

IN THE MATTER OF THE CLAIM	* BEFORE MICHELLE W. COLE,
OF ANTOINETTEIA KNIGHT,	* 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 DEIDRE MURDOCK,	*
T/A D & W CONCRETE	* OAH No.: DLR-HIC-02-16-21538
CONSTRUCTION, LLC, <sup>1</sup>	* MHIC No.: 15 (90) 1259
RESPONDENT	*

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On March 31, 2016, Antoinnetteia Knight (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$18,600.00 in alleged actual losses suffered as a result of a home improvement contract with Deidre Murdock, trading as D & W Concrete Construction, LLC (Respondent).

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<sup>1</sup> At all times relevant to this matter, Deidre Murdock held the Home Improvement Contractor license. At the hearing, she maintained that her father used her license without her permission when he contracted and performed services for the Claimant. As such, she claims no knowledge or liability relating to this claim. As set forth in my decision, *infra*, I reject Ms. Murdock's contention.

I held a hearing on December 14, 2016, at the Office of Administrative Hearings (OAH). Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented herself. John Hart, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. Michael Kaplan, Esquire, represented the Respondent.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 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:

- Clmt. Ex. 1 Receipt, with Claimant's annotation, dated June 9, 2014
- Clmt. Ex. 2 Receipt, dated September 30, 2014
- Clmt. Ex. 3 Proposal, dated December 19, 2014
- Clmt. Ex. 4 Contract, dated June 30, 2014
- Clmt. Ex. 5 Photographs A – J, dated April 19, 2015 and January 20, 2015
- Clmt. Ex. 6 Stop Work Order, dated June 1, 2015
- Clmt. Ex. 7 Inspection Notice, undated
- Clmt. Ex. 8 Authorization Memorandum, dated July 17, 2014
- Clmt. Ex. 9 Inspection Guidelines, revised February 2015

Clmt. Ex. 10 Greylen Services, LLC Project Proposal, dated November 15, 2015

Clmt. Ex. 11 D & W Concrete, LLC Proposal, dated November 27, 2016

Clmt. Ex. 12 Letter from J. Brown to Claimant, dated August 4, 2015

The Respondent did not offer any exhibits.

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 Home Improvement Claim Form, dated March 23, 2016

Fund Ex. 2 Hearing Order, dated June 22, 2016

Fund Ex. 3 Letter from MHIC to Respondent, dated April 21, 2016, with attachments

Fund Ex. 4 Notice of Hearing, dated September 1, 2016

Fund Ex. 5a Memorandum from OAH to Legal Services, dated September 15, 2016, with attachments

Fund Ex. 5b Memorandum from OAH to Legal Services, dated September 27, 2016, with attachments

Fund Ex. 6 Maryland Motor Vehicle Administration Driving Record Information, dated November 15, 2016

Fund Ex. 7 Affidavit of William Banks, dated November 15, 2016

Fund Ex. 8 Fax Transmission from Office of the Attorney General to OAH, dated November 15, 2016, with attachment

Fund Ex. 9 Notice of Hearing, dated November 16, 2016

Fund Ex. 10 Letter from J. Hart to Respondent, dated November 29, 2016, with attachments

Fund Ex. 11 Letter from J. Hart to Claimant, dated November 23, 2016

Fund Ex. 12 Letter from Claimant to District Court of Baltimore City, dated December 1, 2016, with attachments

Fund Ex. 13 District Court for Baltimore City Case Search Print-out, undated

Fund Ex. 14 Letter from MHIC to "To Whom It May Concern," dated December 13, 2016

## Testimony

The Claimant testified on her own behalf, and presented the testimony of her brother, Michael-Taylor.

The Respondent testified on her own behalf.

The Fund did not present any witnesses.

### PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to this matter, the Respondent was a licensed home improvement contractor under MHIC license number 130193.
2. William Graves, the Respondent's father, was performing services on behalf of the Respondent and was the person in responsible charge of the Respondent's home improvement work.
3. In June 2014, the Claimant met with William Graves, who agreed to perform home improvement services for the Claimant.
4. On June 30, 2014, the Claimant and the Respondent entered into a contract to install a concrete parking pad and patio, partial retaining walls, and a fence. Mr. Graves signed the contract on behalf of the Respondent.
5. The original agreed-upon contract price was \$12,500.00.
6. The Claimant made three payments totaling \$12,500.00: \$6,250.00 on June 9, 2014; \$3,000.00 on September 30, 2014; and \$3,250.00 on December 19, 2014.
7. Mr. Graves poured the concrete for the parking pad and erected the retaining walls.

8. In late December 2014, after the walls were completed, cracks appeared in the concrete slabs and at the base of the retaining walls. The walls started to separate from the concrete slabs.

9. The Claimant immediately contacted Mr. Graves and reported the cracks.

10. Mr. Graves agreed to repair the cracks in the concrete, but he was hospitalized for a period of time.

11. On June 1, 2015, the Baltimore City Office of Code Enforcement posted a Stop Work Order at the Claimant's property, because there was no valid building permit.

12. Sometime after the Stop Work Order was issued, Mr. Graves returned to the Claimant's property, demolished the construction, and removed all materials.

13. The Respondent did not refund any payments to the Claimant.

14. The Claimant made several attempts to communicate with Mr. Graves, but she was unable to contact him.

15. On November 15, 2015, Greysten Services, LLC, a licensed home improvement contractor, submitted a proposal to form and pour a concrete parking pad, patio and steps, and install block walls and a chain link fence. The estimate for materials and labor was \$18,600.00.

### DISCUSSION

In this case, the Claimant has the burden of proving the validity of her Claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3). "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true." *Coleman v. Anne Arundel Cty. Police Dep't.*, 369 Md. 108, 125 n. 16 (2002)(quoting Maryland Pattern Jury Instructions 1:7 (3rd ed. 2000)).

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) (2015);<sup>2</sup> *see also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). “For purposes of recovery from the Fund, the act or omission of a licensed contractor includes the act or omission of a subcontractor, salesperson, or employee of the licensed contractor, whether or not an express agency relationship exists.” *Id.* § 8-405(b). Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” *Id.* § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Claimant testified that in May 2014 she met with Mr. Graves regarding the construction of a fenced-in parking pad and patio. She stated that Mr. Graves told her that his daughter would draw up the contract. However, the Claimant never met or spoke with the Respondent. On June 30, 2014, the Claimant signed the contract. The contract and receipts identified the contractor as “D and W Concrete LLC” and “D and W Concrete Const. LLC.” (Clmt. Exs. 2, 3 & 4). Mr. Graves signed the contract on behalf of the Respondent and began working on the project in July 2014. According to the Claimant, all correspondence was through Mr. Graves, and he performed much of the work. She noted that Mr. Graves poured the concrete while another worker helped to spread it.

Shortly after the walls were erected, in late December 2014, the Claimant observed cracks in the concrete slabs. (Clmt. Ex. 5H). She also observed water settling and leaking from the blocks and base of the retaining walls. The Claimant immediately reported these complaints to Mr. Graves, who agreed to repair the cracks. At that time, he told the Claimant that he was

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<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

sick, but promised to return and fix the problems when he was feeling better. The Claimant testified that she could not use the parking pad and "it did not look nice." Mr. Graves did not return to the Claimant's property for several months. After receiving a Stop Work Order on June 1, 2015, the Claimant contacted Mr. Graves, who again agreed to correct the problem. Subsequently, Mr. Graves demolished the construction and removed all materials from the Claimant's property, informing the Claimant that he did so for safety reasons.

Michael Taylor, the Claimant's brother, testified that he contacted Mr. Graves and obtained an estimate for work on his property on November 27, 2016. On the estimate, Mr. Graves identified the contractor as "D & W Concrete LLC." (Clmt. Ex. 11).

The Respondent testified on her own behalf. She denied any liability for the Claimant's damages. Rather, she testified that her father, Mr. Graves, renewed her home improvement license and performed work on the Claimant's property without her knowledge and without her consent to use the MHIC license. She recounted that she started the business in 2012, because she wanted to do home renovations. At that time, she named the LLC after herself (D) and her father (W). According to the Respondent, she held the MHIC license and performed all management duties for the business, including drawing up the contracts and pricing. She reported that her father had experience in home improvement, where she did not, but stated that he would show her how to do things by working with her.

The Respondent stated that the business was not making money, so she decided to close it in May, 2013, and allow the license to expire in August. She claimed that she was unaware that her license was renewed in August 2013 or that her father was using the license and performing services on behalf of the Respondent. She also claimed that she and her father had a falling-out before she closed the business.

Regarding her father's role at D and W Concrete Construction, LLC, the Respondent stated that Mr. Graves was never a subcontractor and was never paid. She testified that he served only as a consultant on projects because of his experience. She reported that he sometimes would go to job sites and instruct workers or provide suggestions.

Mr. Graves sat behind the Respondent throughout the hearing, but he did not testify. After the Respondent's testimony, Mr. Hart warned Mr. Graves of a potential for incriminating himself if he performed home improvement work without a valid license. At that time, the Respondent's attorney, the Respondent, and Mr. Graves spoke privately. When the hearing resumed, Mr. Graves elected not to testify.

Based on the evidence and testimony, I conclude that the Claimant has established an actual loss based on the Respondent's acts and omissions. The Claimant's testimony was undisputed. She met with Mr. Graves, who represented himself as "D and W Concrete Const. LLC," whereupon he agreed to prepare and pour a concrete patio and parking pad, install partial retaining walls and install a fence for a total cost of \$12,500.00, which the Claimant paid. At that time, Mr. Graves was providing services on behalf of the Respondent, a licensed home improvement contractor.

The evidence shows that Mr. Graves performed unworkmanlike, inadequate and incomplete home improvements. Photographs showed cracks in the concrete slabs, which Mr. Graves agreed to correct. On June 1, 2015, the Office of Code Enforcement recognized the unworkmanlike condition of the Claimant's property by issuing a Stop Work Order. Further, Mr. Graves removed all improvements and materials from the Claimant's property, returning the state of the property to that before the contract. The Respondent did not refund any of the money paid by the Claimant. I conclude that the Claimant received no value for the money she paid to the Respondent. Because Mr. Graves was the Respondent's employee and person in charge of



the business' home improvement work, any act or omission by him constituted an act or omission by the licensed contractor for which the Respondent was liable. Md. Code Ann., Bus. Reg. § 8-405(b) (2015). *See also* COMAR 09.08.01.04C(3) (providing that an individual in responsible charge of a corporation's home improvement work "shall be jointly and severally responsible" for repayment of a valid claim filed against the Fund).

I am not persuaded by the Respondent's testimony, distancing herself from her father. I do not find the Respondent's testimony regarding her father's role in the business to be credible. First, the Respondent's testimony on this point was inconsistent. She testified that her father had experience in construction, which she did not, and taught his trade to her *by working with her*. Yet, she denied that he was an employee or subcontractor. She maintained that he only served as an "advisor" on projects, sometimes going to worksites to instruct workers or make suggestions. I consider the Respondent's testimony, downplaying Mr. Graves' role, suspect, particularly where she included him in the naming of her business and was dependent on his experience in an area where she had none. Moreover, the Claimant testified that, prior to beginning work on the Claimant's project, Mr. Graves told her that his daughter would draw up the contract, a responsibility that the Respondent routinely performed. Had Mr. Graves been working independent of the Respondent, he would have had no reason to mention his daughter to the Claimant.

Second, the Respondent's testimony is self-serving. She benefits by separating herself from Mr. Graves' acts because the Respondent is only responsible for damages caused by Mr. Graves if he performed those services as an employee or on behalf of the Respondent. I also consider the Respondent's demeanor during the hearing. During the Claimant's testimony, the Respondent appeared disinterested and bored, laying her head on the table, while her attorney

conferenced with Mr. Graves and vigorously examined the Claimant and her witness. The Respondent showed no emotion under a circumstance which should have evoked at least mild concern for the Claimant, who suffered a loss potentially at the hands of her business, or discontent with her father, who incurred potential liability under her license.

The record fails to support the Respondent's claim that she was completely unaware of her father's actions. While the Respondent reported having a falling-out with her father, she did not provide any evidence to suggest that the two were estranged or out-of-touch. She also did not present any documents or other evidence to prove that someone other than herself renewed her license. Other than her own testimony, she did not present evidence to show that Mr. Graves acted without her authority. Moreover, during the hearing, the father and daughter appeared to work together in the defense of this claim. Mr. Graves sat behind his daughter and conferred with her attorney on breaks and during testimony. Prior to making his decision not to testify in the case, Mr. Graves spoke privately with the Respondent and her attorney. Based on the evidence, I cannot conclude that Mr. Graves acted without the Respondent's knowledge. Accordingly, I 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). The 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:

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 paid \$12,500.00 to the Respondent, which is less than her actual loss of \$18,600.00, computed using the formula in COMAR 09.08.03.03B(3)(c):  $\$12,500.00 + \$18,600.00 - \$12,500.00 = \$18,600.00$ . Pursuant to the applicable law, 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. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5). Accordingly, the Claimant is limited to reimbursement of \$12,500.00. Md. Code Ann., Bus Reg. § 8-405(a).

#### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$12,500.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c).

#### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$12,500.00; 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 ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>3</sup> and

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<sup>3</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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

**Signature on File**

March 9, 2017  
Date Decision Issued

Michelle W. Cole  
Administrative Law Judge

MWC/dlm  
#167097

**PROPOSED ORDER**

***WHEREFORE, this 19<sup>th</sup> day of April, 2017, 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.***

***Andrew Snyder***

***Andrew Snyder  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**