

IN THE MATTER OF THE
CLAIM OF
TIM AND DENISE MILLER,

CLAIMANTS,
AGAINST THE HOME
IMPROVEMENT GUARANTY FUND

FOR THE ALLEGED ACTS
OR OMISSIONS OF
RANDY INGRAM,
TRADING AS INGRAM SERVICES,

RESPONDENT

* BEFORE ROBERT F. BARRY,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS

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* OAH No.: LABOR-HIC-02-24-13769

* MHIC FILE No.: 23 (75) 933

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES

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PROPOSED FINDINGS OF FACT
DISCUSSION

PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On August 28, 2023, Tim and Denise Miller (Claimants) 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 the result of a home improvement contract with Randy Ingram, trading as Ingram Services (Respondent). Md. Code Ann., Bus. Reg. § 8-405(a) (2024).¹

¹ All references to the Business Regulation Article are to the 2024 Replacement Volume.

On May 15, 2024, the Commission issued a Hearing Order and transmitted this case to the Office of Administrative Hearings (OAH). Bus. Reg. § 8-407(c)(2)(i).

On October 3, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. *Id.* Ms. Miller represented the Claimants, both of whom were present. The Respondent did not appear for the hearing. Ernie Dominguez, 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. 2024); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 09.08.02.01B; and COMAR 28.02.01.

ISSUES

1. Did the Claimants 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 Claimants recover from the Guaranty Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted nine exhibits into evidence for the Claimants:²

CLAIM. #1 - Home Improvement Contract between the Claimants and the Respondent, March 18, 2022

CLAIM. #2 - Canceled check payable to the Respondent, March 21, 2022

CLAIM. #3 - Text messages between the Claimants and the Respondent, March 12, 2022, through November 8, 2022

² I renumbered the Claimants' exhibits after the hearing for clarity.

CLAIM. #4 - Photographs of the Claimants' deck:

A - October 19, 2022 (four photographs)

B - January 4, 2023 (three photographs)

C - January 12, 2023 (nine photographs)

D - April 2023 (three photographs)

E - Undated, Finished Deck (six photographs)

**CLAIM #5 - A - Agreement between the Claimants and Remodeling, M.D,
January 5, 2023**

B - Canceled checks payable to Remodeling, M.D.:

January 5, 2023 - \$1,664.00

April 6, 2203 - \$3,329.00

C - Canceled check payable to Mark Molander:

May 5, 2023 - \$6,076.37

CLAIM. #6 - Receipts from The Home Depot and Lowe's Home Centers:

The Home Depot (\$1,539.84):

April 6, 2023 - \$400.47

April 8, 2023 - \$419.28

April 10, 2023 - \$79.23

April 16, 2023 - \$187.60

April 22, 2023 - \$59.18

April 29, 2023 - \$56.65

April 29, 2023 - \$235.00

May 4, 2023 - \$102.43

Lowe's Home Centers (\$2,876.91):

November 30, 2022 - \$2,258.36

March 17, 2023 - \$348.64

April 29, 2023 - \$74.08

May 1, 2023 - \$19.72

May 4, 2023 - \$176.11

CLAIM. #7 - Receipts from 84 Lumber Company (\$1,172.72):

March 17, 2023 - \$1,047.89

April 14, 2023 - \$124.83

CLAIM. #8 - Receipts from LL Flooring (\$1,547.44):

February 21, 2023 - \$500.00

March 29, 2023 - \$1,047.44

CLAIM. #9 - Canceled check payable to Jennifer Miller:

April 14, 2023 - \$1,204.06³

The Respondent did not appear for the hearing.

I admitted five exhibits into evidence for the Guaranty Fund:

FUND #1 - Notice of Hearing, issued June 17, 2024

FUND #2 - Hearing Order, May 15, 2024

FUND #3 - Home Improvement Claim Form, August 28, 2023

FUND #4 - Commission Licensing History for the Respondent, October 4, 2024

FUND #5 - Commission Licensing History for Remodeling, M.D., October 4, 2024

³ According to the Claimants, the \$1,204.06 included \$1,000.00 as payment to Mark Molander for labor and \$204.06 to reimburse Ms. Miller for the April 14, 2023 purchase at 84 Lumber Company (\$124.83) and the April 10, 2023 purchase at The Home Depot (\$79.23).

Testimony

Ms. Miller testified for the Claimants.

