

IN THE MATTER OF
THE CLAIM OF
DANIELLE DAYTON,
CLAIMANT,
AGAINST THE HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS
OR OMISSIONS OF
KEVIN CARL REDDING,
TRADING AS KEVIN REDDING,
RESPONDENT

* BEFORE ROBERT F. BARRY,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-23-25562
* MHIC FILE No.: 21 (75) 851
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PROPOSED DECISION

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

On July 18, 2023, Danielle Dayton (Claimant) filed a claim with the Maryland Home Improvement Commission (Commission) against the Home Improvement Guaranty Fund (Guaranty Fund or FUND) for compensation for an actual loss allegedly suffered as a result of a

home improvement contract with Kevin Carl Redding, trading as Kevin Redding¹ (Respondent).
Bus. Reg. §§ 8-405(a), 8-406 (2015 & Supp. 2023).²

On September 28, 2023, the Commission issued a Hearing Order. On September 29, 2023, the Commission transmitted the case to the Office of Administrative Hearings (OAH).
Bus. Reg. § 8-407(c)(2)(i).

On February 8, 2024, I held a hearing at the OAH in Hunt Valley, Maryland.³ *Id.* The Claimant represented herself. The Respondent, who appeared via videoconference, represented himself. Hope Sachs, Assistant Attorney General, Department of Labor (Department), represented the Guaranty Fund.

The contested-case provisions of the Administrative Procedure Act; the Department's and the Commission'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 (2021 & Supp. 2023); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 09.08.02.01B; and COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss arising from the Respondent's incomplete performance of a home improvement contract?
2. If so, what, if any, compensation may the Claimant recover from the Guaranty Fund?

¹ The Claimant filed her claim against the Respondent and Kevin Redding & Associates, LLC, the name the Respondent was trading as when he worked on the Claimant's home. The Respondent changed the business name to Kevin Redding, effective December 10, 2022.

² All references to section 8-405 of the Business Regulation Article are to the 2023 Supplement. All other references to the Business Regulation Article are to the 2015 Replacement Volume.

³ At the Respondent's request, I postponed a hearing scheduled for November 27, 2023, to allow the Respondent to appear via videoconference and for the parties to exchange documents.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted eleven exhibits into evidence for the Claimant:

CLAIM. #1 - Proposed Estimate For Work (Home Improvement Contract), July 4, 2020, with Facebook thumbnail photographs of screened-in deck before and during construction

CLAIM. #2 - Proof of Payments to the Respondent:

- July 4, 2020 - \$3,500.00
- July 5, 2020 - \$3,500.00
- July 21, 2020 - \$3,600.00
- August 3, 2020 - \$2,000.00

CLAIM. #3 - Complaint to the Commission, with Summary and Claim Form

CLAIM. #4 - Respondent's Response to Complaint

CLAIM. #5 - Text messages between the Claimant and the Respondent, July 23, 27, and 28, 2020

CLAIM. #6 - Text messages between the Claimant and the Respondent, August 13-19, and 27, 2020

CLAIM. #7 - Text messages between the Claimant and the Respondent's wife, August 12, 2020

CLAIM. #8 - Text messages between the Claimant, the Respondent, and the Respondent's wife, August 15, 25, 26, 28, and 29, 2020

CLAIM. #9 - Photographs of the Respondent's work, taken in September 2020

CLAIM. #10 - Proposal, Brian K. Lauer, Inc., with proof of payment, October 22, 2020

CLAIM. #11 - Proposal, Clearview Home Remodeling, August 31, 2021, with proof of payment, November 5, 2021

I admitted fourteen exhibits for the Respondent:

- RESP. #1 - Photograph of interior wall of basement after removal of drywall
- RESP. #2 - Photograph of screened-in deck before home improvement contract (overall exterior view)
- RESP. #3 - Photograph of screened-in deck before home improvement contract (exterior side view)
- RESP. #4 - Photograph of screened-in deck before home improvement contract (interior view)
- RESP. #5 - Photograph of screened-in deck during demolition
- RESP. #6 - Photograph of screened-in deck during demolition
- RESP. #7 - Photograph of screened-in deck during demolition
- RESP. #8 - Photograph of screened-in deck during construction
- RESP. #9 - Photograph of screened-in deck framing during construction
- RESP. #10 - Photograph of screened-in deck framing during construction
- RESP. #11 - Photograph of screened-in deck framing during construction
- RESP. #12 - Photograph of basement wall before home improvement contract
- RESP. #13 - Photograph of basement wall during construction
- RESP. #14 - Photograph of basement ceiling with recessed lighting

I admitted three exhibits into evidence for the Guaranty Fund:

- FUND #1 - Notice of Hearing, issued October 27, 2023, with Hearing Order, September 28, 2023;
Notice of Rescheduled Hearing, issued December 8, 2023
- FUND #2 - Commission Licensing History for the Respondent, November 14, 2023
- FUND #3 - Letter from the Commission to the Respondent, July 21, 2023, with Claim Form, July 18, 2023

Testimony

The Claimant and the Respondent testified.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Commission has licensed the Respondent as an individual home improvement contractor and salesman under registration number 01-116298 since November 27, 2018. The Respondent's current license expires November 27, 2024.
2. Before December 10, 2022, the Respondent traded as Kevin Redding Associates, LLC. He now trades as Kevin Redding.
3. The Claimant owns a home in Baltimore County.
4. On July 4, 2020, the Claimant and the Respondent signed a home improvement contract whereby the Respondent agreed to remove and replace a screened-in deck (with soffit, gutters, and downspouts), provide fill dirt under the deck, and remove and replace a wall, carpet, and screen door in the Claimant's basement for \$11,000.00. The contract indicated that the Respondent would complete the work by July 24, 2020.
5. On or about July 16, 2020, the Claimant and the Respondent agreed that the Respondent would install ceiling tiles and recessed lighting and vinyl flooring (instead of carpet) in the Claimant's basement for \$1,600.00.
6. Between July 4, 2020, and August 3, 2020, the Claimant paid the Respondent the total contract price of \$12,600.00.
7. Between July 7, 2020, and August 28, 2020, the Respondent performed some of the work on the home improvement contract.

8. In late July or early August 2020, the Respondent asked the Claimant for \$500.00 more to complete the work in the contract.

9. On August 29, 2020, the Respondent and his wife indicated that the Respondent would not complete work on the contract. The Respondent did not refund any money to the Claimant.

10. When the Respondent stopped work on the home improvement, he had not completed the railing, steps, screening, lattice, door, soffit, gutters, or downspouts for the screened-in deck.

11. On October 22, 2020, the Claimant received a proposal from Brian K. Lauer, Inc., a home improvement contractor licensed by the Commission, to complete the work in the home improvement contract for \$7,670.00.

12. Mr. Lauer performed some of the work to complete the contract by installing treads, risers, and handrails for the deck's staircase; installing handrail on the deck; installing framing on the deck for screening; and reworking the basement door opening for proper installation of the door.

13. The Claimant paid Mr. Lauer \$2,400.00.

14. On August 31, 2021, the Claimant accepted a proposal from Clearview Home and Remodeling, a home improvement contractor licensed by the Commission, to complete the screened-in deck for \$5,380.00.

15. Clearview Home and Remodeling installed deck screening, lattice and a door under the deck, and gutters, downspout, and drip edge.

16. The Claimant paid Clearview \$5,380.00.

DISCUSSION

Guaranty Fund Claim

A homeowner “may recover compensation from the Guaranty Fund for an actual loss that results from an act or omission by a licensed contractor.” Bus. Reg. § 8-405(a). An “actual loss” means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” *Id.* § 8-401. The Commission may not award from the Guaranty Fund an amount for consequential damages, *id.* § 8-405(e)(3), which are losses that result indirectly from any unworkmanlike, inadequate, or incomplete home improvement. The Commission may deny a claim if it finds that “the claimant unreasonably rejected good-faith efforts by the contractor to resolve the claim.” *Id.* § 8-405(d).

A claimant has the burden of proof at a Guaranty Fund hearing. *Id.* § 8-407(e)(1). In the circumstances presented here, the Claimant has the burden to establish that: (1) the Respondent performed an incomplete home improvement; and (2) the Claimant had an actual loss due to the costs of completing the home improvement.⁴

Incomplete Home Improvement

The Claimant presented overwhelming proof that the Respondent performed an incomplete home improvement. The Guaranty Fund agreed that the Claimant was entitled to compensation for the Respondent’s incomplete work.

On July 4, 2020, the Claimant and the Respondent signed a home improvement contract whereby the Respondent agreed to remove and replace a screened-in deck (with soffit, gutters, and downspouts), provide fill dirt under the deck, and remove and replace a wall, carpet, and screen door in the Claimant’s basement for \$11,000.00.

⁴ There was no issue of good-faith efforts to resolve the claim generated by the evidence. The Respondent conceded that he abandoned the home improvement contract in late August 2020.

The contract indicated that the Respondent would complete the contract by July 24, 2020. On or about July 16, 2020, the Claimant and the Respondent agreed that the Respondent would install ceiling tiles and recessed lighting and vinyl flooring (instead of carpet) in the Claimant's basement for \$1,600.00. Between July 4, 2020, and August 3, 2020, the Claimant paid the Respondent the total contract price of \$12,600.00.

Between July 7, 2020, and August 28, 2020, more than a month after the projected date of completion, the Respondent performed some of the work on the home improvement contract. When the Respondent stopped work on the home improvement, he had not completed the railing, steps, screening, lattice, door, soffit, gutters, or downspouts for the screened-in deck. On August 29, 2020, the Respondent, and his wife, who had also communicated with the Claimant, indicated that the Respondent would not complete work on the contract. In a text message, the Respondent whined about the Claimant's "constant nagging and nitpicking" (CLAIM #8), which seems unwarranted under circumstances where the Claimant had paid the full contract price for work that remained unfinished. The Respondent did not refund any money to the Claimant.

During the hearing, the Respondent continued to shirk any responsibility for failing to complete work on the home improvement contract. He suggested that he underbid the contract simply to keep busy during the early days of the COVID-19 pandemic and to be able to post photographs on Facebook as marketing. He also testified, inconsistently with his own photographs, that the work was almost complete. The Respondent essentially portrayed himself as a victim in a case where he acted unprofessionally. The very straightforward evidence is that the Respondent collected the full contract price, left the job incomplete, and made no effort to mitigate the harm he caused to the Claimant.

Actual loss due to the costs of restoration, repair, or replacement

The Claimant paid a total of \$7,780.00 to complete the work in the home improvement contract. Brian K. Lauer, Inc., a home improvement contractor licensed by the Commission, performed some of the work to complete the contract by installing treads, risers, and handrails for the deck's staircase; installing handrail on the deck; installing framing on the deck for screening; and reworking the basement door opening for proper installation of the door. The Claimant paid Mr. Lauer \$2,400.00. Clearview Home and Remodeling, a home improvement contractor licensed by the Commission, completed the screened-in deck by installing screening, lattice and a door under the deck, and gutters, downspout, and drip edge. The Claimant paid Clearview \$5,380.00.

COMAR 09.08.03.03B, which governs the calculation of awards from the Guaranty Fund, provides, in pertinent part, as follows:

B. Measure of Awards from Guaranty Fund.

...

(2) The Fund may only compensate claimants for actual losses they incurred as a result of misconduct by a licensed contractor.

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

(a) 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.

(b) If the contractor did work according and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant has paid to the original contractor less the value of any materials or services provided by the contractor.

(c) 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.

(4) The Commission may not award from the Fund an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed.

I am recommending an award under COMAR 09.08.03.03B(3)(c). The calculation under B(3)(c) is as follows:

Amount Paid to the Respondent -	\$12,600.00
Plus	
Amount paid by the Claimant to repair -	<u>\$7,780.00</u>
Subtotal -	\$20,380.00
Less	
Amount of contract -	<u>\$12,600.00</u>
Claim	\$7,780.00

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude:

(1) the Claimant suffered an actual loss as a result of the Respondent's acts and omissions, specifically, his incomplete performance of the home improvement contract. Md. Code Ann., Bus. Reg. § 8-401;

(2) the Claimant is entitled to recover an award of \$7,780.00 from the Guaranty Fund. Md. Code Ann., Bus. Reg. § 8-405(a); COMAR 09.08.03.03B(3).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Claimant be awarded \$7,780.00 from the Home Improvement Guaranty Fund; and

ORDER that the Respondent remain ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Home Improvement Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, Md. Code Ann., Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a); and

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

April 16, 2024
Date Decision Issued

Robert F. Barry

Robert F. Barry
Administrative Law Judge

RFB/sh
#210093

PROPOSED ORDER

WHEREFORE, this 21st day of June, 2024, 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.

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Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***