

IN THE MATTER OF THE CLAIM OF	* BEFORE LORRAINE E. FRASER,
DENISE M. SKOTEK	* AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND HOME	* OF THE MARYLAND OFFICE
IMPROVEMENT GUARANTY FUND	* OF ADMINISTRATIVE HEARINGS
FOR THE ALLEGED ACTS OR	* OAH NO.: DLR-HIC-02-10-02591
OMISSIONS OF DARREL M.	* MHIC NO.: 07 (90) 1060
GRANDSTAFF, T/A DARREL M.	*
GRANDSTAFF	*
* * * * *	* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On March 24, 2009, Denise M. Skotek (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$4,294.30 for actual losses allegedly suffered as a result of a home improvement contract with Darrel M. Grandstaff (Respondent).

I held a hearing on May 17, 2010 at St. Mary's County Library, 23250 Hollywood Road, Leonardtown, Maryland 20659. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2)(i) (2010). Jessica B. Kaufman, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. Douglas E. Brown, Esq., represented the Claimant, who was present. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02.01; and 28.02.01.

ISSUE

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

SUMMARY OF THE EVIDENCE

Exhibits

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

- | | |
|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Claimant 1 | Respondent's MHIC license and proof of insurance |
| Claimant 2 | Original contract to build a two-car garage signed on January 6, 2006, along with contract to extend garage signed on January 26, 2006 |
| Claimant 3 | Check #4593, January 9, 2006; check #4595, January 16, 2006; check #4601, January 26, 2006; check #4621, March 15, 2006; total \$34,840.00 |
| Claimant 4 | Timeline written by the Claimant |
| Claimant 5 | Letter to Respondent from the Claimant, April 11, 2006 |
| Claimant 6 | Invoices from: Ryce Electric LLC, May 5, 2006, check #4662, May 4, 2006; Automatic Overhead Door Company, April 24, 2006, check #4655, May 2, 2006; Barnes Contracting Services, April 11, 2006; Joseph Marini Asphalt Paving, April 17, 2006, check #4674, May 30, 2006; Wood's Paint Center II Inc., March 14, 2006 |
| Claimant 7 | Inside Out Contractors' proposal to install 3 rd window for \$1,500, May 9, 2008 |
| Claimant 8 A-I | Nine photographs |

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

- Fund 1 Notice of Hearing, March 1, 2010; unclaimed certified mail
- Fund 2 Transmittal; Hearing Order, November 19, 2009; Home Improvement Claim Form, received March 24, 2009
- Fund 3 MHIC Contractor Licensing History, printed May 10, 2010
- Fund 4 Letter to Respondent, April 29, 2009, along with Home Improvement Claim Form, received March 24, 2009

The Respondent did not submit any exhibits.

Testimony

The Claimant testified on her own behalf. The Respondent testified on his own behalf.

The Fund did not present any witnesses.

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 number 79643.
2. On January 6, 2006, the Claimant and the Respondent entered into a contract to build a twenty-four foot by twenty-four foot two-car garage for the Claimant. The contract included all building permits, two garage doors in front, garage door openers, electric and lighting, three windows and one rear walk-through door. The contract stated that work would begin on or before January 9, 2006 and would be completed on or before March 9, 2006. The original agreed upon contract price was \$35,400.00.
3. On January 26, 2006, the Claimant and the Respondent agreed to amend the contract to extend the garage by one foot on the right side for \$1,440.00. The garage was to measure twenty-five feet by twenty-four feet.
4. The total contract price was \$36,840.00, including original contract price of \$35,400.00 and change order price of \$1,440.00.

5. The Claimant paid the Respondent a total of \$34,840.00 in installments as follows:

<i>Check Date</i>	<i>Check #</i>	<i>Check Amount</i>
1/9/06	4593	\$11,000.00
1/16/06	4595	\$10,000.00
1/26/06	4601	\$10,000.00
3/15/06	4621	\$3,840.00
TOTAL		\$34,840.00

6. The work began on or before January 11, 2006.

7. On March 14, 2006, the Claimant reviewed her handwritten list of finished and unfinished items with the Respondent. The unfinished work included the following: install light in the attic, remove a cable hanging over the edge of the house, pave the driveway with asphalt, replace roof shingle that was removed in order to match the garage roof shingles to the existing shingles, replace dented garage doors, and install garage door openers. Respondent signed the list and promised to complete the garage by March 24, 2006.

8. By March 21, 2006, the last day the Respondent performed work, the Respondent had not installed the light in the attic, removed the hanging cable, replaced the missing roof shingle, replaced the dented door panels (although he did supply new panels), or supplied or installed garage door openers.

9. The Respondent installed asphalt on a portion of the driveway. Paving the driveway was not part of the contract. When building the garage, the Respondent removed approximately thirty feet of asphalt and an approximately eight foot gap existed between the garage and the driveway. The Respondent laid additional asphalt in order to line up the driveway with the garage and to repair damage caused by the concrete trucks during the course of building the garage.

10. On March 24, 2006 and during the following two weeks, the Claimant made numerous telephone calls and left voice messages in an attempt to reach the Respondent. The Respondent did not respond.

11. On April 11, 2006, the Claimant sent a letter to the Respondent by certified mail, identifying incomplete work. The letter was returned to the Claimant unclaimed.

12. In April and May 2006, the Claimant hired other contractors to perform the following work: Ryce Electric LLC installed an attic light & switch for \$226.00; Automatic Overhead Door Company supplied and installed automatic garage door openers and replaced the dented garage door panels for \$870.00; Barnes Contracting Services replaced the missing roof shingle and removed the cable hanging over edge of house for \$250.00; Joseph Marini Asphalt Paving resurfaced the entire existing asphalt driveway and laid two inches of new asphalt for \$3,420.00. In addition, the Claimant purchased paint to repair nail pops inside her home for \$28.30.

13. Barnes Contracting Services was not licensed by MHIC at the time of performing work for the Claimant.

14. On May 9, 2008, the Claimant obtained a proposal to install a third window in the garage for \$1,500.00. The Respondent installed two windows, not three, as stated in the contract.

15. The Claimant's actual loss is \$596.00.

DISCUSSION

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) (2010). *See also* COMAR 09.08.03.03B(2). Actual loss "means 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). For the following reasons, I find that the Claimant has proven eligibility for compensation.

To begin, a claimant may not recover consequential damages from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(3) (2010). Neither paving the Claimant's driveway nor the placement of any asphalt on the driveway was part of the home improvement contract in this case. Repairing damage to the driveway that was caused in the course of building the garage is a consequential damage. Thus, the \$3,420.00 the Claimant paid to Joseph Marini Asphalt Paving to resurface the entire existing asphalt driveway and lay two inches of new asphalt is not recoverable from the Fund. Likewise, the paint the Claimant purchased to repair nail pops inside her home is also a consequential damage and is not recoverable.

In addition, there is no evidence that David Barnes or Barnes Contracting Services were licensed by MHIC. Counsel for the Fund stated that she could not find a license for Barnes. A person must be licensed as a contractor before performing home improvement work. Md. Code Ann., Bus. Reg. § 8-301 (2010). Thus, the \$250.00 the Claimant paid to Barnes Contracting Services is not recoverable from the Fund.

At the hearing, the Claimant attempted to amend her claim to include \$1,500.00 for the proposed cost of installing a third window in the garage. The Claimant obtained the proposal to install the third window on May 9, 2008. Thus, she was well aware of this cost prior to filing her claim on March 24, 2009. She did not explain why she did not include this cost in her original claim. However, the Respondent admitted at the hearing that he installed two, not three, windows. He explained that he could not install the window in the location desired by the Claimant because it was too close to the steps and would not meet building codes. He stated that he offered to install the window at a different location but the Claimant did not want it there and agreed not to have the third window installed. He admitted that he did not deduct the cost of the

third window from the price of the contract. Thus, I find that the Respondent is not prejudiced by amending the claim to include the price of installing a third window, \$1,500.00. COMAR 09.08.03.02C.

The Claimant also attempted to amend her claim to include \$30.00 for the tip she paid to the Automatic Overhead Door Company. The \$870.00 the Claimant paid to the Automatic Overhead Door Company included an additional charge of \$50.00 for travelling outside of their service area. The Claimant chose to give them a \$30.00 tip; it was not a required cost to complete the work. The \$30.00 tip is not recoverable from the Fund.

The Respondent admitted at the hearing that he did not install the light in the attic, replace the dented garage door panels, or supply or install the garage door openers.

COMAR 09.08.03.03B(3) provides that actual loss is measured in this case as follows:

(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.

The Claimant's actual loss is calculated thus:

Amount paid to Respondent	\$34,840.00
Install attic light & switch	226.00
Supply & install garage door openers;	
Replace dented garage door panels	870.00
Install third window	+1,500.00
	\$37,436.00
Original contract price & amendment	-36,840.00
Actual loss	\$596.00

CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$596.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$596.00; 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 at least ten percent as set by the Maryland Home Improvement 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.

August 11, 2010
Date decision mailed



Lorraine E. Fraser
Administrative Law Judge

LLE/te
114261

IN THE MATTER OF THE CLAIM OF	*	BEFORE LORRAINE E. FRASER,
DENISE M. SKOTEK	*	AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND HOME	*	OF THE MARYLAND OFFICE
IMPROVEMENT GUARANTY FUND	*	OF ADMINISTRATIVE HEARINGS
FOR THE ALLEGED ACTS OR	*	OAH NO.: DLR-HIC-02-10-02591
OMISSIONS OF DARREL M.	*	MHIC NO.: 07 (90) 1060
GRANDSTAFF, T/A DARREL M.	*	
GRANDSTAFF	*	
* * * * *		

FILE EXHIBIT LIST

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The Respondent did not submit any exhibits.

PROPOSED ORDER

WHEREFORE, this 5th day of October 2010, 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.

James Chiracol

*James Chiracol
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION