

IN THE MATTER OF THE CLAIM OF Sujit Basu AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMISSIONS OF Natalia Marin and Bent Palm Design/ Build, LLC	* MARYLAND HOME * IMPROVEMENT COMMISSION * * MHIC CASE NO. 19(90)1035 * OAH CASE NO. LABOR-HIC- * 02-20-00083 * *
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FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on December 2, 2020. Following the evidentiary hearing, the ALJ issued a Proposed Decision on January 7, 2021, concluding that the homeowner, Sujit Basu (“Claimant”) was not eligible for an award from the Home Improvement Guaranty Fund as a result of the acts or omissions of Natalia Marin and Bent Palm Design/Build, LLC (“Contractor”) because the Claimant unreasonably rejected the Contractor’s good faith effort to resolve their dispute. *ALJ Proposed Decision* p. 8. In a Proposed Order dated March 17, 2021, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to deny an award from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On September 16, 2021, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant participated without counsel. Thomas Greist attended the exceptions hearing on behalf of Bent Palm Design/Build, LLC. Natalia Marin did not participate and was not represented. Assistant Attorney General Justin Dunbar appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Claimant’s exceptions. Therefore, the Panel’s review of the record was limited to the preliminary exhibits for

the exceptions hearing, the OAH Proposed Decision, and the exhibits admitted as evidence at the OAH hearing. COMAR 09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for the construction of a deck and addition at the Claimant's home. The ALJ found that the Contractor's performance under the contract was incomplete, but that the Claimant prevented the Contractor from completing the contract work. *ALJ's Proposed Decision* pp. 6-8.

On exception, the Claimant argued that the ALJ erred in finding that the Contractor made good faith efforts to resolve the dispute, alleging that the Contractor did not respond to requests for status updates during the project and did not respond to his list of concerns until he filed a Complaint with MHIC. The Claimant did not identify evidence in the record in support of his argument.

The Commission finds no error with the ALJ's findings. The record demonstrates that the Contractor corrected several workmanship defects identified by the Claimant during the performance of the contract (OAH Hearing Claimant's Exhibit 3) and stopped working on the project only after the Claimant refused to make the progress payment following the Contractor's installation of drywall required under the contract and insisted on paying the remaining balance upon completion of the entire project. (OAH Hearing Claimant's Exhibit 4.) Mr. Greist testified that the Contractor was willing to complete the project and correct any defects before collecting the final payment from the Claimants. Therefore, the Commission agrees with the ALJ that the Contractor made good faith efforts to resolve the dispute and that the Claimant was unreasonable to refuse to pay the drywall progress payment to allow the Contractor to correct any defects and complete the project.

Having considered the parties' arguments, the evidence contained in the record, and the

ALJ's Recommended Decision, it is this 15th day of October 2021, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AFFIRMED**;
- D. That the Claimant's claim is **DENIED**;
- E. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- F. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Bruce Quackenbush
Chairperson –Panel
Maryland Home Improvement
Commission

<p>IN THE MATTER OF THE CLAIM</p> <p>OF SUJIT BASU,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF NATALIA MARIN,</p> <p>T/A BENT PALM DESIGN/BUILD,</p> <p>LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE TRACEY JOHNS DELP,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-20-00083</p> <p>* MHIC No.: 19 (90) 1035</p> <p>*</p>
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PROPOSED DECISION

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DISCUSSION
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STATEMENT OF THE CASE

On July 1, 2019, Sujit Basu (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$11,654.00 in actual losses allegedly suffered as a result of a home improvement contract with Natalia Marin, trading as Bent Palm Design/Build, LLC (Respondent).

Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015 & Supp. 2020).¹ On December 20, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a remote hearing on December 2, 2020² via WebEx video conferencing. Bus. Reg. § 8-407(e); Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Nicholas Sokolow, Assistant Attorney General, represented the Fund. The Claimant represented himself. Thomas Griest filed a notarized Special Power of Attorney authorizing him to represent Bent Palm Design/Build, LLC (Bent Palm). Md. Code Ann., State Gov't § 9-1607.1(a)(4)(i) (2014). Mr. Griest is not a licensed Maryland attorney and therefore could not represent the Respondent personally. 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 received proper notice³ and failed to appear, and I proceeded to hear the captioned matter.⁴ *Id.* 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. 2020); COMAR 09.01.03; and 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?

¹ Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume and 2020 Supplement of the Maryland Annotated Code.

² March 25, 2020 and July 31, 2020 hearing dates were administratively postponed due to the COVID-19 pandemic.

³ On September 4, 2020, a notice of the hearing was mailed to the Respondent at her address of record by regular and certified mail, COMAR 09.08.03.03A(2), and was not returned as unclaimed or undeliverable, or for any other reason. The Respondent did not notify the OAH of any change of address. COMAR 28.02.01.03E.

⁴ The hearing concluded on December 3, 2020; however, I held the record open until December 8, 2020 for receipt of the Special Power of Attorney, which was received at the OAH on December 7, 2020.

SUMMARY OF THE EVIDENCE

Exhibits

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

- Clmt. Ex. 1 - Unsigned Contract (eight pages), admitted with a stipulation that the Contract was signed by the parties
- Clmt. Ex. 2 - Four checks from the Claimant to the Respondent totaling \$30,375.00 (four pages)
- Clmt. Ex. 3 - Photographs of the project with notations as to corrected areas of concern and outstanding issues (thirteen pages)
- Clmt. Ex. 4 - Claimant statement (three pages)
- Clmt. Ex. 5 - Estimate, Wellman General Contracting and Home Improvements, LLC (four pages)

I admitted the following exhibit on behalf of Bent Palm:

- Resp. Ex 1 - Change Order, July 31, 2018 (two pages)

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - Notice of December 2, 2020 Hearing, September 4, 2020 (two pages)
- Fund Ex. 2 - Hearing order, December 10, 2019 (two pages)
- Fund Ex. 3 - Letter from MHIC to Respondent, July 10, 2019, and Home Improvement Claim Form, received July 1, 2019 (two pages)
- Fund Ex. 4 - Letter from MHIC To Whom it May Concern, September 16, 2020 (one page)
- Fund Ex. 5 - Respondent's MHIC Licensure Information, printed January 24, 2020 (two pages)

Testimony

The Claimant testified and presented the testimony of his wife, Manu Anand. Mr. Griest testified on behalf of Bent Palm. The Respondent did not appear at the hearing to testify or present the testimony of any witnesses. The Fund recalled the Claimant and Mr. Griest.

PROPOSED FINDINGS OF FACT

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license numbers 01-104766 and 05-129910. (Fund Exs. 4 and 5.)

2. The Claimant is not related to the Respondent or any of her employees, by blood or marriage.

3. The Claimant is the owner of the subject property, located in Bethesda, Maryland, and resides in the property.

4. The Claimant has not filed any other claims against the Respondent outside of these proceedings.

5. On or about March 18, 2018, the Claimant and the Respondent entered into a written Contract for the Respondent to perform the following work: "Installation of new deck/steps areas and addition per plans..." for \$40,500.00. (Clmt. Ex. 1.)

6. The Contract payment schedule is as follows:

- i. 15% Design Contract Payment: \$6,075.00
- ii. 15% Payment due after posting permit: \$6,075.00
- iii. 30% Payment due at deck framing completion: \$12,150.00
- iv. 15% Payment due at addition close-in inspection: \$6,075.00
- v. 15% Payment due at addition drywall installation: \$6,075.00⁵
- vi. 10% Final Payment due at completion and both final inspections: \$4,050.00.

7. The Contract provided an estimated start date of three to six weeks and an estimated completion time of four to seven weeks.

8. The Claimant is dissatisfied with the slow progress of work.

9. The Claimant is dissatisfied with the quality of work.

⁵ The dollar amount written on the Contract of "\$6,0575" appears to be a typographical error.

10. The Claimant paid the Respondent \$30,375.00, representing the first four payments under the Contract.

11. After completion of drywall installation and per the Contract, the Respondent requested the fifth payment of \$6,075.00.

12. The Claimant testified and submitted documentation (Clmt. Ex. 4) of his intention to hold back the fifth payment until project completion.

13. The Respondent made good faith efforts to resolve the claim.

14. The Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't §10-217; 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.” Bus. Reg. § 8-405(a); *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.

“The [MHIC] may deny a claim if the [MHIC] finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim.” Bus. Reg. § 8-405(d). For the following reasons, I find that the Claimant has not proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time she entered into the Contract with the Claimant on or about March 18, 2018. The scope of work included a rear deck, side deck, and an addition (*i.e.* the closing in of a screened porch area). Although the Claimant requested that the addition be completed first, the Contract is silent on the order of work and the Respondent began work on the rear deck first. The Claimant’s evidence indicates that the Respondent secured the deck building permit on or about March 29, 2018. (Clmt. Ex. 4.) Mr. Griest testified that while the rear deck was being constructed, Bent Palm was having architectural drawings prepared for the addition permitting process. The drawings were finalized on May 12, 2018, and Bent Palm obtained the addition permit on or about May 22, 2018. Although not the preference of the Claimant, without specific direction from Contract, the order of construction does not appear unreasonable.

Mr. Griest testified that the rear deck is largely complete, but for a few boards which will abut the addition (which were not installed so as not to be damaged during construction of the addition), deck lighting which would be installed at the time the electrician performed work in the addition, and final post caps. The Claimant complained that the deck railing is shaky, and a gutter downspout was damaged. Mr. Griest testified that the Claimant’s complaints are punch list items which would be corrected at the conclusion of the job. He explained that punch lists are created at the conclusion of the job to note deficiencies observed by the homeowner to be corrected before final payment. Mr. Griest also acknowledged that the side deck, although constructed, is not sized properly due to miscommunication with a subcontractor and that Bent Palm had every intention to correct this error.

With regard to the addition, the Claimant is dissatisfied with the delay, although some delay is attributable to him. In early July, while the addition was being framed in, the Claimant's wife inquired about the cost to enlarge the window area. Mr. Griest explained that larger windows would require steel ridged framing for structural support. Work on the project stopped for a new plan and its associated costs to be created. Bent Palm work crews were assigned to other jobs because no further work could be completed until the manner of framing was decided. On July 31, 2018, the Respondent prepared a change order incorporating the Claimant's ideas, which the Claimant rejected on or about August 2, 2018, choosing to stay with the original design. Thereafter, the correctly sized windows were ordered, and crews resumed work on the addition.

The Claimant testified that he is dissatisfied with the addition work, which failed some phases of the inspection process (wall bracing, insulation, and close-in).⁶ Mr. Griest acknowledged these failed inspections, in part placing blame on an inexperienced inspector, but testified that ultimately the work passed the necessary inspections. After close-in inspection, drywall was hung beginning in mid-November 2018. In December 2018, the Claimant complained about the quality of the drywall work, noting gaps and asymmetrical work. Mr. Griest testified that in early January 2019, he personally inspected the work and agreed with the Claimant's areas of concern; he testified that these concerns were remedied. The Claimant acknowledged that his drywall concerns were remedied. Thereafter, the Respondent requested the fifth Contract payment installment which was due "at addition drywall installation." The Claimant refused to make the payment and stated that the fifth and sixth payments would be made at project completion. As a result, work on the project stopped. At the time work stopped, there were no outstanding inspection requests pending with Montgomery County.

⁶ Payment and work stopped; therefore, the project had not reached final inspection.

The Claimant testified that he is concerned that upon receipt of the fifth payment, the Respondent will walk off the job; however, I do not find the Claimant's belief to be supported by the evidence. The Respondent has completed all work thus far, responded to the Claimant's concerns, and participated in mediation.

I am sympathetic to the Claimant's concern with the project delay; however, as Mr. Griest testified, construction delay is not uncommon, and here, not solely attributable to the Respondent. The Claimant also testified about problems with the flooring subcontractor; however, Mr. Griest testified that flooring work is to be completed after drywall installation for which the Respondent has yet to receive payment. Further, given the Claimant's dissatisfaction with the flooring subcontractor, Mr. Griest testified that Bent Palm offered to subtract the flooring cost from the final payment to allow the Claimant to choose and hire his own flooring contractor, but the Claimant rejected the offer. I also accept Mr. Griest's testimony that the remaining complaints the Claimant has relate to either punch list items or work yet to be completed per the Contract.

Because "[t]he [MHIC] may deny a claim if the [MHIC] finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim," I agree with Counsel for the Fund that the Claimant is ineligible for relief. After careful consideration of the evidence, I find the Respondent's efforts to resolve the dispute have been made in good faith and unreasonably rejected by the Claimant.

PROPOSED CONCLUSIONS OF LAW

Based upon the foregoing Proposed Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's acts and omissions. I also conclude that the Claimant is not entitled to reimbursement from the Fund for the Respondent's work because he unreasonably rejected good

faith efforts by the Respondent to resolve the claim. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2020); COMAR 09.08.03.03B(2). For the reasons stated, I do not recommend an award.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

January 07, 2021
Date Decision Issued

Tracey Johns Delp

Tracey Johns Delp
Administrative Law Judge

TJD/at
#189360

PROPOSED ORDER

WHEREFORE, this 17th day of March, 2021, 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.

Joseph Tunney

Joseph Tunney

Chairman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***