

IN THE MATTER OF THE CLAIM
OF JASON PAIGE,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF JOSEPH PLAZA,
(T/A KEN HUTTON RESTORATION,
LLC)
RESPONDENT

* BEFORE SYEETAH HAMPTON-EL,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-18-09808
* MHIC No.: 17 (90) 79
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PROPOSED DECISION

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

On June 14, 2017, Jason Paige (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$31,507.87 in actual losses allegedly suffered as a result of a home improvement contract with Joseph Plaza, trading as Ken Hutton Restoration, LLC (Respondent).

I held a hearing on June 6, 2018, at the Office of Administrative Hearings - Kensington (OAH) located at 10400 Connecticut Avenue, Suite 208, Kensington, Maryland 20895. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented himself. Shara Hendler,

Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. 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.¹

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); 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. A - Agreement between the Claimant and Respondent, dated January 8, 2016
- Clmt. Ex. B - Quote provided by the Respondent to the Claimant
- Clmt Ex. C - Letter from State Farm Fire and Casualty Company (State Farm) to the Claimant, dated January 18, 2016
- Clmt Ex. D - Insurance Payment Electronic Receipt totaling \$105,807.20, dated July 7, 2017, for payments made on February 13, 2017, December 5, 2016, October 7, 2016, March 28, 2016, and February 22, 2016
- Clmt Ex. E - Contractor's Waiver of Lien for a conditional payment of \$84,857.20, dated March 3, 2016

¹ Notice of the hearing was mailed to the Respondent at his address of record with the MHIC by regular and certified mail on April 3, 2018 and May 14, 2018, and returned as undeliverable on April 26, 2018, and returned as unclaimed on June 11, 2018. COMAR 09.08.03.03A(2). 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 proceeded to hear the captioned matter.

- Clmt Ex. F - Request for Taxpayer Identification Number and Certification (Substitute Form W-9), dated February 15, 2016
- Clmt Ex. G - Copy of Respondent's license
- Clmt Ex. H - Receipt of \$35,150.00 electronic payment to the Respondent
- Clmt Ex. I - Email confirmation regarding receipt of payment from Respondent to Claimant, dated March 22, 2016 and March 30, 2016
- Clmt Ex. J - Email including five color pictures, between the Claimant and the Respondent, dated May 25, 2016
- Clmt Ex. K - Emails between the Respondent and the Claimant regarding work progress, dated May 25, 2016 through May 30, 2016
- Clmt Ex. L - Emails between the Respondent and the Claimant regarding work progress, dated May 31, 2016 through June 13, 2016
- Clmt Ex. M - Emails and pictures from the Claimant to the Respondent, dated June 14, 2016 through June 20, 2016
- Clmt Ex. N - Filed Better Business Bureau (BBB) Complaint, dated June 21, 2016
- Clmt Ex. O - Emails between the Claimant, the Respondent, and the Kitchen Cabinet Contractor, dated March 11, 2016 through May 25, 2016
- Clmt Ex. P - Construction contract between the Claimant and GS Home Services, LLC (GS), dated October 2, 2016
- Clmt Ex. Q - Bank of America (BOA) payment transfers and email communication between the Claimant and Aaron Ruderman, GS
- Clmt Ex. R - Emails between Aaron Ruderman and the Claimant, dated September 27, 2016 through October 3, 2016
- Clmt Ex. S - Emails and a worksheet identifying change orders, dated January 23, 2017 and March 1, 2017
- Clmt Ex. T - Emails between the Claimant and Aaron Ruderman regarding the \$500.00 monthly payment plan to pay outstanding balance, dated March 25, 2017 through May 31, 2018

I did not admit exhibits on the Respondent's behalf

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Hearing Order

Fund Ex. 2 - Notice of Hearing, dated April 3, 2018

Fund Ex. 3 - Home Improvement Claim Form, dated July 10, 2017

Fund Ex. 4 - License records for the Respondent trading as Line Up Contractors, issued June 14, 2019

Fund Ex. 5 - Organizational documents from the State Department of Assessments and Taxation (SDAT) for the Respondent

Fund Ex. 6 - License records for Respondent, issued July 14, 2016

Testimony

The Claimant testified on his own behalf.

The Respondent failed to appear.

The Fund did not provide testimony or present 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 4575273.
2. On January 8, 2016, the Claimant and the Respondent entered into a contract to provide repairs, as a result of a fire, to the Claimant's rental property located in Germantown, Maryland. The contract stated that work would begin on January 1, 2016 and would be completed by April 1, 2016. The Contract was based on an estimate prepared by the Respondent on December 30, 2015. The estimate provided a detailed report for required repairs due at a cost of \$85,857.20. Throughout the residence, the Respondent agreed to complete drywall work, seal walls and provide odor control, replace bathroom fixtures in three bathrooms, paint throughout the property, replace all carpeting, replace kitchen countertop with a granite counter, and remove

the deck. The Respondent recommended an engineer, to evaluate the damages. In addition, the Respondent agreed to remove, repair, and install kitchen cabinets. The estimate was revised after the engineer's report.

