IN THE MATTER OF THE CLAIM	*	**BEFORE MARY R. CRAIG,**
OF WENDY A. ARTHUR,	*	**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 JACOB HARRYMAN,	*	
T/A WINDOW READY,	*	**OAH No.: LABOR-HIC-02-19-39724**
RESPONDENT	*	**MHIC No.: 19(90)1408**

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PROPOSED DECISION

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

On August 12, 2019, Wendy A. Arthur (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 $1,905.20 in actual losses allegedly suffered as a result of a home improvement contract with Jacob Harryman, trading as Window Ready (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411

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

(2015).[2] On November 21,2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on October 30, 2020 at the OAH in Hunt Valley, Maryland. Bus. Reg. § 8-407(e). Hope Sachs, Assistant Attorney General, Department, 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. 2020); Code of Maryland Regulations (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 Contract and Addendum, March 28, 2019

Clmt. Ex. 2 not offered

Clmt. Ex. 3 Photographs of deck after work performed (3)

Clmt. Ex. 4 Letter from Claimant to MHIC, August 8, 2019

Clmt. Ex. 5 Photograph of deck after work performed

The Respondent offered no exhibits for admission into evidence.

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

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

Fund Ex. 1 Notice of hearing, February 25, 2020

Fund Ex. 2 Hearing Order, November 18, 2019

Fund Ex. 3 License history, printed May 18, 2020

Fund Ex. 4 Letter from MHIC to Respondent, August 16, 2019 enclosing Claim

Fund Ex. 5 Deck Ready Welcome Letter, April 23, 2019

Fund Ex. 6 Email from Claimant to Deck Ready, April 30, 2019

Testimony

The Claimant and the Respondent testified. The Fund did not present a witness.

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 5350039.

2. Prior to March 28, 2019, the Claimant's exterior pressure treated wood deck at her residence was in poor condition. Some of the 2" x 4" boards comprising the floor, stairs and tops of the vertical porch railings were cracked and dry-rotten. Several vertical support beams were loosely connected to adjoining horizontal pieces of the deck structure.

3. On March 28, 2019, the Claimant and the Respondent entered into a written contract (Contract) whereby the Respondent agreed to perform the following work on the deck:

   a. Replace all of the deck walking surface, top rails and stair treads;

   b. Secure the top rails, counter-sink screws, and dispose of old wood; and

   c. Sand and stain deck with two coats of commercial grade stain.

4. The Contract provided the Claimant with a ten year stain warranty.

5. The Contract did not cover repair or replacement of the foundation, the wood under the floor boards and on the sides of the porch, the vertical railings, or the 2" x 4" horizontal lumber supporting the top rails (top rail supports).

6. Before the Respondent began work on the deck some of the top rail supports were too short to abut the vertical posts of the deck.

7. The original agreed-upon Contract price was $2,521.00.

8. The Claimant paid the Respondent $2,521.00.

9. The Respondent's employees replaced the floor boards, step treads and top rails on the Claimant's deck, sanded the porch and applied two coats of stain.

10. The work was performed in several hours in a single day.

11. The work was not performed properly in some instances:

    a. In one place the Respondent replaced a damaged piece of top rail leaving a gap at the edges of two pieces at a corner; and

    b. Stain was applied improperly so that it peeled and cracked shortly after installation.

12. The Claimant is not disqualified from recovery from the Fund:

    a. The Claimant is not the spouse or other immediate relative of the Respondent;

    b. The Claimant is not an employee, officer, or partner of the Respondent or an immediate relative of an employee, officer, or partner of the Respondent; and

    c. The Claimant resides in the home as to which the claim is made and does not own more than three residences or dwelling places.[3]

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[3] Bus. Reg. § 8-405(f).

DISCUSSION

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 (2014); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *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 . . . ." Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for 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 for a portion of her claim.

The Claimant's existing pressure treated wood deck was in poor condition when the parties entered into the Contract. Initially, the Claimant and the Respondent's sale representative discussed a broad scope of work which would have entailed repair of the existing deck, construction of an extension of the deck, and construction of a new concrete patio. Ultimately, the parties agreed to a more limited scope of work. The Contract specified the portions of the deck to be repaired and painted. The Respondent's employees performed all of the work in several hours on one day (with one additional repair to the steps on a later day as discussed below).

The Claimant's relationship with the Respondent was satisfactory until the day the work was performed. After the workmen left the job, the Claimant called and complained that the stair

treads had not been repaired. Upon receipt of the Claimant's calls to the office, the Respondent initially took the position that the stairs were not part of the Contract. The Respondent demanded that the Claimant pay an additional $500.00 for repairing the stairs. Eventually the Respondent agreed to replace and stain stair treads for no additional fee. While the Claimant is dissatisfied that she had to repeatedly insist that the stairs were included in the Contract, the Respondent eventually performed that portion of the Contract. The Claimant is not seeking an award from the Fund due to her inconvenience or the time she spent making the phone calls about the stairs.[4]

The stair dispute is relevant because it illustrates the way the Respondent reacted to the Claimant's complaints about the quality of his work. It also reflects on the Respondent's lack of candor. At the hearing, the Respondent testified that the Claimant never brought her complaints to his attention. He testified that if she had done so, he would have responded with further repairs. The Respondent did not explain the inconsistency between his testimony and the Claimant's testimony about the stairs. I found the Claimant's testimony credible because it was clear, consistent and corroborated by the documentary evidence as further explained below. I did not find the Respondent's excuses credible.

The Claimant testified that she was very dissatisfied with the quality of the work performed by the Respondent's employees. Claimant exhibit 3C supports one portion of her Claim. Two of the replacement top rails installed by the Respondent were neither cut nor installed properly, as the joint has an obvious gap where the two pieces of wood should meet. In addition, a photograph in evidence supports the Claimant's testimony that the stain applied to the

[4] 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).

porch started to peel within a month after installation. (*See* Clmt. Ex. 5.) The Respondent did not dispute the quality of the top rail installation shown in the photograph or the peeling of the paint.

The Respondent's reply to the Claimant's case was twofold. First, he testified that the Claimant never complained about the work. I reject that testimony as explained above. The Claimant testified credibly that she called the Respondent's office many times, emailed him and wrote letters, but received no redress except for the issue with the stairs. Claimant's exhibits 5 and 6 are copies of emails the Claimant wrote the Respondent in April 2019. The emails refer to previous phone calls and emails from the Claimant, with specific dates. I conclude that the Respondent had adequate notice of the problems with the work performed, but failed to address them, except for the stairs.

With respect to the defective top rail and stain, the Claimant proved that the Respondent performed unworkmanlike, inadequate home improvements. The Claimant is entitled to a compensation from the Fund for those items.

However, other items of which the Claimant complained are not eligible for compensation. The Claimant was dissatisfied with the rail supports and the stability of the sides of the deck. (*See* Clmt. Ex. 3A & B.) Those items were not covered by the Contract. The Claimant testified that the Contract spelled out the scope of the work "exactly." A close review of the Contract shows that the parties did not agree to installation of rail supports or reinforcement of the deck structure. Furthermore, the Claimant admitted that the rail supports, as shown in Claimant's exhibits 3 A and B, were in poor condition prior to the Respondent's work. As the problem with the rail supports was clearly evident at the time the parties entered into the Contract, and Contract did not require the Respondent to replace or repair the rail supports, the

Claimant is not entitled to recover for that portion of the Claim. The Claimant is only entitled to recover for repair of the top rail joint, as well as sanding and staining the deck.

Having found eligibility for compensation, I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Claimant has the burden of proving the calculation of the proper amount of the award from the Fund. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3).

In this case, the Respondent performed some work under the Contract, and the Claimant is seeking other contractors to complete or remedy that work but has not hired one yet. The Claimant called two other deck contractors asking each for an estimate of the cost to repair the unworkmanlike work, but neither would give her an estimate. The Claimant went to Lowe's and obtained prices for the estimated cost of lumber installed by the Respondent. (Cl. Ex. 4.) The estimate compiled by the Claimant of the cost of all the wood used to repair the deck is $126.80. The cost of two eight foot pieces of wood for a top rail section, according to Claimant's exhibit 4, is $11.54. The Claimant's estimate for stain is $89.00 and the value of the Respondent's labor for the entire job is $300.00. Staining the deck and repairing one joint of top rail requires a portion of the total labor cost. A reasonable apportionment of the labor is $150.00. Therefore, the Claimant is entitled to an award of $250.54 ($11.54 +89.00 +150.00).

The proper formula for the award in this case is governed by COMAR 09.08.03.03B(3)(c):

> If he 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.

COMAR 09.08.03.03B(3)(c). The award from the Fund is calculated as follows:

Amount paid to the Respondent to complete the Contract	$2521.00
Amount to repair work done by Respondent	+250.54
Original Contract price	-2521.00
Award from the Fund	$250.54

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 $250.54.

PROPOSED CONCLUSIONS OF LAW

I conclude that:

1. The Claimant has sustained an actual and compensable loss of $250.54 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)(c);
2. The Claimant is entitled to recover $250.54 from the Fund. COMAR 09.08.03.03B(3)(c); and
3. The Claimant failed to prove that she is entitled to recover $1,905.20 from the Fund. Md. Code Ann., Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $250.54; 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.

January 13, 2021
Date Decision Issued

Mary R. Craig
Administrative Law Judge

MRC/da
#189971

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

PROPOSED ORDER

WHEREFORE, this 7th day of April, 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	*	**MARYLAND HOME**
WENDY ARTHUR	*	**IMPROVEMENT COMMISSION**
AGAINST THE MARYLAND HOME	*	
IMPROVEMENT GUARANTY FUND	*	**MHIC CASE NO. 19(90)1408**
FOR THE ACTS OR OMISSIONS OF	*	**OAH CASE NO. LABOR-HIC-**
JACOB HARRYMAN T/A	*	**02-19-39724**
WINDOW READY	*	

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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 October 30, 2020. Following the evidentiary hearing, the ALJ issued a Proposed Decision on January 13, 2021, concluding that the homeowner, Wendy Arthur ("Claimant") suffered a compensable actual loss of $250.54 as a result of the acts or omissions of Jacob Harryman t/a Window Ready ("Contractor"). (Proposed Decision pp. 8-9.) In a Proposed Order dated April 7, 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 Claimant subsequently filed exceptions to the MHIC Proposed Order.

On June 17, 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 Shara Hendler 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: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Claimant'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 the repair of a deck at the Claimant's home. The ALJ found that the Contractor's performance under the contract was unworkmanlike with respect to the staining of the deck and the replacement of the top rail around the deck. Proposed Decision p. 7.

In her written exceptions, the Claimant argued that the award was too low, that the Contractor's salesperson did not comply with her subpoena for him to testify before the ALJ, that she did not receive a ten-year warranty, that her steps were not up to code and should have been replaced, and that no one inspected the work that the Contractor performed.

Regarding the salesperson's failure to attend the hearing, the Claimant asserted that, during his sales presentation, he had assured her that he would "have the particular side railing in question repaired." (Exceptions Hearing MHIC Exhibit 3.) The Commission holds that remand of this case to take testimony from the salesperson is not warranted because the parties' written contract governs the scope of the work to be performed by the Contractor, and the Claimant received an award because of the Contractor's failure to perform the repairs to the railing required under the contract in a workmanlike manner.

Regarding the amount of the award, the Claimant did not specify an alleged error in the ALJ's calculation. The Commission finds no error with the calculation. The Claimant did not present estimates from other contractors for the correction of the Contractor's defective work. Rather, she presented evidence of the cost of the materials necessary to correct the defects and her estimate of the cost of the labor necessary to correct the defects, which the ALJ accepted as proof of the costs and used to calculate her award.

The Claimant's remaining exceptions are not pertinent to her claim against the Guaranty

Fund. The Guaranty Fund can only compensate claimants for the cost to correct or complete unworkmanlike, inadequate, or incomplete home improvements. Regarding the stairs, the contract between the parties was for the replacement and staining of the stair treads, not for the reconstruction of the stairs to achieve code compliance. (OAH Hearing Claimant's Exhibit 1.) Therefore, the ALJ did not err in denying an award based on the cost of reconstructing the stairs. Regarding the warranty, the Commission does not have the authority to make an award based on the failure to provide a warranty because the failure to provide a warranty does not constitute an unworkmanlike, incomplete, or inadequate home improvement, so the Commission finds no error with the denial of an award based on the warranty issue. Regarding the lack of an inspection of the Contractor's work, there is no legal requirement that an inspection be conducted.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 30th day of June 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 $250.54 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.

Bruce Quackenbush

Maryland Home Improvement Commission