IN THE MATTER OF THE CLAIM	*	**BEFORE KRYSTIN J. RICHARDSON,**
OF ROSEMARY MALECKI,	*	**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	*	
WALTER GILMORE, III,	*	**OAH No.: LABOR-HIC-02-19-40213**
T/A TAGCRETE CONCRETE, LLC,	*	**MHIC No.: 19 (05) 854**
RESPONDENT		

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STATEMENT OF THE CASE

On April 17, 2019, Rosemary Malecki (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 $2,710.00 in actual losses allegedly suffered as a result of a home improvement contract with Walter Gilmore, III, trading as Tagcrete Concrete, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through

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

8-411 (2015).[2] On December 9, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On October 5, 2020, I conducted a remote hearing via the Google Meet video conferencing platform. Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b); Bus. Reg. § 8-407(e). Andrew Brouwer, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent represented himself.

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; 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 A packet containing the following documents:
- Summary, undated
- Email from the Respondent to the Claimant, with attached estimate, dated November 9, 2017 (pp. 1-2)
- Duplicate copy of estimate, signed by the Respondent on October 11, 2018 (p. 3)
- Email from the Claimant to the Respondent, dated November 9, 2017 (p. 4)
- Email from the Claimant to the Respondent, dated November 28, 2017 (p. 5)
- Email from the Respondent to the Claimant, dated December 1, 2017 (p. 6)
- Email from the Claimant to the Respondent, dated December 2, 2017 (p. 7)
- Email from the Respondent to the Claimant, dated December 2, 2017 (p. 8)

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

- Series of emails between the Respondent and the Claimant, dated December 1, 2017 through May 25, 2018 (p. 9)
- Email from the Respondent to the Claimant, dated April 10, 2018 (unnumbered page)
- Email from the Claimant to the Respondent, dated May 25, 2018 (p. 10)
- Email from the Respondent to the Claimant, dated May 25, 2018 (p. 11)
- Email from the Claimant to the Respondent, dated May 25, 2018 (p. 12)
- Email from the Claimant to the Respondent, dated June 6, 2018 (p. 13)
- Email from the Respondent to the Claimant, dated June 6, 2018 (p. 14)
- Email from the Claimant to the Respondent, dated June 7, 2018 (p. 15)
- Email from the Claimant to the Respondent, dated September 14, 2018 (p. 16)
- Screenshots of text message threads between the Claimant and the Respondent, dated September 20, 2018 to October 10, 2018 (p. 17)
- Email from the Respondent to the Claimant, dated October 11, 2018 (p. 18)
- Screenshots of text message threads between the Claimant and the Respondent, dated October 10, 2018 through October 12, 2018 (p. 19)
- Email from the Claimant to the Respondent, dated October 15, 2018 (p. 20)
- Email from the Respondent to the Claimant, dated October 15, 2018 (p. 21)
- Screenshots of text message threads between the Claimant and the Respondent, dated October 29, 2018 through November 20, 2018 (p. 22)
- Email from the Claimant to the Respondent, dated November 15, 2018 (p. 23)
- Email from the Respondent to the Claimant, dated November 15, 2018 (unnumbered page)
- Screenshots of text message threads between the Claimant and the Respondent, dated November 20, 2018 through November 25, 2018 (p. 24)
- Email from the Respondent to the Claimant, dated November 25, 2018 (p. 25)
- Email from the Respondent to the Claimant, dated November 26, 2018 (p. 26)
- Email from the Claimant to the Respondent, dated December 3, 2018 (p. 27)
- Email from the Respondent to the Claimant, dated December 4, 2018 (p. 28)
- Email from the Claimant to the Respondent, dated December 5, 2018 (p. 29)
- Email from the Claimant to the Respondent, dated December 5, 2018 (p. 30)
- Email from the Claimant to the Respondent, dated December 5, 2018 (p. 31)
- Series of photographs, undated (pp. 32-36)
- Photograph of rendering, undated (p. 37)
- Photograph of rendering showing concrete portion only, undated (p. 38)
- Estimate from K and Kustom Contractors, undated (p. 39)

Clmt. Ex. 2 NOT ADMITTED

The Respondent did not offer any exhibits into evidence.

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

MHIC Ex. 1 Notice of remote hearing, dated August 27, 2020

MHIC Ex. 2 Hearing Order, dated December 2, 2019

MHIC Ex. 3 Letter to the Respondent from Joseph Tunney, dated April 22, 2019, with attached Claim, dated April 17, 2019

MHIC Ex. 4 Respondent's MHIC Licensure Information, dated September 4, 2020

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

The Fund did not present the testimony of 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 92522.

2. At all relevant times, the Claimant owned and resided in a home located in Arnold, Maryland.

3. On November 9, 2017, the Claimant and the Respondent entered into an oral contract (Contract) for the construction of a front porch with an overhang, landing, and sidewalk at the Claimant's residence.

4. The Contract was never reduced to writing. The Claimant was only provided with a copy of the estimate.

5. The original agreed-upon price of the Contract was $3,490.00. (*See* Clmt. Ex. 1, p. 2.)

6. In December 2017, the Claimant suffered a broken foot. Following her recovery, the Claimant contacted the Respondent between April 2018 to June 2018 in order to set a date for work to begin on the project.

7. Work began on September 20, 2018 when the Respondent sent workers to perform demolition work by pulling up the existing brick and pavers at the Claimant's residence.

[illegible]

The area was subsequently covered over with dirt and stone, and wooden boards with stakes were erected around the area. (*See* Clmt. Ex. 1, pp. 32-33.) On this same date, the Claimant sent the Respondent a picture via text message of what she wanted the finished project to look like. (*See* Clmt. Ex. 1, pp. 17 & 37.)

8. The Contract did not specify any value to be attributed to the demolition work.

9. Following the demolition work, the Claimant was no longer able to utilize the front door to her residence, but instead had to enter or exit her home using the basement door or garage door.

10. On October 11, 2018, the Claimant paid the Respondent a $1,200.00 cash deposit, one-third of the Contract price.[3] (*See* Clmt. Ex. 1, p. 3.)

11. On or about October 11, 2018, it became apparent that the Respondent had not obtained the necessary permit before starting work. The Claimant offered to apply for the permit herself if the Respondent provided her with the necessary paperwork and information. The Respondent never provided the Claimant with the paperwork or information necessary for the permit application despite the Claimant's repeated requests.[4]

12. Following the demolition work in September 2018, work on the project completely stopped. The Claimant made repeated inquiries into when work would resume on the project, which were met by the Respondent's assurances that workers would return. (*See* Clmt. Ex. 1, pp. 21-22 and 24-26.)

13. The required permit still had not been retained by November 15, 2018. As a result, the Claimant decided to forgo the construction of a front porch with an overhang, and

[3] The Claimant initially paid the one-third deposit by cashier's check on September 27, 2018. The Respondent was unable to cash the check, at which time the Claimant offered to pay him $1,200.00 by cash. The Respondent returned the cashier's check to the Claimant.

[4] A series of text message threads reveal that the Claimant requested the information for the permit on October 11, October 12, October 15, and October 31, 2018. (*See* Clmt. Ex. 1, pp. 19-20 and 22.)

instead requested that the Respondent simply complete the steps and sidewalk. (*See* Clmt. Ex. 1, p. 23.)

14. On November 27, 2018, one of the Respondent's employees, Jeff,[5] came to the Claimant's residence to discuss the changes to the home improvement work. Jeff presented the Claimant with a contract for the new work and quoted the same price as the original Contract. The Claimant declined to sign the contract because she was asking for substantially less work than what was originally agreed-upon.

15. The Respondent never returned to complete any work at the Claimant's residence.

16. After waiting a year, the Claimant retained the services of K and Kustom Contractors to construct a landing, step, and sidewalk at her residence. She paid $3,000.00 for this work.

17. On April 17, 2019, the Claimant filed a claim against the Respondent with the MHIC.

DISCUSSION

Legal Framework

The Maryland General Assembly created the Fund to provide an available pool of money from which homeowners could seek relief for losses sustained at the hands of incompetent or unscrupulous home improvement contractors. Bus. Reg. §§ 8-401 to 8-411. A homeowner is authorized to "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 statutes governing the Fund define "actual loss" as "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401.

[5] The Claimant did not know Jeff's last name.

At a hearing on the claim, 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)).

For the reasons explained below, I find that the Claimant has proven eligibility for compensation from the Fund.

Statutory Eligibility

The evidence in this case establishes there are no impediments barring the Claimant from recovering from the Fund. The home improvement work was performed on the Claimant's residence in Maryland. The Claimant is not a relative, employee, officer, or partner of the Respondent; the Claimant is not related to any of the Respondent's employees, officers, or partners. The Claimant did not reject any efforts by the Respondent to resolve the claim, as the Respondent ultimately abandoned the project and made no such efforts. The Contract between the Claimant and the Respondent does not contain an arbitration provision. The Claimant timely filed her Claim with the MHIC on April 17, 2019. Finally, the Claimant has not taken any other legal action to recover monies. Bus. Reg. §§ 8-101(g)(3)(i), 8-405(c), (d), (f), and (g), 8-408(b)(1) (2015 & Supp. 2020).

Scope of the Contract

At the outset, I note that the Contract in this case fails to comport with Business Regulation Article § 8-501, which requires home improvement contracts to be in writing, among other things. Bus. Reg. § 8-501(b)(1). This requirement is important because in the instant case

the parties dispute the scope of the Contract. The Claimant contends that the Contract included construction of a front porch with an overhang, landing, and sidewalk; the Respondent contends that a porch overhang was not part of the Contract. Because the Respondent did not reduce the Contract to writing as required by law, I credit the Claimant's testimony that a porch overhang was included within the scope of the Contract.

I further find that the scope of the original Contract – construction of a front porch with an overhang, landing, and sidewalk – did not change, as the Claimant refused to sign the new contract presented by Jeff in November 2018, which would have changed the scope of the home improvement work.

The Respondent Performed Incomplete Home Improvement

There is no dispute that the Respondent performed incomplete home improvement. Demolition work was completed on September 20, 2018 by the Respondent's workers, at which time the Claimant's existing brick and pavers were removed. The area was subsequently covered over with dirt and stone, and wooden boards with stakes were erected around the area. Following the demolition work, work stopped completely on the project, despite the Claimant's repeated efforts to engage the Respondent to return and finish the work. Accordingly, I find the Respondent abandoned the Contract.

The Contract was unspecific regarding the value to be attributed to the demolition work. However, I find any value for the demolition would be inextricably connected to the home improvement work the Respondent was to perform. There is no singular or inherent value in the demolition work performed by the Respondent because it rendered use of the Claimant's front door impractical. (*See* Clmt. Ex. 1, p. 33-34 and 36.) Thus, the Claimant is eligible to recover the amount of her actual loss from the Fund.

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.

The Amount of the Claimant's Actual Loss

As discussed above, the Respondent abandoned the Contract without doing any of the work. Accordingly, the following formula appropriately measures the Claimant's actual loss: "If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract." COMAR 09.08.03.03B(3)(a). The Claimant paid the Respondent $1,200.00 pursuant to the Contract; this is the amount of her actual loss.[6] (*See* Clmt. Ex. 1, p. 3.)

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 is less than $20,000.00. Therefore, the Claimant is entitled to recover her actual loss of $1,200.00.

[6] I note that the Claimant paid $3,000.00 to K and Kustom Contractors to construct a landing, step, and sidewalk at her residence. The Fund argued, and I agree, that the Claimant is not entitled to this amount because the scope of work performed by K and Kustom Contractors differs from the original scope of the Contract with the Respondent.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $1,200.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2020); COMAR 09.08.03.03B(3)(a). I further conclude that the Claimant is entitled to recover that amount from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $1,200.00; 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;[7] and

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

December 31, 2020
Date Decision Issued

Krystin J. Richardson
Administrative Law Judge

KJR/da
#189393

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

PROPOSED ORDER

WHEREFORE, this 17th 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