

IN THE MATTER OF THE CLAIM	* BEFORE RICHARD O'CONNOR,
OF KIMBERLY RICE,	* ADMINISTRATIVE LAW JUDGE,
CLAIMANT	* THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF ROCHELLE YOUNG,	*
T/A LEO MORGAN CONTRACTORS,	* OAH No.: LABOR-HIC-02-24-15034
LLC	* MHIC No.: 20 (75) 252
RESPONDENT	*

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On or about August 22, 2019,¹ Kimberly Rice (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC)² Guaranty Fund (Fund) for reimbursement of \$2,850.00 for actual losses allegedly suffered as a result of a home improvement contract with Rochelle Young, trading as Leo Morgan Contractors, LLC (Respondent). Md. Code Ann., Bus.

¹ The claim has a signature date of August 22, 2019; the date it was received at the MHIC is not filled in. The almost-five-year gap between filing the claim and passing a Hearing Order was unexplained.

² The MHIC is part of the Department of Labor (Department).

Reg. §§ 8-401 to -411 (2024).³ On June 3, 2024, the MHIC issued a Hearing Order on the claim and forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On October 9, 2024, I held a hearing by telephone and video. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(a), (b). Hope Sachs, Assistant Attorney General, appeared by video and represented the Fund. The Claimant appeared by video without representation. The Respondent participated by telephone without representation.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2024); 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 offered by the Claimant:⁴

- Clt. Ex. 1: Email from the Respondent to the Claimant, June 7, 2019.
- Clt. Ex. 2: Rehab Quote (Brick Steps), undated.
- Clt. Ex. 3: Rehab Quote, undated
- Clt. Ex. 4: Text messages between the Claimant and the Respondent, July 5 to July 10, 2019.
- Clt. Ex. 5: Three wire transfers to the Respondent, May 8, June 7, and July 5, 2019.

³ Unless otherwise noted, all references to the Business Regulation Article are to the 2024 Volume of the Maryland Annotated Code.

⁴ I left the record open for ten days to allow the Claimant to submit exhibits.

- Clt. Ex. 6. Text messages between the Claimant and the Respondent, July 4, 2019.
- Clt. Ex. 7. Text messages between the Claimant and the Respondent, July 30 to August 15, 2019.
- Clt. Ex. 8. Email from the MHIC to the Claimant, November 12, 2019.
- Clt. Ex. 9. Emails between the MHIC and the Respondent, November 5 and November 11, 2019.
- Clt. Ex. 10. The Respondent's licensing information with the MHIC, August 28, 2019.

The Respondent did not offer any exhibits.

I admitted into evidence the following exhibits offered by the Fund:

- Fund Ex. 1. Notice of Remote Hearing, June 25, 2024; Hearing Order, June 3, 2024
- Fund Ex. 2. Home Improvement Claim Form, August 22, 2019.
- Fund Ex. 3. The Respondent's licensing information with the MHIC, September 27, 2024.

Testimony

The Claimant testified. The Respondent and the Fund offered no 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 01-111016.
2. On June 7, 2019, the Claimant and the Respondent entered into a contract to rebuild the brick steps of the front porch of the Claimant's residence and install white vinyl railings for a contract price of \$2,200.00.
3. The contract stated that work would begin on or about June 13, 2019, and would be completed on or about June 27, 2019.
4. On June 7, 2019, the Claimant paid the Respondent \$1,500.00 as a deposit on the contract.

5. On or about June 28, 2019, the Respondent demolished the porch steps.
6. Thereafter, the Respondent did no more work on the steps.
7. From July 9, 2019, until August 6, 2019, the Claimant continued to prod the Respondent to finish the steps, and the Respondent continued to promise the Claimant that he would complete the work.
8. On August 2, 2019, the Claimant requested a refund of her deposit.
9. On August 6, 2019, the Claimant told the Respondent that she would hire another contractor to rebuild the steps.
10. The Claimant could not find a masonry contractor to rebuild the steps in brick, so she paid about \$3,500.00 to a contractor to fabricate replacement steps using Trex.
11. The Respondent did not refund any money to the Claimant.

DISCUSSION

The Claimant has the burden of proving the validity of her claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217 (2021); 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 Cnty. 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) (2024); *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.

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). For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimant's recovery.

The Respondent performed an inadequate and incomplete home improvement. The contract called for him to replace the brick front steps on the Claimant's porch for \$2,200.00. The Claimant paid the required \$1,500.00 deposit, and the Respondent demolished the existing steps on or about June 28, 2019. After that, the Respondent did no more work on the project.⁵ The Respondent told the Claimant that he would start the rebuild on July 5, 2019, but did not show up that day. By July 9, 2019, the Claimant was complaining to the Respondent that she had been without front steps for ten days and asked, "At what point does this become a priority?" Clt. Ex. 4.

The Claimant continued to exhort the Respondent to finish the job throughout July 2019. On July 30, the Respondent told her, "We'll have your steps in no later than Friday." Clt. Ex. 7. This would have been August 2, 2019, but no work had been done on the steps by that date. On or about August 2,⁶ the Respondent texted, "We will not be able to complete steps today as scheduled." Clt. Ex. 7. On August 5, 2019, the Claimant again asked the Respondent why no one was there replacing the steps.

⁵ The evidence shows that the Claimant had engaged the Respondent to perform other home improvement work on the subject property under separate contracts. Those contracts are not an issue for this decision.

⁶ The date of the text was not included, but the context indicates that it was approximately August 2, 2019.

The next day, August 6, 2019, the Claimant cancelled the contract, requested a refund of the \$1,500.00 deposit, and told the Respondent that she would find another contractor to replace the steps.

The evidence of the Claimant's further efforts to have the steps replaced is murky. The Claimant testified that she could not find a masonry contractor to rebuild the steps with brick, so she hired a contractor to replace them with Trex materials. She stated that she paid the new contractor \$3,500.00 but did not identify the contractor or produce any documentation of the contract or payment. The Home Improvement Claim Form (Fund Ex. 2), filed on August 19, 2019, also includes \$3,500.00 as the amount the Claimant paid to complete the contract.

This gap in the Claimant's evidence, could, under normal circumstances, be severely damaging to the claim. However, I note that, as stated previously, nearly five years passed after the filing of the claim before the MHIC passed the Hearing Order. This delay is entirely attributable to the MHIC, with no fault attaching to the Claimant. It is understandable, if not inevitable, that the intervening years would affect the Claimant's ability to remember relevant events and access documentary evidence. The Claimant wrote on the Home Improvement Claim Form shortly after the Respondent abandoned the job that she spent \$3,500.00 for another contractor to finish the contract. She remembered this figure at the hearing without referring to any documents to refresh her recollection. I find it reasonable and reliable and will use it to calculate a recommended award 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. MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Respondent performed some work, i.e., demolition, under the contract, and the Claimant has retained another contractor to complete 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 calculations are as follows:

\$1,500.00 paid to the Respondent; plus
+3,500.00 paid to complete the contract; equals
\$5,000.00; minus
-2,200.00 the contract price; equals
\$2,800.00 actual loss.

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.⁷ Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$2,800.00 exceeds the \$1,500.00 the Claimant paid to the Respondent. Therefore, the Claimant's recovery is limited to \$1,500.00, which is the amount paid to the Respondent.

⁷ On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$2,800.00 and a compensable loss of \$1,500.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2024); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$1,500.00 from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$1,500.00; and

ORDER that the Respondent be 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;⁸ and

ORDER that the records and publications of the Maryland Home Improvement

January 7, 2025
Date Decision Issued

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Richard O'Connor

Richard O'Connor
Administrative Law Judge

⁸ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2024); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 20th day of May, 2025, 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 Thomas

Michael Thomas

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***