IN THE MATTER OF THE CLAIM	*	**BEFORE ERIN H. CANCIENNE,**
OF COURTNEY BARBOUR,	*	**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 ERIC SANDERS,	*	
T/A SANDERS QUALITY HOME	*	**OAH No.: LABOR-HIC-02-21-24179**
IMPROVEMENTS,	*	**MHIC No.: 21 (75) 569**
RESPONDENT	*	

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PROPOSED DECISION

STATEMENT OF THE CASE

On April 2, 2021, Courtney Barbour (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of $17,631.60 for actual losses allegedly suffered as a result of a home improvement contract with Eric Sanders, trading as Sanders Quality Home Improvements (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to

-411 (2015).[1] On September 29, 2021, the MHIC issued a Hearing Order on the Claim. On October 15, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 10, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Andrew Brouwer, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); Code of Maryland Regulations (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?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimant:

Clmt. Ex. 1 - Complaint Form, December 10, 2020

Clmt. Ex. 2 - Home Improvement Claim Form, March 25, 2021

Clmt. Ex. 3 - Photographs of the Claimant's yard before the Contract, Summer 2020

Clmt. Ex. 4 - Photographs of Claimant's yard, December 9, 2020 and January 10, 2022

Clmt. Ex. 5 - Email to Teresa Rigby-Menendez, MHIC, May 24, 2021

Clmt. Ex. 6 - Email to Respondent, November 18, 2020

[1] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code and will be abbreviated "Bus. Reg.".

Clmt. Ex. 7 - Contract between Claimant and Respondent, August 14, 2020

Clmt. Ex. 8 - Invoices for Contract, August 20, 2020[2]

Clmt. Ex. 9 - Proof of Payment, August, 20, 2020, and September 23, 2020

Clmt. Ex. 10 - Emails from Freedom Fence to the Claimant, February 26, 2021, and March 17, and 25, 2021[3]

Clmt. Ex. 11 - Estimate from Hammer Home Improvement, May 18, 2021

Clmt. Ex. 12 - Emails between David Finneran, MHIC and Claimant, November 24, and 27, 2020

Clmt. Ex. 13 - Emails between the Claimant and Respondent, between October 1, 2020 and November 24, 2020

Clmt. Ex. 14 - Text messages and call logs from Claimant's phone, various dates[4]

Clmt. Ex. 15 - Permits, issued November 7, 2020 and October 16, 2020

The Respondent did not offer any exhibits.

I admitted the following exhibits offered by the Fund:

MHIC Ex. 1 - Hearing Order, September 29, 2021

MHIC Ex. 2 - Notice of hearing, October 22, 2021

MHIC Ex. 3 - Letter from MHIC to Respondent, April 9, 2021, attaching Home Improvement Claim Form, March 25, 2021

MHIC Ex. 4 - License History for Respondent, as of December 22, 2021

MHIC Ex. 5 - Affidavit of David Finneran, December 23, 2021

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[2] Both of the invoices are dated on August 20, 2020. The first invoice shows a payment of $5,167.80 was made and the second invoice shows that two payments totaling $10,335.60 were made.

[3] Emails were not provided in date order. However, for clarity in the exhibit list, the date are listed in order from oldest to most recent.

[4] The Claimant acknowledged that the text of the specific messages is largely illegible, but offered the exhibit to show the numerous attempts to communicate with the Respondent, and denied offering for the content of any specific message.

Testimony

The Claimant testified and presented the testimony of Jennifer Barbour Butler (Claimant's Aunt).

The Respondent testified and did not present other witnesses.

The Fund did not present any witnesses.

PROPOSED FINDINGS OF FACT

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

1. On August 14, 2020, the Claimant and the Respondent entered into a contract (Contract) to remove and replace a fence and deck in the backyard, remove and replace front porch trim, and power wash the concrete slab.

2. At the time that the Contract was entered, the Respondent was a licensed home improvement contractor under MHIC license number 01-110342.[5]

3. The original agreed-upon Contract price was $15,660.00.

4. The Claimant paid the Respondent a total of $10,335.60 in two equal payments on August 20, 2020 and September 23, 2020.

5. On August 26, 2020, the Claimant emailed the Respondent photographs of her "vision" for the back area. Clmt. Ex. 13.

6. The Respondent last worked on the Claimant's property on November 19, 2020. At that time, the fence was incomplete, and the deck had not passed inspection.

7. On November 23, 2020, MHIC, upon request from the Claimant, informed her that the Respondent's license had been suspended since October 30, 2020.

[5] At some point after the contract was entered (on or about October 30, 2020), the MHIC suspended the Respondent's license. Based on the testimony, this suspension was appealed, but it was unclear whether it was upheld.

8. On November 24, 2020, the Claimant requested that the Respondent not return to her property for multiple reasons, including, his suspended license, the incomplete project, and the alleged poor workmanship. In that email, she also requested a refund of $7,000.00. Clmt. Ex. 13.

9. The Claimant received an estimate from Hammer Home Improvement to complete the work on the Contract for $18,150.00.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2021); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

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) ("The Fund may only compensate claimants for 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 has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. Before the project was completed, the MHIC suspended the Respondent's license. However, after the suspension of his license, the Respondent was "not relieved of outstanding obligations" and "may complete and be paid under a home improvement contract that is made but not performed" on the date of the suspension. Bus. Reg. 8-315(b).

Claimant's Position

In the Summer of 2020, the Claimant was seeking to update her fence in the back of her residence, as well as her wood deck. She specifically wanted to remove the wire gate, and update with a wood and steel composite fence. She met with the Respondent to obtain an estimate. During that meeting, the Respondent showed proof of his contractor's license and insurance, took measurements, and discussed her ideas for the area. According to the Claimant, at that meeting, she explained the horizontal wood look of the fence as well as two corrugated steel panels for the gate. See Clmt. Ex. 13.[6] After this meeting, the Claimant provided an estimate for the fence and back deck, as well as an estimate for a closet on the upper level, a change to the façade of the home and a power wash of the front of the house. Before the Contract was executed, the closet work was removed from the agreement. The Contract was executed on or about August 20, 2020 and the total price was $15,660.00. Clmt. Ex. 7. There are no written change orders to the Contract, and the Claimant denies there were any additions to the total price.

The Claimant testified that she paid one-third of the Contract costs ($5,167.80) prior to the work starting. Clmt. Ex. 9. Initially, the Respondent removed the deck and started construction on the new deck. He also removed the old fence and gate. According to the Claimant, in late September the Respondent paused the work on the deck while waiting for the materials. During that period, the Claimant testified that she made a second payment equal to one-third of the total Contract price ($5,167.80). Clmt. Ex. 9. During the pause on the deck, the Respondent finished the façade on the front of the house and started working on the fence.

[6] While Claimant's exhibit 13 shows examples of what the Claimant envisioned, these photographs were sent on August 26, 2020 after the Contract was executed on August 20, 2020. It is unclear whether the Respondent had seen these pictures prior to entering the Contract.

According to the Claimant, when her fence was removed, it was observed that the fence of the adjacent property to the north (Northside neighbor) and the south (Southside neighbor) were attached to her fence posts.[7] The Northside neighbor became upset that his fence was affected. According to the Claimant, the Respondent informed her that he was going to put in a temporary fix during construction, but that when the final fence was installed, he would put an extra post so that the Claimant's fence and the neighbor's fence would each have their own posts going forward. The Claimant testified that this agreement was not in writing and no update was made to the contract. Further, the Claimant testified that there was no extra cost for this addition.

The Southside neighbor told the Claimant that the fence post was on the Southside neighbor's property and was not the Claimant's post. According to the Claimant, the Respondent paused work on the fence to figure out property lines and survey information. Eventually the property line issue was resolved, and the work continued on the fence.

Around the same time, the City of Baltimore issued a warning for work without a permit. The Respondent did not obtain the permits for the deck and the fence. The Claimant eventually was able to apply for and obtain the permits. Clmt. Ex. 15. The City of Baltimore issued the permit to replace the fence on October 16, 2020, and the permit to replace the deck on November 7, 2020.

According to the Complainant, the Respondent began digging into the concrete for the fence posts in late October 2020. The holes in the concrete had to be a certain depth, but according to the Claimant, the Baltimore City Inspector found that the holes were not deep enough. The Respondent came back to the property to fix the holes. After the holes were the correct depth, the Respondent's worker attempted to install the posts with mortar instead of a

[7] The exact addresses for the adjacent properties to the north and south were not in the record. Similarly, the names of the residents of these properties were not in the record.

cement mix. Both the city[8] and the Claimant's neighbors told her to use cement. The Respondent or his employees told the Claimant that mortar was okay, but she objected and eventually in early November, she and the Respondent came to an agreement that cement would be used.

Once the posts were installed, the Claimant noticed that the posts for her fence took up the entire hole, and that no space as left for a post for the neighbor's fence. At the time, the Respondent and the Claimant disagreed about whether there was an agreement to install a second post for her neighbor's fence. According to the Claimant, the Respondent claimed that he was going to just clamp the neighbor's fence back onto the Claimant's post.

During this discussion, the Claimant contends that they also discussed the look, structure and materials for the fence. She testified that she asked the Respondent lots of questions about why there was a delay, and whether he had the right materials. The Claimant testified that the Respondent did not adequately answer her questions even though they had discussed the Claimant's vision for the fence and the deck before the Respondent began work. The Claimant testified that the Respondent made a snide comment about women, called her "mean," made insulting comments to her about her weight, and made other inappropriate comments. The Claimant testified that at this point she asked for a work order to determine whether there would be additional costs to have what she wanted.[9] The Claimant testified that the Respondent did not provide a work order.

On November 11, 2020, the Claimant's family, including her aunt Jennifer Barbour Butler, were at the home while the Respondent's employee was there. At that time, the Claimant

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[8] The Claimant did not testify as to who from the City of Baltimore had provided this advice.

[9] While the Claimant used the term "work order," her testimony seemed to be describing a change order. Based on both the Claimant and the Respondent's testimony, the parties had different expectations for the structure of the fence and deck under the Contract, which did not include specifics regarding what materials would be used. The Claimant asked the Respondent to provide a change order explaining exactly what the Respondent considered a change with any corresponding costs.

testified that the posts in the cement were not level, and were not the same height. The Claimant testified that her family members asked the Respondent's employee how a fence could be built with crooked posts. The Claimant testified she also complained to the Respondent that he needed to better supervise his employees. On November 19, 2022, the Respondent and his employees returned to her property and broke two of the planks on her neighbor's fence. This was the last day anyone from the Respondent's company was on the Claimant's property.

The Claimant testified as to her frustration regarding the consistency and quality of the work. She decided to look the Respondent up on the HIC website and determined on November 23, 2020 that he was not licensed at that time; she later learned he had been suspended as of October 30, 2020 due to unpaid reimbursements to the Fund. The Claimant testified that at this point she tried to get in touch with the Respondent to discuss next steps, including a refund of her money, the repairs needed to the work already performed, and the completion of the Contract. The Claimant asserts that she called from her cell phone number multiple times and the Respondent did not respond. However, when she called from a business line, the Respondent answered her call. According to the Claimant, the Respondent initially denied knowing about the suspension, and then offered a relative (who is also a contractor) to finish the job. However, the Claimant did not want another contractor affiliated with the Respondent. The Claimant testified that the Respondent told her he would contact her with his plan as to the next steps, but he did not. Again, she called the Respondent from a different phone number and he answered, but no further work was done.

At the time the Respondent stopped working on the Contract, the front façade was completed satisfactorily, but the deck and steps violated the Building Code and only the fence posts were installed for the new fence. The Claimant testified that a Baltimore City inspector (Mr. Jones) inspected the deck and found that the deck needed footings, the base of the main

surface of the deck needed to be bolted into the posts, the stairs needed to be bolted at the top of the main deck posts closest to the stairs, and that the railings needed to be bolted to the base of the staircase. According to the Claimant, the inspector also noted that the Respondent should be present at the next inspection. Clmt. Ex. 6.[10] The Claimant testified that when she informed the Respondent of the inspector's findings, he agreed that there was work to do, but told her the deck was a "work in progress," and she had to let him finish. For the fence, the Claimant asserts that the posts were not level and the fence remained incomplete.

At the time of the hearing, the Claimant has not had any contractor work on the fence or the deck. She initially received an estimate from Freedom Fence, but they would not provide an itemized estimate. The Claimant then had Hammer Home Improvement prepare an estimate. Clmt. Ex. 11. The estimate is to complete the fence and fix the problems with the deck. The Hammer Home Improvement estimate was for $18,150.00.

Jennifer Barbour Butler, the Claimant's aunt, testified that she came to the Claimant's home in November to meet the Respondent, but the Respondent did not come and she had to speak to him on a phone. Ms. Butler testified that the fence posts were not the same height. Ms. Butler testified that the deck railings could move back and forth, the slats on the decking were not even, and the bolts were visible on the outside of the posts. Ms. Butler testified that it was a sloppy job.[11] Ms. Butler testified that she asked the Respondent to fix it. Ms. Butler complained of the manner that the Respondent spoke to her and the Claimant. Ms. Butler complained that as a result of the unfinished fence, vagrants and rats entered the yard. Ms. Butler provided emotional and heartfelt testimony about the difficulties her niece has faced as a result of the incomplete Contract with the Respondent.

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[10] This exhibit is an email from the Claimant to the Respondent summarizing what the Claimant contends the inspector found. There is no citation, violation notice, or inspection report from the inspector.

[11] While Ms. Butler has some experience in pursuing civil violations of the building code as an attorney, Ms. Butler was not offered or accepted as an expert in home improvements.

Respondent's Position

The Respondent testified that the Contract with the Claimant was going well, until neighbors and other outside influences interfered with his work. The Respondent complained of issues with the neighbors being upset with the fence which he tried to problem-solve. The Respondent alleged that the Claimant and the neighbors became more and more critical of his work. The Respondent alleged that the neighborhood was rough, and this created a hostile atmosphere; but, on cross-examination he acknowledged that it was his responsibility to maintain the jobsite.

The Respondent alleged the work on the deck was initially supposed to be a repair of the existing structures, but at some point, became a replacement and not repairs. The Respondent's testimony did not refute that the deck failed an inspection or that there may have been issues to repair on the deck after his crew had completed its work. Instead, he complained that he did not receive a written violation notice from the inspector and did not talk with the inspector to hear the verbatim complaints. The Respondent stated that the Claimant's explanation of violations was overly generic and did not use the technical terms. However, the Respondent did not contact the inspector to determine the exact issues with his work and he did not request a written notice of the violations from the inspector.

The Respondent asserted that some of the complaints regarding the fence, in particular that the posts were uneven, was due to the work not being completed and that these issues would have been fixed before he finalized the fence. He does not deny that the fence was not completed when he left the project.

The Respondent acknowledged that his license was suspended during this project. He stated that he was in the process of appealing the suspension in the middle of this Contract; therefore, he did not tell the Claimant of the suspension, or inform her that he had an obligation

to complete any contract he entered into prior to the suspension. He contends that the Claimant refused to let him touch the project as soon as she learned his license was suspended.

The Respondent acknowledged that as the prime contractor, it is his non-delegable duty to obtain all necessary permits. However, the Respondent contended that he was in the process of obtaining the permit for the fence at the time Baltimore City issued a citation for not having a permit; he also testified that he did not initially believe he needed a permit to repair the deck. The Respondent admitted that the existing fence was removed prior to obtaining a permit. The Respondent did not produce any documents to show his attempts to get a permit for either the deck or the fence.

Regarding the estimate from Hammer Home, the Respondent acknowledged that the current cost for the scope of work delineated in the Contract is higher than the cost of the Contract due to the recent increases in the cost of supplies. He does not contend that the estimate from Hammer Home is unreasonable.

Analysis

The Contract describes the work for both the deck and the fence. Clmt. Ex. 7. For the fence, the contract states, that the existing metal post and fence will be removed and a "4" x 4" Post and Custom Fence" would be installed around the backyard. For the deck, the contract specifically states that there would be replacement of the existing decking, and removal and replacement of the railing system.

It is undisputed that the Respondent never finished the fence. The Respondent described issues with the property lines, and the neighbors. He also contended the Claimant kept him from finishing the project. However, the Claimant testified that the Respondent stopped answering her calls and emails, and that the communication completely broke down. At the same time, she determined his license was suspended (which he did not tell her), and the deck did not pass

inspection. Considering all of the above, I find that the work on the fence was incomplete. I do not find that the Respondent made a good faith offer to finish or repair the work as he stopped responding to the Claimant's calls, texts and emails. Therefore, the Claimant did not unreasonably reject any good faith offer of the Respondent to finish or repair the work.

Further, I find that the deck was inadequate. While neither the Claimant nor Ms. Butler were experts, both could provide testimony regarding their personal observations. The railings on the decks were installed in a manner that they would rock back and forth. The slats were not even. Bolts were exposed. The Claimant testified that the deck failed inspection. Although the Respondent did not concede that the violations described in the Claimant's email were the exact violations found by the inspector, he did not deny that there were violations. Instead, he acknowledged that he needed to be present during a second inspection to determine what work needed to be done.

Considering all of the above, I find the Respondent performed inadequate, or incomplete home improvements. Therefore, 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.

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 made a total of two payments to the Respondent in the amount of $10,335.60. Clmt. Ex. 9. Hammer Home Improvement estimated that the cost to repair the poor work on the deck, and to complete the work on the fence, is $18,150.00. Therefore, the Claimant will pay $28,485.60 ($10,335.60 + $18,150.00) to finish the project.

The Contract price is $15,660.00. Claimant's actual loss is the total amount the Claimant will pay to finish the work from the Contract less the actual contract price, or $12,825.60 ($28,485.60 - $15,660.00).

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 $12,825.60 exceeds the amount paid to the Respondent. Therefore, the Claimant's recovery is limited to $10,335.60, 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 $12,825.60 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 $10,335.60 from the Fund. Md. Code Ann., 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 $10,335.60; 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;[12] and

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

March 25, 2022
Date Decision Issued

Erin H. Cancienne
Erin H. Cancienne
Administrative Law Judge

EHC/da
#197324

[12] *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 23rd day of May, 2022, 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.

Heather Connellee

Heather Connellee
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION