

IN THE MATTER OF THE CLAIM
OF ANTHONY MEJIA,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF STEVE GEORGE,
T/A EXQUISITE BUILDING
SERVICES, INC.,
RESPONDENT

* BEFORE JANA CORN BURCH,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-21-00995
* MHIC No.: 20 (75) 628
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PROPOSED DECISION

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STATEMENT OF THE CASE

On January 30, 2020, Anthony Mejia filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$1,260.00 in actual losses allegedly suffered as a result of a home improvement contract with Steve George, trading as Exquisite Building Services, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹

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

On January 13, 2021, MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a remote hearing on March 9, 2021 from OAH. Bus. Reg. § 8-407(e). Eric London, Assistant Attorney General, Department of Labor (Department), represented the Fund. The Claimant represented himself. After waiting 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.² On April 27, 2021, Laura Party, an Administrative Aide, sent an electronic mail (email) to the parties and advised them that I wanted to reopen the record to hear argument as to what impact, if any, Md. Code Ann., Bus. Reg. § 8-405(f)(2) might have on the Claim. Mr. London and the Claimant participated in a hearing on that issue on May 7, 2021.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and OAH's Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 09.01.03; COMAR 28.02.01.

ISSUES

1. Is the Claimant excluded from bringing the Claim because he did not reside in the home as to which the Claim was made?

² Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on January 29, 2021. COMAR 09.08.03.03A(2). The notice sent by regular mail was not returned. MHIC submitted an affidavit, dated February 8, 2021, from its Executive Director, David Finneran, indicating that the Respondent's address of record with MHIC was the same address to which OAH's notice was sent. (Fund Ex. 3) 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.

2. Assuming the Claimant is not excluded from bringing the Claim, did the Claimant sustain an actual loss compensable by the Fund because of the Respondent's acts or omissions?
3. If so, what is the amount of the compensable loss?

SUMMARY OF THE EVIDENCE

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

- Clmt. Ex. 1 - Independent Contractor Agreement, dated March 15, 2018, between the Claimant and the Respondent (Contract)
- Clmt. Ex. 2 - Copies of endorsed checks made out to Respondent from Claimant, dated April 5, 2018 for \$2,000.00, April 27, 2018 for \$2,950.00, May 2, 2018 for \$2,000.00, May 5, 2018 for \$1,000.00 and copies of receipt of a check on March 15, 2018 for \$3,000.00
- Clmt. Ex. 3 - Photograph of interior of garage
- Clmt. Ex. 4 - Photograph of interior of garage
- Clmt. Ex. 5 - Estimate from Atrium Construction LLC to paint garage interior ceiling and walls for \$1,260.00
- Clmt. Ex. 6 - Claimant's letter to MHIC, dated January 30, 2020, requesting \$1,260.00 from the Fund
- Clmt. Ex. 7 - Respondent's June 21, 2018 invoice for \$1,325.74 emailed to the Claimant

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - OAH Notice of Hearing, January 29, 2021
- Fund Ex. 2 - MHIC Hearing Order, January 7, 2021
- Fund Ex. 3 - Respondent's licensing history, February 8, 2021
- Fund Ex. 4 - Claim
- Fund Ex. 5 - Letter to Respondent from MHIC advising that the Claim had been lodged against him, February 11, 2020

Fund Ex. 6 - Respondent's Explanation of Events

Fund Ex. 7 - Scope of Work and Contract provided by Respondent to Fund

Fund Ex. 8 - Respondent's July 6, 2018 Invoice for Claimant and Revised Invoice sent to the Claimant via email on July 9, 2018

Testimony

The Claimant testified.

The Fund did not present any 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 numbers 01-108141 and 05-131970. (Fund Ex. 3)

2. Prior to entering into the Contract, the Respondent and the Claimant's wife walked through the Claimant's then principal residence at 5615 44th Avenue in Hyattsville, Maryland. They discussed improvements that might be completed to place the residence in the most marketable shape to sell and the projected costs of those improvements. The Claimant's wife documented those discussions and took hand-written notes. Her notes included the measurements of three bedrooms and indicated that carpeting for those bedrooms was a "must." (Fund Ex. 7 and T. of Claimant)

3. On March 16, 2018, the Claimant and the Respondent entered into the Contract, dated March 15, 2018, for home improvements at the Claimant's residence. The Contract stated in the Services Provided clause that the Respondent would:

- Prep and repair drywall for painting in house and garage
- Refinish flooring in specified areas

- Crown molding installation in loft area
- Install closet organizer in master bedroom (Services)

In addition, that clause stated that Services would include other agreed upon tasks for work outside the scope of work, noted above, for which the Respondent would provide a new estimate of costs to the Claimant prior to rendering additional services. (Clmt. Ex. 1 and Fund Ex. 7)

4. The Respondent agreed to install carpet in three bedrooms but failed to include it in the Services outlined in the Contract, but the cost of the carpet was accounted for in the total agreed-upon Contract price of \$10,000. (Clmt. Ex. 1 and Fund Ex. 7 and T. of Claimant)

5. Carpet was installed in the bedrooms. (T. of Claimant)

6. At some point after the date of the Contract, the Respondent agreed to refinish the stairs, which had not been included in the Services, for the cost of \$950.00. (T. of Claimant)

7. The Respondent began work on the Services and the refinishing of the stairs in March 2018, He completed the Services in May 2018, except for painting the garage walls. (T. of Claimant)

8. The Claimant paid the Respondent on the following dates and in the following amounts:

- March 15, 2018, \$3,000.00;
- April 5, 2018, \$2,000.00;
- April 27, 2018, \$2,950.00;
- May 2, 2018, \$2,000.00; and,
- May 5, 2018, \$1,000.00.

(Clmt. Ex. 2)

9. On June 21, 2018, the Respondent sent the Claimant an invoice via email. The invoice amount was \$1,325.74. It indicated that the cost of carpet installation was \$900.00.

(Clmt. Ex. 7)

10. On July 6, 2018, the Respondent sent the Claimant another invoice via email. The invoice amount was \$2,744.00. It indicated that the cost of the carpet installation was

\$1,200.00. (Fund Ex. 7)

11. The Respondent sold the residence on September 20, 2018 with an unpainted garage. (T. of Claimant)

12. At some point in January 2020, the Claimant reached out to individuals who purchased his former residence. He asked that they provide him with photographs of the garage, which they did. (Clmt. Exs. 3 and 4 and T. of Claimant)

13. On January 14, 2020, Mario Noya of Atrium Construction LLC provided an estimate of \$1,260.00 to paint the garage. That work has not been completed. (Clmt. Ex. 5 and T. of Claimant)

14. On January 30, 2020, the Claimant filed the Claim seeking \$1,260.00, the estimate to paint the garage. At that time, the Claimant did not reside in the home which was the subject of the Claim. (Fund Ex. 4)

15. On February 11, 2020, MHIC sent the Respondent a copy of the Claimant's Claim and asked that he send a letter stating his position regarding the Claim within ten days. (Fund Ex. 5)

16. In response, the Respondent provided MHIC with an Explanation of Events, the Claimant's wife's handwritten notes, the Contract and a July 6, 2018 Revised Invoice. (Fund Exs. 6, 7 and 8)

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); *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. A claimant may be excluded from bringing a claim against the Fund if, among other things, the owner does not reside in the home to which the claim is made. Bus. Reg. § 8-405(f)(2)(i).

Claimant's Position

The Claimant’s position is that, pursuant to the Contract, he paid for the garage to be painted and it was not painted. He showed that he secured an estimate to have the work completed for \$1,260.00 and should be compensated in that amount even though the work was never done. The Claimant argued that the Respondent agreed to install the carpet and that it was an “oversight” that the Respondent failed to include it as part of the Services noted in the language of the Contract. As a result, the Claimant stated that the cost of the carpet should not be used to reduce any award from the Fund.

Lastly, the Claimant argued that Bus. Reg. § 8-405(f)(2)(i) should not exclude him as a claimant because he was the owner and did reside in the home at the time the Contract was negotiated.

Fund's Position

The Fund does not dispute that the Claimant paid the Respondent to complete the Services as set forth in the Contract. Nor does it dispute that those Services included a painted garage and that work was not performed. The Fund noted, however, that the Respondent completed other work that was not set forth in the Contract and for which the Claimant did not pay the Respondent. Specifically, the Fund points out that the Respondent installed carpet in three bedrooms and that the cost of that carpet was \$900.00 for which the Respondent was not paid. As a result, the Fund argues that the Claimant's award should be \$360.00, which is the amount of the estimate to paint the garage, \$1,260.00, minus the cost of the carpet at \$900.00.

The Fund asserts that Bus. Reg. § 8-405(f)(2)(i) should not be interpreted to exclude a claimant who was an owner and resided in the home, which was the subject of the claim, at the time the Claim was made. The Fund conceded that it had no case law to support that position.

Actual Loss

The Respondent was a licensed home improvement contractor at the time he entered the Contract with the Claimant. The evidence showed that the Respondent performed incomplete home improvements because he did not paint the garage. The evidence further showed that the Claimant was the owner and resided in the home to which the Claim is made at the time the Contract was signed.

As previously noted, Md. Code Ann., Bus. Reg. § 8-405 (f)(2)(i), governs excluded claimants and states, in relevant part, that:

An owner may make a claim against the Fund only if the owner:

(i) Resides in the home as to which the claim is made....

The Claimant pointed out that at the time he filed the Claim he advised MHIC that he no longer owned the home but was told to proceed. In addition, the Fund contended that Bus. Reg. § 8-405 (f)(2)(i) should not be read to exclude the Claimant as he was the owner at the time he contracted with the Respondent for the Services and the Claim should be allowed.

I do not agree. The Court of Special Appeals reiterated the general principles of statutory construction in *Linkus v. Maryland State Board of Heating Ventilation, Air-Conditioning and Refrigeration Contractors*, 114 Md. App. 262, 273-274 (1997) (citations omitted):

The cardinal rule of statutory construction is to ascertain and carry out the actual intent of the Legislature. The task of statutory interpretation begins with the ordinary and natural meaning of the words employed. If the language is plain and free from ambiguity and expresses a definite and sensible meaning, there is no need to look elsewhere to ascertain the intent of the legislative body.

I find that the language of Bus. Reg. § 8-405 (f)(2)(i) is plain and free from ambiguity. In addition, it expresses a definite and sensible meaning to prohibit individuals, who no longer reside in the home that is the subject of the claim, from seeking an award from the Fund. The undisputed facts here show that the Claimant sold the home in September 2018 and did not file the Claim until late January 2020, over 16 months later. The Claimant asked the current homeowner, who purchased the home from him, to take the photographs of the unpainted garage. He admitted those photographs as exhibits to demonstrate that the Respondent did not paint the garage. (Clmt. Exs. 3 and 4)

Based on the clear and unambiguous language of Bus. Reg. § 8-405(f)(2=3)(i), I find that the Claimant is excluded from seeking an award from the Fund.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant is excluded as a claimant and, as a result, has not sustained an actual loss of \$1,260.00 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)(a).


RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claim for \$1,260.00; and

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

June 7, 2021
Date Decision Issued



Jana Corn Burch
Administrative Law Judge

JCB/sw
#191190

PROPOSED ORDER

WHEREFORE, this 16th day of August, 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*