

IN THE MATTER OF THE CLAIM	*	BEFORE LORRAINE E. FRASER,
OF SHELBY J. WIGGINS,	*	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 JOSEPH S. PIERCE,	*	
T/A JOSEPH S. PIERCE CONSTRUCTION,	*	OAH No.: DLR-HIC-02-15-07753
RESPONDENT	*	MHIC No.: 14 (05) 345

\* \* \* \* \*

**PROPOSED DECISION**

STATEMENT OF THE CASE  
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**STATEMENT OF THE CASE**

On January 5, 2015, Shelby J. Wiggins, (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$7,933.59 in alleged actual losses suffered as a result of a home improvement contract with Joseph S. Pierce, trading as Joseph S. Pierce Construction, (Respondent).

I held a hearing on August 13, 2015 at 1400 McCormick Drive, Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).<sup>1</sup> The Claimant represented herself. The Respondent represented himself. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

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 (2014), 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 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. Ex. 1 Complaint Form, 9/30/15, with four page handwritten attachment
- Cl. Ex. 2 Contract, 3/12/12; Invoice, 4/9/12
- Cl. Ex. 3 Job Estimate, 1/8/11; Contract, 3/12/12; Handwritten letter from the Respondent
- Cl. Ex. 4 Handwritten letter from the Respondent
- Cl. Ex. 5 Letter to the Claimant from Prince George's County Community Mediation, 1/10/13
- Cl. Ex. 6 Letter to the Claimant from MHIC, 12/12/13

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

- Cl. Ex. 7 Items selected by the Claimant from Lowe's
- Cl. Ex. 8 Lowe's Budget, 5/29/14
- Cl. Ex. 9 Lowe's Installation Services Customer Contract, 5/29/14; Home Improvement Claim Form, dated 12/27/14
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- Cl. Ex. 10 A-Y, photographs, taken 7/20/13
- Cl. Ex. 11 Cancelled check paid to the Respondent: \$1,500.00 on 4/9/12
- Cl. Ex. 12 Cancelled check paid to the Respondent: \$2,415.00 on 3/12/12
- Cl. Ex. 13 Cancelled check paid to the Respondent: \$180.00 on 5/25/12
- Cl. Ex. 14 Claimant's chronology of events

The Respondent did not offer any exhibits into evidence.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 Notice of Hearing, 5/14/15; Hearing Order, 2/12/15
- Fund Ex. 2 Licensing history, 8/11/15
- Fund Ex. 3 Letter to the Respondent from MHIC, 1/8/15; Home Improvement Claim Form, received 1/5/15, with four page handwritten attachment

### Testimony

The Claimant testified and presented the testimony of Richard Kenner, her son-in-law; and Erica Wiggins, her daughter.

The Respondent testified.

### **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 68241.

2. On March 12, 2012, the Claimant and the Respondent entered into a contract to remodel her master bathroom. Specifically, the Respondent contracted to build a 18 x 36 inch bench seat in the shower; install a new shower base, tile flooring, tile on the walls of the shower from floor to ceiling, tile on the remaining walls from floor to 47 inches high, wall paper from tile to ceiling, a new toilet, a new vanity, a new faucet, a new medicine cabinet, new towel racks and paper holders, and a sliding glass shower door. The contract stated that work would begin on March 12, 2012 and would be completed by March 26, 2012.

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3. The original agreed-upon contract price was \$4,215.00.
4. On March 12, 2012, the Claimant paid the Respondent \$2,415.00.
5. The Respondent started work on the bathroom in March 2012. He built the shower seat; installed tile on the walls and floor, installed a toilet, vanity, faucet, medicine cabinet, towel racks and paper holders.
6. On April 9, 2012, the Claimant paid the Respondent \$1,500.00.
7. The toilet tank and faucet the Respondent installed leaked. He did not repair the leaks.
8. The tile the Respondent installed on the walls and floor was not even and aligned, some tile edges stuck out, some tiles were cracked and chipped, grout was missing, and there were rough edges in places including the shower bench seat, which prevented one from sitting on the bench seat.
9. On May 14, 2012, the Respondent attempted to install a shower door but the door he had was too short for the space.
10. On May 25, 2012, the Respondent told the Claimant that he would get another shower door and asked for money. He said he needed to finish the Claimant's job and start another job.
11. On May 25, 2012, the Claimant paid the Respondent \$180.00.

12. On May 30, 2012, the Respondent called the Claimant and told her to buy the shower door and he would install it.
13. On June 10, 2012, the Respondent met with the Claimant's son-in-law, Mr. Kenner, and promised to finish the bathroom.
14. On July 10, 2012, the Respondent left the Claimant a message saying that he was having financial problems, would be getting his pension in August, and could buy the shower door and install it then.
15. The Respondent did not return to repair and complete his work.
16. On May 29, 2014, the Claimant contracted with Lowe's to repair and complete the Respondent's work. The cost to repair and complete the Respondent's work was \$8,233.59, including \$2,270.00 to demolish the Respondent's work.
17. The Claimant's actual loss is \$4,095.00 ( $\$2,415.00 + \$1,500.00 + \$180.00 = \$4,095.00$ ).

### DISCUSSION

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor." 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 he entered into the contract with the Claimant. The Respondent performed work under the contract but did not complete the work. In addition, the work the Respondent performed was unworkmanlike. The Respondent and the Claimant agreed that the Respondent attempted to install the shower door

but did not do so. The Claimant and Mr. Kenner testified that the toilet tank and faucet the Respondent installed leaked and he did not repair the leaks. The Claimant and Mr. Kenner also testified regarding the appearance of the Respondent's tile work. The Mr. Kenner took photographs of the problems with the tile work, which were submitted into evidence. The tile the Respondent installed on the walls and floor was not even and aligned, some tile edges stuck out, some tiles were cracked and chipped, grout was missing, and there were rough edges in places including the shower bench seat, which prevented one from sitting on the bench seat. The Claimant and Mr. Kenner stated that they both spoke to the Respondent about completing the work and he agreed to finish the work, but he did not do so. The Claimant said that when she hired Lowe's to repair the work, she was told that all of the Respondent's work needed to be removed and replaced because there were so many problems with his work. I found the Claimant's and Mr. Kenner's testimony credible and consistent with the photographs they presented.

The Respondent testified that his work was not finished; he needed to add caulk and clean up. He stated that he intended to finish the work but that he ran into financial difficulties. He explained that the small size of the bathroom caused problems because he had to special order items. He stated that, as a result, he went over his budget for the job. For example, he said that he budgeted \$199.00 for the shower door but that the space required a custom shower door that cost \$500.00. He said that he could not pay \$500.00 to get that door. He stated that the tile the Claimant chose had rough edges and he did the best he could. He testified that he was in construction for twenty to twenty-five years and did not have a prior problem like this. He stated that he is retired now. He apologized to the Claimant for what he failed to do.

Based on the evidence, I find that the Claimant is eligible for compensation from the Fund. The Respondent's work was unworkmanlike and incomplete. His financial problems and his errors in estimating and budgeting the job are not the fault of the Claimant.

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 following formula offers an appropriate measurement to determine the amount of actual loss in this case.

(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.

COMAR 09.08.03.03B(3)(c).

The Claimant's actual loss is calculated under the formula as follows:

Amount paid under original contract	\$4,095.00
Amount paid to complete and correct	<u>+\$8,233.59</u>
	\$12,328.59
Original contract price	<u>-\$4,215.00</u>
Actual loss	\$8,113.59

Pursuant to the Business Regulation Article, the maximum 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. Bus. Reg. § 8-405 (e)(1), (5). The Claimant paid \$4,095.00 to the Respondent, which is less than her actual loss of \$8,113.59 computed using the formula in COMAR

09.08.03.03(c). Accordingly, the Claimant is entitled to reimbursement of \$4,095.00. Bus. Reg. § 8-405 (e)(5).

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$4,095.00 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 \$4,095.00; 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;<sup>2</sup> and

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

**Signature on File**

November 4, 2015  
Date Decision Issued

\_\_\_\_\_  
Lorraine E. Fraser  
Administrative Law Judge

LEF/kkc  
# 159046

<sup>2</sup> See Md. Code Ann., Bus. Reg. § 8-410(a) (2015); COMAR 09.08.01.20.



**PROPOSED ORDER**

***WHEREFORE, this 28th day of January, 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**