

IN THE MATTER OF THE CLAIM * **BEFORE LORRAINE E. FRASER,**
OF ANTONIO CANIGLIA, * **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 DAVID STRAWSER, *
T/A STRAWSER INVESTMENT * **OAH No.: DLR-HIC-02-18-21593**
CONTRACTING, * **MHIC No.: 17 (90) 703**
RESPONDENT *

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

On August 2, 2017, Antonio Caniglia (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$14,579.66 in actual losses allegedly suffered as a result of a home improvement contract with David Strawser, trading as Strawser Investment Contracting (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On July 9, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on October 2, 2018, at the Calvert County Public Library in Prince Frederick, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). Shara Hendler, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. The Claimant represented himself. After waiting over fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.¹

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. 2018); 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 the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

- Claimant 1 Contract between the Claimant and the Respondent, 12/8/14
- Claimant 2 Checks paid to the Respondent: \$1,675.00 dated 12/9/14; \$4,000.00 dated 1/12/15; \$1,318.00 dated 1/28/15; \$1,317.00 dated 2/2/15; \$900.00 dated 3/3/15
- Claimant 3 Emails between the Claimant and the Respondent, 3/3/15-7/26/16
- Claimant 4 Text messages between the Claimant's wife and the Respondent, 8/12/15-10/2/16

¹ Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on August 1, 2018. COMAR 09.08.03.03A(2). The regular mail was not returned but the certified mail was returned as unclaimed on August 29, 2018. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Respondent had received proper notice, and proceeded to hear the captioned matter.

- Claimant 5 Text messages between the Claimant and the Respondent, 7/26/16-10/17/16
- Claimant 6 Emails between the Claimant's wife and the Respondent, 12/19/14-1/3/15
- Claimant 7 MHIC Complaint Form, dated by the Claimant 11/25/16
- Claimant 8 Proposal from Southern Maryland Kitchen, Bath, Floors & Design, 2/11/17
- Claimant 9 MHIC Claim Form, dated by the Claimant 7/4/17, with attached letter from the Claimant
- Claimant 10 Project Timeline written by the Claimant
- Claimant 11 Photograph of tile floor under construction by the Respondent, taken by the Claimant's wife January 2015
- Claimant 12 A-C Three photographs of the underlayment under the tile floor, taken by Michael Hickman, Hickman Contractors, in January 2017
- Claimant 13 A-G Seven photographs of the cracked tile and grout, taken by the Claimant in September 2018

The Respondent did not offer any exhibits into evidence.

I admitted the following exhibits on behalf of the Fund:

- Fund 1 Hearing Order, 7/5/18
- Fund 2 Notice of Hearing, mailed 8/1/18
- Fund 3 Affidavit of William Banks, 10/1/18
- Fund 4 MHIC Claim Form, filed 8/2/17
- Fund 5 The Respondent's licensing history, 9/26/18

Testimony

The Claimant testified.

The Respondent and the Fund did not present 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 number 01 89936. Subsequently, the Respondent's license expired on October 28, 2015.
2. On December 8, 2014, the Claimant and the Respondent entered into a contract to remodel the Claimant's kitchen (Contract). On December 19, 2014, the Claimant and the Respondent amended the Contract to add the installation of a tile floor in the kitchen. The Contract stated that work would be completed in five weeks.
3. The original agreed-upon Contract price was \$5,570.00. There was no written estimate for the tile work amendment.
4. Between December 19, 2014 and March 3, 2015, the Claimant paid the Respondent a total of \$9,210.00.
5. The Respondent performed the work under the Contract. The last day the Respondent performed any work was March 12, 2015.
6. The tiles and grout cracked during the installation of the tile floor and continued thereafter.
7. The Claimant asked the Respondent to repair the cracked tiles and grout.
8. The Respondent did not repair the cracked tiles and grout.
9. The cost to remove and replace the tile floor is \$14,579.66.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. § 8-407(e)(1) (2015); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3).² “[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 (3d 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); *see also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). “[A]ctual 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 (2015). 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 unworkmanlike, inadequate or incomplete home improvements. The Claimant testified that during the installation of the tile floor there was a problem with the tiles “popping.” He stated that the tile moved when one walked on it and the tile and grout cracked. He said that both he and his wife asked the Respondent to repair the tile floor but that the Respondent did not do so. The Claimant submitted pictures showing the lack of screws and cement on the underlayment under the tile, which he said was causing the tile and grout to crack. The Respondent did not appear to

² As noted above, “COMAR” refers to the Code of Maryland Regulations.

question the Claimant's evidence. The Claimant stated that he still has cracked tiles and grout and submitted photographs showing the cracked tiles and grout. I find the Respondent's faulty installation of the tile was the likely cause of the many cracked tiles and grout. Thus, I find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation, I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Md. Code Ann., Bus. Reg. § 8-405(e)(3) (2015); COMAR 09.08.03.03B(1). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent performed work under the contract, and the Claimant intends to retain another contractor to remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

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 the Respondent a total of \$9,210.00 under the contract, which included the cost of installing the tile floor. He submitted an estimate from Southern Maryland Kitchen, Bath, Floors & Design showing that the cost to remove and reinstall the tile floor is \$14,579.66. Thus, I find pursuant to the above formula, that the Claimant's actual loss is \$14,579.66.

However, the Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor, and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss of \$14,579.66 exceeds \$9,210.00, the amount the Claimant paid to the Respondent. Therefore, the Claimant's recovery is limited to \$9,210.00, the amount paid to the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2015); COMAR 09.08.03.03B(4).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$14,579.66 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$9,210.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2015); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$9,210.00; 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;³ and

³ 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

12/20/18
Date Decision Issued

Lorraine E. Fraser
Administrative Law Judge

LEF/kdp
177273

PROPOSED ORDER

WHEREFORE, this 25th day of February, 2019, 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