

IN THE MATTER OF THE CLAIM

OF ANDREW AND NATASHA

DILLON,

CLAIMANTS

AGAINST THE MARYLAND HOME

IMPROVEMENT GUARANTY FUND

FOR THE ALLEGED ACTS OR

OMISSIONS OF GREGORY STOTTS,

T/A GROUND UP HOME

SOLUTIONS, LLC,

RESPONDENT

* BEFORE MICHAEL R. OSBORN,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

* OAH No.: DLR-HIC-02-18-13174

* MHIC No.: 17 (05) 662

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PROPOSED DECISION

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STATEMENT OF THE CASE

On May 22, 2017, Andrew and Natasha Dillon (Claimants)¹ filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$2,655.00 in actual losses allegedly suffered as a result of a home

¹ Originally Andrew Dillon filed the Claim. At the hearing I allowed the Claimants to amend the Claim to include Natasha Dillon.

improvement contract with Gregory Stotts, trading as Ground Up Home Solutions, LLC (Respondent).

I held a hearing on May 30, 2018 at the LaPlata Public Library in LaPlata, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). Natasha Dillon represented the Claimants. Andrew Dillon was not present. Shara Hendler, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. Anthony Shore, Esquire, represented the Respondent, who was present.

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 Claimants 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

The Claimants offered the following exhibits, which I admitted as evidence:

Clmt. Ex. 1 – Contract, dated September 10, 2016

Clmt. Ex. 2 – VISA statement, closing date September 27, 2016

Clmt. Ex. 3 – VISA statement, closing date October 28, 2016

Clmt. Ex. 4 – Letter from the Claimants to the Respondent, dated October 14, 2016

Clmt. Ex. 5 – Photograph, undated

Clmt. Ex. 6 – Photograph, undated

Clmt. Ex. 7 – Photograph, undated

The Respondent did not offer any exhibits.

The Fund offered the following exhibits, which I admitted as evidence:

Fund Ex. 1 – Hearing Order, dated April 10, 2018

Fund Ex. 2 – Notice of Hearing, dated April 25, 2018

Fund Ex. 3 – Home Improvement Claim Form, received May 22, 2017

Fund Ex. 4 – Licensing information, dated December 8, 2016

Testimony

Natasha Dillon testified on behalf of the Claimants. Neither the Respondent nor the Fund offered 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 licensed home improvement contractor under MHIC license number 102832.
2. On September 9, 2016, the Respondent met the Claimants at their home to discuss renovation of the Claimants' master bathroom.
3. On September 10, 2016, the Respondent presented the Claimants with a contract to renovate the master bathroom. The scope of work included demotion of the existing bathroom and installation of the following: tile floor and tile shower surround; frameless glass shower enclosure; double vanity with stone counter surface and under mount sinks; shower head and faucets; mirrors; and, electrical fixtures and lights. The contract included specific allowances for

some materials to be installed, with the Claimants responsible for any amounts over the allowances.

4. Following the Respondent's meeting with the Claimants, the Claimants met with Ms. White, the Respondent's assistant, at Home Depot and at other locations to select materials for the renovation. The Claimants also responded to general inquiries from the Respondent, and also made general inquiries of the Respondent. These communications were by both phone call and email.

5. The contract stated that work would begin on October 10, 2016 and would be completed by November 10, 2016. The contract also included a provision that on all jobs over \$5,000.00, the owner will sign off on an itemized list, house rules agreement, and additional job notes and definitions before the contractor will step on site with any products.

6. The original agreed-upon contract price was \$12,500.00. Under the contract, \$4,000.00 was due at signing, \$4,500.00 was due when work commenced, \$2,000.00 was due when the tile work was done, and \$2,000.00 was due at completion.

7. The contract was not signed by the Claimants. However, on September 25, 2016, the Claimants paid the Respondent \$4,000.00, using their VISA card.

8. After coordinating with Ms. Dillon with regard to her availability to greet workers and let them into the Claimants' home, work under the contract commenced on or about October 19, 2016. Demolition went smoothly. On October 19, 2016, the Claimants paid the Respondent \$4,500.00, using their VISA card.

9. The Respondent, through a subcontractor, then installed the new tile floor, the shower floor, and the tile shower walls. The Respondent applied grout on the shower floor and

shower walls. The materials and workmanship were acceptable to the Claimants and consistent with their expectations.²

10. The Claimants made various inquiries of the Respondent as the work progressed as to when the Respondent thought the work would be done, each time with reassurances from the Respondent that the work was progressing and the contract would be done on time. The Claimants' inquiries were prompted, in part, by delay in delivery of materials that kept some workers from having what they needed to perform any work. On at least one occasion, a subcontractor retrieved materials himself that were not on site for him to use.

11. One specific item that was of interest to the Claimants was a double vanity that was to be custom-built for the bathroom. Ms. Dillon made inquiries of the Respondent as to the progress in its construction and expected delivery date. She also contacted the vanity builder, who told her he had not yet started construction and was not aware he was being hired. The Claimants became concerned that the bathroom renovation would take longer than stated in the contract, and were not satisfied with the Respondent's explanation that he had a special relationship with the vanity builder and that the vanity would be delivered on time. The Claimants were not satisfied with the Respondent's reassurances that the renovation would be completed on schedule.

12. On October 27, 2016, Mr. Dillon sent a letter to the Respondent directing the Respondent to discontinue all work, and demanding return of the Claimants' \$4,000.00 deposit. Mr. Dillon referenced the slow pace of work and the Respondent's responses to the Claimants' inquiries, which Mr. Dillon described as vague. He also cited the contract provision that "on all jobs over \$5,000.00, the owner will sign off on an itemized list, house rules agreement, and additional job notes and definitions before the contractor will step on site with any products" as

² Ms. Dillon testified that in her view the tile work was outstanding.

an unsatisfied contract provision. Mr. Dillon also referenced the lack of receipts for materials purchased, the lack of an order for a custom vanity, and the failure of the Respondent to provide a final cost estimate for the completed project. He also referenced the absence of a calendar that identified the specific dates when work was to be performed so that the Claimants could adjust their work schedules. Mr. Dillon also took issue with the Respondent's failure to tell the Claimants that some of the work would be done by subcontractors, who the Claimants had not met.

13. The Respondent did not refund the Claimants' deposit and, as instructed by Mr. Dillon, did not complete the contract.

DISCUSSION

In this case, the Claimants have 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).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);⁴ *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

³ As noted above, “COMAR” refers to the Code of Maryland Regulations.

⁴ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume of the Maryland Annotated Code.

completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”
Bus. Reg. § 8-401. For the following reasons, I find that the Claimants have not proven
eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into
the contract with the Claimants. The Respondent performed work under the contract consistent
with its terms. All work performed under the contract was to the satisfaction of the Claimants
and was not unworkmanlike, inadequate, or incomplete.

The Claimants cancelled the contract before its stated completion date for reasons that
had nothing to do with unworkmanlike, inadequate, or incomplete work. The Claimants suffered
what can best be described as a crisis of confidence in the Respondent, even though demolition
and renovation had, to the point of Mr. Dillon’s October 27, 2016 letter, been completely
satisfactory. The Claimants apparently concluded the Respondent would miss the completion
deadline – November 10, 2016 - but until the Respondent missed that target date there is no
basis for complaint and no basis for recovery from the Fund due to “incomplete” work.

While the Respondent may not have responded to the Claimant’s concerns in the manner
the Claimants preferred, the Respondent did not perform unworkmanlike, inadequate or
incomplete home improvements. I thus find that the Claimants are not eligible for compensation
from the Fund.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have not sustained an actual and compensable loss 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(2). I therefore further conclude that the Claimants are not entitled to
recover from the Fund.

RECOMMENDED ORDER


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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimants' claim; and

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

Signature on File

August 20, 2018
Date Decision Issued



Michael R. Osborn
Administrative Law Judge

MRO/emcl
174288

PROPOSED ORDER

WHEREFORE, this 16th day of October, 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.

Joseph Tunney

***Joseph Tunney
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION