

IN THE MATTER OF THE CLAIM	* BEFORE NANCY E. PAIGE,
OF GERARD ZULAUF,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH No.: DLR-HIC-02-13-47179
FOR THE ALLEGED ACTS OR	* MHIC No.: 13 (75) 1132
OMISSIONS OF ALEXANDER	*
BARABASH,	*
T/A WELSH CONSTRUCTION	*
REMODELING, LLC,	*
RESPONDENT	*

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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 June 11, 2013, Gerard Zulauf (Claimant) filed a claim (Complaint) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$17,500 in alleged actual losses suffered as a result of a home improvement contract with Alexander Barabash, T/A Welsh Construction Remodeling (Respondent).

I held a hearing on May 20, 2014 at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-312 (Supp. 2013) and § 8-407 (2010).

Peter Martin, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented himself. The Respondent was not present.

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. January 20, 2013 agreement between Respondent and Claimant
- Cl. #2. January 18, 2013 and March 28, 2013 record of check payments
- Cl. #3. A-C. Photographs
- Cl. #4. April 13, 2014 Plumbcrazy Proposal/Contract

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

- Fund #1. January 24, 2014 Notice of Hearing with attachments
- Fund #2. January 28, 2014 Notice of Postponement
- Fund #3. January 29, 2014 Notice of Hearing
- Fund #4. February 4, 2014 Change of Date and Time
- Fund #5. May 19, 2014 certified licensing history of Respondent

Fund #6. June 18, 2013 letter from MHIC to "To Whom it May Concern"

Fund #7. May 19, 2014 MHIC # 13(75)1132 Consent Order

Fund #8. May 19, 2014 licensing history for Stephan Allen Bogan, T/A Plumbcrazy

Testimony

The Claimant testified on his 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 numbers 01-96580 and 05-49.

2. On January 14, 2013, the Claimant and the Respondent entered into a contract to remodel two bathrooms in the Claimant's home, and to perform other improvements in two bedrooms in the home. The contract stated that work would begin between five and six weeks after the contract date and would be completed within four to five weeks thereafter.

3. The original agreed-upon contract price was \$27,300.00.

4. On January 18, 2013, the Claimant paid the Respondent \$9,100.00 and an additional \$9,100.00 on March 28, 2013.

5. The Respondent performed three day's labor (value \$100.00 per day) and supplied 12 2x4s (value \$1.50 each), two commodes (value \$159.00 each), a tub (\$199.00) and a shower (\$299.00).

6. The Respondent removed two existing commodes and carpet from one bedroom. He did not install the new commodes, the tub or the shower. The Claimant

paid another licensed contractor \$228.30 to install one of the commodes and connect water lines to the tub. The drain on the tub is not connected and the shower has not been installed.

7. The Claimant's actual loss is \$17,294.00.

8. On May 19, 2014, the Respondent and his company entered into a Consent Order with the HIC. The Consent Order provides that the Respondent violated home improvement laws as set forth in Maryland Business Regulation Article, Title 8, by either failing to return unapplied money received as deposits; performing work in an unworkmanlike, inadequate or incomplete manner; and/or abandoning or failing to perform home improvement contracts, wholly or in part, including his contract with the Claimant. The Consent Order further provides that the Respondent would not contest the Claimant's claim in the amount of \$17,500.00 and would not appeal any decision or awards by the Commission made pursuant to the Order.

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 Respondent performed inadequate and incomplete home improvements. More particularly, the Respondent performed only minimal work on the contract with the Claimant, but retained \$18,200.00 paid on deposit and as an interim payment on the contract.

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 is not seeking the cost of completing the contract work. He is seeking the return of the amounts paid to the Respondent, less the value of the work and materials provided by the Respondent. The following formula, therefore, offers an appropriate measurement to determine the Claimant's 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 value of the work and materials provided by the Respondent is as follows:

Three days labor @100.00 per day	\$300.00
Two commodes @ \$159.00 each	\$318.00
Tub	\$199.00
Shower with doors	\$299.00
12 2x4s @\$1.50 each	\$ <u>18.00</u>
Total	\$1,134.00

The Claimant also paid another contractor, Plumbcrazy, \$228.30 to perform a portion of the contract work, that is, installation of one of the commodes and connection of the water line to the tub. He stated that he has not been able to afford completion of the remainder of the contract work. The Claimant did not show that the cost of this plumbing work exceeded the amount included in the contract price. He received value for the work, and there is thus no basis to charge this as an additional cost to him as a result of the Respondent's abandonment of the work.

Accordingly, the Claimant is entitled to reimbursement from the Fund in the amount of \$17,066.00, calculated as follows:

Amount paid to the Respondent	\$18,200.00
Less value of work and materials provided by the Respondent	- <u>\$1,134.00</u>
	\$17,066.00

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$17,066.00 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 \$17,066.00; 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 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

August 1, 2014
Date Decision Issued

Nancy E. Paige
Administrative Law Judge

NEP/emh
#150427

<p>IN THE MATTER OF THE CLAIM</p> <p>OF GERARD ZULAUF,</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 ALEXANDER</p> <p>BARABASH,</p> <p>T/A WELSH CONSTRUCTION</p> <p>REMODELING, LLC,</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-02-13-47179</p> <p>* MHIC No.: 13 (75) 1132</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>
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FILE EXHIBIT LIST

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PROPOSED ORDER

WHEREFORE, this 26th of September 2014, Panel B of the Maryland Home Improvement Commission approves the Recommended Decision 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.

W.M. Bruce Quackenbush, Jr.

*WM. Bruce Quackenbush, Jr.
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION