

**IN THE MATTER OF THE CLAIM
OF MARIA MCCOY,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF ANDREW
AVRAMIDIS, T/A PRESTIGE HOME
SOLUTIONS, LLC,
RESPONDENT**

*** BEFORE DANIEL ANDREWS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-19-40339
* MHIC No.: 19 (75) 675**

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PROPOSED DECISION

**STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
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DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER**

STATEMENT OF THE CASE

On May 30, 2019, Maria McCoy (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of an actual loss allegedly suffered as a result of a home improvement contract with Andrew Avramidis, trading as Prestige Home Solutions, LLC (collectively, the "Respondent"). Md. Code Ann., Bus.

Reg. §§ 8-401 through 8-411 (2015).¹ On November 21, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 6, 2020, the OAH mailed a Notice of Hearing (Notice) to the parties, which scheduled a hearing for May 7, 2020. A Notice was mailed to each party, using their respective address of record, by first class regular and Certified Return Receipt Requested (Certified) mail. On February 18, 2020, an individual at the Respondent's address of record accepted service of the Notice delivered by Certified mail. The Notice mailed by regular first-class mail to the Respondent was not returned the OAH as undeliverable by the United States Postal Service (USPS). The hearing, however, was postponed because of the COVID-19 pandemic.

On April 28, 2020, the OAH rescheduled the case for a hearing on July 21, 2020, at 9:30 a.m., at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland. The OAH mailed a second Notice to the parties, using their respective address of record, by first class regular mail and by Certified mail. The second Notice informed the parties of the date, time, and location of the hearing. The Notice mailed to the Respondent by Certified mail was returned to the OAH as received by the Respondent, but no signature was obtained due to the COVID-19 pandemic. The Notice mailed by first-class mail regular mail was not returned to the OAH as undeliverable.

On July 21, 2020, I held the hearing as scheduled. Bus. Reg. § 8-407(e). The Claimant represented herself. Andrew Brouwer, Assistant Attorney General, Department of Labor (Department),² represented the Fund. The Respondent failed to appear or participate in the hearing. After waiting approximately fifteen minutes, neither the Respondent nor anyone authorized to represent him appeared for the hearing. Because the Respondent received the second Notice, as well as the first, I am satisfied that he received due notice of the scheduled

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

² On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

hearing and the issue to resolve but failed appear. For this reason, I found it appropriate to proceed with the hearing. Md. Code Ann., Bus. Reg. § 8-312.

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; 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 into evidence the following exhibits on the Claimant's behalf:

- Clmt. Ex. 1 - Contract between the Respondent and Claimant, dated May 3, 2017
- Clmt. Ex. 2 - Claimant's Payment Transaction History, for payments to the Respondent, posting May 6 and June 5, 2017, in the amounts of \$2,583.00 and \$5,367.00
- Clmt. Ex. 3 - Two photographs of the Claimant's siding, taken July 10, 2017
- Clmt. Ex. 4 - Photograph of the Claimant's siding, taken August 2, 2018
- Clmt. Ex. 5 - Photograph of the Claimant's siding, undated
- Clmt. Ex. 6 - Complaint Activity Report, Better Business Bureau, for September 30 through October 22, 2018
- Clmt. Ex. 7 - Photograph of the Claimant's siding, dated October 14, 2018
- Clmt. Ex. 8 - MHIC Complaint Form, November 6, 2018, with attached event history, photographs, text messages, and payment history
- Clmt. Ex. 9 - Proposal by B and R Siding, dated May 7, 2019
- Clmt. Ex. 10 - Proposal by Chase Remodeling, dated May 28, 2019

Clmt. Ex. 11 - Claimant's letter to the MHIC, Home Improvement Claim Form, dated May 29, 2019, with attached supporting documents

Clmt. Ex. 12 - Two photographs of the Claimant's siding, taken December 12, 2019

Clmt. Ex. 13 - Home Inspection Report, Accurate Home Inspection and Testing, Co., dated December 15, 2019

Clmt. Ex. 14 - Photograph of the Claimant's siding, taken March 1, 2020

The Respondent did not offer any exhibits.

I admitted into evidence the following exhibits on behalf of the Fund:

Fund Ex. 1 - Hearing Order, dated December 2, 2019

Fund Ex. 2 - Notice of Hearing, dated February 6, 2020, for hearing scheduled May 7, 2020

Fund Ex. 3 - Notice of Hearing, dated April 28, 2020, for hearing scheduled July 21, 2020

Fund Ex. 4 - MHIC letter to the Respondent, dated June 4, 2019, with attached Home Improvement Claim Form submitted by the Claimant on May 30, 2019

Fund Ex. 5 - Letter to the Parties from the OAH, dated May 15, 2020

Fund Ex. 6 - Notice of Hearing, dated July 13, 2020

Fund Ex. 7 - License History for the Respondent, as of May 28, 2020

Testimony

The Claimant testified on her own behalf and presented the testimony of Paul Platt, Accurate Home Inspection and Testing Company. Mr. Platt was accepted as an expert in home inspection.

Neither the Respondent nor the Fund presented any witnesses.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 01-95413. Prestige Home Solutions, LLC operated under MHIC license number 05-132711.
2. On May 3, 2017, the Claimant and the Respondent entered a contract to replace the aluminum siding on her home. The total contract price was \$8,050.00.
3. On or about May 4, 2017, the Claimant paid a deposit to the Respondent for the work to be performed under the contract in the amount of \$2,583.00.
4. After May 4, 2017, the Respondent started the work required under the contract and finished the work on or about June 2, 2017.
5. On June 2, 2017, the Claimant paid the balance due for work performed under the contract in the amount of \$5,367.00.
6. On July 10, 2018, the Claimant observed and photographed a section of aluminum siding installed by Respondent which fell from her home. She also called the Respondent to come out and fix the siding.
7. In August 2018, the Claimant again requested that the Respondent return to her home to repair the new siding that had fallen from her home.
8. In September 2018, the Respondent sent a person out to fix the siding, at which time the Claimant pointed out other areas of the new siding which were failing or which did not completely meet with existing door frames.
9. Sometime in October 2018, the Respondent attempted to fix the aluminum siding when the Claimant was not home. The siding, however, continued to remain improperly repaired.

10. On December 15, 2019, the Claimant had the aluminum siding that was installed by the Respondent inspected by Paul Platt, a licensed home inspector, with Accurate Home Inspection and Testing Company.

11. When the Respondent installed the siding, sections of the siding had inadequate nailing to studs and sheathing. In other areas, the siding was excessively nailed to the house. Some portions of the siding were blown loose exposing underlying sheathing and insulation to weather conditions. Other sections of the siding were cut too short, exposing insulation to weather conditions. Portions of the siding were misaligned causing bulging and buckling.

12. To repair the work performed by the Respondent, requires the removal all existing siding, insulation, and house wrap and then properly installing all new materials in a manner required by industry workmanlike standards.

13. The Claimant's actual loss is \$8,050.00.

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); 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); *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 established eligibility for compensation from the Fund for an actual loss.

The Claimant had a contract with the Respondent on May 3, 2017 to conduct home improvement work by installing new siding on her home. The contract amount was \$8,050.00. The Respondent performed the contract and completed work on June 2, 2017 and the Claimant paid the Respondent the full contract price. By July 2018, the Claimant noticed parts of the siding were falling and requested the Respondent make repairs. Eventually, the Respondent came to the Claimant’s home and assessed the need to make repairs in September 2018, during which time the Claimant also showed the Respondent other areas of the siding were failing or incompletely installed. The Respondent attempted to repair the siding, but the siding continued to remain in a state of disrepair. The Claimant’s photographs admitted in evidence documented the issues with the siding showing areas of the siding which remained installed improperly or continued to be in a state of disrepair.

Out of concern that her siding was not repaired, she contacted Paul Platt, a licensed home inspector with Accurate Home Inspection and Testing Company. Mr. Platt has performed home inspections for over fifty years, with overlapping thirty-five years of custom home building. Mr. Platt has also taught classes on home inspection at a local community college for sixteen years. Mr. Platt explained that based on his work experience he is familiar with industry standards for installing aluminum siding on residential homes. Mr. Platt inspected the Claimant’s home in December 2018 and found the siding installed by the Respondent installed incompletely and in an unworkmanlike manner for the reasons described in my Finding of Fact number 11. Mr. Platt also documented those reasons by several photographs which were admitted into evidence. Finally, Mr. Platt explained that to properly repair the work requires complete removal of the

siding and that no siding material can reused. He explained that the siding installed by the Respondent was damaged by improper cutting or installation and would not provide proper protection from water intrusion if re-installed.

Based the evidence presented by both the Claimant, which was supported by her own photographs and the testimony of Mr. Platt, which was also supported by several photographs, the Claimant established that she suffered an actual loss from the acts of the Respondent, a licensed home improvement contractor. I found especially helpful and credible the expert testimony. Mr. Platt has extensive work experience in home inspection and construction. After his inspection, he produced a detailed report explaining the deficient work performance by the Respondent, which he also supported by photographs. Following the presentation by the Claimant, the Fund agreed that the Claimant demonstrated an actual loss.

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 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.

The Claimant obtained proposals from other contractors but had not engaged any contractors to repair the siding, mostly because she does not have the resources to do so. Accordingly, the following formula appropriately measures the Claimant's actual loss: "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." COMAR 09.08.03.03B(3)(b). Again, Mr. Platt opined that the siding installed by the

Respondent requires removal and cannot be reused. For this reason, I find that any materials or services provided by the Respondent have no value. As a result, the amount of the Claimant's actual loss is \$8,050.00, which is the amount that she paid the Respondent.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant sustained an actual and compensable loss of \$8,050.00 as a result of the Respondent's acts or omissions. I further conclude that the Claimant is entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(b).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$8,050.00; 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;³ and

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

October 16, 2020
Date Decision Issued

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CONFIDENTIAL

Daniel Andrews
Administrative Law Judge

³ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 1st day of December, 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.

Joseph Tunney

Joseph Tunney

Chairman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***