IN THE MATTER OF THE CLAIM	*	**BEFORE RICHARD O'CONNOR,**
OF SVETLANA DUBOVAYA,	*	**ADMINISTRATIVE LAW JUDGE,**
CLAIMANT	*	**THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF SARKIS TUNIYEV,	*	
T/A SARKIS REMODELING,	*	**OAH No.: LABOR-HIC-02-21-19670**
RESPONDENT	*	**MHIC No.: 21 (75) 62**

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PROPOSED DECISION

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STATEMENT OF THE CASE

On November 11, 2020, Svetlana Dubovaya (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of $9,975.00 for actual losses allegedly suffered as a result of a home improvement contract with Sarkis Tuniyev, trading as Sarkis Remodeling (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015).[1] On August 2,

[1] All references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

2021, the MHIC issued a Hearing Order on the claim. On August 27, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On September 29, 2021, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Shara Hendler, Assistant Attorney General, represented the Fund. The Claimant was present and participated without representation. The Respondent did not appear for the hearing; after waiting more than fifteen minutes for the Respondent or his representative to appear, I proceeded with the hearing.

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); 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 into evidence the following exhibits offered by the Claimant:

Clt. Ex. 1. Narrative of the Claimant's complaints, undated.

Clt. Ex. 2. Contract, November 14, 2019.

Clt. Ex. 3. Copies of eight checks from the Claimant to the Respondent or to cash, November 14, 2019 to January 16, 2020.

Clt. Ex. 4. Four photographs.

Clt. Ex. 5. Home Improvement Claim Form, unsigned and undated; two estimates from Liberty Home Improvement, Inc., April 2, 2020 and September 22, 2020; estimate from Signature Hardwood Floors, Inc., November 10, 2020.

Clt. Ex. 6. Twenty photographs of the Respondent's work taken in March 2020;[2] text message from the Claimant to the Respondent, April 20, 2020.

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

GF Ex. 1. Hearing Order, August 2, 2021.

GF Ex. 2. Notice of Hearing, August 31, 2021.

GF Ex. 3. Home Improvement Claim Form, November 11, 2020; letter from the MHIC to the Respondent, December 9, 2020.

GF Ex. 4. The Respondent's MHIC licensing history, September 10, 2021.

Testimony

The Claimant testified and presented the testimony of Yelina Dubovaya, her daughter.

The Fund presented 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 01-85211.

2. On November 14, 2019, the Claimant and the Respondent entered into a contract to completely remodel two bathrooms in the Claimant's home, a master bathroom and a hall bathroom.

3. The original contract price was $16,500.00: $10,000.00 for the master bathroom and $6,500 for the hall bathroom. Changes to the contract increased the contract price to $17,600.00.

[2] The Claimant marked these in groups as 1 through 9.

4. The contract stated that work would begin on November 18, 2019 and would be completed in approximately four to five weeks.

5. Claimant paid the Respondent $15,260.00 under the contract.

6. The Respondent started work on November 18, 2019, by demolishing both bathrooms.

7. The Respondent performed work under the contract until March 30, 2020 but did not finish either bathroom.

8. The Respondent almost completed the hall bathroom but hung the shower door incorrectly, left a leaking drain in the sink, damaged a mirror during installation, installed some tile incorrectly, and did not properly finish and paint the walls. The Respondent had a piece of quartz countertop that was to be installed as a shelf but did not install it or return it to the Claimant.

9. The Respondent left the master bathroom in a state of demolition with no fixtures or furnishings installed. He put in the shower drain incorrectly and damaged it with a nail.

10. The Respondent abandoned the contract on March 31, 2020, when he did not return to install the quartz shelf.

11. The Claimant telephoned and texted the Respondent many times to try to have him return to finish the job or return the money paid for the master bathroom, but the Respondent did not reply in any way, never returned, and did not refund any money.

12. Ceilings and hardwood floors in the home were damaged by leaks the Respondent caused. The Respondent also damaged the hardwood floor in the master bedroom when moving equipment.

13. The Claimant has received an estimate of $6,200.00 from Liberty Home Improvement, Inc. (Liberty) to repair the Respondent's faulty work in the hall bathroom and complete the master bathroom as called for in the contract.

14. The Claimant has received an estimate of $1,500.00 from Liberty to repair the Respondent's tile work in the hall bathroom, and $1,200.00 to repair the ceiling damaged by the leaks the Respondent caused.

15. The Claimant has received an estimate of $2,350.00 from Signature Hardwood Floors, Inc. (Signature) to refinish the floors damaged by leaks the Respondent caused.

16. The Claimant has received an estimate of $1,165.00 from Signature to refinish the damaged floor in the master bedroom.

DISCUSSION

The Respondent's Failure to Appear

Section 8-312 of the Business Regulation Article, entitled "Hearings," states, in pertinent part, as follows:

> (a) Except as otherwise provided in § 10-226 of the State Government Article, before the Commission takes any final action under § 8-311 of this subtitle, or if requested under § 8-620(c) of this title, it shall give the person against whom the action is contemplated an opportunity for a hearing before the Commission or, as provided under § 8-313 of this subtitle, a hearing board.
>
> (b) The Commission shall give notice and hold the hearing in accordance with Title 10, Subtitle 2 of the State Government Article.
>
> . . .
>
> (d) The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission.
>
> . . .
>
> (h) If, after due notice, the person against whom the action is contemplated does not appear, nevertheless the Commission may hear and determine the matter.

Bus. Reg. § 8-312.

Although the above statute applies to disciplinary proceedings against licensees, the MHIC uses the same procedures for hearings involving claims against the Fund, such as this case. *Id.* § 8-407(a). These procedures ensure, as much as possible, that a contractor against whom a claim is filed is made aware of the date, time, and place of the hearing.

The notices of hearing in this case went to the Respondent's address of record with the MHIC on August 31, 2021, by certified mail and by first-class mail. Neither notice was returned undelivered. I concluded that the OAH provided "due notice" to the Respondent under Business Regulation section 8-312(h), above, and held the hearing in the Respondent's absence. The OAH's Rules of Procedure permit 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.

The Merits of 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 (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 Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

A homeowner 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. 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 and performed work under the contract. The Fund's licensing history (GF Ex. 4) shows that the Respondent has been continuously licensed since 2003 and that his current license expires on May 27, 2023.

The evidence overwhelmingly proves that the Respondent performed unworkmanlike, inadequate, and incomplete home improvements. The Claimant's photographs (Clt. Ex. 4 and 6) are particularly damning. Taken at the time the Respondent abandoned the contract, they show the master bathroom completely gutted, with no plumbing, fixtures, furnishings, or tile installed, and the Respondent's equipment and materials lying around. The Respondent also punctured a drain that he installed with a nail. Photographs of the hall bathroom depict the shower door hung out of plumb, a damaged j-channel for a mirror, a leaking drain under the sink, and a hole in the linen closet where the quartz shelf should have been installed.

Other photographs show damage to hardwood floors that the Respondent caused during the course of the work. He hid the damage with a cloth and the Claimant did not discover it until after the Respondent abandoned the project.

The Claimant testified credibly that she tried many times to contact the Respondent by telephone calls and by text messages to have him return to finish the job or refund some of her money. She provided one text message from April 20, 2020, asking for the quartz shelf to be returned and for the Respondent to pick up the materials he left behind. The Respondent did not reply in any way, never returned, and refunded no money. The Claimant heard nothing from him after March 30, 2020.

The leaking sink in the hall bathroom caused damage to ceilings and hardwood floors on the lower level of the home. The Claimant also documented this damage in her photographs.

The Claimant's testimony about the steps she has taken to remedy the Respondent's poor work and complete the contract was slightly unclear. She presented estimates from Liberty and Signature, but no invoices showing that any work has actually been done. She testified that she "cleaned up" but did not mention any remedial work being performed. I shall assume that the bathrooms are in the same state today as they were when the Respondent left.

The Claimant did not present any testimony, expert or otherwise, about the appropriateness of the estimates from Liberty and Signature. Nevertheless, they appear reasonable, and I shall accept them as written. Clearly, the master bathroom needs to be finished and the faulty work in the hall bathroom must be repaired.

I thus find that the Claimant is eligible for compensation from the Fund. Next, I must determine the amount of the Claimant's actual loss and the amount, if any, that she 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 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 Claimant is seeking to include repairing the damage caused by leaks to her ceilings and flooring in the claim. However, this damage is consequential – that is, it was caused by the Respondent's inadequate work but was not part of that work. Under section 8-405(e)(3) of the Business Regulation Article and COMAR 09.08.03.03B(1), such damage is not covered. In contrast, the Respondent damaged the floor in the master bedroom during the course of his work under the contract, so that is not consequential damage and may be reimbursed from the Fund. Therefore, under COMAR 09.08.03.03B(3)(c) the calculation of the Claimant's actual loss is as follows:

$15,260.00 paid to the Respondent under the contract; plus
+7,700.00 estimate from Liberty to repair poor work and finish the contract;[3] plus
+1,165.00 estimate from Signature to repair the floor the Respondent damaged;[4] equals
$24,125.00 minus
-17,600.00 the contract price; equals
$6,525.00 actual loss.

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 the amount paid to the Respondent and less than $20,000.00. Therefore, the Claimant is entitled to recover her actual loss of $6,525.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $6,525.00 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 $6,525.00 from the Fund.

[3] This amount excludes the $1,200.00 estimate to repair the ceilings.
[4] This amount excludes the $2,350.00 estimate to repair the flooring damaged by leaks.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $6,525.00; 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;[5] and

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

Richard O'Connor

December 23, 20021
Date Decision Issued

Richard O'Connor
Administrative Law Judge

ROC/emh
#195755

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

PROPOSED ORDER

WHEREFORE, this 13th day of April, 2022, 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