IN THE MATTER OF THE	*	BEFORE ROBERT F. BARRY,
CLAIM OF LAURA MAMARIL,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	*	OF THE MARYLAND OFFICE
AGAINST THE HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS	*	
OR OMISSIONS OF	*	OAH No.: LABOR-HIC-02-19-28697
WESLEY STANKIEWICZ,	*	MHIC FILE No.: 19 (75) 463
TRADING AS	*	
EXTREME MEASURES HOME	*	
IMPROVEMENT,	*	
RESPONDENT	*	

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

PROPOSED DECISION

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STATEMENT OF THE CASE

On February 20, 2019, Laura Mamaril (Claimant) filed a claim with the Maryland Home Improvement Commission (Commission) against the Home Improvement Guaranty Fund (Guaranty Fund) for reimbursement for an actual loss allegedly suffered as a result of a home

improvement contract with Wesley Stankiewicz, trading as Extreme Measures Home Improvement (Respondent). Md. Code Ann., Bus. Reg. §§ 8-405(a), 8-406 (2015).[1]

On August 19, 2019, the Commission issued a Hearing Order; on August 22, 2019, the Commission transmitted the case to the Office of Administrative Hearings (OAH). Md. Code Ann., Bus. Reg. § 8-407(c)(2)(i). The OAH postponed a hearing scheduled for March 17, 2020 due to the COVOD-19 pandemic and the OAH's inability to hold in-person hearings.

On October 2, 2020, I held a remote hearing via Cisco Webex, a video conference platform, from the OAH in Hunt Valley, Maryland. *Id.* The Claimant represented herself. The Respondent, after receiving notice of the hearing, did not appear. Nicholas Sokolow, Assistant Attorney General, Department of Labor (Department), represented the Guaranty Fund.

The contested-case provisions of the Administrative Procedure Act; the Department's and the Commission'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) 09.08.02.01B, COMAR 09.01.03, and COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss arising from the Respondent's incomplete performance of a home improvement contract?

2. If so, what, if any, compensation may the Claimant recover from the Guaranty Fund?

[1] Unless otherwise noted, all references to the Business Regulation Article cite the 2015 Replacement Volume.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted seven exhibits into evidence for the Claimant:

CLAIM. #1 - Contract between the Claimant and the Respondent, July 8, 2017

CLAIM. #2 - Photocopies of text messages between the Claimant and the Respondent, July 10, 2017 through October 4, 2017

CLAIM. #3 - Photocopies of canceled checks – payments made by the Claimant to the Respondent: July 13, 2017; July 19, 2017; and August 10, 2017

CLAIM. #4 - Stop Work Order, Code Compliance Division, Anne Arundel County Department of Inspections and Permits, September 18, 2017

CLAIM. #5 - Estimate, American Builders Corp. (American Builders), July 2, 2018

CLAIM. #6 - Contract between the Claimant and American Builders, August 16, 2018

CLAIM #7 - Photograph of the Claimant's garage and photocopies of canceled checks – payments made to American Builders: August 16, 2018; October 3, 2018; October 24, 2018; November 29, 2018; and February 1, 2019

The Respondent did not appear for the hearing.

I admitted five exhibits into evidence for the Guaranty Fund:

FUND #1 - Notice of Remote Hearing

FUND #2 - Hearing Order, August 19, 2019

FUND #3 - Letter from the Commission to the Respondent, February 25, 2019, with Home Improvement Claim, February 20, 2019

FUND #4 - Respondent's licensing history with the Commission, September 4, 2020

FUND #5 - Affidavit of Kevin Niebuhr, February 4, 2020

Testimony

The Claimant testified on her own behalf.

The Guaranty Fund did not present any witnesses.

FINDINGS OF FACT

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

1. The Respondent was licensed by the Commission as an individual home improvement contractor under registration number 01-95944 almost continuously from October 5, 2007 through October 15, 2017.

2. At all times relevant to this claim, the Claimant owned and resided in a house located on Hamlen Road in Anne Arundel County.

3. On July 8, 2017, the Claimant and the Respondent signed a home improvement contract whereby the Respondent agreed to perform work at the Claimant's home for $26,800.00, including the construction of a two-story garage for $24,500.00.