PROPOSED FINDINGS OF FACT

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

1. The Commission has licensed the Respondent, who trades as Ingram Services, as an individual home improvement contractor and salesman under registration number 01-142521 almost continuously since June 7, 2021. The Respondent's current license expires June 7, 2025.
2. The Claimants own a home on Flintlock Drive in Bel Air in Harford County.
3. On March 18, 2022, the Claimants and the Respondent signed a home improvement contract whereby the Respondent agreed to renovate the Claimants' screened-in deck for \$19,575.00. The contract required a deposit of \$6,525.00, a second payment of \$6,525.00 when work started, and a third payment of \$6,525.00 when work was completed.
4. The Respondent agreed to begin work on the Claimants' deck between May 13 and June 2, 2022.
5. The scope of work included installation of thirteen Eze-Breeze windows and two Eze-Breeze storm doors, installation of beadboard on interior hip walls, installation of insulation, removal of deck boards, installation of OSB [oriented strand board] tongue-and-groove floor, installation of tongue-and-groove vinyl floor over the OSB floor, and reinstallation of handrails.
6. On March 21, 2022, the Claimants paid the Respondent a deposit of \$6,525.00.
7. In late May 2022, the Claimants and the Respondent exchanged text messages concerning delivery of the Eze-Breeze windows and doors, with the Respondent asserting that there was a delay in receiving the materials.
8. On May 29, 2022, the Claimants asked the Respondent to hold off work on the deck until September due to an issue with the Claimants' pool that required repairs.

9. Between July 2022 and early September 2022, the Claimants asked the Respondent about the availability of the Eze-Breeze windows and doors.
10. On September 11, 2022, the Respondent indicated that he planned to start on the Claimants' deck around September 28, 2022.
11. On September 12, 2022, the Respondent indicated that he had to pick the Eze-Breeze windows and doors up at a shipping depot.
12. On October 4, 2022, the Respondent started work on the Claimants' deck by removing the existing screens and deck railing. The Respondent did not ask for the second payment.
13. By October 19, 2022, the Respondent had installed the OSB flooring, insulation, beadboard, and two railings.
14. Much of the Respondent's work was inadequate and unworkmanlike: flooring nails were not driven into framing, flooring was cut unevenly, beadboard was cut unevenly, and excessive insulation caused the beadboard to bow.
15. On October 19, 2022, the Claimants told the Respondent that they wanted the job completed by the end of the month.
16. On October 27, 2022, in his last text to the Claimants, the Respondent indicated that his crew was working on a different job.
17. The Claimants texted the Respondent on November 1 and 2, 2022, without a response.
18. On November 8, 2022, the Claimants texted the Respondent: "You are fired! Do not come to my home!!" (CLAIM. #4)

19. On January 5, 2023, the Claimants and Remodeling, M.D., a company licensed by the Commission as a home improvement contractor, signed an agreement whereby Remodeling, M.D., agreed to provide eight windows for \$4,993.00. (The Claimants opted not to use Eze-Breeze windows and doors, which the Respondent apparently never ordered.)

20. The Claimants paid Mark Molander, acting under Remodeling M.D.'s home improvement license, \$6,076.37 to complete the deck. (According to the Claimants, Mr. Molander was able to use some of the OSB flooring installed by the Respondent.)

21. The Claimants paid Mr. Molander's wife, Jennifer Miller, \$1,204.06 (\$204.06 to reimburse her for materials and \$1,000.00 due to Mr. Molander for labor).

22. The Claimants purchased (or had Mr. Molander purchase on their behalf) materials to complete the deck from The Home Depot, Lowe's Home Centers, 84 Lumber Company, and LL Flooring:

| | |
|-----------------------|------------|
| The Home Depot - | \$1,539.84 |
| Lowe's Home Centers - | \$2,876.91 |
| 84 Lumber Company - | \$1,172.72 |
| LL Flooring - | \$1,547.44 |

23. On June 17, 2024, the OAH sent a Notice of Hearing to the Respondent by first-class and certified mail to his address of record in Street, Maryland.

24. On June 24, 2024, the United States Postal Service (USPS) returned to the OAH a signed receipt of certified mail delivery to the Respondent on June 20, 2024.

25. The USPS did not return to the OAH as undeliverable the first-class mailing to the Respondent.

DISCUSSION

The Respondent's Notice of Hearing

The procedures for notice and hearings for disciplinary actions against home improvement contractors also apply to proceedings to recover compensation from the Guaranty Fund. Bus. Reg. § 8-407(a). Section 8-312(a) of the Business Regulation Article requires the Commission to give the person against whom disciplinary action is contemplated an opportunity for a hearing. The Commission is required to send a hearing notice to the person against whom disciplinary action is contemplated at least ten days before the hearing by certified mail to the business address on record with the Commission. Bus. Reg. § 8-312(d). If, after due notice, the person against whom disciplinary action is contemplated does not appear, the Commission (or by delegation, the OAH) “may hear and determine the matter.” *Id.* § 8-312(h).

