

IN THE MATTER OF THE CLAIM	* BEFORE LAURIE BENNETT,
OF CHRIS BEIL,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	* OAH No.: DLR-HIC-02-19-04015
OMISSIONS OF SJAUNNA	* MHIC No.: 18 (05) 705
GARFINKLE, TRADING AS	*
MARYLAND COMPLETE HOME	*
IMPROVEMENTS, LTD,	*
RESPONDENT	*

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On March 22, 2018, the Claimant filed a claim on his and his wife Lindsey Biel's behalf with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$948.00 in actual losses they allegedly suffered as a result of a home improvement contract with Sjaunna Garfinkle, trading as Maryland Complete Home Improvements, LTD (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).

On February 4, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on May 28, 2019 at the OAH, Hunt Valley, Maryland. Bus. Reg. § 8-407(e). Hope Sachs, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. The Claimant and his wife were present to represent themselves. Eugene I. Kane, Esquire, represented the Respondent, who was present. Code of Maryland Regulations (COMAR) 28.02.01.23A.

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 the Claimant offered:

4. (A) Contract, September 23, 2017; (B) Door Addendum, September 23, 2017
5. Text messages between the Claimant and George Economides, various dates between September 22, 2017 through December 10, 2017
6. Emails between the Claimant and Home Advisor, between November 20, 2017 and December 11, 2017

8. An MHIC check list and instructions, undated
9. Letter from the Respondent to the MHIC, not dated but written in response to a letter from the MHIC dated December 19, 2017
10. (A) MHIC's Proposed Order, December 14, 2018; (B) letter from the MHIC to the Respondent, December 13, 2018

I admitted the following exhibits the Fund offered:

1. Memorandum from the OAH, April 22, 2019; Notice of Hearing, for the May 28, 2019 hearing; the MHIC's Hearing Order, February 4, 2019; certified copy of mail marked "return to sender unclaimed unable to forward."
2. The MHIC licensing history for the Respondent, printed on May 23, 2019
3. Letter from the MHIC to the Respondent, March 27, 2019; Fund claim form, March 17, 2018

I admitted the following exhibit the Respondent offered:

1. Contract, September 23, 2017¹

Testimony

The Claimant testified for himself.

The Respondent testified for herself.

The Fund did not present witnesses.

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 110034.

¹ This is a complete copy of the contract between the Respondent and the Claimant. Claimant Exhibit 4A is an incomplete copy in that it does not show the fine print at the bottom.

2. The Claimant and his wife wanted to purchase a new sliding glass door to replace the existing door that was leaking at their home. The Claimant obtained the Respondent's name from a company called Home Advisor.

3. The Respondent's salesperson, George Economides, met with the Claimant and his wife about the replacing the door. Mr. Economides drafted a contract, and an addendum that recites the door specifications but does not change the terms of the contract.

4. On Saturday September 23, 2017, the Claimant and Mr. Economides, acting on the Respondent's behalf, signed the contract for a door with mini blinds embedded between the two panes of glass. The Respondent was responsible for ordering and purchasing the door from the manufacturer and installing it at the Claimant's home.

5. The Claimant paid a \$948.00 down payment toward the contract price, by personal check, when they signed the contract.

6. The contract states: the estimated start date for the work is September 29, 2017; the estimated completion date was November 29, 2017; and the Respondent is not responsible for any delays out of her control. The start date accounted for a five-day rescission period after the signing of the contract.

7. The Respondent cashed the deposit check on Monday, September 25, 2017, before the expiration of the rescission period.

8. After the rescission period, the Respondent had someone measure the door space again to ensure the specifications.

9. In the ordinary course of the Respondent's business, she would have ordered the door through Thermal Industries (Thermal); her contact person would have been Sondra Thurston, who was based in Thermal's Baltimore, Maryland office; she would have paid

Thermal a down payment; Thermal would have built and delivered the door; and the Respondent would have installed it at the Claimant's home.²

10. In the ordinary course of the Respondent's business, she would have placed the order for the door at the conclusion of the five-day rescission period for the contract and she would have expected Thermal to deliver it within eight to nine weeks. Because the contract called for estimated completion nearly eight weeks from the expiration of the rescission period, the Respondent would not have expected to install the door until at least the estimated completion date, if not later. Mr. Economides did not tell the Claimant how long delivery usually takes. The Claimant therefore would reasonably have expected installation at any time between the estimated start and completion dates.

11. On October 2, 2017, the Claimant texted Mr. Economides and asked out of "curiosity" if he had any idea when the door would be ready. Mr. Economides replied that day, "will let you know." Clmt. Ex. 5. Neither Mr. Economides nor anyone else let him know when the door would be ready.

12. On October 19, 2017, the Claimant texted Mr. Economides and again expressed curiosity about the expected installation date. Neither Mr. Economides nor anyone else replied.

13. On November 15, 2017, the Claimant texted Mr. Economides to say he had not heard from Mr. Economides and he wanted to know what was happening with the installation. Neither Mr. Economides nor anyone else replied. Over the next few days or so, the Claimant left several voice mail messages for Mr. Economides; neither Mr. Economides nor anyone else replied.

² The record is not clear to whether Thermal would deliver the door to the Respondent or the Claimant. The evidence is undisputed that the Respondent would install it.

14. On November 27, 2017, the Claimant called Mr. Economides and he answered. The Claimant told him he wanted his money back. Mr. Economides agreed to refund the down payment.

15. On December 2, 2017, the Claimant texted Mr. Economides and asked whether he had spoken to the Respondent or the door company about returning his money and offered to meet him on December 5, 2017 to pick up a check. Mr. Economides replied that day that he would get back to the Claimant and arrange a meeting. The Respondent replied that he was thankful. Neither Mr. Economides nor anyone else got back to the Claimant.

16. On December 7, 2017, the Claimant texted Mr. Economides that he had received an email from Home Advisor stating it had been in touch with the Respondent and wanted to know from the Claimant whether everything had worked out. The Claimant told Mr. Economides he was waiting to receive the refund check before replying to Home Advisor and offering to meet that Saturday. Neither Mr. Economides nor anyone else replied.

17. On December 10, 2017, the Claimant texted Mr. Economides that he had not heard from Mr. Economides about meeting to receive a refund check. He offered to meet Mr. Economides that Sunday, and if he did not receive a refund, the Claimant would file a complaint with the MHIC. Neither Mr. Economides nor anyone else replied.

18. In the text messages, the Claimant mistakenly referred to the Respondent as Mr. Economides' wife. Mr. Economides and the Respondent lived together at the time the contract was signed but were not married.

19. The Respondent never delivered, nor offered to deliver, the door.

20. The Claimant never had contact with the Respondent; all of his contact was with Mr. Economides.

21. The Respondent never attempted to contact the Claimant.
22. Neither the Respondent nor anyone on her behalf ever told the Claimant the door was delayed because of a problem with Thermal or the mini blind manufacturer.
23. Neither the Respondent nor anyone on her behalf told the Claimant the door was ready for delivery in December 2017 or any other time.
24. The Respondent never refunded to the Claimant any portion of his \$948.00 deposit.
25. On an unspecified day, Thermal Industries changed its name to Thermal Windows and Doors.

DISCUSSION

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). “[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);³ *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

³ Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

improvement.” Bus. Reg. § 8-401. 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 she entered into the contract with the Claimant.

Second, the Respondent performed incomplete home improvements in that she never delivered and installed the door. The Respondent asserts she is not responsible because Thermal delayed delivery; the Respondent wrongly expected installation even before the estimated date for completion of the contract; and the completion date was merely an estimate, so the Claimant had no reason to expect the door before that date and should not have cancelled the contract in early December 2017. The evidence shows it is more likely than not that the Respondent never ordered the door. Thus, whether the Claimant started inquiring about the status of the door too soon after the contract was signed or cancelled the contract too soon after the estimated completion date is immaterial.

Nevertheless, the contract states that the estimated start date was September 29, 2017 and the estimated completion date was November 29, 2017. The Claimant therefore reasonably expected installation at any time during that period. It was reasonable then for him to start making inquiry even in early October 2017. Mr. Economides mostly did not reply to the Claimant’s messages asking for the status of the door and, later, the status of his request for a refund. Neither the Respondent nor anyone on her behalf contacted the Claimant to explain what she believes was a manufacturing delay. Thus, I question whether such a delay existed, or whether the Respondent created a delay by not ordering the door.

The Respondent testified that just before Christmas 2017, she spoke with the manufacturer who said the door was ready for delivery; she told the manufacturer to hold on

because she did not believe the Claimant still wanted the door; she asked Mr. Economides whether he thought the Claimant and his wife would take the door; and Mr. Economides replied that the Claimant was too angry and under no circumstances would he and his wife accept it. The Respondent testified Mr. Economides showed her the Claimant's texts and said the Claimant was "pretty angry" and he did not think the availability of the door would make a difference. The Respondent thus considered the Claimant's decision to cancel the contract a "done deal," "no ifs ands or buts about it, they weren't taking the door." (Test. Respondent.) As a result, the Respondent did not bother to tell the Claimant the door was ready. The Respondent added that she told Thermal to "hold on" with delivery because she was hopeful the Claimant would change his mind.

First, if she were truly hopeful the Claimant would change his mind, she would have told him the one crucial fact that might have changed his mind: the door was ready.

Second, I question the Respondent's testimony that Thermal told her just before Christmas that the door was ready. The Respondent wrote to the MHIC,

From what I understand from the manufacturer's rep, the manufacturer of the sliding glass door has sorted out the problems with the internal blinds and would like to make and ship up the door as ordered. They closed for the Christmas, New Year's holidays. Actually, I would like that as well as they have our deposit. I am told that the process will 4-5 weeks [sic] because of the internal blinds.

Clmt. Ex. 9. The letter is not dated, but the Respondent wrote that it was in reply to the MHIC's December 19, 2017 letter. Also, because she wrote in the past tense that the manufacturer "closed for the Christmas, New Year's holidays," I conclude she did not write the letter until after New Year's Day, or at least during the closure. This information is inconsistent with the Respondent's testimony that the door was *ready for delivery* before Christmas. This material

inconsistency causes me to question the chain of events as the Respondent presented them and whether she had ever ordered the door.

Because the Respondent was not credible, I look to whether the record includes any evidence to corroborate her version of the events, but no such evidence exists. She did not present a written order to Thermal; a copy of the check she claims she wrote to Thermal as a down payment on the door; or texts, emails or letters, between Sondra Thurston or anyone else on behalf of Thermal. Ms. Thurston did not testify. The Respondent also did not present testimony from Mr. Economides, whom she claims she told the door was ready. Mr. Economides was sequestered at the hearing in anticipation of his possible testimony on the Respondent's behalf.

The Claimant testified he called Thermal to ask about the status of the door and a John Wilson told him it did not have an order from the Respondent or anyone on her behalf. The Respondent speculates that because Thermal went through corporate structural change and closed its Baltimore office, perhaps it just could not find the order. That is unlikely, though, because the Respondent testified she spoke to someone at Thermal about the delivery date and was told "it's that time of year and the blinds take longer" and talked to Ms. Thurston four or five times and there was no doubt in the Respondent's mind the order had been received. And, of course, she asserts Thermal manufactured the door in which case they would have had the order. Moreover, the evidence does not show whether Thermal went through a corporate structural change or just a name change, or that any change would have caused Thermal to lose or delay the order. Absent evidence to corroborate that the Respondent made those calls, I do not find she actually made them.

Also, the Respondent's testimony about why she did not tell the Claimant the door was ready is far-fetched and not believable. The Respondent testified she did not tell the Claimant the door was ready because Mr. Economides showed her the Claimant's texts and said the Claimant was too angry to accept the door at that point. The Claimant certainly had the right to feel anger because no one kept him informed about the door for over two months, but nothing in the text messages show anger. The Claimant called Mr. Economides on November 27, 2017, and finally reached him, but the evidence does not show the Claimant was so angry it would have been useless to provide him with material information about the status of the door. I find it unbelievable that the Respondent would have purposefully chosen not give the Claimant an important update that would might resolve their dispute, complete the contract, and save both of them money. The Respondent is a business person with a customer to satisfy and a reputation to protect.

The Respondent testified she told Thermal in the first week of January that the contract was cancelled; when she cancels an order with Thermal, she expects Thermal to issue her a credit for one half of the deposit she made to them and Thermal did not issue a credit. She attributed the failure to receive a credit to some unspecified change in Thermal's business structure. The evidence does not show the Respondent made any effort to obtain a credit. I find it more likely she did not ask for a credit because she was not due one because she had not ordered the door.

The Respondent wrote in the undated letter to the MHIC that at the same time the Claimant wanted his money back, she had "a rather large insurance job that the owner decided to keep the money and use it for a vacation instead of paying us for the materials and labor. Two weeks later, as we were working another job the owner stopped payment on 2 progress payment

checks[.] She never even said a word to us but continued to order more work.” Clmt. Ex. 9. The Respondent did not explain why she made these remarks to the MHIC. Her remarks suggest the Respondent did not issue a refund to the Claimant because she was experiencing financial difficulties, not because the order was delayed for reasons beyond her control. Also, the Respondent did not mention a corporate change in the letter as a reason for the delay.

The Respondent stated in her opening statement that she was “ready, willing and able” to deliver the door to the Claimant, but it never arrived. That is a disingenuous statement. It never arrived because she claims she told Thermal to hold off and then cancelled the order herself. Even assuming she had ordered the door in a timely way, she never told the Claimant she was ready, willing, and able to deliver it.

The Respondent stated in opening statement that a subcontractor was responsible for providing the mini blind to the door manufacturer for installation in the door, and an issue arose between Thermal and the subcontractor which left her “in the dark for a while” and she was “strung along.” The evidence does not show any issue between the two that in fact caused a delay. The only evidence on point was the Respondent’s testimony. She did not offer any documentation of a delay from either company. Even if the Respondent was strung along, she cannot ignore the fact she strung along the Claimant by not keeping him informed of any delay.

In sum, the Claimant had a reasonable basis to cancel the contract and request a refund because the evidence shows it is more likely than not that the Respondent did not order the door and she therefore did not complete the contract. Thus, the Claimant proved eligibility for compensation for incomplete home improvement. I must now determine the amount of the Claimant’s actual loss. The MHIC’s regulations provide “[i]f the contractor abandoned the contract without doing any work, the claimant’s actual loss shall be the amount which the

claimant paid to the contractor under the contract. COMAR 09.08.03.03B(3)(a). Thus, the Claimant's loss is the \$948.00 deposit he paid.

A claimant's recovery is capped at \$20,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). The Claimant's claim is considerably less than the statutory maximum and he has not claimed more than he paid the Respondent.

The Respondent testified she paid someone to measure the space for the new door and she paid Mr. Economides a commission for selling the door to the Claimant. Although the Respondent did not argue the Claimant's loss should be reduced by these amounts, I will consider whether that is so. The Respondent incurred these costs as part of doing business with the Claimant. Presumably she factored them into the contract price. The Claimant is not responsible for the Respondent's business costs when she never delivered on the contract.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$948.00 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)(b). I further conclude that the Claimant is entitled to recover \$948.00 from the Fund. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$948.00; 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;⁴ and

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

Signature on File

July 11, 2019
Date Decision Issued

Laurie Bennett
Administrative Law Judge

LB/kdp
#180134

⁴ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 8th day of August, 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.

J. Jean White

***I. Jean White
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION