

IN THE MATTER OF THE CLAIM * **BEFORE LOUIS N. HURWITZ,**
OF HARDY WIGGINS * **AN ADMINISTRATIVE LAW JUDGE**
AGAINST THE MARYLAND HOME * **OF THE MARYLAND OFFICE**
IMPROVEMENT GUARANTY FUND * **OF ADMINISTRATIVE HEARINGS**
FOR THE ALLEGED ACTS AND * **OAH NO.: DLR-HIC-02-10-28674**
OMISSIONS OF KHORAN DAVIS, * **MHIC NO.: 09 (05) 181**
T/A AKBAR'S RENOVATIONS AND *
CONSTRUCTION *

* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On or about January 6, 2009, Hardy Wiggins (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$20,690.00 for actual losses suffered as a result of home improvement work performed in an unworkmanlike, inadequate or incomplete manner by Khoran M. Davis, *t/a* Akbar's Renovations and Construction (Respondent).

I conducted a hearing in this matter on December 14, 2010 at the County Office Building in Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2) (2010). Jessica B. Kaufman, Assistant Attorney General, represented the Fund. The

Claimant appeared on his own behalf. The Respondent, after receiving due notice of the hearing, did not appear.

Procedure in this case is governed by the provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation (DLLR), and the Rules of Procedure of the Office of Administrative Hearings (OAH). Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010); Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02 and 09.08.03; COMAR 28.02.01.

ISSUES

Did the Claimant sustain an actual loss compensable by the Fund as a result of the acts or omissions of the Respondent and, if so, what should be the monetary award?

SUMMARY OF THE EVIDENCE

Exhibits

The Claimant submitted the following exhibits, which were admitted into evidence:

- | | |
|-----------|---|
| CL #1 | Contract for Services, signed by the parties on October 23, 2007 and Draw Schedule, unsigned |
| CL #2 | Draw Schedule W/Garage, October 23, 2007 |
| CL #3 | Spreadsheet of payments made by the Claimant to the Respondent, with photocopies of ten canceled checks |
| CL #4 | Washington Suburban Sanitary Commission receipt, dated February 12, 2008 |
| CL #5 | Invoice from Lite House, LTD., dated November 10, 2008 |
| CL #6 | Invoice from Waldorf Water & Gas, undated |
| CL #7-#20 | Photographs of the property, taken in July 2008 |

- CL #21 Undated letter from the Claimant to the Respondent, with attached return receipt "green card," verifying receipt by the Respondent on November 25, 2008
- CL #22 Letter from William A. Mitchell, Esq., to the Respondent, dated June 6, 2008
- CL #23 Letter from Robert L. Lombardo, Esq., to the Respondent, dated July 29, 2008
- CL #24 Contract between the Claimant and Comars Construction, dated October 21, 2008, with attached Disbursement Schedule, dated November 1, 2008

The Respondent did not submit any exhibits for inclusion into evidence.

The Fund submitted the following exhibits, which were admitted into evidence:

- GF #1 Three Notices of Hearing, dated September 15, 2010; two Hearing Orders, dated August 6, 2010; two memos from Sandra Sykes, OAH Docket Specialist, to DLLR Legal Services, dated September 28, 2010; and two envelopes, returned by the United States Postal Service (USPS) as undeliverable
- GF #2 Two Notices of Hearing, dated November 9, 2010; two Hearing Orders, dated August 6, 2010; two memos from Sandra Sykes, OAH Docket Specialist, to DLLR Legal Services, dated December 7, 2010 and December 14, 2010; and two envelopes, returned by the United States Postal Service (USPS) as undeliverable
- GF #3 Transmittal to OAH; Hearing Order, dated August 6, 2010; and Home Improvement Claim Form, received by DLLR on January 6, 2009
- GF #4 Respondent's MHIC licensing history, dated November 4, 2010
- GF #5 Respondent's Maryland driving record, dated November 4, 2010
- GF #6 Print-out from Maryland courts website, printed on November 4, 2010
- GF #7 MHIC letter to the Respondent, dated January 17, 2009, with attached Home Improvement Claim Form, received by DLLR on January 6, 2009

Testimony

The Claimant testified on his own behalf and presented the testimony of Miguel Omar Juarez, owner of Comars Construction, who was accepted as an expert in construction, home remodeling, and construction costs. .

No witnesses appeared on behalf of the Respondent or the Fund.

FINDINGS OF FACT

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

1. The Respondent was licensed by the MHIC as a contractor at all times relevant to this case. His MHIC license expired on April 4, 2009, and was not renewed.
2. On or about October 23, 2007, the Claimant entered into a contract with the Respondent to perform the following home improvement work at the Claimant's residence, located at 6805 Middlefield Road, Fort Washington, Maryland:
 - construct a home addition of approximately 704 square feet and a garage addition of approximately 350 square feet
 - construct a back porch, with a two to three foot retaining wall, where needed
 - as part of the home addition, construct a master bedroom, master bathroom, walk-in closet and sunroom
 - construct the addition with materials that will match the existing house, specifically wood, wood sheathing or oriented strand board (OSB), vinyl siding, and asphalt shingles
 - utilize bricks to match the existing home on the front of the garage and matching siding on the side and back of the garage
 - provide all heating, ventilation and air conditioning (HVAC), electrical, and plumbing work, following minimum Code requirements of the State of Maryland and Prince George's County
 - construct a brick veneer wall on the right side of the house
 - obtain all permits, plans, sub-contractors, materials, and labor for the job

3. The parties agreed that the work would be completed for \$121,210.00. The contract called for a completion date of March 1, 2008.
4. The parties entered into an agreement, titled Draw Schedule, which provided for incremental payments to be made in conjunction with the corresponding work as follows:

Draw #1- \$18,000.00	<ul style="list-style-type: none"> Get plans drawn up, reviewed by owner and approved by County Get necessary permits for construction, electrical, plumbing and HVAC Tear down deck Get take-off on plans, order roof trusses
Draw #2- \$32,000.00	<ul style="list-style-type: none"> Dig footers for addition and garage Excavate patio area Pour concrete patio and retaining wall Perform block work for side and back of garage Build floor for addition Build exterior walls for addition and garage Install roof trusses for addition and garage Install Tyvek house wrap
Draw #3- \$22,000.00	<ul style="list-style-type: none"> Install asphalt shingles Install matching vinyl siding Install sliding door and all windows Open up house in master bedroom and bathroom
Draw #4- \$22,000.00	<ul style="list-style-type: none"> Frame interior walls per plan Install sub-panel for addition Install all electrical wiring Install all recessed lighting Install plumbing water lines, drains and vents for master bath Install jet tub and shower floor in master bath Install HVAC unit Call for close-in inspection
Draw #5- \$12,000.00	<ul style="list-style-type: none"> Install wall insulation Install drywall, mud and tape Hang interior doors and trim Install garage door Paint

Install electrical plates and trims

Draw #6- \$9,210.00

Install carpet in master bedroom and sunroom
Install ceramic tile in master bathroom

Draw #7- \$6,000.00

Final Clean-up

5. The Respondent began work on the project some time in late October 2007.
6. The Respondent worked on the project for several months before beginning to spend less and less time on the job. He stopped working on the property some time at or near the end of May 2008 or beginning of June 2008.
7. The Claimant was aware of the fact that the job was not completed and he also had questions about the quality of the workmanship regarding the items that had been completed.
8. In a letter dated June 6, 2008, the Claimant's attorney, William A. Mitchell, Jr., notified the Respondent of the Claimant's desire to resolve the matter without litigation.
9. At some time during July 2008, the Respondent returned to the property, looked around and left.
10. The Claimant paid the Respondent a total of \$117,210.00.
11. The Claimant's attempts to reach the Respondent and have him return to the property and complete the job were unsuccessful.
12. In a letter dated July 29, 2008, attorney Robert L. Lombardo wrote to the Respondent on the Claimant's behalf regarding the Claimant filing a complaint with the MHIC.
13. The Respondent did not return to complete the job or to correct the numerous deficiencies with the work performed.

14. Some time during the next three months, the Claimant engaged Miguel O. Juarez, owner of Comars Construction, to conduct a review of the plans for the project and to inspect the work the Respondent had performed. The Claimant knew Mr. Juarez because he had previously done basement work for him. Mr. Juarez made the following findings, which I adopt as fact:

- a. there were insufficient beams and support posts to support the addition to the house and the porch deck (CL #12);
- b. the metal support post was not protected from the weather (CL #12);
- c. the porch deck landing is not even with the first step; the first step should be even with the landing or seven and one-half inches lower than the deck landing (CL #14);
- d. there is a lack of proper insulation under the main addition (CL #15);
- e. the absence of proper insulation resulted in exposed pipes (CL #18);
- f. the drywall was unevenly finished (CL #19);
- g. some doors were not painted and some ceilings and walls need repainting;
- h. trim was not installed around the doorway of the master bedroom;
- i. five doors did not close properly;
- j. the master bathroom door was not installed;
- k. the walk-in closet was not built;
- l. at least one of the new windows was installed in an incorrect location;
- m. the placement of the tub and double sink was reversed;
- n. the roof line ridges do not meet;
- o. gutter problems were causing water to leak into the garage addition;
- p. insulation was missing in the addition's attic;
- q. excess dirt was left on the property;

- r. the electrical work was incomplete; and
 - s. the fence was not reinstalled.
15. On or about October 21, 2008, the Claimant obtained an estimate from Mr. Juarez for repairing the above-referenced deficiencies and completing project undertaken by the Respondent. The estimate, in the amount of \$24,690.00, was limited to the correction and completion of the work performed by the Respondent, with the exception of the walk-in closet. Installing a walk-in closet would be cost prohibitive at this point, given that the Respondent erred in configuring the master bedroom, leaving no room for a walk-in closet.
16. In an undated letter received by the Respondent on November 25, 2008, the Claimant gave the Respondent yet another opportunity to address the Claimant's concerns, this time with the assistance of a mediator.
17. The Respondent failed to respond to the Claimant's correspondence.
18. On or about January 6, 2009, the Claimant filed a Fund claim in the amount of \$20,690, alleging that a number of items had been performed in an unworkmanlike, inadequate, or incomplete manner.
19. The Respondent has not returned any of the funds the Claimant paid to him.

DISCUSSION

I. Respondent's Failure to Appear

The OAH initially mailed notice of the hearing, dated September 15, 2010, to the Respondent by certified and regular mail to the Respondent's Clinton, Maryland home and business address of record on file with the MHIC. The Clinton, Maryland address is also the Respondent's address on file with the Maryland Motor Vehicle Administration

(MVA) as his address of record. The Respondent has had an MHIC license at all times relevant to the filing of the claim and remained licensed until April 4, 2009, when his license expired and was not renewed. The notices, sent by regular and certified mail, were returned by the USPS as undeliverable.

On November 9, 2010, the OAH sent new notices to additional addresses for the Respondent, which were obtained by the MHIC. The new notices were sent to a Hyattsville, Maryland address the MHIC obtained from public records on the Maryland courts' website. The Hyattsville address is listed in court records for a matter scheduled for trial in January 2011. The second address the MHIC obtained is a corporate address in Washington, DC. The notices sent to the Washington, DC addresses, via regular and certified mail, were returned by the USPS as undeliverable, marked "return to sender, not deliverable as addressed." The notices sent to the Hyattsville, Maryland address were not returned as undeliverable. All of the OAH notices advised the Respondent of the time, place and date of the hearing.

I find that the Respondent received due notice, via first class mail, to appear at the hearing but failed to appear, and therefore, the hearing proceeded in the Respondent's absence. Md. Code Ann., Bus. Reg. § 8-312 (h) (2010).

II. The Merits of the Case

Section 8-405 of the Business Regulation Article provides that an owner may recover compensation of up to \$20,000.00 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 (2010). Section 8-401 defines "actual loss" as "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 (2010).

COMAR 09.08.03.03B governs the calculation of awards from the Fund:

B. Measure of Awards from Guaranty Fund.

(1) The Commission may not award from the Fund any amount for:

- (a) Consequential or punitive damages;
- (b) Personal injury;
- (c) Attorney's fees;
- (d) Court costs; or
- (e) Interest.

(2) The Fund may only compensate claimants for actual losses they incurred as a result of misconduct by a licensed contractor.

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

(a) If 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.

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

(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.

On or about October 23, 2007, the Claimant entered into a contract with the Respondent to perform home improvement work, for the amount of \$121,210.00, at the Claimant's property. The contract called for the Respondent to construct an addition to his home, including a sun room, deck, garage, master bedroom, enlarged bathroom, and a Jacuzzi at the Claimant's residence at 6805 Middlefield Road, Fort Washington, Maryland (the property).

The Respondent began working on the project in late October 2007. The contract called for the work to be completed by March 1, 2008. Work progressed on the project over the winter, until the Claimant noticed a considerable drop-off in the amount of time the Respondent was spending on the project. The Claimant realized in the spring of 2008 that, not only was the project not completed, but a number of items had not been done correctly. Even though the Claimant is not a home improvement professional, with the help of a Prince George's County building inspector, he was fully aware that the workmanship of the completed work was lacking. Finally, sometime in late May or early June 2008, the Respondent stopped coming to the property. The Respondent only returned to the property, at the Claimant's request, in July 2008 to look around, but he left without performing any work. He never returned to the property. Despite the fact that the project was not completed as contemplated by the contract, the Claimant paid the Respondent a total of \$117,210.00. The Respondent did not refund any of the payments to the Claimant.

The deficiencies in the work were described in detail at the hearing by Miguel Juarez, owner of Comars Construction Company, who was qualified as an expert in home improvement. Mr. Juarez described the numerous workmanship problems with the work

the Respondent performed and he noted which of the items provided for in the contract were incomplete. Both are referenced in detail in the above Findings of Fact.

I understand that Mr. Juarez, whom the Claimant hired previously for another project, inspected the job with the prospect of entering into a contract to complete and correct the work. The Claimant testified that he contacted Mr. Juarez for assistance because he trusted his opinion and his prior work was more than satisfactory. Mr. Juarez's expert testimony was presented in a credible fashion and I find no reason not to give it considerable weight. I also note that the Respondent did not appear at the hearing to refute Mr. Juarez's evaluation of the work performed pursuant to the contract.

The Claimant subsequently hired Mr. Juarez to complete and correct the deficiencies, with the exception of the walk-in closet. Mr. Juarez explained that it would be cost prohibitive to install the walk-in closet that the Respondent omitted because of a design flaw in the Respondent's project. Mr. Juarez pointed out that the improper location of the windows did not allow room for the walk-in closet provided for in the contract between the parties. The Claimant hired Mr. Juarez to otherwise complete the project and correct the defects at a cost of \$24,690.00. The Claimant paid Mr. Juarez and he completed and corrected the work as agreed.

Specifically, the Claimant's contract with Comars included the following work to complete and correct the work performed by the Respondent: install insulation and soffit under the floor; complete all electrical work; extend the overflow pipe; wrap the exposed post and beams with wood framing and aluminum; reinforce the existing deck with two columns and a beam; reconstruct the deck steps and landing; install beams and four supporting columns at the point where the existing structure meets the addition; install

attic insulation; reset the fence; relocate dirt; adjust five doors; install and paint trim around the master bedroom doorway; paint master shower and toilet area ceiling and walls; set and install sink cabinet; install handrail on side of Jacuzzi; install master bathroom door; and remove trash from the site.

The unrefuted testimony and documentary evidence, including photographs, presented by the Claimant show that he suffered an actual, measurable loss as a result of the Respondent's unworkmanlike, inadequate, or incomplete home improvement within the definition found in section 8-401 of the Business Regulation Article. Proper notice was given to the Respondent, who was licensed at all times relevant to this case, at his current address of record as listed with the District Court of Maryland for Anne Arundel County. The Respondent elected not to appear and respond to the Claimant's allegations.

The Claimant presented copies of checks and other bank documents to show that he paid the Respondent the sum of \$117,210.00, none of which was returned to him. The cost of correcting and completing the work undertaken is \$24,690.00

I find, from the documents presented, that the Respondent was licensed at the time of the Claimant's loss. The burden of proof in this case rests with the Claimant to establish, by a preponderance of the evidence, that he should be reimbursed for actual losses suffered as a result of an act or omission by a licensed contractor. Md. Code Ann., Bus. Reg. §§ 8-405(a), 8-407(c)(1) (2010) and Md. Code Ann., State Gov't. § 10-217 (2009).

The evidence before me supports a finding that the work undertaken by the Respondent was unworkmanlike, inadequate, or incomplete. COMAR 09.08.03.03B(3)(c), as set forth above, establishes the methods for determining actual

loss when the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract. In that case, the Claimant's actual loss shall be the amount which the Claimant paid to the original contractor, 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 and complete the original contract, less the original contract price.

Thus, the calculations under COMAR 09.08.03.03B(3)(c) establish the Claimant's loss as follows:

Paid to Respondent under contract	\$117,210.00
Amount to be paid to another contractor to correct/complete work	+ <u>24,690.00</u>
	\$141,900.00
Original contract price	- <u>117,210.00</u>
Total amount of loss	\$ 24,690.00

Pursuant to section 8-405(e)(1) of the Business Regulations Article, the maximum award any one claimant can receive from one contractor is \$20,000.00. Accordingly, the Claimant is entitled to a \$20,000.00 maximum award from the Fund.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant has sustained an actual loss compensable by the MHIC Fund as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2010) and COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

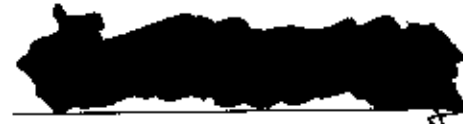
I RECOMMEND that the MHIC:

ORDER that the Claimant be awarded \$20,000.00 from the MHIC Fund; and

ORDER that the Respondent be ineligible for an MHIC license until the Respondent reimburses the Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

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

February 24, 2011
Date Decision Mailed



Louis N. Hurwitz
Administrative Law Judge

LNH
#119887

IN THE MATTER OF THE CLAIM * **BEFORE LOUIS N. HURWITZ,**
OF HARDY WIGGINS * **AN ADMINISTRATIVE LAW JUDGE**
AGAINST THE MARYLAND HOME * **OF THE MARYLAND OFFICE**
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EXHIBIT LIST

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PROPOSED ORDER

WHEREFORE, this 21st day of March 2011, 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