| | | |
|---|---|---|
| **IN THE MATTER OF THE CLAIM** | * | **BEFORE STEPHEN W. THIBODEAU,** |
| **OF ANGELINA SHAW,** | * | **AN ADMINISTRATIVE LAW JUDGE** |
| **CLAIMANT** | * | **OF THE MARYLAND OFFICE** |
| **AGAINST THE MARYLAND HOME** | * | **OF ADMINISTRATIVE HEARINGS** |
| **IMPROVEMENT GUARANTY FUND** | * | |
| **FOR THE ALLEGED ACTS OR** | * | |
| **OMISSIONS OF ANDREW** | * | |
| **AVRAMIDIS, T/A PRESTIGE HOME** | * | **OAH No.: DLR-HIC-02-19-08696** |
| **SOLUTIONS, LLC,** | * | **MHIC No.: 18 (05) 1096** |
| **RESPONDENT** | * | |

* * * * * * * * * * * * *

## PROPOSED DECISION



## STATEMENT OF THE CASE

On July 9, 2018, Angelina Shaw (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of $2,959.00 in actual losses allegedly suffered as a result of a home improvement contract with Andrew Avramidis, trading as Prestige Home Solutions, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On March 21, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on June 25, 2019 at the Tawes State Office Building, Maryland Department of Natural Resources, 580 Taylor Avenue, Room C1-A, Annapolis, Maryland. Bus. Reg. § 8-407(e). Kris M. King, Assistant Attorney General, Department of Labor (Department),[1] represented the Fund. The Claimant represented herself. After waiting twenty 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.[2]

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 Respondents' acts or omissions?

2. If so, what is the amount of the compensable loss?

## SUMMARY OF THE EVIDENCE

Exhibits

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

Clmt. Ex. 1 - Photo of drainage system at the Claimant's home, taken by the Claimant, June 2017

Clmt. Ex. 2 - Photo of flooding in the Claimant's sunroom, taken by the Claimant, June 2017

Clmt. Ex. 3 - Photo of flooding in the Claimant's sunroom, taken by the Claimant, June 2017

---

[1] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.
[2] Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on May 3, 2019, COMAR 09.08.03.03A(2), and not returned as unclaimed/undeliverable. A certified mail receipt indicating the notice was signed for by a Margie Gessinger at the Respondent's address of record was returned to OAH on May 10, 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 proceeded to hear the captioned matter.

Clmt. Ex. 4 - Photo of sliding door in the Claimant's sunroom, taken by the Claimant, June 2017

Clmt. Ex. 5 - Photo of French drain at the Claimant's home, taken by the Claimant, June 2017

Clmt. Ex. 6 - Photo of water seepage into interior of the Claimant's home, taken by the Claimant, June 2017

Clmt. Ex. 7 - Photo of French drain at the Claimant's home, taken by the Claimant, June 2017

Clmt. Ex. 8 - Two photos of standing water over the drainage system installed by the Respondent at the Claimant's home, taken by the Claimant, June 2017

Clmt. Ex. 9 - Photo of debris over the French drain installed by the Respondent at the Claimant's home, taken by the Claimant, June 2017

Clmt. Ex. 10 - Estimate of work by Allmaster Home Services, with the attached photos of open drainage system, June 6, 2018

Clmt. Ex. 11 - Estimate from the Respondent to the Claimant for "punch out for finishing job," June 22, 2016

Clmt. Ex. 12 - Contract between the Claimant and the Respondent, May 27, 2015

Clmt. Ex. 13 - Paid invoice for the Claimant to Allmaster Home Services, September 4, 2018

No exhibits were admitted on the Respondent's behalf.

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Notice of Hearing, May 3, 2019

Fund Ex. 2 - MHIC Hearing Order, March 15, 2019

Fund Ex. 3 - MHIC Licensing History for the Respondent, printed June 17, 2019

Fund Ex. 4 - Claimant's MHIC Home Improvement Claim, May 22, 2018

Fund Ex. 5 - Letter from the MHIC to the Respondent, July 9, 2018

Fund Ex. 6 - MHIC Licensing History for Allmaster Home Services, printed June 17, 2019

Testimony

The Claimant testified.

The Respondent and 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 132711.

2. On May 27, 2015, the Claimant and the Respondent entered into a contract (Contract) to install a sunroom at the Claimant's home in Glen Burnie, Maryland. The Contract stated that the Respondent would install a 16' x 14' sunroom addition with a shingled roof, tile floor, drywall walls and ceiling, and fresh paint for a total contract price of $25,750.00.

3. On June 22, 2016, the Claimant and the Respondent amended the Contract to include additional work related to the Claimant's home, including installing a drain line to the Claimant's backyard from the sunroom; sanding and repainting walls in walkway to the sunroom; ceiling work in the sunroom, kitchen, and office; checking an electrical outlet in the front "red room" of the home; installing gutter covers around the entire home; installing brick moulding on the screen door for the home; and restoring a fence gate back to working order. The total cost for this additional work was $17,167.00.

4. The Claimant paid the Respondent a total of $40,750.00 on the Contract. The payments were made both through credit card payments and from funds from the Claimant's 401K account.

5. The Respondent ended his work on the Contract on or about July 18, 2016.

6. In the fall of 2016, the Claimant observed that the drain in her sunroom was not draining properly. The French drain clogged on several occasions leading to flooding of her sunroom. The water that ponded in her sunroom would often leak under her sliding glass door, where the Respondent had failed to properly caulk, and into the interior of her home.

7. The Claimant spoke with the Respondent on several occasions from the fall of 2016 through 2018 to attempt to get the Respondent to fix her French drain. In each instance, the Respondent refused, stating that there was nothing wrong with the drain.

8. On June 6, 2018, the Claimant obtained an estimate from Allmaster Home Services (Allmaster) to remedy the drain issue. Allmaster provided an estimate of $2,959.00 for the following work: installing a sump pump and sealed pit at the rear side of the sunroom with a discharge line running under the sidewalk and back towards the right rear corner of the Claimant's yard; connecting the French drain in between the sunroom and house to the sump pump by breaking the concrete and installing a 4-inch PVC pipe; re-cementing the concrete that was opened by the new drain; and caulking under the threshold of all four sliding glass doors.

9. The Claimant agreed to Allmaster's estimate, and Allmaster completed its work on September 4, 2018. In the course of its work for the Claimant, Allmaster discovered that the Respondent installed the drain pipe from the Claimant's sunroom with the incorrect pitch, and the yard drain was not connected to anything.

## 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). "[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);[3] *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 proved eligibility for compensation.

There is no dispute the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. Therefore, the only question in relation to whether the Claimant has proven eligibility for compensation from the Fund is whether the Respondent performed unworkmanlike, inadequate or incomplete home improvements. Based on the analysis below, I find that the Respondent performed unworkmanlike and inadequate home improvements.

The Respondent's work on the Claimant's sunroom, in particular the drainage for the sunroom, was both unworkmanlike and inadequate. Indeed, shortly after the Respondent completed his work, significant ponding and flooding of the Claimant's sunroom would occur during the time of rain storms. The Claimant would notice the accumulation of debris in her French drain and inadequate drainage, and raised the issue several times to the Respondent to no avail. The Respondent continually denied anything was wrong with his work and refused to remedy the situation. Allmaster, who corrected the problem for the Claimant, confirmed the unworkmanlike and inadequate nature of the Respondent's work when they determined that the Respondent never connected the yard drain to anything, and further installed a drain pipe to the Claimant's French drain in her sunroom with an improper pitch. Because of the Respondent's

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

inadequate home improvement, I necessarily 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. 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.

In this case, the Respondent performed some work under the contract, and the Claimant intends to retain 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 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 Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c).

In applying the formula pursuant to COMAR 09.08.03.03B(3)(c), the Claimant paid the Respondent $40,750.00 under the Contract, plus $2,959.00 the Claimant paid Allmaster to remedy the Claimant's drainage problem, for a total of $43,709.00. The formula then provides for subtracting the original contract price of $40,750.00 from the $43,709.00 amount to calculate the Claimant's actual loss, which would be $2,959.00.

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. 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 recover her actual loss of $2,959.00.

## PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $2,959.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405; COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover $2,959.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

## RECOMMENDED ORDER

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant $2,959.00; 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;[4] and

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


September 11, 2019
Date Decision Issued

Stephen W. Thibodeau
Administrative Law Judge

JLG

SWT/dlm
#181701

[4] *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii); COMAR 09.08.01.20.

## *PROPOSED ORDER*

***WHEREFORE, this 29th day of April, 2020, 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.***

*Robert Altieri*

***Robert Altieri***
***Panel B***
***MARYLAND HOME IMPROVEMENT COMMISSION***