

IN THE MATTER OF THE CLAIM
OF BECIR ZEKOVIC,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF BIANCA MEDRANO,
T/A WINDOW UNIVERSE LLC,
RESPONDENT

* BEFORE NICOLAS ORECHWA,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-17-32208
* MHIC No.: 17 (75) 611

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PROPOSED DECISION

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

On May 12, 2017, Becir Zekovic (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$12,865.00 in actual losses allegedly suffered as a result of a home improvement contract with Bianca Medrano, trading as Window Universe LLC (Respondent).

I held a hearing on April 9, 2018 at the Prince George's County Office Building, 1400 McCormick Drive, Largo, Maryland 20774. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented himself. Eric London, Assistant Attorney General, Department of Labor,

Licensing, and Regulation (Department), represented the Fund. The Respondent represented herself:

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the Office of Administrative Hearings (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); Code of Maryland Regulations (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 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, May 2, 2016
- Clmt. Ex. 2 - Nine pages of photographs taken by the Claimant
- Clmt. Ex. 3 - Contract between the Claimant and Home Depot, June 11, 2016

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

- Resp. Ex. 1 - E-mail from Jay Drenner to Bianca Medrano, September 9, 2016
- Resp. Ex. 2 - E-mail from Bianca Medrano to Jay Drenner, April 5, 2017 with string of previous e-mails
- Resp. Ex. 3 - Vinyl Siding Installation Manual, 2017
- Resp. Ex. 4 - Siding, Trim and Accessory Catalog, December 2017

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Notice of Hearing, March 9, 2018

Fund Ex. 2 - Hearing Order, October 2, 2017

Fund Ex. 3 - Respondent's Licensing History, December 11, 2017

Fund Ex. 4 - Home Improvement Claim Form, June 14, 2017

Fund Ex. 5 - Letter from the Fund to the Respondent, June 20, 2017

Testimony

The Claimant testified in his own behalf.¹

The Respondent did not testify but presented the testimony of Daniel Schwiehs and Jason Fitzwater.

The Fund presented no 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 ****724 and ****538.
2. On May 2, 2016, the Claimant and the Respondent entered into a contract² wherein the Respondent agreed to replace a variety of structural material on the outside of the Claimant's house including siding, window trim, and shutters. While the contract did not contain a specific start and end date, its terms provided that the Respondent would begin work four to six weeks after the contract's execution and complete the work within ninety days of its commencement.
3. The original agreed-upon contract price was \$9,180.00.

¹ The Claimant testified through a Bosnian interpreter.

² The Claimant's wife signed the contract, not the Claimant. The Claimant's wife did not appear at the hearing and testify. None of the parties contested the validity of the contract and for the sake of simplicity, I will refer to the Claimant as the contracting party in this decision.

4. The Claimant paid \$9,180.00 to the Respondent for work performed under the contract. While the Claimant's wife signed and paid, the payment came from joint funds.

5. The Claimant is not related to the Respondent in any way.

6. The Claimant has not filed any civil law suits nor has he obtained any civil judgments against the Respondent as a result of the contract.

7. After executing the contract, the Respondent commenced work on the Claimant's residence on July 16, 2016 and completed the work on July 18, 2016. With the exception of the capping of some window trim, the Respondent completed all work per the contract's terms. The Respondent performed the work within the standards utilized by the Vinyl Siding Institute.

8. On or about August 17, 2016, the Claimant began to complain to the Respondent about the quality of the work in a variety of respects:

- The Respondent did not replace the siding in compliance with certain standards³
- The Respondent left gaps at various points in the siding.
- The Respondent left an improper amount of space between the siding and the gutters
- The Respondent left a hollow space between the siding and the corner of the house
- The Respondent failed to install insulation at various points leaving hollow spaces
- The Respondent installed siding designed for a roof on the side of the house

³ While I find as a fact the Claimant raised this particular issue with the Respondent, as shall be addressed in the discussion, it is uncertain what standards the Claimant alleged the Respondent failed to follow.

- The Respondent installed siding at various points which was five inches too short
- The Respondent installed a window frame which was too wide and did not fit the particular window
- The Respondent improperly installed some siding below the Claimant's deck which caused water to seep inside the wall
- The Respondent installed some siding made of different material in different locations on the side of the house

9. The Respondent offered to come out to the Claimant's residence on August 19, 2016. The Claimant declined that offer. The Respondent was finally able to meet with the Claimant at his residence on August 30, 2016.

10. The parties agreed under the contract that the Respondent would cap the window trim. The cost under the contract to cap the window trim was \$455.00. The Claimant decided he did not like the style of the window trim and declined the work.

11. The Claimant never solicited another contractor to cap the window trim.

12. The Claimant requested the Respondent install aluminum capping on his gutters. This request exceeded the terms of the original contract and the Respondent requested the Claimant pay an additional \$631.00 to complete the work. The Respondent offered to credit the Claimant \$455.00 from the window trim work the Claimant declined toward the \$631.00 additional cost. Accordingly, the Claimant would owe \$176.00 for the additional aluminum capping on his gutters.

13. The Claimant never paid the \$176.00 to the Respondent nor did the Claimant allow the Respondent to perform the aluminum capping of the gutters.

14. The Respondent offered to address the Claimant's various concerns and, if warranted, fix any errors in their workmanship.

15. The Claimant did not allow the Respondent perform further work and fix any errors.

16. The Claimant then obtained an estimate from Home Depot in the amount of \$12,865.00⁴ to perform the same work the Respondent performed under the contract.

17. The Claimant's native language is Bosnian. He cannot communicate in English fluently.

18. The Respondent needed to communicate with the Claimant through the Claimant's daughter due to the Claimant's lack of fluency in the English language.

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).⁵ "[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);⁶ *see also* COMAR 09.08.03.03B(2) ("actual losses . . . incurred as a result of misconduct by a

⁴ The Claimant listed this sum as the amount of his claim. However, at the hearing it was agreed his claim was limited to the contract price of \$9,180.00.

⁵ As noted above, "COMAR" refers to the Code of Maryland Regulations.

⁶ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume of the Maryland Annotated Code.

licensed contractor"). Actual loss "means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Md. Code Ann., Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation due to incomplete work, but not due to unworkmanlike or inadequate work.

The Claimant's Case

The Claimant testified that his daughter identified the Respondent as the contractor to perform the work and that his wife signed the contract with the Respondent. Approximately ten days after the Respondent completed work, the Claimant began to notice problems with the Respondent's workmanship. Most of the problems stemmed from the Respondent's replacement of the siding on the Claimant's residence. The Claimant presented a series of pictures, most of which he used to substantiate his argument that the Respondent failed to properly space and fit the siding on his house; did not install insulation where they should have; put siding designed for a roof on the side of the house, and improperly installed siding below the deck allegedly causing water to seep into the house.

The Claimant testified that after he noticed the Respondent's alleged errors, his daughter advised the Respondent of the errors. In response, the Respondent dispatched a salesman to the Claimant's house to discuss the Claimant's complaints. The Claimant testified that he asked the salesman what standards the Respondent used in performing the work on his house. The salesman did not know the standards and referred the Claimant to individuals in ownership positions at the Respondent (ownership). The Claimant testified the salesman "provoked" him and because of that, he did not contact ownership.

The salesman further told the Claimant that the Respondent would refund the Claimant for some windows the Claimant alleged the Respondent installed improperly.⁷ However, the salesman wanted the Claimant to pay an additional \$200.00 to install additional parts under one particular portion of the gutters. Both the Claimant and his daughter attempted to come to an agreement with the Respondent about the payment of the \$200.00, but never did. The Claimant testified that the \$200.00 would not assuage his concerns because he felt the entire job needed to be redone. The salesman did not agree to redo the work and without any agreement, the salesman left.

Later, one of the Respondent's workers came to the Claimant's house to address the Claimant's issues. The Claimant testified that he asked the worker what standards the Respondent used in doing its work and questioned the worker about the issue of spacing in the siding the Respondent installed. The worker referred the Claimant to ownership. The Claimant testified that at this point he ceased being willing to work with the Respondent and instead of contacting ownership, began to explore other options. That exploration ultimately culminated in the Claimant securing an estimate from Home Depot for \$12,865.00 to redo all the work completed by the Respondent. The Claimant ultimately did not have Home Depot perform any work.

The Respondent's Case

The Respondent presented its case through the testimony of Daniel Schwiehs (Schwiehs) and Jason Fitzwater (Fitzwater). Schwiehs testified that the Respondent, as part of the work to be completed under the contract, should have capped the window trim, but did not after the Respondent stated he did not like the style of the trim. Because of that the Respondent offered a credit to the Claimant of \$455.00. The Respondent wanted aluminum capping done behind the

⁷ The Claimant could not remember the exact amount, but claimed it was the same amount agreed to in the contract for the window work. The contract entered into evidence (Clmt. Ex. 1) does not make this amount clear.

gutter, which was an additional expense above and beyond the terms of the contract. The capping would cost the Claimant an additional \$631.00. With the \$455.00 credit, the Claimant would owe \$176.00. Schwiehs further testified that the Respondent completed the work on July 18, 2016. On August 17, 2016, the Claimant notified the Respondent of various alleged problems. On August 19, 2016, the Respondent offered to speak to the Claimant about his various complaints. The Respondent did not speak to the Claimant until around August 30, 2016. The Claimant never agreed to allow the Respondent to install the aluminum capping nor did he pay the \$176.00 for that work. Schwiehs testified that while the Claimant's daughter assisted with communication, because of the language barrier, and the Respondent had much difficulty understanding the exact nature of the Claimant's complaints.

Fitzwater testified that he works for Allside Building Products (Allside), a division of Associated Materials, which is the manufacturer of the siding installed in the Claimant's home. Fitzwater is a certified vinyl siding installer. The Respondent, through Fitzwater, offered the Allside product guide into evidence. (Resp. Ex. 4) Using the guide, Fitzwater explained why the Respondent performed work in the manner it did and that it did so per the standards of the Vinyl Siding Institute.

Analysis

There is no dispute the Respondent was a licensed home improvement contractor at the time she entered into the contract with the Claimant. What is disputed is whether the Respondent performed unworkmanlike, inadequate, or incomplete home improvements.

I do not find the Respondent performed unworkmanlike or inadequate home improvements. Much of what the Claimant alleged to be unworkmanlike centered around the Respondent's replacement of the siding of his house. However, the Claimant presented no evidence (other than his own lay opinion) that the Respondent's workmanship was incorrect.

While the Claimant provided several pictures of the siding, none of those pictures illustrate obvious or objective errors in the Respondent's workmanship. Furthermore, none of the pictures show damage done to the Claimant's residence as a result of the Respondent's workmanship or otherwise. Notably, there are no pictures of water damage to the Claimant's residence despite the Claimant's contention that the Respondent's improper installation of siding below the deck caused water to seep into the house. The Claimant seemed to focus on what "standards" the Respondent used in completing the work on the Claimant's house. However, the Claimant never articulated what he believes are appropriate standards nor did he explain what renders the standards utilized by the Respondent inferior. The Claimant's case instead consisted of a variety of conclusory statements about the Respondent's alleged inferior work.

I listened to Fitzwater's testimony and found it to be credible and based in a vast knowledge of his craft. Fitzwater addressed several of the Claimant's concerns in his testimony, notably, the issue of spacing between the siding and the gutters. Fitzwater addressed two of the Claimant's major concerns with regard to the spacing of the siding. First, he explained that spacing between the gutters and the siding is required in certain areas because the gutters must be pitched in order to allow rainwater to flow toward the downspouts. Additionally, Fitzwater explained that vinyl siding should not be extended behind a gutter because that could cause water to seep behind the siding.

Furthermore, I found Schwiehs' testimony concerning efforts to work with the Claimant to be credible. Schwiehs demonstrated the ability to recall specific days when the Respondent started and finished work as well as dates when the Respondent attempted to address the Claimant's complaints. Schwiehs testified that the Respondent had difficulty understanding the exact nature of the Claimant's complaints due to a language barrier. However, I do not find the cause of the misunderstanding entirely rooted in the language barrier. At the hearing, the

Claimant had the use of a professional Bosnian interpreter (and native speaker of the language). While at one point the interpreter had difficulty interpreting some of Fitzwater's technical testimony, she did not have much trouble with the Claimant's testimony. The interpreter interpreted the Claimant's testimony mostly⁸ without problems. I find that even if the Claimant spoke native English, the Respondent would still have had difficulty understanding the Claimant's complaints. The Claimant made a variety of complaints, but failed to state exactly how or why they amounted to unworkmanlike or inadequate work by the Respondent. The Claimant referred repeatedly to standards, but never stated exactly what standards he felt the Respondent should have followed, or why the Respondent used the wrong standards. The only negative effect of the Respondent's work which the Claimant alleged was water seeping into the home due to improper installation of siding below the deck. However, the Claimant never provided any evidence (e.g. pictures) to substantiate this.

I do find that the Respondent performed an incomplete home improvement. The parties did not dispute that the Claimant paid the full contract price of \$9,180.00. The parties do not dispute that the Respondent did not cap the window trim per the terms of the contract and that the cost of doing so under the contract was \$455.00. The parties further do not dispute that the Respondent did not refund the Claimant the \$455.00 for not performing the capping of the window trim.

Accordingly, I find that the Claimant is eligible for compensation from the Fund for the Respondent's incomplete work.

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,

⁸ At certain points during the proceeding the Claimant would interrupt the interpreter causing her to lose focus which would require that certain testimony be repeated.

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 is not soliciting other contractors to complete or remedy that work. 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).

Because I find the Claimant paid the full contract price of \$9,180.00 and the Respondent did not complete work worth \$455.00, the value of materials and services provided by the Respondent is the following: $\$9,180.00 - \$455.00 = \$8,725.00$. Therefore, the Claimant's actual loss is $\$9,180.00 - \$8,725.00 = \$455.00$.

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). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$455.00.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$455.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015) COMAR 09.08.03.03B(3)(b). I further conclude that the Claimant is entitled to recover \$455.00 from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$455.00; 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

June 20, 2018
Date Decision Issued

NO/sw
174154

Nicolas Orechwa
Administrative Law Judge

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

PROPOSED ORDER

WHEREFORE, this 2nd 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