On June 17, 2024, the OAH sent a Notice of Hearing to the Respondent by first-class and certified mail to his address of record in Street, Maryland. On June 24, 2024, the USPS returned to the OAH a signed receipt of certified mail delivery to the Respondent on June 20, 2024. The USPS did not return to the OAH as undeliverable the first-class mailing to the Respondent. I am satisfied that the Respondent had actual notice of the hearing and decided not to appear. It is appropriate for me to determine the merits of this claim against the Guaranty Fund even in the Respondent's absence.

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 Claimants have the burden to establish that: (1) the Respondent performed an unworkmanlike and incomplete home improvement; and (2) the Claimants had an actual loss due to the costs of completing or repairing the home improvement.⁴ As explained below, I find that the Claimants, with the concurrence of the Guaranty Fund, established beyond any doubt that the Respondent performed an unworkmanlike and incomplete home improvement and the Claimants are entitled to compensation.

On March 18, 2022, the Claimants and the Respondent signed a home improvement contract whereby the Respondent agreed to renovate the Claimants’ screened-in deck for \$19,575.00. The Claimants paid the Respondent a deposit of \$6,525.00, which was the only payment the Claimants made to the Respondent. The scope of work included installation of thirteen Eze-Breeze windows and two Eze-Breeze storm doors, installation of beadboard on interior hip walls, installation of insulation, removal of deck boards, installation of OSB tongue-and-groove floor, installation of tongue-and-groove vinyl floor over the OSB floor, and reinstallation of handrails. After the Claimants asked the Respondent to hold off work on the deck until September due to an issue with the Claimants’ pool, the Respondent started work on the Claimants’ deck on October 4, 2022, by removing the existing screens and deck railing.

⁴ There was no issue of good-faith efforts to resolve the claim generated by the evidence.

By October 19, 2022, the Respondent had installed the OSB flooring, insulation, beadboard, and two railings.

Much of the Respondent's work was inadequate and unworkmanlike: flooring nails were not driven into framing, flooring was cut unevenly, beadboard was cut unevenly, and excessive insulation caused the beadboard to bow. The Claimants told the Respondent that they wanted the job completed by the end of the month. On October 27, 2022, in his last text to the Claimants, the Respondent indicated that his crew was working on a different job. The Claimants texted the Respondent on November 1 and 2, 2022, without a response. On November 8, 2022, the Claimants texted the Respondent: "You are fired! Do not come to my home!!" (CLAIM. #4)

On January 5, 2023, the Claimants and Remodeling, M.D., a company licensed by the Commission as a home improvement contractor, signed an agreement whereby Remodeling, M.D., agreed to provide eight windows for \$4,993.00. The Claimants paid Mark Molander, acting under Remodeling M.D.'s home improvement license, \$6,076.37 to complete the deck. The Claimants paid Mr. Molander's wife, Jennifer Miller, \$1,204.06 (\$204.06 to reimburse her for materials and \$1,000.00 due to Mr. Molander for labor). The Claimants purchased (or had Mr. Molander purchase on their behalf) materials to complete the deck from The Home Depot, Lowe's Home Centers, 84 Lumber Company, and LL Flooring.

The Claimants paid a total of \$19,206.28 to complete the deck:

| | |
|--------------------|-------------------------|
| Remodeling, M.D. - | \$4,993.00 |
| Mark Molander - | \$6,076.37 |
| Jennifer Miller - | \$1,000.00 ⁵ |
| The Home Depot - | \$1,539.84 |

⁵ I subtracted the \$204.06 for materials because that amount was accounted for in the receipts from The Home Depot and 84 Lumber Company.

| | |
|-----------------------|------------|
| Lowe's Home Centers - | \$2,876.91 |
| 84 Lumber Company - | \$1,172.72 |
| LL Flooring - | \$1,547.44 |

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

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:

...

(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 recommend an award under COMAR 09.08.03.03B(3)(c). The calculation of the Claimants' actual loss is as follows:

| | |
|--|--------------------|
| Amount Paid to the Respondent - | \$6,525.00 |
| Plus | |
| Amount paid by the Claimants to complete - | <u>\$19,206.28</u> |
| Subtotal - | \$25,731.34 |
| Less | |
| Amount of contract - | <u>\$19,575.00</u> |
| Actual Loss - | \$6,156.28 |

PROPOSED CONCLUSIONS OF LAW

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

(1) the Claimants suffered an actual loss of \$6,156.28 as a result of the Respondent's acts and omissions, specifically, the unworkmanlike and incomplete performance of the home improvement contract. Bus. Reg. § 8-401;

(2) the Claimants are entitled to recover an award of \$6,156.28 from the Guaranty Fund for the Respondent's unworkmanlike and incomplete performance of the home improvement contract. Bus. Reg. § 8-405(a); COMAR 09.08.03.03B(3).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Claimants be awarded \$6,156.28 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.

December 31, 2024
Date Decision Issued

RFB/sh
#215335

Robert F. Barry

Robert F. Barry
Administrative Law Judge

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**