

IN THE MATTER OF THE CLAIM * BEFORE ANN C. KEHINDE,
 OF CHRISTOPHER BLAKESLEE, * AN ADMINISTRATIVE LAW JUDGE
 CLAIMANT * OF THE MARYLAND OFFICE
 AGAINST THE MARYLAND HOME * OF ADMINISTRATIVE HEARINGS
 IMPROVEMENT GUARANTY FUND *
 FOR THE ALLEGED ACTS OR *
 OMISSIONS OF CYNTHIA *
 THORNTON, * OAH No.: DLR-HIC-02-15-24664
 T/A REVERE CONSTRUCTION & * MHIC No.: 12 (75) 1463
 REMODELING, INC., *

RESPONDENT *

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

On October 1, 2013, Chris Blakeslee (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$2,610.00 in alleged actual losses suffered as a result of a home improvement contract with Cynthia Thorton, t/a Revere Construction & Remodeling, Inc. (Respondent).

I held a hearing on October 19, 2015, at the office of the OAH located in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).¹ The Claimant was present and represented by Diana Wallace, Esquire. Peter Martin, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

A Notice of Hearing (Notice) was sent to the Respondent at her last address of record with the Department by regular mail and by certified mail, informing the Respondent of the date, time, and location of the hearing. Neither Notice was returned to the OAH. Furthermore, an investigator with the Department searched the Maryland Motor Vehicle Administration's (MVA) computer system for driver's license records to obtain the most recent address for the Respondent. The investigator noted that the MVA had the same address as the most recent address that the Department had used.

The Respondent's licensing information, submitted by the Fund, indicates that the Respondent's license was last renewed, effective December 13, 2010, and expired on December 12, 2012. Acknowledging this information, I went forward and conducted the hearing in the absence of the Respondent or anyone appearing on her behalf.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the Office of Administrative Hearings (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2015) Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 28.02.01.

¹ Unless otherwise noted, all citations of the Business Regulation Article hereinafter refer to the 2015 Replacement Volume.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of any acts or omissions committed by the Respondent?
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 | Contract, dated March 11, 2012 |
| Cl. #2 | Check number 2031 in the amount of \$10,000.00 and check number 5041 in the amount of \$9,000.00 |
| <hr/> | |
| Cl. #3 | Annotated pictures of basement (12 pp) taken in June 2012 |
| Cl. #4 | Letter from Claimant to Respondent, dated July 11, 2012 |
| Cl. #5 | Order issued April 16, 2015, by the Circuit Court for Carroll County, in case no.: 06-C-13-063745 |
| Cl. #6 | List of materials left on site and labor hours from April 25, 2012 to June 4, 2012 |
| Cl. #7 | Cost to complete summary |

I admitted the following exhibits on behalf of the Fund:

- | | |
|-------|---|
| GF #1 | Notice of Hearing, dated July 27, 2015; Hearing Order, dated July 8, 2015 |
| GF #2 | Respondent's Licensing Record |
| GF #3 | Affidavit of Kevin Niebuhr, dated September 22, 2015 |
| GF #4 | Letter from MHIC to Respondent, dated October 16, 2012; MHIC Claim Form, dated September 21, 2012, received October 1, 2012 |

No exhibits were offered on behalf of the Respondent.

Testimony

The Claimant testified in his own behalf.

The Fund did not present any witnesses.

No one testified or appeared on behalf of the Respondent.

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 01-89281.
2. On March 11, 2012, the Claimant and the Respondent entered into a contract (Contract) for the complete buildout of the 1,000 square foot basement in the Claimant's home in Hampstead, Maryland.
3. The contract work included: framing the basement, as specified by the Respondent's drawing, with pressure treated bottom plates and kiln dried studs; replacing a sliding door with a French Door with a new threshold as high as possible to eliminate water entering basement; electrical work (recessed lighting, outlets, cable tv lines, new electric subpanel); plumbing work for bathroom, future kitchen area and washer/dryer area; install tub (with three walls tiled to ceiling), toilet and sink in bathroom; install exhaust fan vented to exterior; sheetrock throughout basement; perimeter walls insulated with R-13; walls finished, primed and painted with two coats; door to match existing in house; base molding to match existing in house; under steps storage; steps leading to basement will be covered with hardwood flooring; install ceramic tile in bathroom; basement floor engineered floating wood floor.
4. The Contract provided that the work was to begin on or before April 10, 2012 and to be substantially completed on or before June 8, 2012. The agreed-upon contract price was \$30,000.00.

5. On March 12, 2012, the Claimant gave the Respondent a \$10,000.00 deposit.

6. The Respondent began work on April 23, 2012.

7. The Claimant and the Respondent agreed that the exterior French door would be a mid to high-grade door made by Feather River. The Respondent installed an economy door purchased from Home Depot instead. The Respondent contracted with the Claimant to use composite materials and flashing when installing the exterior French door. The Respondent used painted pine and no flashing. The Respondent contracted to build up the concrete and use sealant so that the patio would not drain under the exterior door. The Respondent did not build up the concrete or use sealant. The Respondent installed a pressure treated 2x4 beneath the door ~~which allowed the water to enter the basement every time it rained.~~

8. On May 11, 2012, the Claimant gave the Respondent a check in the amount of \$9,000.00.

9. Towards the end of May 2012, the Respondent only worked for a few hours on the Claimant's basement. At the beginning of June 2012, the Respondent stopped showing up to work on the Claimant's basement. The Claimant made at least twelve telephone calls, and sent twenty text messages and emails to the Respondent about the lack of progress on his basement.

10. The Respondent completed most of the framing and the insulation before abandoning the job.

11. The Respondent did not get any permits for the Claimant's basement. The insulation had to be torn out so the framing could be inspected.

12. The Respondent completed about half of the electrical work specified in the contract. The Respondent did not install an electrical subpanel but tried to connect to the panel that was already there. The Respondent left live electrical wires exposed without capping them. The electrical work presented a fire and safety hazard.

13. The Respondent ordered the bath tub, but did not install it. The Respondent installed a flexible piping that did not meet the requirements of the Code for the stackable washer and dryer. The Respondent installed an exhaust fan but did not build a duct to vent the fan to the outside as required by the Contract.

14. The Respondent and his workers expended 105 hours on the Claimant's project. The Respondent's carpenter told the Claimant he was paid \$15.00 per hour. The Claimant researched the industry standard wages for a plumber, an electrician, and an electrician's helper. The value of the 105 hours spent by the carpenter, plumber, electrician and electrician's helper was \$4,740.00.

15. The Claimant inventoried the materials left behind by the Respondent. The Respondent purchased most of his materials and supplies at Home Depot. The value of the materials left behind by the Respondent was \$4,008.67.

16. The Claimant hired numerous contractors and purchased items to correct and complete the Respondent's work and finish the basement at a cost of \$23,479.65. The Respondent did some of the work himself to finish the project.

DISCUSSION

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). *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." Bus. Reg. § 8-401. 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 she entered into the contract with the Claimant. There are no *prima facie* statutory impediments barring the

Claimant from recovering compensation from the Fund (being related to the Respondent, recovering damages from the Respondent in a court proceeding, owning more than three houses, etc.). Md. Code Ann., Bus. Reg. § 8-405(f)(1) and (2) (2015).

The Respondent performed unworkmanlike, inadequate or incomplete home improvements. The Respondent abandoned the project in June 2012, and many aspects of the work that were completed were unworkmanlike and not according to the contract: a cheaper door was installed than what was contracted; the trim and the flashing for the exterior door was unworkmanlike; the Respondent failed to pull permits which resulted in the insulation having to be torn out so that the framing could be inspected; the electrical subpanel was not installed; ~~wiring was left in an unsafe condition; a duct was not installed to vent the exhaust fan to the~~ outside; and, the Respondent installed a flexible pipe for the washer and dryer that did not meet Code.

The Claimant documented the Respondent's incomplete and unworkmanlike performance with pictures that clearly showed the deficiencies.

Additionally, I find that the Claimant gave the Respondent ample opportunities to complete the work and correct the deficiencies but the Respondent repeatedly ignored the Claimant's efforts.

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. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The Claimant used the following formula 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 formula, therefore, demonstrates the Claimants’ actual loss as follows:

Amount Paid to Respondent	\$19,000.00
Value of materials	- 4,008.67
Value of services	- 4,740.00
Actual Loss	\$10,251.33

In this case, however, the Claimant did use contractors to finish and correct the Respondent’s work. COMAR 09.08.03.03B(3)(c) provides:

(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.

Using this formula, the Claimant’s actual loss is calculated as follows:

Amount Paid to Respondent	\$19,000.00
<u>Amount to Repair and Complete</u>	<u>23,479.65</u>
Total	42,479.65
Minus original contract price	\$19,000.00
Actual loss	\$23,479.65

Recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(1) and (5) (2015). The Claimant paid \$19,000.00 to the Respondent and therefore, the Claimant is entitled

to reimbursement in the amount of \$19,000.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2015).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained a compensable loss of \$19,000.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401; 8-405 (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$19,000.00; and

~~**ORDER** that the Respondent repay the Maryland Home Improvement Guaranty Fund~~
plus interest before being eligible for a license; and

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

January 19, 2016
Date Decision Issued

Signature on File

Ann C. Kehinde
Administrative Law Judge

ACK/cj
#160397

PROPOSED ORDER

WHEREFORE, this 15th day of February, 2016, 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
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION