

IN THE MATTER OF THE CLAIM

OF MASOOMA MOHIUDDIN,

CLAIMANT

AGAINST THE MARYLAND HOME

IMPROVEMENT GUARANTY FUND

FOR THE ALLEGED ACTS OR

OMISSIONS OF ORLANDO

FERNANDEZ,

T/A FERNANDEZ TEAM, LLC,

RESPONDENT

* BEFORE TAMEIKA LUNN-EXINOR,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

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* OAH No.: DLR-HIC-02-18-29582

* MHIC No.: 18 (75) 271

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PROPOSED DECISION

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STATEMENT OF THE CASE

On January 10, 2018, Masooma Mohiuddin (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$2,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Orlando Fernandez, trading as Fernandez Team, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On September 19, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on January 22, 2019 at the Office of Administrative Hearings in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e). Jessica Kauffman, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department or DLLR), represented the Fund. The Claimant represented herself. The Respondent represented himself.

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); 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 the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

I have attached a complete Exhibit List as an Appendix.

Testimony

The Claimant testified.

The Respondent testified.

The Fund did not present any 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 4926950.
2. The Claimant resides in Baltimore, Maryland at 1205 Canberwell Road.

3. The Respondent performed home improvement work for the Claimant in the past on other properties.

4. On March 20, 2017, the Claimant and the Respondent entered into a contract to perform the following scope of work:

- Demo and build a completely new hallway bath to include: new double bowl vanity cabinet & sink, mirror(s), light, toilet, bath tub, and floor and wall ceramic tile. New sink faucet and tub faucet and all required plumbing.
- Demo existing master bath and build new bath to include: New shower base, ceramic tile shower walls, new faucet, new shower doors, new ceramic tile bathroom floor, new 24" vanity cabinet, sink, faucet, mirror and light over mirror. New dual flush toilet and all required plumbing (shut-off valves, supply lines, traps, etc.)
- Demo and rebuild basement bath to include: New 36" shower stall with base, new shower door, new vanity cabinet, new sink, faucet, mirror and light, new toilet and new ceramic floor tile.
- Demo existing kitchen cabinets, counter top, bulk head and wall dividing kitchen and dining room, and remove all appliances. Install new grey kitchen cabinets (42" high wall cabinets & standard base cabinets), install (3) new level 1 granite countertops, install new undermount stainless steel sink and new pull out faucet, build/prepare breakfast bar wall for granite top and install. Make all necessary drywall repairs and trim out new cabinets. Re-install existing appliances. Replace dishwasher with 24" base cabinets. (Trashcan cabinet if available.)
- Install new laminate floor in kitchen. Match as close as possible with existing hardwood flooring in adjacent rooms.
- Painting: Paint interior of home, living room, dining room, 3 bedrooms, hallway bathroom, master bathroom, hallway, insides of bedroom, bathroom and hallway closets, kitchen, basement stairwell, finished areas of the lower level (2 rooms, hallway and bathroom). All walls with flat finish, celery bunch color. Kitchen and bathrooms will be painted in a satin finish. Ceilings will be painted in flat white paint and doors and trim in white semi-gloss paint.
- Painting: Paint 10 exterior shutters & outside of the main front entry door with exterior semi-gloss burgundy paint.
- Demo and replace 3 sheets of biological growth damages drywall in rear of basement. Clean up biological growth on block walls with bleach and water solution. Finish and paint new drywall and 2 center block walls in rear unfinished section of basement with mold/mildew resistant paint.

- Windows & Trim: replace metal frame windows in basement. (1) 31x17, (2) 32x17. Build new wood framing in existing opening to give new window a solid foundation for proper installation.
- Windows & Trim: Replace (1) 32x42 inch metal frame basement window. Build new wood framing in existing opening to give new window a solid foundation for proper installation.
- Doors & Trim: Install new pre-hung 32x80 kitchen entry door & new kitchen storm door. Includes new door jambs, threshold and trim.
- Doors & Trim: Install new pre-hung 32x80 basement entry door & new basement storm door. Includes new door jambs, threshold and trim.
- Replace inoperable sump pump.
- Install 30" sink base cabinet, kitchen sink, faucet and 77" of counter top in basement. (We will attempt to reuse the existing main floor kitchen sink and counter top.) Cut an approximately 15 foot long trench in the concrete basement floor and run a new 2" PVC drain line. Tie new drain line into existing drain line under basement steps. Cut into basement ceiling and walls to run 2 new ½" cpvc water supply lines to feed new kitchen sink. Tie new water lines into closest accessible existing water lines (approximately 12 feet away).
- Electrical: Replace electric service cable and replace electric panel with new 200 amp panel.
- Furnish & Install 4 recessed lights in kitchen ceiling.
- Remove existing carpet on basement floor & install new commercial carpet in 3 finished rooms and hallway in basement.

5. The Contract price was \$35,340.76 for the property located at 1205 Canberwell Road.¹ The Claimant agreed to pay a deposit of \$12,196.66 at the time she signed the contract and to make two additional payments.

6. The work was contracted to begin on March 21, 2017 and to be completed on or before May 1, 2017.

¹ There was a second estimate from the Respondent for a separate scope of work in the amount of \$1,250.00. This estimate is not in evidence and is not an issue in this matter.

7. The Claimant was awaiting the completion of the work on the property so that she could move in. The Claimant was temporarily residing with her son and daughter-in-law and paying rent during the home improvement work at her property.

8. The Respondent used a three-man contracting team, including himself. In March 2017, right after the work started in the Claimant's home; the Respondent's two employees were robbed. One of the Respondent's employees was shot and killed during the robbery.

9. This violent incident caused delay in the schedule to complete the Claimant's contract.

10. On May 4, 2017, the parties signed an addendum to the Contract. In the addendum, the parties agreed that the Respondent installed cabinets that were not approved by the Claimant and that the Respondent failed to provide the warranty information. The Respondent agreed to either change the cabinets or deduct \$2,000.00 from the third installment.

11. On or about May 30, 2017, the Claimant paid the Respondent in full, a total of \$35,340.76.

12. The Respondent last performed work at the Claimant's property in early June 2017.

13. In June 2017, the Claimant noticed the following problems in her home:

- cracks forming in the kitchen cabinets installed by the Respondent;
- two basement windows were purchased for the basement but not installed;
- a hole in the ceiling where the Respondent ran a gas line for the stove in the kitchen;
- kitchen exhaust fan had no outside cover;
- kitchen sink leaking;
- wood trim missing between the kitchen and the living room;
- closet doors were painted but no longer closed properly; and
- the installed cabinets were the wrong color.

14. The Respondent repaired the leaking sinks in the kitchen and the bathrooms. Besides the kitchen cabinets being the wrong color, none of the other defects noted by the Claimant were in the Respondent's scope of work in the contract.

15. The Claimant attempted to make contact with the Respondent but was not able to reach him from June 2017 through September 2017.

16. In September 2017, the Claimant lodged a complaint with the MHIC.

17. On September 6, 2017, the Respondent, after speaking with an MHIC investigator, agreed to return to the Claimant's home on September 7, 2017 at 5:00 or 5:30 p.m. to review the Claimant's concerns. The Claimant did not respond to the Respondent when the Respondent attempted to contact her to make those arrangements. The Respondent reached out to the Claimant a few more times with no response.

DISCUSSION

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); 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).

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); *see also* COMAR 09.08.03.03B(2). The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. "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 failed to prove the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement.

The Claimant and the Respondent have worked together previously in a different home improvement job at a different property. They stated they had a trusting relationship, therefore many agreements and changes to the original contract were not memorialized in writing. As a result, much of the evidence derives solely from their testimony and is not supported by corroborating documentation.

The Claimant's son, Umer Farooq, testified that the Claimant and the Respondent worked together in the past so the Claimant hired the Respondent to perform home improvement work on her new home. He testified that at the beginning of the contract, changes were made that turned the projected six weeks of work into eight weeks of work. Farooq testified that the Claimant was supposed to have a wood floor in the kitchen but the Respondent changed it to tile floors, the kitchen cabinets were the wrong color, and the Claimant was not given the warranty information for the cabinets. Farooq testified that the Respondent changed the materials to cut costs. Farooq stated that his mother was living with his wife and him during the home improvement work and paying them rent. Thus, the delay in the timeframe for the work caused his mother to pay additional rent. Farooq recalled that the communication "went bad" between the Claimant and the Respondent with no contact between June 2017 to September 2017. He testified that the Claimant made a claim for \$2,000.00 for cracks in the kitchen cabinets, windows in the basement that were purchased but not installed, and for other unfinished work such as the wood trim, wall patching due to the installation of a gas line, a broken exhaust fan, and relocation of a basement closet door.

The Claimant testified that she is making claim for \$2,000.00 for the kitchen cabinets installed by the Respondent. She testified that the Respondent did not install the cabinets she

chose and also failed to give her the warranty information for the cabinets. The Claimant testified that she also noticed a few other problems with the Respondent's work once he left in the beginning of June 2017. Those items were: leaking sinks, a hole in the basement ceiling, missing wood trim, and basement closet doors that would not close. As for the cabinets, the Claimant testified that the Respondent admitted that he purchased and installed the wrong cabinets and therefore agreed to either change the cabinets or deduct \$2,000.00 from the Claimant's final contract payment. (Cl. #1). The Claimant testified that she contacted the Respondent about the problems she had with his work but he did not return to make the repairs. She said that on May 30, 2017, she paid the Respondent in full for the contracted work and did not deduct the \$2,000.00 from the final payment for the cabinets.

The Respondent testified that he started his company in 2016 and met the Claimant when he performed work on another property. He testified that he had two employees who were carpenters and laborers. He said that he and the Claimant executed the contract on March 20, 2017 and the work on her property began immediately. The demolition went well but there was a delay in March 2017 when his employees were robbed and one of them was shot and killed. In order to decrease the delay, the Respondent moved the vendor timing around so that the painter came in to paint while he worked. As for the cabinets, the Respondent testified that the Claimant wanted light grey cabinets in her kitchen and explained to the Claimant that they would have to be ordered. The Claimant was eager to move into her home and told him to get whatever he needed to complete the work and that she did not want to wait for the cabinets to be ordered. The Respondent purchased dark grey cabinets and delivered them to the Claimant's home. The cabinets sat in the Claimant's home in boxes for weeks before installation and the Claimant never complained to him that she did not like the color or the quality of the cabinets he purchased. The

Respondent testified that the cabinet company informed him the warranty for the cabinets was available online and he shared that information with the Claimant.

The Respondent does not dispute that on May 4, 2017, he signed an addendum to the contract agreeing to either change the cabinets or deduct \$2,000.00 from the Claimant's final payment. However, he testified that he and the Claimant agreed that in lieu of him paying her \$2,000.00 for the cabinets, he would provide upgrades for her that she did not want to pay for in the original contract. The Respondent testified that the upgrades and additional work performed was to offset the installation of the wrong cabinets. The Respondent was adamant during his testimony that the Claimant agreed to the upgrades, which explains why she paid him the full contract amount on May 30, 2017 without deducting the \$2,000.00 for the cabinets. The Respondent testified that he provided the following upgrades:

- Installed a quartz countertop in the kitchen instead of granite;
- Installed glass vessel sinks in the bathrooms instead of standard sinks;
- Kitchen backsplash installed at no charge;
- Installed ceramic flooring instead of laminate flooring in the kitchen;
- Purchased two additional windows for the basement and installed one at no charge; and
- Installed appliances at no charge.

The Respondent testified that there was additional work he performed that he was never paid for although the Claimant agreed to pay him, such as the installation of a gas line for the Claimant's new stove. He said the Claimant agreed to pay him \$1,500.00 to install the gas line and failed to pay him. He also stated that his employees performed many other jobs at the Claimant's home at no charge, such as replacing door knobs, installing a front door entry panel, hanging mirrors, additional painting, removing and replacing a chandelier, relocating lights switches, assembling furniture, and dumping the Claimant's moving boxes. The Respondent testified that he repaired the leaking sinks. He said that when he left the Claimant's home in June 2017, there were only two punch list items to be completed: 1) install 1½ – 2 inch wood trim

between the kitchen and the dining room and 2) sand down the basement doors so they would close properly.

The Respondent testified that his work has a one year warranty. He stated that he agreed to return to the Claimant's home in September 2017 to complete the two items that were left undone; however, the Claimant wanted him to come on a specific day that he was not available. The Respondent agreed to come on a different day and time, at which point the Claimant stopped communicating with him and sent a complaint to MHIC. (CL. #4). The Respondent said he could not fulfill his one-year warranty because the Claimant failed to allow him back into her home once she filed the claim with the MHIC. The Respondent testified that there was no further communication after September 6, 2017.

The Respondent argues that he does not owe the Claimant \$2,000.00 because they agreed that he would provide upgrades to offset that amount after signing the May 4, 2017 addendum to the contract, the Claimant failed to pay him the \$1,500.00 for the gas line, and he performed a lot of work for the Claimant that was outside the scope of the project. The Respondent estimated that the cost of the kitchen backsplash that he installed at no cost was \$1,600.00. The Respondent testified that he performed all of the additional work for the Claimant because of their longstanding relationship and he felt bad about the two-week delay due to the death of his employee.

I find the testimony of both parties to be credible in this matter; however, the testimony of the Respondent was more detailed as to what work was performed based on the contract and what additional work was performed at the Claimant's home at no cost. The Claimant did not testify as to the additional work performed by the Respondent that was not contracted and she also did not deny that the Respondent performed additional work, such as the gas line installation, the backsplash in the kitchen, windows installation, appliance installation, doorknobs, moving light switches, removing and replacing a chandelier, installing a door in the basement and the

numerous upgrades testified to by the Respondent. The Claimant's testimony focused mostly on the wrong color of the kitchen cabinets and that she did not have a warranty. The Respondent's testimony was clear and concise while the Claimant and her son were disjointed in their delivery and left out a lot of details. Therefore, I find the testimony of the Respondent to be more persuasive in this matter. I believe there was an oral agreement after the May 4, 2017 addendum that the Respondent would provide certain upgrades and perform work outside the contract to offset the \$2,000.00 payment. The oral agreement is bolstered by the fact that on May 30, 2017, the Claimant paid the Respondent in full for the work and did not deduct the \$2,000.00.

It is also important to note that the Respondent returned to the Claimant's home and repaired the leaking sinks. Also, according to the text messages introduced by the Claimant, it is clear that the Respondent tried to return to the Claimant's home in September 2017 to complete the punch list items. The Respondent's contract has a detailed scope of work which was completed by the Respondent, except for one contracted item which was the installation of some wood trim. The painting and sanding of the basement closet doors, installation of two additional basement windows, and the installation of the gas line were not enumerated in the contract and was additional work performed by the Respondent. The contracted work was completed.

The Claimant has failed to show that the Respondent's home improvement was unworkmanlike, inadequate, or incomplete. The evidence before me shows that the Claimant paid in full for the contracted work at the completion of the work and failed to act in good faith by allowing the Respondent to return to her home to complete the punch list items, such as the wood trim. It is apparent that despite the kitchen cabinets being the wrong shade of grey, the Respondent's contracted work was performed in a workmanlike manner. It is also apparent from the Respondent's credible testimony that the Claimant benefited heavily from all of the additional home improvement work performed by the Respondent at no cost. The Respondent

had a desire to satisfy the Claimant due to their business relationship and he felt bad about the two-week delay. The Respondent went above and beyond in this matter to satisfy the Claimant.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant failed to prove she 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).

RECOMMENDED ORDER


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

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

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

Signature on File

April 24, 2019
Date Decision Issued



Tameika Lunn-Exinor
Administrative Law Judge

TLE/cmg
179122

IN THE MATTER OF THE CLAIM	* BEFORE TAMEIKA LUNN-EXINOR,
OF MASOOMA MOHIUDDIN,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
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FERNANDEZ,	* OAH No.: DLR-HIC-02-18-29582
T/A FERNANDEZ TEAM, LLC,	* MHIC No.: 18 (75) 271
RESPONDENT	*

* * * * *

APPENDIX: FILE EXHIBIT LIST

Fund Exhibits:

1. Notice of Hearing, October 11, 2018
2. Transmittal Form with Hearing Order September 17, 2018 and Claim Form attached thereto, January 10, 2018
3. DLLR Information on the Respondent, January 18, 2019
4. Letter to the Respondent, January 10, 2017²

Claimant's Exhibits:

1. Estimate from Fernandez Team, LLC, March 10, 2017, with Contractor/Homeowner Agreement, March 20, 2017 and an Addendum, May 4, 2017
2. Estimate from Ahmed Construction, LLC, December 19, 2017
3. Photo of kitchen cabinets installed by Respondent, photo of kitchen cabinets chosen by the Claimant, current photo of the inside of the silverware drawer installed by Respondent, and photo of Claimant's sink
4. Text messages between Claimant and Respondent, July 22, 2017 through September 6, 2017

Respondent's Exhibits:

1. Written Statement from Respondent, October 4, 2017

² The year on this letter is incorrect. This letter was sent to the Respondent on January 10, 2018.

PROPOSED ORDER

WHEREFORE, this 13th day of June, 2019, 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.

J. Jean White

***I. Jean White
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION