

**IN THE MATTER OF THE CLAIM
OF ROBERT MARINE,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF STEPHEN SNYDER,
T/A ALL STATE HOME
IMPROVEMENT CO., INC.,
RESPONDENT**

*** BEFORE RACHAEL BARNETT,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-21-08303
* MHIC No.: 20 (90) 165

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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 March 10, 2020, Robert Marine (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$23,735.00 in actual losses allegedly suffered as a result of a home improvement contract with Stephen Snyder, trading as All State Home Improvement Co, Inc. (Respondent). Md. Code Ann., Bus. Reg.

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§§ 8-401 through 8-411 (2015).¹ On April 13, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on May 28, 2021 using the Webex platform. Bus. Reg.

§§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B. Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself.

After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. 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. On April 15, 2021, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail to the Respondent's address on record with the OAH. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for May 28, 2021, at 9:30 a.m. on the Webex platform and provided a website and meeting number for accessing the platform. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service did not return the Notice to the OAH. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

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.

¹ 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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Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); 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 Claim Form, March 9, 2020
- Clmt. Ex. 2 - Complaint Form, July 25, 2019
- Clmt. Ex. 3 - Copies of checks, May 16, 2018, June 13, 2018, and June 29, 2018
- Clmt. Ex. 4 - Letter from Brothers Services Company with attached estimate, December 18, 2019
- Clmt. Ex. 5 - Contract, May 9, 2018
- Clmt. Ex. 6 - Text message exchange between the Claimant and the Respondent, various dates in 2019
- Clmt. Ex. 7 - Photographs of the Claimant's deck, undated

The Respondent did not offer any exhibits into evidence.

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

- Fund Ex. 1 - Notice of Remote Hearing, April 15, 2021, and attached Hearing Order, April 2, 2021
- Fund Ex. 2 - Licensure registration data for the Respondent, August 30, 2021²
- Fund Ex. 3 - Letter from the Department to the Respondent, March 13, 2020, with attached Home Improvement Claim Form, March 10, 2020

² This is the date when the license is due to expire.

Testimony

The Claimant testified and did not present other witnesses.

Neither the Respondent nor the Fund presented any testimony.

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 5401390.
2. The Claimant and his wife own a home located in Bel Air, Maryland; it is their primary residence. Prior to 2018, there was a wooden deck on the rear of the home.
3. On May 9, 2018, the Claimant and the Respondent entered into a contract to tear off and haul away an existing wood deck on the rear of the home and construct a new forty-foot by sixteen-foot open deck with steps to grade on driveway (Contract). The Contract stated that work would begin on or about June 1, 2018 and would be completed by approximately July 15, 2018.
4. The original agreed-upon Contract price was \$26,220.00.
5. On May 16, 2018, the Claimant paid the Respondent \$8,740.00.
6. On June 13, 2018, the Claimant paid the Respondent \$8,740.00.
7. On June 29, 2018, the Claimant paid the Respondent \$8,740.00.
8. The Respondent completed the deck, as specified in the Contract.
9. In August 2018, the Claimant observed warped deck boards. The warping was significant enough that a level laid across the deck revealed a visibly uneven surface.
10. In August 2018, the Claimant called the Respondent. The Respondent texted the Claimant back.

11. From August 2018 through July 2019, the Claimant and the Respondent communicated about making arrangements to have the Respondent assess and repair the deck.

12. The Respondent did not perform any repairs to the deck to address the uneven surfaces.

13. On December 18, 2019, Brothers Services Company issued the Respondent an estimate for repairing the deck (the Proposal).

14. The Proposal provided for the following work:

- a. Remove existing deck surface and dispose of it
- b. Inspect and replace as needed any warped frame boards (up to three)
- c. Furnish and install Fibercon composite deck boards with same color [border].³

15. The Proposal indicated the cost of the work would be \$23,760.00.

16. On May 19, 2021, Marc Johnson, Executive Director, AES Builder & Home Improvements (AES), an MHIC-licensed construction company, issued the Claimant a letter documenting the outcome of his inspection of the deck. The letter included the following pertinent remarks:

After my inspection of your outdoor deck, I regret to inform you that there are a few issues with the construction that are not compliant with [i]ndustry standards. The most serious issue is the structure is severely out of level from side to side. As much as [one] inch. Being out of level from back to front is standard to create a pitch to allow ample water to drain away from the house. Your deck has a "belly" in the center of more than [one] inch which I am sure is creating ponding of water. I would believe the uneven surface is a hazard for walking as well.

DISCUSSION

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

³ This word was misspelled in the Proposal.

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).

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.

The Respondent performed unworkmanlike home improvements. The Respondent completed construction of the deck in June 2018, and by August 2018, only two months later, the Claimant detected warped deck boards. The Claimant tried for nearly a year to get the Respondent to repair the deck; however, the Respondent never did so. An inspection of the deck by Mr. Johnson of AES revealed the deck was not constructed according to industry standards and that the deck curved in the middle, causing a “belly” effect that could allow water to pool or be a tripping hazard. The deck was out of level by an inch. Photographs of the deck, taken with a level laid across the decking, depict uneven decking. Considering the photographs along with the assessment by Mr. Johnson of AES, an MHIC-licensed construction company, there is credible evidence that the Respondent performed an unworkmanlike home improvement on the Claimant’s deck. I thus find that the Claimant is eligible for compensation 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.

In this case, the Respondent performed some work under the Contract, and the Claimant intends to retain other contractors 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). The Respondent completed the work and the Claimant anticipates hiring another contractor to remedy the construction defects in the deck. Thus, this formula is applicable. The Claimant paid the Respondent \$26,220.00, which must be added to the cost to repair the deck (\$23,760.00) and then subtracted from the original contract price of \$26,220.00. The result is \$23,760.00.

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 of \$23,760.00 exceeds \$20,000.00. Therefore, the Claimant's recovery is limited to \$20,000.00. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a). Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$23,760.00 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 \$20,000.00 from the Fund. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; 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;⁴ and

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

August 19, 2021
Date Decision Issued

Rachael Barnett

Rachael Barnett
Administrative Law Judge

RAB/at
#193662

⁴ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 4th day of November, 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.

Michael Newton

Michael Newton

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

