate his testimony, he knew the facts and did not testify that he could not remember important facts. For example, when asked by the Fund if C. Wells Paving was a licensed contractor, the Claimant testified C. Wells Paving was a licensed contractor and supported his testimony by noting that he saw a license number on the van C. Wells Paving used. Furthermore, the Claimant constrained his case to the issue of the cracks in the driveway. He could have argued for a reimbursement from the fund of \$12,000.00 to replace the entire driveway. Instead, he simply requested reimbursement of the \$1,607.00 required to repair the cracks. I thus find that the Claimant suffered an actual loss and is eligible for compensation from the Fund.

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. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. COMAR 09.08.03.03B(3).

In this case, the Respondent performed some work under the contract and the Claimant retained C. Wells Paving to complete and make the repairs to the driveway. Accordingly, the following formula appropriately measures the Claimant's actual loss:

If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the [MHIC] determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the [MHIC] may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c).

The total amount of the original Contract is \$7,400.00. Therefore I find the Claimant's actual loss is the following: $(\$7,400.00 + \$1,607.00) - \$7,400.00 = \$1,607.00$.

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). Accordingly, the Claimant is entitled to reimbursement of \$1,607.00. Md. Code Ann., Bus Reg. § 8-405(a).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$1,607.00 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)(c).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$1,607.00; 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;⁹ and

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

Signature on File

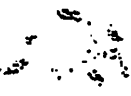
December 14, 2017
Date Decision Issued



Nicolas Orechwa
Administrative Law Judge

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⁹ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



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PROPOSED ORDER

WHEREFORE, this 2nd day of February, 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