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| IN THE MATTER OF THE CLAIM | * BEFORE JEROME WOODS, II, |
| OF MARIA S. RIOS, | * AN ADMINISTRATIVE LAW JUDGE |
| CLAIMANT, | * OF THE MARYLAND OFFICE |
| AGAINST THE MARYLAND HOME | * OF ADMINISTRATIVE HEARINGS |
| IMPROVEMENT GUARANTY FUND | * OAH NO.: DLR-HIC-02-13-34292 |
| FOR THE ALLEGED ACTS OR | * MHIC NO.: 13 (90) 99 |
| OMISSIONS OF GEORGE BRANTON, | * |
| T/A GEORGE BRANTON ASPHALT | * |
| PAVING, | * |
| RESPONDENT | * |
| | * |

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On April 8, 2013, Maria S. Rios (Claimant), filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement for actual losses allegedly suffered as a result of a home improvement contract with George Branton, t/a George Branton Asphalt Paving. I held a hearing on April 9, 2014 at the Frederick County Department of Social Services. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2013). Chris

King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant and the Respondent represented themselves.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, 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 (2009 & Supp. 2013), Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; and 28.02.01.

ISSUE

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

SUMMARY OF THE EVIDENCE

Exhibits

I attached an exhibit list to this Proposed Decision.

Testimony

The Claimant testified in support of her Claim and did not present any other witnesses.

The Respondent testified and presented testimony from his son, David Branton.

The Fund presented no witnesses.

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 #86711.
2. The Claimant owns a home at 3934 Shakespeare Way, Monrovia, Maryland 21770 (Property).

3. On November 23, 2010, the Claimant entered into a written contract (Contract) with the Respondent to pave the driveway of her home.
4. The Contract price was \$5,000.00.
5. Under the Contract, the Respondent was to:
 - remove the grass from the driveway;
 - furnish gravel base in driveway;
 - apply weed killer as needed and
 - pave driveway using approximately 2 ½" of top mix asphalt.
6. The work began and was completed on or November 29, 2010. At the completion of the work, the Claimant paid the total price of the Contract.
7. The Respondent's son David supervised the work.
8. In the spring of 2011, the top portion of the driveway began popping and bulging which resulted in grass growing out of the affected areas.
9. In July 2011, the Respondent sent a worker to the Claimant's home to make repairs to the driveway. The worker removed the grass from the affected area, and heated the asphalt with a torch to smooth the bulged areas. Additionally, the Worker, added top sealant to the driveway.
10. Subsequent to July 2011, and prior to November 2011, the Claimant made several phone calls to the Respondent because the driveway continued to bulge and have visible lumps with small holes.
11. In December 2011, the Respondent sent a worker to the Property and the worker removed grass from the affected areas of the driveway but did not do anything to fix the bulges, lumps or holes.

12. In January 2012, the Claimant sent a letter to the Respondent informing him that despite two attempts to fix the defects in the driveway, the driveway remained defective with bulges, lumps, holes and grass growth through it.
13. In August 2012, the Respondent's son David contacted the Claimant but did not do any more repairs to the driveway.
14. On March 5, 2013, the Claimant obtained an estimate Mr. Airy Tar and Chip Paving, Inc. (Mt. Airy)
15. In order to correct the Respondent's work, Mt. Airy would have to perform the following:
 - Remove asphalt and stone;
 - Replace with new asphalt and stone;
16. The total cost of the repairs is \$2,600.00.
17. The Claimant's actual loss is \$2,600.00 ($\$5,000.00 + \$2,600.00 - \$5,000.00$).

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 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.

First, the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant.

Second, the Respondent performed unworkmanlike and inadequate home improvement by improperly installing the driveway. It is undisputed that the Claimant hired the Respondent to pave her driveway with asphalt. It is also undisputed that after the Respondent's work, the Claimant called the Respondent to come back to the Property because the new driveway bulged, had holes, and allowed for grass to grow through the holes.

Third, pictures of the driveway confirm that that the driveway has bulges, bumps, holes and places where grass is growing through the holes. It is also clear that that there are portions of the driveway that are not even as a result of the bulges and holes. As a result, I am compelled to believe that the improper installation must be attributed to the work performed by the Respondent's agent. There is no evidence that the Claimant damaged the driveway in any way.

Given the numerous defects, indicated in the Claimant's photographs, I agree with the Claimant that the Respondent did not perform the job in a, adequate and workmanlike manner and for those reasons gave her testimony more weight than that of the Respondent and his son who essentially testified that the work was performed in accordance with industry standards. I further note, that the damage depicted in the photographs was present even after the Respondent had multiple opportunities to fix the driveway.

I conclude that the Respondent performed inadequate and unworkmanlike home improvement work at the Property. The Claimant engaged the Respondent's services because she needed a new driveway. The Respondent performed services which did not give the Claimant a smooth, bulge-free and hole-free driveway. Further, the repairs made by the

Respondent were not made in accordance with industry standards. No evidence was presented that the estimate provided to the Claimant to fix the Respondent's work is erroneous.

Having found eligibility for compensation, I now turn to the amount of the award. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest and none are sought here. COMAR 09.08.03.03B(1). MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). One of those formulas, as follows, offers an appropriate measurement in this case:

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.

COMAR 09.08.03.03B(3)(c).

Using this formula, the Claimant's actual loss is \$5,004.00 calculated as follows:

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| Amount paid to the Respondent | \$5,000.00 |
| Amount required to correct the inadequate work | <u>+\$2,600.00</u> |
| Total | \$7,600.00 |
| Contract price | <u>-\$5,000.00</u> |
| Actual loss | \$2,600.00 |

Hence, the Claimant is entitled to reimbursement in the amount of \$2,600.00 from the Fund.

CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual/compensable loss of \$2,600.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010); COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

I PROPOSE that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$2,600.00; 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 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 28, 2014
Date Decision Issued

JW/cj
150666

Jerome Woods, II
Administrative Law Judge

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| OF MARIA S. RIOS, | * AN ADMINISTRATIVE LAW JUDGE |
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| RESPONDENT | * |

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FILE EXHIBIT LIST

The Fund submitted the following exhibits, which I admitted into evidence:

- Fd. Ex. 1 - Notice, March 3, 2014
- Fd. Ex. 2 - Hearing Order, August 9, 2013
- Fd. Ex. 3 - Inquiry Printout, May 2, 2014
- Fd. Ex. 4 - Home Improvement Claim Form, April 8, 2013
- Fd. Ex. 5 - Fund Notice to the Respondent, April 17, 2013

The Claimant submitted the following exhibits, which I admitted into evidence:

- Cl. Ex. 1 - Contract, November 23, 2010
- Cl. Ex. 2 - Cancelled Check #1248 from the Claimant to the Respondent, dated November 29, 2010