IN THE MATTER OF THE CLAIM	*	**BEFORE TRACEY JOHNS DELP,**
OF KATHLEEN NOEL,	*	**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 PHILIP CALVERT,	*	
T/A CALVERT QUALITY	*	**OAH No.: LABOR-HIC-02-19-28994**
CONSTRUCTION,	*	**MHIC No.: 18 (75) 1116**
RESPONDENT	*	

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PROPOSED DECISION

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STATEMENT OF THE CASE

On March 8, 2019, Kathleen Noel (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),[1] for reimbursement of $1,002.00 in actual losses allegedly suffered as a result of a home improvement contract with Philip Calvert, trading as Calvert Quality Construction (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015 &

[1] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

Supp. 2020).[2] On August 30, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a remote hearing on September 28, 2020[3] via WebEx video conferencing. Bus. Reg. § 8-407(e); Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Justin Dunbar, Assistant Attorney General, represented the Fund. The Claimant represented herself. On August 27, 2020, a notice of the hearing was mailed to the Respondent at his address of record by regular and certified mail, COMAR 09.08.03.03A(2), and was not returned as unclaimed or undeliverable, or for any other reason. The Respondent did not notify the OAH of any change of address. COMAR 28.02.01.03E. On September 14, 2020, the Respondent filed a request to postpone the September 28, 2020 hearing because his parents may be witnesses and they were purportedly not in possession of video conferencing technology. On September 15, 2020, I denied the Respondent's request, instead permitting his parents to provide testimony via telephone. COMAR 28.02.01.20(B)(1)(a).[4] 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. On September 28, 2020, after waiting at least fifteen minutes for the Respondent or the Respondent's representative to appear remotely, I determined that the Respondent received proper notice and failed to appear; I proceeded to hear the captioned matter.[5] *Id.* 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

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

[3] Due to a scheduling error, a hearing date of April 2, 2020 was rescheduled to April 8, 2020. The April 8, 2020 hearing date was administratively postponed due to the COVID-19 pandemic.

[4] In response to my ruling, the Respondent's parents promptly provided their telephone numbers in the event they were called upon to testify.

[5] The hearing concluded on September 28, 2020; however, I held the record open until October 2, 2020 for receipt of Claimant Exhibits 28 and 29, which were received at the OAH on September 29, 2020.

Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 09.01.03; and 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 the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

Clmt. Ex. 1 - Text messages between the Claimant and Respondent, various dates

Clmt. Ex. 2 - Letter from MHIC to Complaint, May 11, 2018; Complaint form, with attachments, April 12, 2018

Clmt. Ex. 3 - Photograph of base molding, undated

Clmt. Ex. 4 - Letter from MHIC to Respondent, April 25, 2018; Respondent's Response to Complaint, with attachment, May 2, 2018

Clmt. Ex. 5 - Claimant's reply to Respondent's response, with attachments, May 18, 2018

Clmt. Ex. 6 - Photograph of back living room wall, undated

Clmt. Ex. 7 - Photograph of wall outside powder room, undated

Clmt. Ex. 8 - Photograph of stairwell ceiling, undated

Clmt. Ex. 9 - Photograph of doorframe (upper floor landing), undated

Clmt. Ex. 10 - Photograph of master bedroom doorframe, undated

Clmt. Ex. 11 - Photograph of stairs with masking tape, undated

Clmt. Ex. 12 - Photograph of primed stair railing, undated

Clmt. Ex. 13 - Photograph of trim outside powder room, undated

Clmt. Ex. 14 - Photograph of paint drips on living room wall, undated

Clmt. Ex. 15 - Photograph of flaws in living room wall and ceiling, undated

Clmt. Ex. 16 - Eight photographs of roller brush marks on living room wall, undated

Clmt. Ex. 17 - USB flash drive

Clmt. Ex. 18 - Photograph of paint streaks on living room wall, undated

Clmt. Ex. 19 - Photograph of uneven paint markings, undated

Clmt. Ex. 20 - Photograph of uneven paint markings, undated

Clmt. Ex. 21 - Four photographs of rooms with blue tape markings, undated

Clmt. Ex. 22 - Not Admitted

Clmt. Ex. 23 - Letter from MHIC to Respondent, March 18, 2019; Respondent's Response, March 21, 2019

Clmt. Ex. 24 - Text messages between the Claimant and Respondent's father, various dates

Clmt. Ex. 25 - Check No. 1485; Check No. 1490; Lowe's Receipt dated February 13, 2018; Check No. 1498

Clmt. Ex. 26 - Cover letter from Complainant to MHIC, with claim form and attachments, March 3, 2019

Clmt. Ex. 27 - Emails between the Complainant and the Respondent's father, March 24-25, 2018

Clmt. Ex. 28 - Contract, Wayne's painting and Home Improvement, undated[6]

Clmt. Ex. 29 - Check No. 1635[7]

The Respondent did not appear at the hearing to submit any exhibits.

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Hearing order, August 27, 2019

Fund Ex. 2 - Notice of September 28, 2020 Hearing, August 27, 2020

Fund Ex. 3 - Letter from MHIC to Respondent, March 18, 2019, and Home Improvement Claim Form, received March 8, 2019

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[6] The hearing concluded on September 28, 2020; however, I held the record open until October 2, 2020 for receipt of Claimant Exhibit 28 (which was received at the OAH on September 29, 2020).

[7] The hearing concluded on September 28, 2020; however, I held the record open until October 2, 2020 for receipt of Claimant Exhibit 29 (which was received at the OAH on September 29, 2020).

Fund Ex. 4 - Respondent's MHIC Licensure Information, printed September 25, 2020

Testimony

The Claimant testified and did not present the testimony of any other witnesses. The Respondent did not appear at the hearing to testify or present the testimony of any other witnesses. The Fund did not present the testimony of any witnesses.

PROPOSED FINDINGS OF FACT

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 01-69028. (Fund Ex. 4.)

2. The Claimant is not related to the Respondent or any of his employees, by blood or marriage.

3. The Claimant was the owner of the subject property, located in LaPlata, Maryland.[8]

4. The Claimant has not filed any other claims against the Respondent outside of these proceedings.

5. On February 6, 2018, the Claimant and the Respondent entered into a written Contract for the Respondent to perform the following work for $3,000.00:

- Sand and prep all walls/ceiling on 1st floor to extend into stairwell on 2nd floor
- Prime (as required) and paint 1st floor to include kitchen, living room and stairwell to 2nd floor
- Paint to be used will be flat for walls and ceiling white for ceiling. Satin white for trim
- Remove stairwell knee wall located on landing between 1st and 2nd floor (trim, caulk and paint) NO RAILING
- Install 2 ft slip jamb door and approx. 20' of base trim including painting – door and trim to be provided by customer
- Remove all debris at completion of job

(Clmt. Ex. 2.)

[8] The Claimant has since sold the property and relocated.

6. On February 6, 2018, the Claimant paid the Respondent $1,500.00.

7. On or about February 8, 2018, the Respondent began work; the Claimant was immediately dissatisfied with its quality.

8. The Respondent purchased and installed base trim that did not match base trim within the house.

9. The Respondent left dried roller brush streaks and paint drips on the walls. There were areas too lightly covered on the walls where the paint was spotty and not evenly applied. Brush strokes near the trim were highly visible. Patchwork was sloppy.

10. On February 14, 2018, the Claimant paid the Respondent $265.00.

11. On February 20, 2018, the Claimant paid the Respondent $652.41.

12. On February 27, 2018, the Claimant inquired when the Respondent would return to correct areas of concern. It was the last time the Respondent communicated directly with the Claimant.

13. On February 28, 2018, the Respondent's father came to the residence and used pieces of blue tape to mark the Claimant's areas of concern; approximately seventy pieces of tape were used. Although he began work on the Respondent's behalf, he left the job incomplete.

14. Incomplete work included: thinly painted areas, paint drips and streaks on walls; poorly patched walls; masking tape was left above cabinets and on the staircase; and staircase trim was left unpainted.

15. The Respondent's father contacted the Claimant on the Respondent's behalf and requested the balance of the Contract and additional money although Contract work remained unfinished and the Claimant remained dissatisfied.

16. The Claimant contracted with Wayne's Painting and Home Improvement for $1,300.00 to repair and complete the Respondent's scope of work.[9]

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't §10-217; 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." Bus. Reg. § 8-405(a); *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. "The [MHIC] may deny a claim if the [MHIC] finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim. Bus. Reg. § 8-405(d). 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 Claimant immediately realized the Respondent's poor quality of work and requested corrections; her photographs clearly depict the Respondent's unworkmanlike, inadequate, and incomplete home improvement. Despite the Respondent's

[9] The contract price was $1,700.00; however, the Claimant testified that the price included $400.00 which was not part of the Respondent's scope of work.

father's efforts to correct his son's work, problems remained. The Respondent left dried roller brush streaks and paint drips on the walls. There were areas of the walls too lightly covered with paint, where the paint was spotty and unevenly applied. Brush strokes near the trim were highly visible. Patchwork where the Respondent attempted to fill in drywall holes where curtain rods had once been was sloppy and unworkmanlike. Thereafter, through his father, the Respondent demanded the balance owed on the Contract and more money, but the staircase bannister was primed and never painted, masking tape was left above cabinets and on the staircase, and the staircase trim was left unpainted. After consideration of the Claimant's testimony and documentary evidence, I conclude that the Respondent's work was unworkmanlike, inadequate, and incomplete.

Exhibits offered by the Claimant contain the Respondent's responses to the MHIC. In his responses, the Respondent alleged that the Claimant rejected his good faith efforts to resolve the claim. I agree with the Fund's position as set forth in its closing argument that the Respondent did not demonstrate sufficient good faith. From start to abandonment, the Respondent's work was unworkmanlike. Nonetheless, he demanded final payment under the Contract and argued for additional money. Thus, the Respondent's position that the Claimant rejected his good faith efforts is hollow and without merit.

Accordingly, the Claimant is eligible for compensation from the Fund and I must now 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). 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 work under the Contract, and the Claimant retained Wayne's Painting and Home Improvement to

remedy that work.[10] The Fund recommended applying COMAR 09.08.03.03B(3)(c), and I concur. 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).

The calculations when applying this formula are as follows:

Amount paid to Respondent:	$2,417.41
Amount paid to Wayne's Painting and Home Improvement to repair unworkmanlike, inadequate, and incomplete work done by Respondent	+ $1,300.00
	= $3,717.41
Original Contract price	- $3,000.00
Claimant's Actual Loss under the Contract	**= $717.41**

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 to recover her actual loss of $717.41.

[10] The Claimant testified without impeachment that Wayne's Painting and Home Improvement performs licensed home improvement.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss $717.41 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2020). I further conclude that the Claimant is entitled to recover $717.41 from the Maryland Home Improvement Commission Guaranty Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2015 & Supp. 2020); 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 $717.41; 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;[11] and

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

November 17, 2020
Date Decision Issued

Tracey Johns Delp
Administrative Law Judge

TJD/da
#188548

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

PROPOSED ORDER

WHEREFORE, this 4th day of February, 2021, 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
Chairman
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION

IN THE MATTER OF THE CLAIM OF KATHLEEN NOEL AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMISSIONS OF PHILIP CALVERT T/A CALVERT QUALITY CONSTRUCTION	* * * * * * *	**MARYLAND HOME IMPROVEMENT COMMISSION** **MHIC CASE NO. 18(75)1116** **OAH CASE NO. LABOR-HIC-02-19-289894**

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FINAL ORDER

This matter was originally heard before an Administrative Law Judge ("ALJ") of the Office of Administrative Hearings ("OAH") on September 28, 2020. Following the evidentiary hearing, the ALJ issued a Proposed Decision on November 17, 2020, concluding that the homeowner, Kathleen Noel ("Claimant") suffered a compensable actual loss as a result of the acts or omissions of Philip Calvert t/a Calvert Quality Construction ("Contractor"). *ALJ Proposed Decision* p. 10. In a Proposed Order dated February 4, 2021, the Maryland Home Improvement Commission ("MHIC" or "Commission") affirmed the Proposed Decision of the ALJ to grant an award from the Home Improvement Guaranty Fund. The Contractor subsequently filed exceptions to the MHIC Proposed Order.

On April 1, 2021, a three-member panel ("Panel") of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant and Contractor participated without counsel. Assistant Attorney General Justin Dunbar appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Contractor's exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. Therefore, the Panel's review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, and the exhibits admitted as evidence at the OAH hearing. COMAR

09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for painting, trim work, and the removal of a knee wall at the Claimant's home. The ALJ found that the Contractor's performance under the contract was unworkmanlike, inadequate, and incomplete. *ALJ's Proposed Decision* pp. 7-8.

On exception, the Contractor, who did not attend the OAH hearing, stated that he missed the OAH hearing because his father put the wrong date for the hearing on his calendar. The Contractor sought to present evidence at a hearing in response to the Claimant's claim.

The Contractor admits, and the record demonstrates, that he received proper notice of the OAH hearing, and error on the part of the Contractor's father regarding the hearing date does not warrant a rehearing in this proceeding. The Commission finds no error with the ALJ's Proposed Decision and, therefore, shall affirm.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 5th day of April 2021, **ORDERED:**

A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;

B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;

C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AFFIRMED;**

D. That the Claimant is awarded $717.41 from the Maryland Home Improvement Guaranty Fund;

E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the

Commission, *Md Code Ann.*, Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a);

F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and

G. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Joseph Tunney
Chairperson –Panel
Maryland Home Improvement Commission