

IN THE MATTER OF THE CLAIM  
OF TIFFANY LANCASTER,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF ROLAND MASON,  
T/A MASON AND MASON  
CONTRACTING,  
RESPONDENT

\* BEFORE NICOLAS ORECHWA,  
\* ADMINISTRATIVE LAW JUDGE  
\* THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: LABOR-HIC-02-19-39719  
\* MHIC No.: 19 (90) 772

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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On May 1, 2019, Tiffany Lancaster (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$8,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Roland Mason, trading as Mason and Mason Contracting (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On November 21, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on July 20, 2020, at the OAH main building. Bus. Reg. § 8-407(e). Hope Sachs, Assistant Attorney General, Department of Labor (Department),<sup>1</sup> 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.<sup>2</sup>

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 – Respondent's Scope of Work, December 26, 2017;
- Clmt. Ex. 2 – Hightower Construction & Installing Co. Scope of Work, May 21, 2019;
- Clmt. Ex. 3 – "Important Notice Regarding Contingency Funds On Renovation Loans," December 26, 2017;
- Clmt. Ex. 4 – Various emails;

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<sup>1</sup> On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

<sup>2</sup> Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on March 23, 2020, COMAR 09.08.03.03A(2), and not returned as unclaimed/undeliverable. 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 – Authorization to Wire Funds, December 26, 2017.

I admitted no exhibits on the Respondent's behalf.

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 – Notice of Hearing, March 23, 2020;

Fund Ex. 2 – Hearing Order, November 18, 2019;

Fund Ex. 3 – Respondent's Licensing information;

Fund Ex. 4 – Correspondence with the Claimant's Complaint attached, June 14, 2019.

### Testimony

The Claimant testified and presented no witnesses. Neither the Fund nor the Respondent presented witnesses.

### **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 5025597.
2. On December 26, 2017, the Claimant and the Respondent entered into a contract whereby the Respondent would perform various repair work on a Maryland residence the Claimant purchased. The parties agreed the Respondent would complete the work under the contract within ninety days of the contract's date.
3. The original agreed-upon Contract price was \$29,494.00. The Claimant paid the Respondent \$14,747.00 to begin the work.
4. The Respondent began work under the contract, but did not complete it. He completed much of his work in an unworkmanlike and substandard manner.

5. The Respondent's failure to complete work under the contract, as well as the unworkmanlike manner of what work he did complete, required the Claimant to hire a second contractor to complete and repair the Respondent's work.

6. The Claimant paid the second contractor \$14,747.00 to perform the balance of the work on the residence.

7. In addition, the Claimant paid \$5,000.00 above and beyond the original contract price to acquire supplies needed to complete the agreed upon work on the residence.

### 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).<sup>3</sup> “[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.” Md. Code Ann., Bus. Reg. § 8-405(a) (2015);<sup>4</sup> *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.

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<sup>3</sup> As noted above, “COMAR” refers to the Code of Maryland Regulations.

<sup>4</sup> Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

Neither the Respondent nor the Fund presented a case. The Claimant contended that she purchased her residence in January 2018. The residence required various repairs and renovations. The Respondent received a loan<sup>5</sup> for the repairs and renovations and on December 26, 2017, entered into a contract with the Respondent for \$29,494.00. (Clmt. Ex. 1.) The contract required the Respondent to perform a variety of major work and renovations throughout the residence including, but not limited to, painting walls and ceilings, installing new outlets, switches and fixtures, replacing wood floors, replace a bathtub, toilet, bathroom flooring, remove and replace kitchen appliances and fixtures, and install new doors.

The parties agreed the Respondent would complete the work in ninety days, per the request of the institution which loaned the Claimant the funds for the repairs and renovations.<sup>6</sup> The Claimant paid the Respondent \$14,747.00 representing one half the contract price and the Respondent commenced work in early 2018. Ninety days after commencing work, the Respondent had not finished. In June 2018, the Respondent stopped working completely without completing all work under the contract.

As work progressed, the Respondent appeared less and less and stopped answering the Claimant's calls and emails. The Respondent completed work on the bathroom. However, water leaked from the bathroom to the room directly below. This required the Claimant to hire Roto Rooter to "bust a hole" in the ceiling to inspect the damage. Another contractor determined the Respondent did not cap off plumbing which caused the leak. This caused the Claimant to have the entire bathroom redone. The Respondent removed a wall in the downstairs of the residence

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<sup>5</sup> The nature of the loan the Claimant received and the timing of the transfer of title to the property are a little unclear. Notwithstanding, the Fund did not dispute that her ownership interest in the residence at the time she entered into the contract made her eligible for an award from the Fund. The source of the funds she paid to the Respondent is immaterial to my decision.

<sup>6</sup> There is no provision in the contract specifying this agreement. However, I found the Claimant's testimony that she and the Respondent agreed upon this credible.

but failed to properly install its replacement. The Respondent redid the floors of the residence but failed to make them level. The tile the Respondent put in the kitchen began to bubble. In the bedroom, the Respondent left a loose piece of wood which went up and down when she walked on it. The Claimant needed to get a Home Depot card to purchase \$5,000.00 worth of materials for the Respondent to complete work because he said he was "out of money."

The Respondent's poor workmanship and failure to complete the contracted tasks required the Claimant to hire another contractor, Hightower Construction (Hightower), to complete the tasks and repair those already completed in an unworkmanlike manner. The Claimant paid Hightower \$14,747.00 representing the balance owed on the original contract with the Respondent. Hightower fixed the floor in the bedroom. Hightower, in addition to other uncompleted work, put doors up, installed a new mailbox, cleaned up the basement and painted walls in the basement.

There is no dispute the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The only issues concern whether the Claimant met her burden as to whether the Respondent performed in an unworkmanlike manner and whether as a result she sustained a loss compensable by the Fund. For the following reasons, I find the Claimant met her burden.

While the Claimant presented no testimony expert or otherwise to substantiate her claim the Respondent performed in an unworkmanlike manner, I find the contracts reveal that to be the case. Both the Respondent's contract and the Hightower contract set forth their respective tasks in specific detail. The Hightower contract makes clear the Claimant required Hightower to repair various tasks the Respondent completed. Of the thirty-three total line items on the Hightower contract, twelve (roughly one third) concern the repair or replacement of damaged items from the

Respondent's contract. The balance appear to concern items the Respondent either wholly or partially failed to complete. I find this indicates a gargantuan failure by the Respondent to perform in a workmanlike manner.

I found the Claimant's testimony with regard to payments credible. She clearly set forth how she paid the Respondent and Hightower as well as the amounts paid. Furthermore, despite the magnitude of the Respondent's failures, the Claimant calmly presented her case in a matter of fact manner without attacking the Respondent. I found this bolstered her credibility.

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).

In closing, the Fund took the position that \$5,000.00, the amount the Claimant paid the Respondent for materials from Home Depot was the appropriate award. I agree. The Claimant paid the Respondent \$14,747.00 or one half the contract price. The Respondent failed to complete the work and whatever work he did, he performed poorly. Thus, the Claimant contracted with Hightower and paid them \$14,747.00, the balance of the contract price, to complete and fix the Respondent's work. Thus, to ultimately complete the job, the Claimant paid \$5,000.00 above and beyond the original contract price of \$29,494.00. 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 Claimant paid the Respondent and Hightower \$29,494.00 as the original contract price, plus \$5,000.00 for materials from Home Depot. Therefore I find the Claimant suffered an actual loss of \$5,000.00.<sup>7</sup> 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) (emphasis added). 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 recover her actual loss of \$5,000.00.

#### **PROPOSED CONCLUSIONS OF LAW**

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

#### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,000.00; 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

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<sup>7</sup> (\$29,494.00 + \$5,000.00) - \$29,494.00 = \$5,000.00.



under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>8</sup> and

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

September 28, 2020  
Date Decision Issued

**CONFIDENTIAL**

Nicolas Orechwa  
Administrative Law Judge

NO/dlm  
#188013

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

PROPOSED ORDER

*WHEREFORE, this 13<sup>th</sup> day of November, 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.*

*Lauren Lake*

*Lauren Lake*

*Panel B*

**MARYLAND HOME IMPROVEMENT  
COMMISSION**