

IN THE MATTER OF THE CLAIM	* BEFORE NANCY E. PAIGE,
OF GERTRUDE A. SAVOY,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH No.: DLR-HIC-02-14-02360
FOR THE ALLEGED ACTS OR	* MHIC No.: 12 (75) 1211
OMISSIONS OF	*
THURIEL GILMORE,	*
T/A GILMORE & SONS, INC.,	*
RESPONDENT	*

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSION OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On March 7, 2013, Gertrude A. Savoy (Claimant) filed a claim (Complaint) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$7,324.75 in alleged actual losses suffered as a result of a home improvement contract with Thuriel Gilmore, T/A Gilmore & Sons, Inc. (Respondent).

I held a hearing on June 2, 2014 at the Largo Government Center, 9201 Basil Court, Largo, Maryland. Md. Code Ann., Bus. Reg. § 8-312 (Supp. 2013) and § 8-407 (2010). Jessica B. Kaufman, Assistant Attorney General, Department of Labor, Licensing and Regulation

(Department), represented the Fund. The Claimant represented herself. The Respondent failed to appear after proper notice.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2013), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 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 that loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

- Cl. #1. September 16, 2010 Contract between Respondent and Claimant
- Cl. #2. September 16, 2010 check for \$8011.75 from Claimant to Respondent
- Cl. #3. A-F. Photographs
- Cl. #4. August 19, 23, 2010 emails between Claimant and Respondent
- Cl. #5. November 4, 2010 emails between Claimant and Respondent
- Cl. #6. April 7, 2011, Defendant Trial Summary, *State v. Gilmore & Sons, Inc.*, District Ct., Prince George's County
- Cl. #7. January 3, 2011- June 23, 2011 correspondence between Claimant and Respondent
- Cl. #8. March 17 through September 1, 2011 telephone log

Cl. #9. August 31, 2011 letter from The Better Business Bureau (BBB) to Claimant

Cl. #10. Estimates for remedial work

Cl. #11. January 14, 2012 letter from Brian R. Bregman, Esquire, to Respondent with attachments

Cl. #12. September 22, 2010 through March 29, 2011 email correspondence between Claimant and Respondent

Cl. #13. February 4, 2013 letter from BBB to Claimant

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

Fund #1. March 5, 2014 Notice of Hearing with attachments

Fund #2. Undated Transmittal from MHIC to OAH

Fund #3. April 22, 2014 licensing history of Respondent

Fund #4. April 22, 2014 SDAT (State Department of Assessments and Taxation) Real Property Search

Testimony

The Claimant testified on her own behalf.

The Fund did not offer 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 01-100181.

2. On September 16, 2010, the Claimant and the Respondent entered into a contract for the Respondent to install a French drain outside the Claimant's home and to perform certain improvements in the basement of the home (Contract). The Contract

stated that work would begin within 45 days of acceptance of the Contract proposal and would be completed 120 days thereafter.

3. The total original agreed-upon Contract price was \$28,047.00. The Contract price for the French drain was \$1,587.00, including replacing the steps and regrading and reseeding disturbed areas.

4. On September 23, 2010, the parties agreed to an additional \$1,555.00 to finish the laundry area of the basement.

5. The Claimant paid the Respondent \$8,011.75 at the time of signing the Contract.

6. The Respondent completed the French drain on or about November 3, 2010. The drain did not, however, prevent water from entering the basement, as the parties had been hoped.

7. In early December 2010, the Respondent removed the steps to the back door of the home and a gate, a portion of chain link fence, and 2 posts leading to the steps, and broke up a concrete slab below the steps, in an effort to address the water problem. The Respondent did no further work on the Contract until May 21, 2011.

8. The French drain installed by the Respondent directed water toward the home of Claimant's neighbor. The neighbor sued the Respondent and, on April 27, 2011, the District Court for Prince George's County ordered the Respondent to "abate the infraction."

9. On May 21, 2011, the Respondent re-routed the French drain. The Respondent did no further work on the Contract.

10. The value of the work done by the Respondent is \$687.00.

DISCUSSION

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor” Md. Code Ann., Bus. Reg. § 8-405(a) (Supp. 2013). *See also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401 (2010). 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. The Contract called for the Respondent to install a French drain to correct water infiltration into the basement of the Claimant’s home, and then to construct additional improvements in the basement.

The Respondent installed the drain on November 3, 2010. Water continued to enter the basement. In an effort to remedy the water problem, the Respondent removed stairs to the back deck of the Claimant’s home, removed a gate, a portion of chain link fence and two fence posts and broke a concrete slab near where the stairs had been, but did not remove it.

The Claimant’s neighbor complained that the drain directed water onto his property, and brought suit against the Respondent. The court ordered the Respondent to correct the condition, which he did in May 2011. The Respondent failed to replace the steps and fence, or to remove the broken slab, and did no further work on the Contract. The Contract included replacement of stairs and regrading and reseeding of the disturbed area. The Contract did not address either removal or replacement of the fence, and there was a dispute between the parties as to whether that was necessary. Since the Respondent chose to remove the fence in order to complete his

work on the drain, I conclude that he was obligated to replace it. I also conclude that the Respondent was responsible for removing the broken concrete. The Contract provides, "All work will be completed in a neat & workmanlike manner. . . ." The Respondent performed no work on the basement renovations and nonetheless retained the \$8,0211.75 paid on deposit.

The Respondent performed inadequate and incomplete home improvements. I thus find that the Claimant is eligible for compensation from the Fund. Having found eligibility for compensation I now turn to the amount of the award, if any, to which the Claimant is entitled.

MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The Claimant is not seeking the cost to complete the basement work. She is only seeking the return of the amount she paid the Respondent less the value of the work he completed. The following formula, therefore, offers an appropriate measurement to determine the amount of actual loss in this case:

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

COMAR 09.08.03.03B(3)(b).

The Contract price for the French drain was \$1,587,00, including replacing the steps and regrading and reseeding disturbed areas. The Claimant has provided two estimates, one for \$900.00 and the other for \$785.00 for replacing the steps and fence and removing the concrete slab. The higher estimate is somewhat more detailed, and thus more credible. I therefore conclude that the cost of completing and correcting the Respondent's work is \$900.00, and the value of the work he did is \$687.00 ($\$1,587 - \$900 = \687).

Accordingly, the Claimant is entitled to reimbursement from the Fund in the amount of \$7,324.75 calculated as follows:

Amount paid to the Respondent	\$8,011.75
Value of work done by Respondent	<u>687.00</u>
Actual loss	\$7,324.75

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$7,324.75 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 (2010), 8-405 (Supp. 2013).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$7,324.75; 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 at least ten percent (10%) as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

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

Signature on File

July 31, 2014
Date Decision Issued

Nancy E. Paige
Administrative Law Judge

NEP/emh
#150653

<p>IN THE MATTER OF THE CLAIM</p> <p>OF GERTRUDE A. SAVOY,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF</p> <p>THURIEL GILMORE,</p> <p>T/A GILMORE & SONS, INC.,</p> <p>RESPONDENT</p>	<p>* BEFORE NANCY E. PAIGE,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH No.: DLR-HIC-02-14-02360</p> <p>* MHIC No.: 12 (75) 1211</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>
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FILE EXHIBIT LIST

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