

IN THE MATTER OF THE CLAIM

OF JILL SCHUBERT,

CLAIMANT

AGAINST THE MARYLAND HOME

IMPROVEMENT GUARANTY FUND

FOR THE ALLEGED ACTS OR

OMISSIONS OF MICHAEL

BONOMOLO,

T/A MICHAEL'S HOME SERVICES,

RESPONDENT

* BEFORE NICOLAS ORECHWA,
* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

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* OAH No.: DLR-HIC-02-19-13812

* MHIC No.: 18 (90) 578

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
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DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On August 20, 2018, Jill Schubert (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$12,887.00 in actual losses allegedly suffered as a result of a home improvement contract with Michael Bonomolo, trading as Michael's Home Services (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On May 3, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on July 24, 2019 at the OAH in Hunt Valley, Maryland. Bus. Reg. § 8-407(e). Shara Hendler, Assistant Attorney General, Department of Labor (Department),¹ represented the Fund. The Claimant represented herself. The Respondent represented himself. Code of Maryland Regulations (COMAR) 28.02.01.23A.

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 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 - Collection of the following documents:²

- The Claimant's Complaint Form, October 31, 2017
- Various e-mails between the Claimant and the Respondent
- Various photographs

Clmt. Ex. 2 - Various black and white photographs

Clmt. Ex. 3 - Two documents:

- Claimant's checking account ledger, August 19, 2016 through November 17, 2016
- Respondent's Invoice, October 18, 2016

Clmt. Ex. 4 - Estimate Sheet from Joe Godlewski, July 20, 2018

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

² The e-mails and photographs are the same as those attached to the Claimant's October 31, 2017 Complaint Form. Some photographs contain notations from the Claimant. Per my ruling at the hearing, I did not consider the notations.

I did not admit any exhibits on behalf of the Respondent.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - Hearing Order, April 25, 2019
- Fund Ex. 2 - OAH Hearing Notice, May 8, 2019
- Fund Ex. 3 - HIC Claim Form, July 30, 2018
- Fund Ex. 4 - Respondent's Licensing Information

Testimony

The Claimant testified on her own behalf.

The Respondent testified and presented the testimony of Silas Springsteen and Richard Bonomolo.

The Fund did not present any 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 104136.
2. In 2016, the Claimant purchased a residence at 13202 Cherwin Avenue, Middle River, Maryland 21220 (Cherwin Avenue). On behalf of the Claimant, the Respondent conducted the home inspection of Cherwin Avenue prior to settlement. Cherwin Avenue is an older residence and needed various repairs and upgrades at the time the Claimant purchased it.
3. After settlement, the Claimant and the Respondent agreed the Respondent would perform the following work on Cherwin Avenue:
 - Repair defective roof shingles;
 - Repair the chimney crown;
 - Extend the downspouts;
 - Repair the block wall in the crawl space;
 - Regrade the interior of the crawl space and under the rear deck;
 - Reinforce the rear deck and install new structural footing;

- Prepare, prime and paint the interior of Cherwin Avenue;
- Repair areas on rear shed roof and sheathing;
- Supply and install subfloor for great room and three bedrooms.

4. The Claimant and the Respondent did not enter into a written contract to complete the work. Instead, they agreed the Respondent would complete the work on a time and materials (T&M) basis. The Respondent would purchase the materials, perform the work and then bill the Claimant.

5. The Respondent performed work on all the agreed upon tasks. The Respondent commenced work on Cherwin Avenue on August 22, 2016, and completed the work three weeks thereafter.

6. The Claimant paid the Respondent a total of \$8,817.00 in the following amounts on the following dates:

- September 8, 2016: \$2,817.00;
- September 22, 2016: \$6,000.00.

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).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)).

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

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”). “[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 has not proven eligibility for compensation.

The Claimant’s Case

The Claimant testified that after purchasing Cherwin Avenue, she hired the Respondent to perform a variety of necessary structural and cosmetic repairs. The Respondent, along with his workers, appeared at Cherwin Avenue and commenced work. The Claimant did not enter into a written contract with the Respondent, but instead agreed the Respondent would perform the work on a T&M basis. In other words, the Respondent would bill the Claimant for time and materials at the conclusion of each task.

The Claimant testified that the Respondent’s work⁵ was either incomplete or substandard. As an example,⁶ the Claimant testified that the Respondent failed to adequately prepare the interior of Cherwin Avenue for painting. As a result, dirt bled through the paint and the paint looks stained. Paint in other areas is cracking. As another example, the Respondent missed repairing a footer which caused joints to crack open in the ceiling. The Respondent told the Claimant the cracks were the result of the heat. As another example, the area around the foundation of Cherwin Avenue needed to be built up, a task to which the Respondent agreed.

⁴ Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code (Bus. Reg).

⁵ Hereafter, when referring to “the Respondent’s work” or work the Respondent performed, I am referring to the work of the Respondent and/or his workers collectively.

⁶ These do not constitute the sum total of the Claimant’s complaints against the Respondent. As discussed further below, her testimony was inconsistent, uncertain and vague.

However, the Respondent placed no topsoil around the foundation. As another example, the Claimant wanted the doors to a shed on the property replaced – the Respondent did not do that.

Because their agreement was T&M, the Claimant wanted receipts for materials. She testified she received none. Instead she testified “whenever the man asked for money, I gave him money.” The Claimant made two payments to the Respondent: one for \$2,817.00 on September 8, 2016 and another for \$6,000.00 on September 22, 2016. Cl. Ex. 3. On October 18, 2016, the Respondent produced an invoice which reflected a total balance for all the work of \$7,236.00. *Id.* The invoice credited the Claimant’s \$6,000.00 payment. It did not credit her \$2,817.00 payment and reflected a balance owed of \$1,236.00. The Claimant argued that the invoice reflected she over paid the Respondent by \$1,581.00.⁷ The Claimant testified she needed to have other contractors either fix or complete the Respondent’s work.

The Respondent testified he inspected Cherwin Avenue on behalf of the Claimant prior to the property going to settlement. According to the Respondent, he regrettably agreed to perform work on the various repairs he recommended in his inspection report.⁸ The Respondent and Claimant arrived at a scope of work verbally by walking around Cherwin Avenue and its grounds. The Respondent testified that he performed all work he and the Claimant discussed. The parties agreed to a T&M arrangement and the Claimant told the Respondent she set aside a budget of \$10,000.00 to complete the work. During the three weeks he worked on Cherwin Avenue, the Respondent was at the residence almost every day. The Respondent saw the Claimant at Cherwin Avenue almost every day he was there.

⁷ The Claimant paid a total of \$8,817.00. \$8,817.00 minus the \$7,236.00 total balance on the Respondent’s invoice equals \$1,581.00.

⁸ The Respondent conceded that the regulations governing home inspectors require they refrain from performing work related to their inspection reports themselves within one year of completing the inspection.

The Respondent testified he placed 200 bags of dirt around the foundation of the house since the foundation appeared to be washing out. The Claimant marked an "x" on boards on the deck she wished be replaced and the Respondent replaced them. The deck did not have footers and, thus, its superstructure was beginning to fail. The Respondent replaced the footers. The Claimant told the Respondent to use shingles from the shed. The Respondent followed that instruction. While the shingles did not match, the Respondent correctly installed them on the shed.

According to the Respondent, if the Claimant had an issue with the Respondent's work, the Respondent would come back and fix it, even if it took multiple attempts. For example, if the Claimant raised an issue with regard to the painting of the interior of Cherwin Avenue, the Respondent fixed it. The Respondent did not end his work on Cherwin Avenue until he was assured of the Claimant's satisfaction. Toward the end of the job, the Respondent wrote up an invoice for the work which delineated all the tasks and set forth a price. The Respondent testified he did so hastily and that the \$7,236.00 balance reflected on the invoice was a mistake. The Respondent insisted he told the Claimant he made a mistake on the invoice with regard to the pricing. The Respondent testified that the \$8,817.00 the Claimant paid was less than the true cost of all the work.

The Respondent called two of his employees who worked on Cherwin Avenue. Silas Springsteen (Silas) testified that he was on the Cherwin Avenue job every day of its duration. The Claimant was present and directed what work she wanted and what work she did not want done. With regard to the deck, the Claimant marked an "x" with magic marker on certain boards she wanted saved. The Claimant did not want other boards replaced due to budgetary concerns. Silas worked to put new footers on the deck to stabilize it. The Claimant requested all the removed wood be placed in a fire pit in the backyard.

Some of the wood in the shed in the back yard was rotted. Silas went through the shed joist by joist and repaired the wood in the shed. He adjusted the doors so they closed properly. Silas acknowledged a hole in the shed, but never got around to fixing it before the Claimant ended the work.

In addition to the deck work, Silas cut and laid the sub floor in the Claimant's great room. The Respondent wanted certain brick on the outside of Cherwin Avenue replaced. Silas stated he did the work, but did not have a chance to clean the brick before the Claimant stopped all work.

Richard Bonomolo (Richard) testified that like Silas, he was at Cherwin Avenue every day of the job. Richard hauled approximately 200 bags of dirt to the Cherwin Avenue and used the dirt to regrade various areas of the house including under the deck and against the crawl space. Richard testified that the Claimant accepted all the work which was done. Whatever complaints she had, he fixed. Richard did most of the outdoor work, but was inside Cherwin Avenue to assist with installing the subfloor. Richard was present when the painters painted the interior of Cherwin Avenue. He did not hear any complaints from the Claimant about the paint job.

At one point, the Claimant requested the Respondent perform tile work and the Respondent purchased tiles from Home Depot. However, the Claimant found someone else to perform the work. Richard brought the tiles back to Home Depot and Home Depot gave Richard a credit card as a refund. Richard gave the credit card to the Claimant.

Analysis

As noted above, the burden in this matter rests with the Claimant. I did not find the Claimant credible. I found the Claimant's presentation of her case so haphazard, so vague and so inconsistent that it is difficult to ascertain what she even wishes the Fund to reimburse. The Claimant agreed the Respondent's invoice (Cl. Ex. 3) correctly set forth the general scope of the

Respondent's work. However, the Claimant's case rested mostly on accusations that the Respondent either did not complete the agreed upon work, or that he completed it poorly. The Claimant only provided photographs to support those accusations.⁹ I reviewed the photographs and find them unhelpful. In many of the photographs it is difficult to ascertain any poor workmanship. In others, it is difficult to determine whether the condition of the property is the result of the Respondent's work. The Claimant failed to present any independent testimony or evidence that the Respondent performed his duties in an unworkmanlike manner or failed to complete agreed upon work.

At some points, the Claimant testified the Respondent did not do work; at other points, she testified he did the same work poorly. She argued she overpaid the Respondent but then testified she "had no idea what she paid for." If that is the case, it begs the question why the Claimant paid the Respondent any money. The Claimant argued e-mails contained in Cl. Ex. 1 support her case. I reviewed the e-mails and found them to be mostly self-serving, conclusory and vague statements about the Respondent's performance. Like her testimony at the hearing, she provided no evidence to support her statements in the e-mails. The Claimant testified she had other contractors fix the Respondent's alleged poor workmanship or the work he failed to complete. However, she presented no evidence that other contractors performed the work or that she paid for it.¹⁰ At some points, she stated she wanted to be reimbursed for what she allegedly paid the other contractors; at other points, she stated she wanted to be reimbursed for what she allegedly overpaid the Respondent.

I found the testimony of the Respondent, Silas and Richard more credible and convincing. All three testified assuredly as to what transpired during the pendency of their work at Cherwin Avenue. I found Silas and Richard to be particularly unwavering in their testimony.

⁹ At the hearing, the Claimant conceded she only had the photographs to support her accusations.

¹⁰ The Claimant only presented an estimate for additional work. (Cl. Ex. 4).

Both testified quite assuredly as to the specific tasks they performed at Cherwin Avenue and their specific interactions with the Claimant. I found the Respondent testified assuredly as to his work and candidly as to mistakes he made in the process. The Respondent conceded that as the home inspector, it was a mistake to repair Cherwin Avenue himself. The Respondent also conceded he mistakenly wrote up the invoice for the work he completed. However, his testimony that he alerted the Claimant to the fact he made a mistake was steadfast. I found the Respondent's testimony credible and find that the Claimant appropriately paid \$8,817.00 for the work the Respondent performed, as set forth in his invoice (Cl. Ex 3).

The Respondent did testify that the Claimant threatened to besmirch his reputation on social media if he did not acquiesce to her demands that he pay what she contended he owed her. This is corroborated by an e-mail dated May 9, 2017. (Cl. Ex. 1). It is also true that the Claimant references an "overpayment" and "money owed for materials" but does not provide specific amounts. *Id.* The Respondent requests the Claimant provide specific amounts, but the Claimant does not do so.

However, I do not find the Claimant failed to respond to good faith attempts by the Respondent to settle this matter. The Respondent offered to settle this matter by paying the Claimant \$1,000.00 with a signed release. The Claimant countered with \$3,000.00. The Respondent testified the he thought the Claimant was trying to extort him. I do not find the Claimant's counter offer of \$3,000.00 so outside the realm of the Respondent's offer to be in bad faith.¹¹

¹¹ The HIC Complaint provides the Claimant with the option for mediation. The Claimant checked both "yes" and "no" in response to whether she wished to mediate her complaint.

For the reasons set forth above, in balancing the cases presented by the Claimant and the Respondent, I find the Claimant failed to prove by a preponderance of the evidence that the Respondent did not perform his work in a workmanlike manner or that he did not perform work for which she paid. Accordingly, I decline to recommend an award from the Fund.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has 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). Therefore, the Claimant is not entitled to recover from the Fund. COMAR 09.08.03.03B(2).

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

September 12, 2019
Date Decision Issued

✓ Nicolas Orechwa
Administrative Law Judge

NO/sw
#181972



The following information was obtained from the records of the
 Department of the Interior, Bureau of Land Management, on
 the date indicated below:

Date	Description	Acres	Remarks
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PROPOSED ORDER

WHEREFORE, this 30th day of October, 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.

Michael Shilling

***Michael Shilling
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION