

IN THE MATTER OF THE CLAIM	*	BEFORE LORRAINE E. FRASER,
OF ISRAEL SAYAG,	*	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 MONICA STANLEY,	*	
T/A TRIPLE A PAVING &	*	OAH No.: LABOR-HIC-02-20-00100
SEALCOATING,	*	MHIC No.: 19 (05) 848
RESPONDENT	*	

* * * * *

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 June 28, 2019, Israel Sayag (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 \$13,700.00 in actual losses allegedly suffered as a result of a home improvement contract with Monica Stanley, trading as Triple A Paving and Sealcoating (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.

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DECLARATION
I, the undersigned, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the County of [illegible] State of [illegible].
[illegible]
[illegible]

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(2015).² On December 20, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On November 23, 2020, I held a hearing via videoconference. Bus. Reg. § 8-407(e). Shara Hendler, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. The Respondent represented herself.

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 - Home Improvement Commission Complaint Form, dated January 2, 2019
- Clmt. Ex. 2 - Receipt for check from the Claimant payable to Steve Stanley (the Respondent's husband) in the amount of \$7,000.00, dated September 7, 2018, cashed September 10, 2018
- Clmt. Ex. 3 - Contract, dated September 3, 2018
- Clmt. Ex. 4 - Undated picture of equipment left on site in October 2018
- Clmt. Ex. 5 - Undated picture of debris left on site

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

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Clmt. Ex. 6 - Picture of unfinished driveway/parking area/carport, dated December 3, 2018

Clmt. Ex. 7 - Picture of unfinished driveway/parking area, dated December 3, 2018

Clmt. Ex. 8 - Picture of unfinished carport/driveway, dated December 3, 2018

Clmt. Ex. 9 - Picture of unfinished driveway/parking area, dated December 3, 2018

Clmt. Ex. 10 - Picture of site condition, dated December 3, 2018

Clmt. Ex. 11 - Screen shots of text message correspondence between the Claimant and the Respondent between September 9, 2018 and November 16, 2018

Clmt. Ex. 12 - Estimate by Accurate Asphalt, signed March 25, 2019

The Respondent did not offer any exhibits into evidence.

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

Fund Ex. 1 - Hearing Order, December 10, 2019

Fund Ex. 2 - Notice of Hearing, September 2, 2020

Fund Ex. 3 - Letter from MHIC to the Respondent with attached Home Improvement Claim Form, July 9, 2019

Fund Ex. 4 - The Respondent's MHIC licensing history

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

The Fund did not present any 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 01-67243.

Chapter 10 - Introduction to the study of the human mind
Chapter 11 - The biological basis of behavior
Chapter 12 - Sensation and perception
Chapter 13 - Learning
Chapter 14 - Intelligence
Chapter 15 - Developmental psychology
Chapter 16 - Personality
Chapter 17 - Social psychology
Chapter 18 - Abnormal psychology
Chapter 19 - Psychological disorders
Chapter 20 - Treatment of psychological disorders
Chapter 21 - Research methods in psychology
Chapter 22 - The scientific method
Chapter 23 - Statistics
Chapter 24 - Experimental design
Chapter 25 - Research ethics
Chapter 26 - The history of psychology
Chapter 27 - Psychology's impact on society
Chapter 28 - The future of psychology

2. At all times relevant to the subject of this hearing, the Claimant owned the property at 2105 Arcola Avenue, Silver Spring, Maryland (property).
3. On September 3, 2018, the Claimant and the Respondent executed a contract for installation of a paved asphalt driveway, parking area for four cars, and a walkway at the property (Contract).
4. The original agreed-upon Contract price was \$10,000.00.
5. On September 7, 2018, the Claimant paid the Respondent \$7,000.00.
6. The project should have taken a total of two or three days to complete.
7. On September 7 and 8, 2018, the Respondent brought equipment and gravel to the site and began work on the project by demolishing the existing driveway and preparing the site for asphalt installation. The Respondent left much of the debris in the yard.
8. The last day the Respondent performed any work on the project was September 8, 2018.
9. The Respondent left her equipment at the Claimant's property for approximately one month.
10. Between September 9, 2018 and November 16, 2018, the Claimant contacted the Respondent to find out when the Respondent would be returning to the site to remove the equipment and the debris and complete the project.
11. When the Respondent's employee returned to retrieve the equipment left at the Claimant's property, the Respondent's employee told the Claimant that the Respondent would return in the next few days to complete the job.
12. The Respondent did not return to the Claimant's property to complete the job.

13. In December of 2018, the Respondent closed operations for the winter with a projected reopening date of April 2019. The Respondent did not tell the Claimant the business was closing for the winter.

14. On March 25, 2019, the Claimant obtained an estimate from Accurate Asphalt to complete the same scope of work for the project for \$16,700.00. The estimate included removing the debris the Respondent left at the site.

DISCUSSION

Legal Framework

In this case, 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). 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) (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) ("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.

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The Positions of the Parties

The Claimant testified that he hired the Respondent on September 3, 2018 to pave the driveway and parking areas at a rental home he owned. The Claimant stated that the Respondent worked at the property on September 7 and 8, 2018. The Respondent demolished some old concrete and dumped some gravel but left most of the debris in the yard. The Claimant said he repeatedly contacted the Respondent during September, October, and November asking when the job would be completed. The Claimant explained that there were days between September 2018 and December 2018 when the site was dry enough to complete the project, but the Respondent failed to do so. The Claimant testified that in October of 2018, when the Respondent's employee came to retrieve equipment left on the site, the employee said that the Respondent would return in the next few days to complete the project but that never occurred. The Claimant denied that he was told by the Respondent that the project could not be completed because of the weather and site conditions.

The Respondent testified that, after the initial work was completed on the project on September 7-8, 2018, the project could have been finished in one or two days. She testified that she stopped work because weather conditions made the site too wet to complete the project. She explained that she was in Michigan at the time and was relying on what her husband told her. The Respondent stated that the site remained too wet to complete the project before she closed business operations for the season in December 2018. She stated that her husband or her employee were supposed to tell the Claimant that the business was closing for the winter. She said "someone" tried to call the Claimant to complete the project in March or April 2019 but the project was already complete.

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The Respondent Performed Unworkmanlike, Inadequate or Incomplete Home Improvements

The Respondent was a licensed home improvement contractor at the time she executed the Contract with the Claimant. The evidence shows that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements.

On September 3, 2018, the Claimant and the Respondent executed a Contract for a complete asphalt driveway, parking area for four cars, and a walkway for \$10,000.00. On September 7, 2018, the Claimant paid the Respondent \$7,000.00, which was \$3,000.00 more than the deposit required by the Contract. On September 7-8, 2018, the Respondent completed some demolition and preparation work for the project. After September 8, 2018, the Respondent stopped work and did not complete the project.

By the Respondent's own measure, after September 8, 2018, the project could have been completed in just one or two days. The Respondent's testimony that the project could not have been completed at any time between September and December of 2018 because of weather and site conditions is not supported by any evidence. Indeed, the Respondent's testimony indicates that she did not have first-hand knowledge of the site conditions during this timeframe but was relying on information from her husband while she was in Michigan. The Claimant testified credibly that when the Respondent's employee retrieved equipment from the site in October 2018, he told the Claimant that the Respondent would return to complete the project in a few days, indicating that it was possible to finish the project at that time. The Respondent did not return, however.

Having executed the Contract, accepted the Claimant's deposit and undertaken site construction in early September, it was entirely unreasonable for the Respondent to not complete the

project for four months and then to close operations for the winter. The Respondent's total inaction left the Claimant with no other choice but to seek out another contractor to finish the project.

The Respondent offered no evidence for her claims that she communicated timely or effectively with the Claimant. Rather, I find that the Respondent did not make any good faith efforts to resolve the claim.

Based on these facts, I conclude that the Respondent performed an unworkmanlike, inadequate, and incomplete home improvement. Thus, I find that the Claimant is eligible for compensation from the Fund.

Calculation of Compensation

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). 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 retained 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).

Here, the Claimant paid the Respondent \$7,000.00 of the original Contract price, which was \$10,000.00. The Claimant then obtained a reasonable estimate to complete the project for \$16,700.00. Thus, the Claimant's actual loss is the \$7,000.00 added to the \$16,700.00, minus the original contract price, \$10,000.00, which equals \$13,700.00.

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, \$13,700.00, is more than the \$7,000.00 paid to the Respondent. Therefore, the Claimant's recovery is limited to \$7,000.00, the amount paid to the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2015); COMAR 09.08.03.03B(4).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$13,700.00 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). I further conclude that the Claimant is entitled to recover \$7,000.00 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 \$7,000.00; 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 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.

CONFIDENTIAL

February 2, 2021
Date Decision Issued

Lorraine E. Fraser
Administrative Law Judge

LEF/kdp
#190055

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

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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***

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