3. The original agreed-upon contract price was \$86,519.99.² Thirty percent of the total cost was due as a down payment. Another thirty percent was due after the installation of drywall. The balance was due upon completion of the work.

4. State Farm, the Claimant's homeowners' insurance carrier, insured the property and assumed responsibility to pay for the damages.³

5. On March 28, 2016, on behalf of the Claimant and under his insurance policy, State Farm paid the Respondent \$35,150.00. The Respondent acknowledged receipt of payment via an email dated March 30, 2016.

6. The Claimant and Respondent communicated via multiple emails regarding the progress of the work. On May 25, 2016, the Claimant complained to the Respondent about the lack of progress in the two months since receiving payment of \$35,150.00. The Claimant complained about the following items: incomplete wall priming; smell of smoke at the property; lack of precision and workmanship around the toilet basin; and a failure to remove the damaged studs as suggested by the engineering evaluation. The Claimant noticed that the damaged studs were primed with paint. In addition, the Claimant complained of a failure to communicate by the Respondent with the cabinet restoration company. As a result, the cabinets were not installed in the kitchen and instead were stored in the garage at the property. To supplement the complaints, the Claimant provided the Respondent with five color pictures of problem areas within the property.

² The Claimant provided two copies of the contract, one unsigned with the contract price of \$84,857.20 and a signed contract with a contract price of \$86,519.99.

³ State Farm agreed to cover repairs in the amount of \$84,857.20.

7. The Respondent responded on May 26, 2016 and promised to speed up the work. In addition, the Respondent promised to remove and replace the damaged framing in the kitchen.

8. On June 2, 2016 via email, the Respondent promised to do the following:

- Address inconsistent sealing using a smoke and stain blocker
- Obtain Building and Electrical permit by June 6, 2016
- Remove the deck and open the kitchen wall
- Begin insulating and hanging drywall by the end of the week
- Contact Potomac Electric Power Company (PEPCO) regarding electrical service

9. On June 9, 2016, the Respondent confirmed completion of the permit process. The Respondent also noted the beginning of the deck removal and joist and framing repair. The Respondent agreed to send pictures to the Claimant documenting the work progress.

10. The Claimant last received an email response from the Respondent on June 13, 2016, regarding the Respondent's failure to send photos showing progress as promised.

11. From June 14, 2016 through June 20, 2016, the Claimant continued to email the Respondent but received no response. On June 19, 2016, the Claimant had his brother stop by the property to assess the work progress and take pictures. The Claimant's brother took five pictures

12. of the property. The pictures documented the failure of the Respondent to do the following:

- Demolish the deck
- Replace back wall joists
- Begin electrical work

13. Since receiving the initial payment of \$35,150.00, the Respondent only obtained a permit and applied two coats of stain block.

14. The Respondent failed to respond to the previous emails and on or about June 21, 2016, the Claimant filed a complaint with the Better Business Bureau (BBB).

15. On October 2, 2016, the Claimant entered into a new contract with GS Home Services, LLC. (GS) to complete all work not performed by the Respondent. The contract price was \$100,457.20. GS agreed to complete the work as outlined in the estimate prepared by the Respondent based on the State Farm Claim. GS also agreed to follow the engineering assessment provided by Vannoy & Associates, dated August 16, 2016, including: building bulkheads; replacing and relocating duct work; detaching and reconnecting electrical wiring; and plumbing.

16. To begin the new contract with GS, the Claimant paid GS \$20,000.00 via Bank of America (BOA) account transfers on October 3, 2016 and October 4, 2016. The Claimant did not have the \$35,150 to pay GS to begin the new contract so he used \$20,000.00 of his own money and promised to pay the balance over time. The \$20,000.00 paid by the Claimant was from his own funds, as State Farm and the mortgage company refused to release funds.

17. The Claimant agreed to make monthly payments of \$500.00 to Aaron Ruderman, owner of GS, while the Claimant pursued the MHIC claim as a result of problems with the

Respondent. On December 12 and 18, 2016, State Farm made additional payments to GS totaling \$37,903.60.

18. The insurance company and mortgage company refused to release the additional funds without inspection and proof that one-third of the work was completed.

