

IN THE MATTER OF THE CLAIM	* BEFORE BRIAN ZLOTNICK,
OF ALBERT GIANGIORDANO,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF JAMES FLANAGAN,	*
T/A FLANAGAN'S RENOVATIONS,	* OAH No.: LABOR-HIC-02-23-27102
INC.,	* MHIC No.: 23 (75) 846
RESPONDENT	*

* * * * *

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 April 4, 2023,¹ Albert Giangiordano (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)² Guaranty Fund (Fund) for reimbursement of \$21,095.00 for actual losses allegedly suffered as a result of a home improvement contract with James Flanagan, t/a Flanagan's Renovations, Inc. (Respondent).³

¹ The Claim was signed by Lisa Fuller, the Claimant's daughter, who has power of attorney for the Claimant.
² The MHIC is under the jurisdiction of the Department of Labor (Department).
³ Md. Code Ann., Bus. Reg. §§ 8-401 to 411 (2015 & Supp. 2023). Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

- Claim. Ex. 9 - ARC diagram of firestop, undated
- Claim. Ex. 10 - Contract with DMH Contracting, June 6, 2023
- Claim. Ex. 11 - Letter from Atlantic Casualty to the Respondent, June 20, 2023
- Claim. Ex. 12 - Photograph of truss under the Claimant's bathtub, November 10, 2023

I admitted the following exhibits offered by the Fund:

- GF Ex. 1 - Letter from the MHIC to the Respondent, April 7, 2023, with attached Home Improvement Claim Form, signed October 10, 2023
- GF Ex. 2 - Hearing Order, October 13, 2023
- GF Ex. 3 - Notice of Hearing, November 2, 2023
- GF Ex. 4 - The Respondent's Licensing History with the MHIC, printed November 27, 2023

I admitted the following exhibits offered by the Respondent:

- Resp. Ex. 1 - Texts between the Respondent and Ms. Fuller, March 9, 2022
- Resp. Ex. 2 - Letter from Atlantic Casualty to the Respondent, June 20, 2023
- Resp. Ex. 3 - Email from the Respondent to Kim Rosenthal, January 24, 2023
- Resp. Ex. 4 - Contract with the Claimant, August 16, 2021

Testimony

Ms. Fuller testified on behalf of the Claimant and presented Richard Truitt, Director of Harford County Inspections as a witness.

The Respondent testified on his own behalf and presented George Schrufer, Lead Renovator, Flanagan Renovations, Inc., as a witness.

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 01-6056226 and 05-129209.⁶
2. The Claimant resides in a fourth floor condominium unit.

⁶ GF Ex. 4.

10. In June 2022 the Claimant and the Respondent agreed to remove the used tub and install a new tub purchased from Home Depot. In July 2022 the Respondent removed the used tub and installed the new tub in the Claimant's condominium. On July 28, 2022, the Claimant paid the Respondent \$2,300.00 for the purchase and installation of the new tub.

11. The Respondent did not obtain either a plumbing or electrical permit from Harford County for the work performed under the Contract.

12. In November 2022 Ms. Fuller sent a text to the Respondent indicating that the new tub faucet was leaking. The Respondent replied that he could come out to fix the tub but did not receive any follow up invitation to return to the Claimant's condominium to make repairs.

13. On November 21, 2022, Steve Phillips, Harford County Inspector, inspected the new tub and found that it lacked a tempering valve and that the hand held shower did not have a required back flow protection installed.

14. The Respondent notified the Claimant in November 2022 that he could install the fire stop, the tempering valve, and back flow protection for the hand held shower. The Claimant did not respond to the Respondent.

15. Ms. Fuller did not ask the Respondent to make any repairs to the new tub after it leaked because she lacked confidence in his ability to fix it.

16. On June 20, 2023, the Claimant entered into a contract with DMH Contracting to remove the tub and install a shower for \$11,500.00.

DISCUSSION

STATUTORY PREREQUISITES

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, the Claim was timely filed,⁸ the Claimant did not recover the alleged losses from any

⁸ *Id.* § 8-405(g) (Supp. 2023).

install a tempering valve and back flow protection in the hand held shower. The Claimant contended that all of this is clear evidence that the Respondent performed unworkmanlike and inadequate work and that he suffered an actual loss as a result.

The Respondent argued that the work he performed was not of poor quality. He acknowledged that he did not obtain permits prior to starting the work. He also argued that they did not cut the truss or remove the fire stop during their installation of both tubs. The Respondent also argued that he reached out to the Claimant to fix the issues with the new tub but was not asked to make any repairs.

The Respondent further asserted that the Claimant has not proven an actual loss because the contract with DMH Contracting involved the installation of a shower which was not included in the Contract and was substantially different than the Contract.

ANALYSIS

The Respondent Performed an Unworkmanlike, Inadequate, and Incomplete Home Improvement

The Claimant asserted that there were numerous problems with the work the Respondent performed. The Claimant focused on the findings of the Harford County inspectors who found that the truss beneath the bathroom floor had been cut and that the fire stops were missing. However, the Respondent offered credible testimony, which the Claimant did not rebut, that the truss was not cut by them and that the fire stop was missing during their installation of the tub. I found Mr. Schrufer's testimony to be both credible and convincing when he indicated that there was no fire stop present when he removed the original tub and installed the used tub and that he did not cut the truss during installation as it was already cut. That testimony was corroborated by the Respondent during cross examination when he stated that when they removed the original tub, Mr. Schrufer called him to notify him that the truss was cut.

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.¹⁸

In order to apply this formula, I must first determine the "reasonable amount" the Claimant paid another contractor to "repair poor work" done by the Respondent under the original Contract. As previously discussed, the evidence did not support a finding that the Respondent installed the bathtub and surround in an unworkmanlike or inadequate manner and therefore the Claimant has not demonstrated that he suffered an actual and compensable loss. However, the Fund argued, and I agree, that work requiring a permit that is done without obtaining that permit is by definition unworkmanlike and inadequate. Therefore, I will assume for the sake of argument that any costs the Claimant incurred to redo any of the Respondent's technically sound work constitute an actual loss, simply because the work was performed without a permit. Even in that scenario, the Claimant's Claim must still fail due to insufficient evidence to establish any actual loss.

Regarding the bathtub, the unrebutted evidence shows that the Claimant contracted with DMH Contracting to remove the tub and install a walk-in shower with no tub. Therefore, the DMH contract is different in scope than that specified in the Contract and therefore, the amount of the DMH contract is not a proper measure for actual loss.

Even if I had found that the issues listed by the Claimant amounted to an unworkmanlike, inadequate, or incomplete home improvement for which he was entitled to reimbursement, I

¹⁸ COMAR 09.08.03.03B(3)(c).

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.

February 29, 2024
Date Decision Issued

Brian Zlotnick

Brian Zlotnick
Administrative Law Judge

BMZ/emh
#210379

PROPOSED ORDER

WHEREFORE, this 3rd day of June, 2024, 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**