4. On July 13, 2017, the Claimant paid the Respondent a deposit of $8,040.00.

5. The construction of the garage required a permit from the Anne Arundel County Department of Inspections and Permits, which the Respondent never obtained.

6. Between July and September 2017, the Respondent constructed the garage, including footings, a concrete slab, block walls, framing, siding, and a roof.

7. On July 19, 2017 and August 10, 2017, the Claimant paid the Respondent installments of $5,376.00. The three payments made by the Claimant to the Respondent totaled $18,792.00.

8. On September 18, 2017, the Code Compliance Division of the Anne Arundel County Department of Inspections and Permits issued a Stop Work Order to the Claimant for constructing an accessory structure without the required permit.

9. Between September 25 and October 4, 2017, the Claimant and the Respondent exchanged texts, with the Respondent asserting falsely that he was attempting to obtain the required permit.

10. After the Claimant texted the Respondent to inform him that she knew she could not get the required permit without tearing down the structure in order to allow for a footing inspection, the Respondent stopped communicating with the Claimant.

11. On August 16, 2018, the Claimant hired American Builders to construct a garage for $27,618.00; the contract included $2,800.00 for electrical work that was not part of the Claimant's contract with the Respondent.

12. American Builders was only able to use the footings constructed by the Respondent; it had to demolish the other unpermitted work performed by the Respondent to allow an inspection of the footings.

13. The Claimant paid American Builders Corp. a total of $24,818.00 to complete the work that the Respondent had agreed to perform.[2]

14. On August 27, 2020, the OAH sent a Notice of Remote Hearing to the Respondent at his last address of record with the Commission and to his current address of record with the Motor Vehicle Administration (MVA).

15. On September 4, 2020 the United States Postal Service (USPS) returned to the OAH a certified mail receipt indicating that the remote hearing notice sent to the MVA address was delivered to the Respondent's "agent." The USPS receipt was not signed by anyone and it did not contain anyone's printed name – it read "COVID-19, Social Distance Order."

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[2] The Claimant presented five canceled checks, three of which were drawn on the account of Baltimore Fleet Service, LLC, a company controlled by the Claimant and her then boyfriend. The Guaranty Fund did not object to these canceled checks as proof of the Claimant's payments to the Respondent.

16. On September 28, 2020 the USPS returned to the OAH a certified mail receipt indicating that the remote hearing notice sent to the Commission address was unclaimed.

DISCUSSION

The Respondent's Notice of Hearing

The procedures for notice and hearings for disciplinary actions against home-improvement contractors also apply to proceedings to recover compensation from the Guaranty Fund. Md. Code Ann., Bus. Reg. § 8-407(a). Section 8-312 of the Business Regulation Article requires the Commission to give the person against whom disciplinary action is contemplated an opportunity for a hearing. Md. Code Ann., Bus. Reg. § 8-312(a). The Commission is required to send a hearing notice to the person against whom disciplinary action is contemplated at least ten days before the hearing by certified mail to the business address on record with the Commission. *Id.* § 8-312(d). If, after due notice, the person against whom disciplinary action is contemplated does not appear, nevertheless the Commission (or by delegation the OAH) "may hear and determine the matter." *Id.* § 8-312(h).

In this case, the Respondent has not been licensed by the MHIC since his registration expired on October 15, 2017. On August 27, 2020, the OAH sent a Notice of Remote Hearing to the Respondent at his last address of record with the Commission and to his current address of record with the MVA. On September 4, 2020 the USPS returned to the OAH a certified mail receipt indicating that the remote hearing notice sent to the MVA address was delivered to the Respondent's agent. The USPS receipt was not signed; it read "COVID-19, Social Distance Order." On September 28, 2020 the USPS returned to the OAH a certified mail receipt indicating that the remote hearing notice sent to the Commission address was unclaimed. I am satisfied that the Respondent received actual notice of this proceeding at his MVA address and

simply declined to attend. Therefore, it is appropriate for me to hear and determine this claim against the Guaranty Fund even in the Respondent's absence.

Guaranty Fund Claim

A homeowner "may recover compensation from the Guaranty Fund for an actual loss that results from an act or omission by a licensed contractor." Md. Code Ann., Bus. Reg. § 8-405(a). An "'actual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." *Id.* § 8-401. The Commission may not award from the Guaranty Fund an amount for consequential damages, *id.* § 8-405(e)(3), which are losses that result indirectly from any unworkmanlike, inadequate, or incomplete home improvement, such as the cost of restoration of a flooded basement. The Commission may deny a claim if it finds that "the claimant unreasonably rejected good-faith efforts by the contractor to resolve the claim." *Id.* § 8-405(d).

A claimant has the burden of proof at a Guaranty Fund hearing. *Id.* § 8-407(e)(1). In the circumstances presented here, the Claimant has the burden to establish that: (1) the Respondent performed an incomplete home improvement; (2) the Claimant had an actual loss due to the costs of completing the home improvement; and (3) the Claimant did not unreasonably reject the Respondent's good-faith efforts to resolve the claim.[3] As explained below, I find that the Claimant met her burden of proof as to her claim against the Guaranty Fund.

Incomplete Home Improvement

The Claimant asserted and the Guaranty Fund conceded that the Respondent failed to complete the home improvement, specifically, the garage. The construction of the garage required a permit from the Anne Arundel County Department of Inspections and Permits.

[3] There was no issue of good-faith efforts to resolve the claim generated by the evidence; the Respondent abandoned the home-improvement contract after the Claimant learned that the Respondent had not obtained the required permit from Anne Arundel County.

Between July and September 2017, the Respondent constructed the garage, including footings, a concrete slab, block walls, framing, siding, and a roof, all without the required permit. On September 18, 2017, the Code Compliance Division of the Anne Arundel County Department of Inspections and Permits issued a Stop Work Order to the Claimant for constructing an accessory structure without the required permit. Between September 25 and October 4, 2017, the Claimant and the Respondent exchanged texts, with the Respondent asserting falsely that he was still attempting to obtain the required permit. After the Claimant texted the Respondent to inform him that she knew that she could not get the required permit without tearing down the structure the Respondent had built, the Respondent stopped communicating with the Claimant.

Actual loss due to the costs of restoration, repair, or replacement

COMAR 09.08.03.03B, which governs the calculation of awards from the Guaranty Fund, provides, in pertinent part, as follows:

> B. Measure of Awards from Guaranty Fund.
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> . . .
>
> (2) The Fund may only compensate claimants for actual losses they incurred as a result of misconduct by a licensed contractor.
>
> (3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:
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> . . .
>
> (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.

(4) The Commission may not award from the Fund an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed.

The Claimant paid the Respondent a total of total of $18,792.00 for his work. The Claimant paid American Builders $24,818.00 to complete the home improvement. (American Builders was only able to use the footings constructed by the Respondent; it had to demolish the other unpermitted work performed by the Respondent to allow an inspection of the footings.)

I am recommending an award under COMAR 09.08.03.03B(3)(c), but modified by the limitation of B(4). The calculation under B(3)(c) is as follows:

Amount Paid to the Respondent -	$18,792.00
Plus	
Amount paid by the Claimant to complete -	$24,818.00
Subtotal -	$43,610.00
Less	
Amount of contract -	$24,500.00
Claim	$19,110.00

The Claimant's award from the Guaranty Fund is limited to the $18,792.00 that she paid to the Respondent.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude:

(1) the Claimant suffered an actual loss as a result of the Respondent's acts and omissions, specifically his incomplete performance of a home improvement. Md. Code Ann., Bus. Reg. § 8-401;

(2) the Claimant is entitled to recover an award of $18,792.00 from the Guaranty Fund. Md. Code Ann., Bus. Reg. § 8-405(a); COMAR 09.08.03.03B(3);

(3) the Claimant did not unreasonably reject the Respondent's good-faith efforts to resolve the Claimant's claim against the Guaranty Fund. Md. Code Ann., Bus. Reg. § 8-405(d).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Claimant be awarded $18,792.00 from the Home Improvement Guaranty Fund; and

ORDER that the Respondent remain 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 at least ten percent (10%) as set by the Commission, Md. Code Ann., Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a); and

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

CONFIDENTIAL

December 21, 2020
Date Decision Issued

Robert F. Barry
Administrative Law Judge

RFB/kdp
#188246

PROPOSED ORDER

WHEREFORE, this 15th day of March, 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