19. The Claimant and GS agreed to credits and reductions to the original contract as the Claimant was unable to afford the repairs. The credits and reductions included the following changes:

- \$1500.00 credit: substitute vinyl siding for aluminum siding
- \$2,401.93 credit: GS Services is not responsible for sealing any areas including stud walls for odor control
- \$413.60 credit: installation of new granite countertop in kitchen instead of resetting the old broken countertop
- \$589.98 credit: Painting bathroom instead of replacing main bathroom wallpaper
- \$750.00 credit: Flooring
- \$588.08 credit: Dishwasher
- \$271.05 credit: Powder room sink
- Reduction from \$90.00 to \$40.00: Hall bath vanity and mirror

20. The Claimant agreed to pay the balance of \$13,513.96 by making monthly \$500.00 payments to GS. The payments began on March 25, 2017.

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).⁴ “[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)⁵; *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 proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. The Respondent provided a detailed estimate for repairs due to fire damage. State Farm issued a check in the amount of \$84,857.20 to the Claimant and his mortgage company to cover the fire damage repairs. The Claimant used part of this check to pay the Respondent the required down payment of \$35,150.00.

The Respondent performed unworkmanlike, inadequate or incomplete home improvements. The Respondent received the agreed down payment of \$35,150.00 and failed to perform the work as agreed in their contract. The Claimant made the Respondent aware of delays, but the Respondent still did not perform under the contract. The Respondent also failed to respond to multiple emails sent by the Claimant seeking work updates and questioning why certain work remained uncompleted. For example, the Respondent promised to demolish the

⁴ As noted above, “COMAR” refers to the Code of Maryland Regulations.

⁵ Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

deck, but he failed to do so. The Respondent's unworkmanlike behavior extended beyond the Claimant and impacted other vendors, including the cabinet company. Due to the Respondent's abandonment, the cabinet company could not install the new cabinets as agreed.

The Respondent abandoned the contract and the Claimant did not make future payments as required by the contract. In addition, the Claimant filed a complaint with the BBB. The Claimant also hired another contractor to complete the work using the estimate as prepared by the Respondent and the report from Vannoy & Associates. The Claimant contracted with GS to finish all repairs and complete the work abandoned by the Respondent for a total contract price of \$100,957.20; the scope of the GS contract matched that of the Respondent's. As a result of the Respondent abandoning the contract and the repairs, the Claimant paid an additional \$16,100.00 to repair the damage caused by the residential fire.

The abandonment of the contract forced further hardship on the Claimant. The Claimant made significant payments out of his pocket as the mortgage and insurance companies initially refused to release additional funds without inspection and proof that one-third of the work was completed. Further, the Claimant had to work with GS to reduce his expenditures through credits and deductions, as the new contract price exceeded his allotted budget the insurance company agreed to pay, \$84,857.20. Lastly, the Claimant is required to make monthly payments to GS to pay for work it completed under the original contract abandoned by the Respondent beginning in March 2017. The Claimant made a total of fifteen \$500.00 payments to Aaron Ruderman, which total \$7,500.00. As of May 2018, the Claimant still owed a balance of \$4,013.96.

I thus find that the Claimant 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 abandoned the contract without adequately performing under the terms of the contract or making good faith efforts to perform according to the contract. The Respondent was paid \$35,150.00 and only applied two coats of stain blocker and obtained a permit. The Respondent failed to remove the deck, replace the back wall joists, begin the electrical work, or permit timely installation of the new kitchen cabinets. Accordingly, the following formula appropriately measures the Claimant's actual loss: "If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract." COMAR 09.08.03.03B(3)(a).

The Claimant paid the Respondent a deposit in the amount of \$35,150.00 to begin the repairs caused by fire damage. Based on the evidence presented by the Claimant, the Respondent abandoned the contract by failing to adequately perform work as detailed in the contract. The Respondent did not demolish the deck, begin the electrical work, or replace joists as required. The Respondent stopped communicating with the Claimant and failed to perform as required by the contract. The Claimant hired another contractor, GS, to complete the work abandoned by the Respondent. The Claimant paid GS \$20,000.00, plus at least fifteen \$500.00 monthly payments beginning in March 2017.

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 of \$35,150.00

exceeds \$20,000.00. Therefore, the Claimant's recovery is limited to \$20,000.00. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$20,000.00 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)(C). I further conclude that the Claimant is entitled to recover the maximum amount of \$20,000.00 from the Fund. Md. Code Ann., Bus. Reg. §8-405(e)(1), (5); COMAR 09.08.03.03B(3)(4), D(2)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; 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 Commission⁶; and

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

Signature on File

September 4, 2018
Date Decision Issued

Syeghan Hampton-EE
Administrative Law Judge

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⁶ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 10th 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.

Bruce Quackenbush

***Bruce Quackenbush
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION