IN THE MATTER OF THE CLAIM	*	**BEFORE LEIGH WALDER,**
OF COURTNEY ROBERTS,	*	**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 KEITH HOLZ,	*	
T/A K2 RESTORATION AND	*	
CONSTRUCTION, INC.,	*	**OAH No.: LABOR-HIC-02-19-27592**
RESPONDENT	*	**MHIC No.: 19 (05) 12**

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PROPOSED DECISION

STATEMENT OF THE CASE

On January 25, 2019, Courtney Roberts (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of $20,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Keith Holz, trading as K2 Restoration and Construction, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On August 9, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on February 7, 2020, at the OAH in Rockville, Maryland. Bus. Reg. § 8-407(e). Eric B. London, Assistant Attorney General, Department of Labor (Department),[1] represented the Fund. The Claimant represented herself. After waiting fifteen 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. 2019); 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 – Letter from the Claimant to the Department, dated January 19, 2019

Clmt Ex. 2 – Letter from the Respondent to the Claimant, dated April 15, 2018

Clmt Ex. 2A – Safeco Insurance printout, printed March 30, 2018

Clmt Ex. 3 – Emails between the Claimant and the Respondent, sent June 22 and 26, 2018

Clmt Ex. 4 – Vannoy & Associates Invoice, dated August 22, 2018

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[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 via regular and certified mail to the Respondent's address of record, as well as to the Respondent's attorney's address of record. Neither the Respondent nor the Respondent's attorney of record appeared to the scheduled hearing. 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. 5 – K&B Restoration Authorization for Work, dated July 26, 2018

Clmt Ex. 5A – Safeco Insurance printout, printed November 16, 2018

Clmt Ex. 6 – Spreadsheet, undated

Clmt Ex. 7 – Photographs, undated

Clmt Ex. 8 – Photographs, undated

Clmt Ex. 9 – K&B Restoration Invoice, dated February 12, 2019

Clmt Ex. 10 – K&B Restoration Invoice, dated June 18, 2019

Clmt Ex. 11 – Emails between the Claimant and Credit Union, sent between July 25 through 30, 2018

Clmt Ex. 12 – Email from Credit Union to the Claimant, dated May 8, 2019

Clmt Ex. 13 – Emails between the Claimant and Credit Union, sent between January 28 through August 5, 2019; Email from Credit Union to the Claimant, sent April 26, 2018

Clmt Ex. 14 – Spreadsheet, undated

Clmt Ex. 15 – Quickbooks screenshot, undated

Clmt Ex. 16 – Atlas Floors, Inc. Invoice, dated April 11, 2019

Clmt Ex. 17 – Harvey W. Hottel, Inc. Invoice, dated November 6, 2018

Clmt Ex. 18 – Harvey W. Hottel, Inc. Invoice, dated November 15, 2018

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

Fund Ex. 1 – Notice of Hearing, dated October 10, 2019

Fund Ex. 2 – The Respondent's licensing history, dated January 22, 2020

Fund Ex. 3 – Hearing Order, dated August 6, 2019

Fund Ex. 4 – Home Improvement Claim Form, dated January 21, 2019

Fund Ex. 5 – Letter from the Department to the Respondent, dated January 25, 2019

No documents were submitted on behalf of the Respondent.

Testimony

The Claimant testified on her own behalf.

The Respondent was not present to testify or offer any witnesses.

The Fund did not offer any witness 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 numbers 01-87890 and 05-120742.

2. On March 2, 2018, a tree fell on the Claimant's property and damaged the Claimant's home.

3. On March 16, 2018, the Respondent inspected the damage to the interior and exterior of the Claimant's home and submitted an estimate of all the repairs necessary to the Claimant's insurance company, Safeco Insurance (Safeco).

4. Safeco approved the estimate and the cost of the repairs.

5. On April 15, 2018, the Claimant and the Respondent entered into a contract whereby, in exchange for $69,945.45, the Respondent agreed to repair the damage to the interior and exterior of the Claimant's home in accordance with the estimate submitted to and approved by Safeco.

6. The Claimant paid the Respondent a $23,315.15 deposit from money that was furnished by Safeco into a casualty account.

7. Soon thereafter, the Respondent started work on the Claimant's home and did some framing work on the roof.

8. By approximately mid-June 2018, the Respondent stopped all construction work on the Claimant's home and never returned to the Claimant's property.

9. On June 22, 2018, the Claimant emailed the Respondent requesting a status update on the construction project.

10. On June 26, 2018, the Respondent emailed the Claimant explaining that the Respondent closed the business, that the Claimant will need to solicit another contractor to finish the repairs, and that all future communication should be directed to the Respondent's attorney.

11. On July 24, 2018, the Claimant paid $741.83 to tarp the home to protect it from damage while she waited for a new contractor to finish the repairs.

12. The $741.83 was reimbursed by Safeco.

13. On July 26, 2018, the Claimant entered into a contract with K&B Restoration (K&B) whereby K&B agreed to repair the damage to the interior and exterior of the Claimant's home.

14. Some of the repair components that were called for under the contract with the Respondent, such as flooring, HVAC work, and painting, were provided by other contractors, and paid for by Safeco.

15. On or about August 22, 2018, the Claimant hired Vannoy & Associates (Vannoy) to assess the Respondent's work and to determine a correct scope of work that needed to be completed by K&B.

16. Vannoy determined that the work that the Respondent performed on the Claimant's home was inadequate and provided the Claimant with detailed repair recommendations to restore the Claimant's home to its pre-damaged condition.

17. K&B made all requisite repairs to the interior and exterior of the Claimant's home, and billed the Claimant a total of $54,064.37 for the work it completed.

18. Safeco paid out $41,119.33 to reimburse K&B for the work it completed on the Claimant's home.

19. After Safeco paid out $41,119.33 to reimburse K&B for the home repairs, there was no more money left in the casualty account to pay the remaining balance due to K&B.

20. The Claimant had to pay out the remaining balance due to K&B, $12,945.04, out-of-pocket.

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." 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 has proven eligibility for compensation.

Statutory Eligibility

The evidence in this case establishes there are no impediments barring the Claimant from recovering from the Fund. The home improvement work was to be performed on the Claimant's residence in Maryland. The Claimant is not a relative, employee, officer, or partner of the

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

Respondent; the Claimant is not related to any of the Respondent's employees, officers, or partners. The Claimant did not reject any efforts by the Respondent to resolve the claim. The Claimant timely filed the Claim with the MHIC on January 25, 2019. Finally, the Claimant has not taken any other legal action to recover monies from the Respondent.

Incomplete and Inadequate Home Improvement

In this matter, the Claimant argued, and the fund agreed, that the Respondent performed an incomplete and inadequate home improvement on the Claimant's home.

For the following reasons, I agree that the Respondent performed an incomplete home improvement. Although the Claimant hired the Respondent to fix the damage caused to her house by a tree, and paid the Respondent a $23,315.15 down payment, the Respondent only performed some work, and eventually abandoned the project. The Claimant credibly testified that the bulk of the work the Respondent performed was an attempt to frame the roof; however, the Respondent eventually stopped all work by mid-June 2018. To support this testimony, the Claimant submitted emails which demonstrate that she requested a status update on the construction from the Respondent, and the Respondent informed the Claimant: "[u]nfortunately, I had to close my business. All communication will be handled by my attorney . . . I'm sorry for the inconvenience but you will need to have another contractor finish your repairs." (Clmt Ex. 3). The Claimant also submitted photographs depicting the work that the Respondent started performing, but eventually left incomplete. (Clmt. Ex. 8). The photographs show an active construction site, nowhere near complete. (*Id.*). As such, the Claimant demonstrated that the Respondent performed an incomplete home improvement. Bus. Reg. § 8-401.

For the following reasons, the Claimant also proved that the Respondent performed an inadequate home improvement. The Claimant convincingly testified that the Respondent performed some framing work on the roof, however the work the Respondent performed was of

no value. As proof, the Claimant submitted an assessment completed by Vannoy which demonstrates that the Respondent's work was inadequate. (Clmt Ex. 4). Vannoy was hired by the Claimant to inspect the quality of the Respondent's work and to determine what measures would be necessary to mitigate any shortages. Specifically, in the assessment, Vannoy concluded that "[the Respondent] had attempted repairs that were found to be inadequate." (*Id.*). To remedy these inadequacies, Vannoy drew up comprehensive repair recommendations. (*Id.*). These repairs were ultimately carried out by K&B, which was retained to perform the work the Respondent was originally hired to perform. (Clmt. Exs. 5 & 5A). The Claimant testified that K&B had to redo much of the work that was attempted by the Respondent because the work was so inadequate. The Claimant's testimony is supported by documents which set out the scope of work that K&B had to carry out, which includes the same repairs that the Respondent was originally responsible for. (*Compare* Clmt Exs. 3 & 3A *with* 5 & 5A). As such, the Claimant demonstrated that the Respondent performed an inadequate home improvement. Bus. Reg. § 8-401.

Because the Claimant proved that the Respondent performed an incomplete and inadequate home improvement, I thus find the Claimant is eligible for compensation from the Fund.

<u>The Amount of the Claimant's Actual Loss</u>

Having found eligibility for compensation, I must determine the amount of the Claimant's actual loss and the amount, if any, 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.

At the hearing, the Claimant argued that her actual loss was calculated as follows: $12,945.04 (money paid out-of-pocket to K&B) plus $1,700.00 (money paid to a flooring company, which may have been paid out-of-pocket), which combined equals $14,645.04. As explained in the paragraph below, the Fund took the position that the Claimant may have suffered an actual loss of $13,686.67.

The Fund's position is that this is a unique case where the formulas found under COMAR 09.08.03.03B(3)(a)-(c) are not applicable. Specifically, the Fund took the position that COMAR 09.08.03.03B(c) is inapplicable because the Claimant hired more than one contractor to complete the same work called for under the contract with the Respondent, and some of this work was paid for by Safeco. Instead, the Fund's position is that this case requires a credibility determination to decide if the Claimant is entitled to the return of $12,945.04, which the Claimant argued she paid K&B out-of-pocket once all funds from Safeco were expended. Additionally, the Fund took the position that the Claimant may be eligible for reimbursement of $741.83 which is money the Claimant paid for tarping the roof prior to K&B starting repairs. The Fund argued that the Claimant is not eligible to receive the $1,700.00 she seeks for reimbursement for flooring expenses because the Claimant acknowledged in her testimony that this sum may have been reimbursed by Safeco.

I agree with the Fund that the Claimant is not entitled to the return of the $1,700.00 she paid another contractor for flooring expenses. The Claimant acknowledged in her testimony that Safeco *may* have reimbursed her for this expense. While the Claimant was not entirely sure if Safeco reimbursed her for this expense, the Claimant has the burden of proof in this matter, and the Claimant was unable to demonstrate, by a preponderance of the evidence, that she paid $1,700.00 in out-of-pocket expenses to cover the cost of fixing the floor in her home. As the Claimant is unsure if this amount was ultimately paid for by Safeco, I cannot find that the Claimant established a loss of $1,700.00 for floor repairs in her home.

I also cannot find that the Claimant should be reimbursed $741.83, as suggested by the Fund. Reviewing the Claimant's testimony, the Claimant acknowledged that this payment went towards tarping, and that this payment was reimbursed by Safeco. As Safeco has already reimbursed the Claimant for this sum, the Claimant did not demonstrate that she suffered a loss in this amount.

The Claimant credibly established that she paid K&B $12,945.04, out-of-pocket, once all insurance proceeds were expended. I find the Claimant credible, as the Claimant provided documents to substantiate that K&B was owed $12,945.04 and that she paid K&B this sum. (Clmt Exs. 10 & 15). Claimant's Exhibit 10 demonstrates that K&B charged the Claimant a total of $54,064.37 for work on her home, and that K&B received $41,119.35 as payment. The Claimant explained that this $41,119.35 came in the form of two payments made by Safeco towards the total sum of $54,064.37. This left a balance, as demonstrated in Claimant's Exhibit 10, of $12,945.04, which was not provided by Safeco. The Claimant credibly explained that Safeco did not provide this sum because it had already paid out the maximum amount it would cover under the Claimant's insurance policy. As such, the Claimant was expected to pay the remainder, which she did as demonstrated in Claimant's Exhibit 15. Claimant's Exhibit 15 establishes that on June 25, 2019, the Claimant paid K&B the remaining balance owed, $12,945.04. For these reasons, the Claimant is entitled to recover $12,945.04 as the amount of her actual loss. Bus. Reg. § 8-405(a).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $12,945.04 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

[illegible]

I further conclude that the Claimant is entitled to recover $12,945.04 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a) (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $12,945.04; 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.

April 28, 2020
Date Decision Issued

Leigh Walder
Administrative Law Judge

LW/dlm
#185746

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

PROPOSED ORDER

WHEREFORE, this 26th day of May, 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.

I Jean White

I Jean White
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION