

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF BRENDA PARKS,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF MARK HALL,</b></p> <p><b>T/A MR. BASEMENT,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE STEPHEN W. THIBODEAU,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>* OAH No.: DLR-HIC-02-19-04042</b></p> <p><b>* MHIC No.: 18 (90) 891</b></p>
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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On May 17, 2018, Brenda Parks (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$17,740.00 in actual losses allegedly suffered as a result of a home improvement contract with Mark Hall, trading as Mr. Basement (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On February 7, 2019 the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on June 3, 2019 at the Prince George’s County Government Center, 1400 McCormick Drive, Room 306, Largo, Maryland 20774. Bus. Reg. § 8-407(e). Andrew J.

Brouwer, Assistant Attorney General, Department of Labor (Department),<sup>1</sup> represented the Fund. The Claimant represented herself. After waiting twenty 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.<sup>2</sup>

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:

- Clmt. Ex. 1 - Estimate of work from the Respondent, September 14, 2017; Executed Contract between the Claimant and the Respondent, September 18, 2017
- Clmt. Ex. 2 - Claimant's bank statement detailing payments to Respondent from September 19, 2017 through October 2, 2017
- Clmt. Ex. 3 - Text messages between the Claimant and the Respondent, undated; Photograph of the Claimant's basement; Email from the Claimant to the Respondent, December 11, 2017
- Clmt. Ex. 4 - Email from Melanie Wieringa, Chief Building Official of the City of Laurel, to the Claimant, December 15, 2017

<sup>1</sup> On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

<sup>2</sup> Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on May 2, 2019, COMAR 09.08.03.03A(2), and not returned as unclaimed/undeliverable by June 3, 2019. 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.

- Clmt. Ex. 5 - Email from Melanie Wieringa to the Claimant, December 15, 2017
- Clmt. Ex. 6 - Uniform Civil Citation issued to the Respondent by the City of Laurel, January 3, 2017; Correction Order issued the Respondent by the City of Laurel, January 2, 2017<sup>3</sup>; Certified mail receipt to the Respondent, undated
- Clmt. Ex. 7 - Email from Melanie Wieringa to the Claimant, January 16, 2018
- Clmt. Ex. 8 - Five photographs of the Claimant's basement and water leakage, taken by the Respondent June 2, 2019
- Clmt. Ex. 9 - Copy of Warranty of the Respondent's Work for the Claimant, September 14, 2017
- Clmt. Ex. 10 - Email exchange between the Claimant and Charles Corbin of the Department, April 2, 2018
- Clmt. Ex. 11 - MHIC Complaint Form, completed by the Claimant February 7, 2018
- Clmt. Ex. 12 - Order from the MHIC to the Respondent, March 16, 2018
- Clmt. Ex. 13 - Email from the Claimant to Charles Corbin, April 18, 2018
- Clmt. Ex. 14 - Email exchange between the Claimant and Charles Corbin, April 2, 2018; Home Improvement Claim Form filed by the Claimant, with attached letter, May 14, 2018
- Clmt. Ex. 15 - Contractor Estimates Worksheet, undated; Estimate from AquaGuard Waterproofing, April 26, 2018; Estimate from Affordable Basement Waterproofing, April 9, 2018; Estimate from DryZone Waterproofing, April 17, 2018

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - Hearing Order, February 4, 2019
- Fund Ex. 2 - Notice of Hearing, May 2, 2019
- Fund Ex. 3 - Letter from the MHIC to the Respondent, May 24, 2018
- Fund Ex. 4 - MHIC Licensing History for the Respondent, printed on May 24, 2019
- Fund Ex. 5 - Affidavit of David Brown, Investigator for the MHIC, May 2, 2019

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<sup>3</sup> Both the Uniform Civil Citation and the Correction Order have dates in January 2017, but it was made clear from the Claimant's testimony at the hearing that they were actually issued in 2018 after the Claimant executed a contract with the Respondent.

Fund Ex. 6 - State of Maryland Business History for the Respondent, printed on May 24, 2019

Fund Ex. 7 - Corporate Charter Approval Sheet for the Respondent, April 17, 2018; Articles of Cancellation of Maryland Limited Liability Company for the Respondent, filed March 9, 2018

The Respondent did not submit any exhibits.

Testimony

The Claimant testified on her own behalf.

The Fund and the Respondent 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 132166.
2. On September 18, 2017, the Claimant and the Respondent entered into a contract (Contract) to waterproof the Claimant's basement and repair the foundation of the Claimant's home. The Contract specified that the Respondent would seal interior and exterior wall cracks in the foundation, install a fourteen foot sub-floor drain and with sump well and new cover, apply mold treatment and waterproof all walls, and remove wood on the sump pump.
3. The original agreed-upon Contract price was \$8,168.00.
4. The Claimant made the following payments on the Contract to the Respondent:
  - \$2,722.00 on September 19, 2017;
  - \$800.00 on October 2, 2017;
  - \$2,446.00 on October 2, 2017;
  - \$1,600.00 on October 2, 2017;
  - \$1,400.00 on October 2, 2017.

5. The \$800.00 payment on October 2, 2017 represented additional work that was required beyond the original contract to seal visible cracks on the outside of the Claimant's home, bringing the total Contract price to \$8,968.00.

6. The Respondent began work on the Contract in late September 2017 and stopped work in early October 2017. At the time the Respondent stopped work on the Contract, everything except the waterproofing of the basement was completed.

7. Shortly after the Respondent stopped work on the Contract, the Claimant discovered the Respondent never secured a permit for the basement work.

8. The Respondent was subsequently issued a correction order for the unpermitted work by the City of Laurel in January 2018, and issued a citation for failure to obtain the necessary permits around the same time.

9. The Respondent never responded to either the correction order or the citation, and the Claimant and the City of Laurel discovered that the Respondent's location in Linthicum, Maryland, where the citation and correction order were mailed, was closed.

10. In February 2018, the Claimant experienced significant water leakage in her basement following a storm. The leaking in the basement continues to this day.

11. As part of the Contract, the Claimant obtained a twenty-five year transferrable warranty for any defective work by the Respondent. As such, in April 2018, the Claimant was told that Blake and Sons Contracting LLC (Blake) would honor the warranty because the Respondent was unavailable. However, the Claimant was unsuccessful in getting Blake to perform any corrective work to the basement after multiple attempts to contact Blake.

12. In April 2018, the Claimant subsequently obtained the following estimates to fully waterproof her basement and correct the Respondent's defective work:

- \$17,740.00 from AquaGuard Waterproofing;
- \$10,313.00 from Affordable Basement Waterproofing; and
- \$11,200.00 from DryZone Waterproofing.

### 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). “[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)<sup>4</sup>; *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.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant proved eligibility for compensation.

There is no dispute the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. In addition, there is no dispute the Respondent performed unworkmanlike, inadequate or incomplete home improvements. The

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<sup>4</sup> Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

Claimant specifically contracted for foundation repair that included a full waterproofing of her basement. Yet when the Respondent stopped work on the Contract in October 2017, the waterproofing was not completed. Indeed, some four months later, the Claimant experienced significant water leakage in her basement following a storm. At a minimum, the Respondent's home improvement work pursuant to the Contract was inadequate, because the Claimant specifically contracted for a waterproofed basement with a twenty-five year workmanship warranty. The Respondent did not adequately waterproof the basement as evidenced by the continuing water leakage into the Claimant's basement, and the Respondent did not remedy the issue either directly or through Blake, the contractor assigned the warranty work under the Contract. Because of the Respondent's inadequate home improvement, I necessarily 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. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). 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 some work under the contract, and the Claimant intends to retain other contractors to complete or 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 received estimates from three different companies to perform the work to remedy the Respondent's inadequate home improvement. All of the contractors – AquaGuard, Affordable Basement Waterproofing, and DryZone Waterproofing – are MHIC licensed contractors. For the purposes of calculating the Claimant's actual loss, I have used the Affordable Basement Waterproofing estimate of \$10,313.00. This estimate represents the lowest estimate of the three obtained by the Claimant, and it provides for full waterproofing of the Claimant's basement, including permits and engineering reports.

In applying the formula pursuant to COMAR 09.08.03.03B(3)(c), the Claimant paid the Respondent \$8,968.00 under the Contract, plus \$10,313.00 the Claimant would need to pay Affordable Basement Waterproofing, for a total of \$19,281.00. The formula then provides for subtracting the original contract price of \$8,968.00 from the \$19,281.00 amount to calculate the Claimant's actual loss, which would be \$10,313.00.

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. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss of \$10,313.00 exceeds the amount paid to the Respondent. Therefore, the Claimant's recovery is limited to \$8,968.00, the amount paid to the Respondent. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).



**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$10,313.00 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)(c). I further conclude that the Claimant is entitled to recover \$8,968.00 from the Fund. Bus. Reg. § 8-405(e)(5); 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 \$8,968.00; 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>5</sup> and

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

**Signature on File**

August 21, 2019  
Date Decision Issued

\_\_\_\_\_  
Stephen W. Thibodeau  
Administrative Law Judge



SWT/kdp  
# 181117

<sup>5</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

UNITED STATES DEPARTMENT OF JUSTICE

Washington, D.C. 20535

MEMORANDUM FOR THE ATTORNEY GENERAL

DATE: 10/15/54

RE: [Illegible]

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**PROPOSED ORDER**

***WHEREFORE, this 22<sup>nd</sup> day of October, 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.***

***Michael Shilling***

***Michael Shilling***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***

TRUST AGREEMENT

THIS TRUST AGREEMENT is made this 1st day of January, 1954, between the undersigned settlor, [Name], of the County of [County], State of [State], and the undersigned trustee, [Name], of the County of [County], State of [State].

The settlor hereby transfers, conveys, assigns, and endows unto the trustee, for the use and behoof of the beneficiaries named herein, the sum of [Amount] Dollars, together with the interest thereon, to be held, managed, and disposed of by the trustee in accordance with the provisions hereinafter set forth.

The trustee shall hold the said sum of money and the interest thereon for the use and behoof of the beneficiaries named herein, and shall pay the same to them as and when they shall become entitled thereto in accordance with the provisions hereinafter set forth.

The trustee shall have full power to invest the said sum of money and the interest thereon in such securities as he may deem prudent, and he shall have full power to sell, lease, convey, or otherwise dispose of the same, and he shall have full power to execute all such instruments as may be necessary or proper to carry out the purposes of this trust.

The trustee shall not be liable for the acts or omissions of any person who may be employed by him in the performance of his duties as trustee, provided that the trustee exercises due care in the selection and supervision of such person.

The trustee shall not be liable for the acts or omissions of any person who may be employed by him in the performance of his duties as trustee, provided that the trustee exercises due care in the selection and supervision of such person.

IN WITNESS WHEREOF, the settlor has hereunto set his hand and seal, and the trustee has hereunto set his hand and seal, at the City of [City], State of [State], this 1st day of January, 1954.

\_\_\_\_\_  
[Name]  
Settlor

\_\_\_\_\_  
[Name]  
Trustee