IN THE MATTER OF THE CLAIM	*	**BEFORE RICHARD O'CONNOR,**
OF CATHERN KLINE,	*	**ADMINISTRATIVE LAW JUDGE,**
CLAIMANT,	*	**THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF DAVID FINAN and	*	
LETTY PLACE ASSOCIATES, INC.,	*	**OAH No.: LABOR-HIC-02-21-02706**
T/A WHEATON DOOR & WINDOW	*	**MHIC No.: 19 (75) 1476**
and DECK WIZARD,	*	
RESPONDENTS	*	

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

PROPOSED DECISION

STATEMENT OF THE CASE

On October 31, 2019, Cathern Kline (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of $15,691.00 in actual losses allegedly suffered as a result of a home improvement contract with David Finan and Letty Place Associates, Inc., trading as Wheaton Door & Window and as Deck Wizard. Md. Code Ann., Bus.

Reg. §§ 8-401 through 8-411 (2015).[1] On January 21, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing, naming David Finan, the individual license holder of Letty Place Associates, Inc., as the Respondent.

I held a hearing on April 14 and May 12, 2021, on the Webex video platform. *Id.* §§ 8-407(a), 8-312. John Hart, Assistant Attorney General, Department, represented the Fund. The Claimant participated without representation. Respondent David Finan participated without representation during the April 14, 2021 portion of the hearing but did not re-appear on May 12, 2021. The April 14, 2021 hearing dealt only with ascertaining the proper individual and corporate Respondents; I did not receive evidence on the merits of the claim at that time.

No representatives of the corporate MHIC licensee, Letty Place Associates, Inc., trading as Wheaton Door & Window and doing business as Deck Wizard, appeared for the May 12, 2021 hearing despite receiving proper notice. After waiting fifteen minutes for all Respondents or their representatives to appear, I proceeded with the 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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On April 20, 2021, the OAH sent a Notice of Hearing to Respondent David Finan by United States Postal Service mail to his address on record with the OAH as well as to a new address in Los Alamitos, California, that Mr. Finan provided on April 14, 2021. The notice sent to his address of record was returned undelivered several weeks after the hearing. The notice sent to the Los Alamitos address was not returned.

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

Also on April 20, 2021, the OAH mailed a Notice of Hearing to Respondent Letty Place Associates, Inc., d/b/a Deck Wizard, to its address on record with the MHIC on Sunnyside Avenue in Beltsville, Maryland. The OAH also mailed a Notice of Hearing to Letty Place Associates, Inc.'s resident agent on record with the State Department of Assessments and Taxation (SDAT). The notice sent to the Beltsville address was returned undelivered, but the notice sent to the resident agent was received and signed for on April 22, 2021. All notices informed the Respondents that a hearing would take place on May 12, 2021, at 9:30 a.m., on the Webex video platform, and provided the meeting number for the hearing. The notices advised the Respondents that failure to attend the hearing might result in "a decision against you." When no Respondents had joined the hearing at 9:45 a.m., I proceeded in their absence. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1).

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); 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 Respondents' acts or omissions?

2. If so, what is the amount of the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits into evidence on the Claimant's behalf:

Clt. Ex. 1. MHIC Complaint Form, June 4, 2019.

Clt. Ex. 2. Summary, undated.

Clt. Ex. 3. Documentation of Contacts with Deck Wizard, May 26, 2018 to May 29, 2019.

Clt. Ex. 4. Annotated copies of thirty-three photographs of the Respondents' work, taken October 16, 2019 and March 2021.

Clt. Ex. 5. Proposal from Taurus Enterprises, Inc., March 23, 2021.

Clt. Ex. 6. Contract between the Claimant and Deck Wizard, September 11, 2014.

Clt. Ex. 7. Contract between the Claimant and Deck Wizard, May 26, 2018.

Clt. Ex. 8. Copies of two checks, June 26, 2018 and July 19, 2018.

No Respondent offered exhibits.

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

Fund Ex. 1. Notice of Remote Hearing, March 4, 2020.

Fund Ex. 2. MHIC Hearing Order, January 20, 2021.

Fund Ex. 3. Letter from the MHIC to the Respondents, November 4, 2019; Home Improvement Claim Form, received October 31, 2019.

Fund Ex. 4. Respondent David Finan's licensing status and history with the MHIC.

Fund Ex. 5. SDAT Real Property Search, April 12, 2021.

Fund Ex. 6. Letter from Respondent David Finan to the MHIC, February 5, 2018.

Fund Ex. 7. Change from Active to Inactive Status form from Respondent David Finan to the MHIC, April 8, 2019; Letty Place Associates, Inc., Informal Action of Stockholders, April 6, 2019; letter from Respondent David Finan to the MHIC removing his MHIC license number from use by Respondent Letty Place Associates, Inc., April 8, 2019.

Fund Ex. 8. SDAT corporate information for Respondent Letty Place Associates, Inc., April 15, 2021.

Fund Ex. 9. Respondent Letty Place Associates, Inc.'s licensing status and history with the MHIC.

Fund Ex. 10. Notice of Remote Hearing, April 20, 2021.

[illegible]

Testimony

The Claimant testified and presented the testimony of Christine Tucker, her daughter.

No witnesses were sworn during the April 14, 2021 hearing, so Respondent David Finan did not testify.

The Fund presented no testimony.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. On May 26, 2018, the Claimant entered into a contract with Deck Wizard, purchasing the Gold Package, which included replacing the decking boards and top rails with composite boards and covering all railing posts, balusters, and fascia with primer and Deck Wizard coating.

2. The Claimant's home contains two decks, an upper one and a lower one. The contract with Deck Wizard included both decks.

3. The contract also included installation of new stairs (stringers, treads, and risers) from the lower deck to the ground.

4. The contract did not include installation of new support posts for the decks.

5. The contract price was $12,000.00.

6. The Claimant paid Deck Wizard $12,000.00 under the contract.

7. Work under the contract began on July 2, 2018 and was finished by July 19, 2018.

8. Respondent David Finan was the individual MHIC license holder (license number 01-90503) for Respondent Letty Place Associates, Inc., between February 5, 2018 and April 6, 2019, which included all times relevant to this claim.

9. Respondent Letty Place Associates, Inc., held corporate MHIC license number 05-125679 at all times relevant to this claim and did business under the trade names Deck Wizard and Wheaton Door & Window.

10. The MHIC now lists Respondent David Finan as an inactive contractor. Respondent Letty Place Associates, Inc.'s MHIC license expired on May 15, 2021, and Deck Wizard is out of business.

11. One non-English-speaking workman did almost all the work under the contract over several weeks in July 2018. The Claimant had difficulty communicating with the worker.

12. To replace the stairs, the Respondents' worker re-used the right-side (when facing the stairs) stringer and installed new center and left-side stringers.

13. The new stringers were cut too short and did not reach from the deck to the ground, where they should have rested on a concrete slab.

14. The worker nailed shims to the bottom of the center and left stringers to reach the concrete. On the left side, the worker put a piece of wood under the stringer in addition to a shim.

15. The piece of wood on the left side was next to the edge of the concrete slab and soon slid off, removing support from the stringer.

16. A post that should have helped support the left side of the stairs did not reach the ground.

17. At the top of the stairs, where they should have connected to the deck, the worker nailed two boards to the underside of the deck, then nailed the stringers to the boards. This arrangement was the only support for the top of the center and left stringers.

18. The Claimant quickly realized that the stairs were inadequately supported. She insisted that the Respondents return to install proper supports for the stairs.

19. The Respondents returned and installed a 4x4 post to support the deck near the top of the stairs, but the post rested on a wooden garden retaining wall rather than on a concrete footer.

20. Some stair risers and treads were incorrectly installed and are detaching from the stringers.

21. The stairs are uneven, sagging to the left, and unsafe.

22. The worker used the wrong caps on the posts of the deck railings. One of the caps obstructs a doorway.

23. At least one handrail was partially unattached on the lower deck and several pieces of trim were improperly installed on each deck.

24. One railing support post was loose and the edging was not finished on the upper deck.

25. The Respondents installed composite deck flooring, primer, and coating as called for in the contract.

26. The Claimant has received a proposal from Taurus Enterprises, Inc. (Taurus), to tighten the support post, finish the edging, and install trim on the upper deck; and to replace the stairs, install proper supports with concrete footings, and remove and replace the improperly-installed trim on the lower deck.

27. All of Taurus's proposed work is within the scope of the Claimant's contract with the Respondents.

28. The total price of Taurus's proposal is $19,848.00.

DISCUSSION

The Claimant has the burden of proving the validity of her claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., 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.

Respondent David Finan held the individual home improvement contractor license for Respondent Letty Place Associates, Inc., in 2018 when the Claimant executed this contract and work was performed under the contract. Respondent Letty Place Associates, Inc., held the corporate license at that time and was doing business under the name Deck Wizard. The Claimant did not know who the individual licensee or corporate entity behind Deck Wizard were, but the evidence establishes that both Respondents were the responsible license holders.

The Claimant's evidence shows overwhelmingly that the Respondents' work under the contract was inadequate. In particular, the installation of the stairs was grossly incompetent and left the Claimant with an unsafe and unusable staircase. As the Claimant testified, "Obviously, the measurement was incorrect." The Respondents' worker cut two new stringers that were not long enough to reach from the lower deck to the ground. Instead of providing stringers of the

correct length, the worker tried to cosmetically cover up his error by attaching shims and a block of wood under the bottoms of the stringers. At the top, he nailed two boards to the underside of the deck, then nailed the tops of the stringers to the boards. The stairs never actually reached the deck at the top. The block of wood at the bottom soon fell off the concrete footer, leaving that side of the stairs unsupported.

The Claimant saw the inadequacy of the work soon after it was finished. She insisted that the Respondents return and provide proper support for the stairs. The worker came back and installed a 4x4 post near the top of the stairs, but the bottom of the post merely rested on a garden timber that could be easily displaced. The stairs lean to the left because the stringers on the left side and in the middle have no support.

The worker also installed some treads backward and they are now detached. Likewise, some risers were not properly connected to the stringers and are also coming apart.

The Respondents' worker used an incorrect size of post caps on the deck railing, resulting in one of the caps protruding into a doorway. Many pieces of railings and other trim were not attached properly and have come loose or fallen off both the upper and lower decks.

The Claimant was under some misapprehension about the scope of the work under the contract. Some of her photographs are annotated with the complaint that the contract called for 6x6 support posts, but the Respondent used 4x4 posts. In fact, the contract does not include installation of any support posts of any size. The Claimant also introduced a prior contract with Deck Wizard from 2014 but could not provide any details about it or recall if Deck Wizard performed any work at that time. That contract has no evidentiary value for the present claim.

The Claimant has received a proposal from Taurus to repair or replace the Respondents' faulty work for $19,848.00. According to the Claimant's testimony and a close examination of the proposal, everything it contains is also included in the Respondents' contract. Taurus

proposes to rebuild the stairs (with properly-sized stringers) and install concrete footers for support posts, as well as correct or replace the improperly-installed post caps, trim, railings, and other pieces.

I thus find that the Claimant is eligible for compensation from the Fund. I must now determine the amount of the Claimant's actual loss and the amount, if any, that 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). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent performed some work under the contract, and the Claimant intends to retain another contractor to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

> 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)(c). The calculation is as follows:

$12,000.00 paid under the original contract; plus
+19,848.00 required to repair poor work; equals
$31,848.00 minus
-12,000.00 the original contract price; equals
$19,848.00 actual loss.

The Business Regulation Article 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)(5); COMAR

09.08.03.03B(4). In this case, the Claimant's actual loss is more than the amount paid to the Respondents; therefore, the Claimant's recovery from the Fund is limited to $12,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $12,000.00 as a result of the Respondents' acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover $12,000.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2015); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $12,000.00; and

ORDER that the Respondents are ineligible for Maryland Home Improvement Commission licenses until the Respondents reimburse 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;[2] and

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

June 28, 2021
Date Decision Issued

Richard O'Connor

Richard O'Connor
Administrative Law Judge

ROC/at
#192247

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

PROPOSED ORDER

WHEREFORE, this 6th day of September, 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.

Wm Bruce Quackenbush

Wm Bruce Quackenbush
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION