IN THE MATTER OF THE CLAIM	*	**BEFORE MICHELLE W. COLE,**
OF JING YANG AND IAN HERRON,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANTS	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF RUBEN RIVERA,	*	
T/A ROEL CERAMIC SERVICES,	*	**OAH No.: DLR-HIC-02-19-16985**
INC.,	*	**MHIC No.: 18 (75) 778**
RESPONDENT	*	

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

PROPOSED DECISION

STATEMENT OF THE CASE

On November 20, 2018, Jing Yang and Ian Herron (Claimants) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of $33,739.00 in actual losses allegedly suffered as a result of a home improvement contract with Ruben Rivera, trading as Roel Ceramic Services, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On May 30, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on August 29, 2019, at the OAH in Rockville, Maryland. Bus. Reg. § 8-407(e). Shara Hendler, Assistant Attorney General, Department of Labor (Department),[1] represented the Fund. Rebekah Lusk, Esquire, represented the Claimants, who were present. After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing in his absence. 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. 2019); COMAR 09.01.03; COMAR 28.02.01.

ISSUES

1. Did the Claimants 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 Claimants' behalf:

Cl. Ex. 1 Check Image, June 26, 2017

Cl. Ex. 2 Check Image, August 29, 2017

Cl. Ex. 3 Contract between Carl Williamson Designs and Claimants, undated

Cl. Ex. 4 Email correspondence between Claimant and Respondent, September 25, 2017, with attachment

[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 his address of record on July 15, 2019, COMAR 09.08.03.03A(2), and was not returned as unclaimed or undeliverable. 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 matter.

Cl. Ex. 5	Estimate, September 29, 2017
Cl. Ex. 6	Email correspondence from Dominguez Insurance Agency to Claimant, September 25, 2017, with attachment
Cl. Ex. 7	License, Expiration date of January 30, 2017
Cl. Ex. 8	Photographs A-C, undated
Cl. Ex. 9	Photographs A-E, undated
Cl. Ex. 10	Photographs A-F, undated
Cl. Ex. 11	Photographs A-H, undated
Cl. Ex. 12	Photographs A-D, undated
Cl. Ex. 13	Photographs A-L, undated
Cl. Ex. 14	NV Kitchen and Bath Contract, March 24, 2018
Cl. Ex. 15	Inspection Report, April 24, 2018
Cl. Ex. 16	Technical Report, June 17, 2018
Cl. Ex. 17	Building Permit, April 11, 2018
Cl. Ex. 18	Inspection Approval, September 7, 2018
Cl. Ex. 19	NV Kitchen and Bath Change Order, May 24, 2018
Cl. Ex. 20	NV Kitchen and Bath Change Order, June 18, 2018
Cl. Ex. 21	Copy of Check to NV Kitchen and Bath, March 24, 2018; Receipt, March 23, 2018
Cl. Ex. 22	Copy of Check to NV Kitchen and Bath, June 10, 2018
Cl. Ex. 23	Copy of Check to NV Kitchen and Bath, July 17, 2018
Cl. Ex. 24	Copy of Check to NV Kitchen and Bath, August 11, 2018
Cl. Ex. 25	Copy of Check to NV Kitchen and Bath, August 27, 2018
Cl. Ex. 26	Copy of Check to NV Kitchen and Bath, September 12, 2018

Cl. Ex. 27 Porcelanosa Sales Order, June 5, 2018

Cl. Ex. 28 Water & Power Technologies list of repairs, August 14, 2018

Cl. Ex. 29 Jaeger & Ernst, Inc. Invoice, June 6, 2018

Cl. Ex. 30 Jaeger & Ernst Contract, March 1, 2018

Cl. Ex. 31 Copy of Check to Jaeger & Ernst, March 7, 2018

Cl. Ex. 32 Copy of Check to Jaeger & Ernst, June 6, 2018

Cl. Ex. 33 Text messages screens, August 29, 2017 – October 6, 2017

The Respondent did not request admission of any exhibits.

I admitted the following exhibits on behalf of the Fund:

GF Ex. 1 Hearing Order, May 24, 2019

GF Ex. 2 Notice of Hearing, July 15, 2019

GF Ex. 3 Home Improvement Claim Form, November 20, 2018

GF Ex. 4 License History, August 6, 2019

Testimony

The Claimants testified and presented the testimony of Richard Phillips, a licensed electrician, plumber, gas fitter, and general contractor.

No witnesses testified on behalf of the Respondent or the Fund.

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.

2. On June 26, 2017, the Claimants paid $25,000.00 to Carl Williamson. The Claimants entered into a contract with Carl Williamson Designs for a master bathroom

renovation. The Respondent was named as the contractor. The following services were included under the contract:

- Demolition of bathroom and walk-in closet to combine spaces
- Plumbing per Interior Architect's plumbing plan
- HVAC per Interior Architect's plan-duct relocation
- Electrical per Interior Architect's electrical plan
- Installation of cement board, drywall and finish and paint bathroom and master bedroom
- Tile installation (wet room ceiling additional)
- Radiant heat floors
- Installation of finish plumbing, lighting, mirrors, vanities, etc.
- Sloped entry to wet room
- Curb to wet room

(Cl. Ex. 3). The amount of the contract was $51,000.00, to be paid in three draws: (1) $22,000.00; (2) $14,500.00 due to the Respondent on August 28, 2017; and (3) $14,500.00 due to the Respondent at completion. The contract specified that the Respondent would install the cabinetry for the master bedroom built-in closet, the great room entertainment center, and the dressing room "at no additional cost to client." (*Id.*).

3. On July 10, 2017, the Respondent started working on the renovation, beginning with demolition of the existing bathroom and walk-in closet. The Respondent also demolished the existing built-in entertainment center in the great room ahead of the schedule.

4. Part-way into the renovation, the Claimants terminated the relationship with Carl Williamson Designs. They asked the Respondent to remain as the contractor and complete the renovation.

5. Based on the Respondent's representation that the Claimants could save money by not getting permits, the Claimants consented to the Respondent's request to continue the renovation without permits.

6. On August 29, 2017, the Claimants paid to the Respondent $14,500.00.

7. The Respondent submitted an estimate of $43,500.00 to the Claimants for the following services:

- Demolition and disposal of trash of bathroom
- Framing new ceiling
- Framing shower
- Shower pan; Mud mix included
- Adding bench
- Plumbing for bathroom, includes material
- Moving ducts; All materials included
- Electrical, includes recess lighting and all material for installment switches
- Installation of cement board on bathroom
- Installation of drywall on bathroom; Includes materials
- Installation of new vent fan, Panasonic
- Installation of tile, includes mortar
- Installation of tub and bathroom fixtures
- Installation of vanities
- Radiant floor
- Paint bathroom, paint included
- Installation of baseboard, baseboard included

- Installation of mirrors

(Cl. Ex. 5).

8. In October 2017, the Claimants became concerned about the quality of the Respondent's work and asked the Respondent to stop working on the renovation. In November 2017, the Claimants' attorney sent a letter to the Respondent ordering him to cease work on the renovation. The Respondent did not return to the Claimants' home after November 2017 and did not offer to correct any of the problems reported by the Claimants.

9. On March 24, 2018, the Claimants entered into a contract with NV Kitchen and Bath to complete the bathroom renovation at the cost of $38,206.00. The services under the contract included:

- Run new wires for electrical in the bathroom, recessed light over the bathtub and vanity light
- Install new rough in the bathroom
- Install new plumbing pipes in the bathroom
- Install new housing for the recessed lights over the bathroom
- Remove entire current plaster from the bathroom
- Install new drain for the bathtub
- Install new drywall on the walls
- Install durock on the floor and wall
- Install new tile on the floor and wall
- Create a niche on the wall
- Install accent tile in the niche
- Install new threshold
- Install new toilet

- Install new vanity
- Install new faucet and sink
- Install baseboards in the bathroom
- Install new mirror along with the vanity light
- Paint the bathroom – install tissue holder, towel bar, and towel ring
- Clean the bathroom and bedroom from debris and dirt
- Install recessed light over the sink
- Remove existing radiator and relocate it as per design
- Relocate the existing toilet as per design – Remove all plaster from bathroom and install new drywall
- Heated floor installation on the flooring
- Install new pocket door with the lock

(Cl. Ex. 14 at 3).

10. On April 24, 2018, prior to NV Kitchen and Bath starting work, Excel Inspections performed an inspection of the Respondent's work. It identified problems with the electrical work, plumbing, waterproofing, structure, and interior, including the following:

- screws sticking out of the ceiling
- improper waterproofing (not to manufacturer's specifications)
- subpar bench seat in the shower area (moves when weight is applied)
- no electrical wiring for the tub
- no dedicated electrical circuits for new installations (tub and heated floor system)
- missing electrical junction boxes for heated floor system
- no water supply for the tub
- insufficient support for the tile wall

11. In June 2018, structural problems with the master bathroom floor joists were identified.

12. The Claimants paid other contractors to repair the structural problems, finish the bathroom renovation, and construct a new built-in bookcase in the great room.

DISCUSSION

In this case, the Claimants have 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)).

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 Claimants have proven eligibility for compensation from the Fund.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimants. (GF Ex. 4). The Claimants explained that they did not have a signed contract with the Respondent because he was the contractor selected by Carl Williamson Designs, the architectural design company they hired for the renovation, and was hired by them

[3] As noted above, "COMAR" refers to the Code of Maryland Regulations.
[4] References to the Business Regulation Article cite the 2015 volume of the Maryland Annotated Code.

to complete the renovation after they terminated the relationship with Carl Williamson Designs. A signed agreement was never produced. However, at some time while work was being performed, the Respondent provided an estimate detailing the services included under the contract. (Cl. Ex. 5). I find this estimate to reasonably set forth the agreement between the parties. The Claimants contracted with the Respondent to perform a bathroom renovation, including demolition of the existing bathroom, framing and drywall of the new bathroom, and installation of tile, a new vent fan, tub, vanities, heated floor system, mirrors, and bathroom fixtures, plumbing and electrical work to support the renovation. The amount of the contract was $43,500.00. When the Claimants ordered the Respondent to stop working on the renovation, the Claimants had paid $25,000.00 to Carl Williamson and $14,500.00 to the Respondent.

The Claimants testified in some detail regarding their concerns about the Respondent's workmanship. They submitted inspection reports and numerous photographs to demonstrate the poor quality of the Respondent's work. The photographs, accompanied by explanations from the Claimants and Richard Phillips, a licensed electrician, master plumber and general contractor hired by the Claimants, clearly show substantial deficiencies in the home improvement work. I found Mr. Phillips' testimony very persuasive. He identified the problems he observed with the Respondent's work and described the work that was required to correct the Respondent's deficient work. He detailed this information in an estimate which was presented at the hearing. (Cl. Ex. 28). The Respondent failed to appear after being sent proper notice of the hearing, and the evidence in this case is undisputed.

Based on this evidence, I find that the Respondent's home improvement work was unworkmanlike, inadequate and incomplete. The Respondent failed to properly install the electric and plumbing to support the renovation and did not waterproof all four walls of the shower area. When the Claimants asked the Respondent to stop work, the bathroom was not in

usable condition. The heated floor did not work. The pipes and drain system were incorrect to support proper water flow. Ceiling light fixtures in the wet area did not meet code specifications. And, the bench in the shower area could not support any weight. Moreover, exposed screws were visible in the ceiling, and the room was not painted or finished. Accordingly, the Claimants have established that the Respondent performed home improvement work in the Claimants' bathroom in an unworkmanlike and inadequate manner. Md. Code Ann., Bus. Reg. § 8-401, 8-405. When the Claimants identified problems with the work, the Respondent did not offer to make any repairs and did not have any further contact with the Claimants. I find that the Claimants are eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimants' actual loss and the amount, if any, that the Claimants are 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:

> (a) 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.
>
> (b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.
>
> (c) 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)(a)-(c).

None of the three regulatory formulas is appropriate in this case. The Respondent did not abandon the contract without doing any work, so that formula is inapplicable. COMAR 09.08.03.03B(3)(a). The Claimants hired other contractors to complete or remedy the Respondent's work, so the formula in which a claimant is not soliciting another contractor to complete the contract is also not applicable. COMAR 09.08.03.03B(3)(b). While the Respondent performed some work under the contract and the Claimants have retained other contractors to remedy that work, I conclude that COMAR 09.08.03.03B(3)(c) fails to appropriately measure the Claimants' actual loss because the value of the Respondent's work was significantly limited and additional work, not included under the Respondent's estimate, was included in Mr. Phillips' estimate and NV Kitchen and Bath's contract.

I find that a unique formula is required under this circumstance. Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2015). The Claimants paid $14,500.00 to the Respondent. When the Claimants requested that the Respondent stop working on the project, the Respondent had completed work under the contract, including demolition of the existing bathroom and closet, framing of the ceiling and shower, and the installation of a shower bench, tile, drywall, plumbing and electric. However, I do not assess any value to the Respondent's work because the entire renovation had to be demolished and redone by other contractors. The significant deficiencies set forth in the inspection reports and photographs support the Claimants' argument that they received no value for the Respondent's work. As such, the Claimants have proven an actual loss of $14,500.00.

I do not consider the $25,000.00 paid to Carl Williamson Designs because there was no evidence to support the Claimants' assertion that this money was for the contractors. Even if I

were to accept this representation, the record fails to identify the amount, if any, paid to the Respondent. Accordingly, I do not consider this amount in the actual loss.

In this case, the Claimants paid $14,500.00 to the Respondent to perform the renovation work in their master bathroom and received no value because they had to pay other contractors to demolish and redo the Respondent's home improvement work. The actual loss is $14,500.00, the amount paid to the Respondent. 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 Claimants' actual loss is less than $20,000.00. Therefore, the Claimants are entitled to recover their actual loss of $14,500.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of $14,500.00 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)(a-c). I further conclude that the Claimants are entitled to recover that amount from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimants $14,500.00; 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;[5] and

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

November 22, 2019
Date Decision Issued

[redacted]
Michelle W. Cole
Administrative Law Judge

MWC/dlm
#183192

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

PROPOSED ORDER

WHEREFORE, this 2nd day of January, 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