

The Maryland Home
Improvement Commission

v. Michael Greasley
t/a Cornerstone Design & Remodel Inc.
(Contractor)
and the Claim of
Lisa Babin
(Claimant)

* BEFORE THE
* MARYLAND HOME IMPROVEMENT
* COMMISSION
*
* MHIC No.: 07 (75) 2751
*
*

FINAL ORDER

WHEREFORE, this February 1, 2011, Panel B of the Maryland Home

Improvement Commission ORDERS that:

1. The Findings of Fact set forth in the Proposed Order dated July 26, 2010 are AFFIRMED.
2. The Conclusions of Law set forth in the Proposed Order dated July 26, 2010 are AFFIRMED.
3. The Proposed Order dated July 26, 2010 is AFFIRMED.
4. This Final Order shall become effective thirty (30) days from this date. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.

Joseph Tunney
Joseph Tunney, Chairperson
PANEL B

MARYLAND HOME IMPROVEMENT COMMISSION

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MARTIN O'MALLEY, GOVERNOR • ANTHONY G. BROWN, LT. GOVERNOR • ALEXANDER M. SANCHEZ, SECRETARY

IN THE MATTER OF THE CLAIM OF	*	BEFORE BRIAN ZLOTNICK,
LISA BABIN	*	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-02-09-38819
OMISSIONS OF MICHAEL GREASLEY,	*	MHIC NO.: 07 (75) 2751
T/A CORNERSTONE DESIGN &	*	
REMODEL, INC.		

* * * * *

RECOMMENDED DECISION

STATEMENT OF THE CASE
ISSUE
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FINDINGS OF FACT
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RECOMMENDED ORDER

STATEMENT OF THE CASE

On April 23, 2009, Lisa Babin (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$26,357.96 for actual losses allegedly suffered as a result of a home improvement contract with Michael Greasley, trading as Cornerstone Design & Remodel, Inc. (Respondent).

I held a hearing on March 16, 2010, at the County Office Building, 1400 McCormick Drive, Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2)(i) (2010), Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. Mareco Edwards, Esquire, represented the Claimant. 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 (OAH) 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:

- CLMT #1 March 1, 2007 Estimate from Kemper Insurance
- CLMT #2 March 20, 2007 Contract with the Respondent (**NOT ADMITTED INTO EVIDENCE**)
- CLMT #3 May 1, 2007 punch-out/repair list compiled by the Claimant
- CLMT #4 July 19, 2007 Proposal from Micro Construction
- CLMT #5 March 9, 2010 Proposal from Hidden Levels, LLC
- CLMT #6 April 29, 2007 photographs of foyer area and bathroom
- CLMT #7 April 29, 2007 photographs of crown molding and insulation
- CLMT #8 April 29, 2007 photographs of storage area insulation and basement bathroom sink
- CLMT #9 April 29, 2007 photographs of basement and master bathrooms and the dining room ceiling
- CLMT #10 April 29, 2007 photographs of the master bathroom
- CLMT #11 April 29, 2007 photographs of master bedroom and storage area
- CLMT #12 May 6, 2007 photographs of insulation, debris and basement bathroom
- CLMT #13 May 6, 2007 photographs of pedestal sink in basement bathroom and dining room crown molding
- CLMT #14 May 6, 2007 photographs of dining room crown molding
- CLMT #15 May 6, 2007 photographs of foyer bathroom, doorway and a master bedroom wall
- CLMT #16 May 6, 2007 photographs of master bedroom and bathroom
- CLMT #17 May 6, 2007 photographs of master bathroom
- CLMT #18 May 6, 2007 photographs of master bathroom

- CLMT #19 May 6, 2007 photograph of pipe behind master bathroom vanity
- CLMT #20 April 3, 2007 check in the amount of \$3,973.00 paid by the Claimant to the Respondent
- CLMT #21 January 30, 2009 Estimate from Fieldstone Services, Inc.
- CLMT #22 January 23, 2009 letter from Valerie Cox to the Claimant
- CLMT #23 Claimant's summary of voice mail messages (**NOT ADMITTED INTO EVIDENCE**)

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

- FUND #1 October 30, 2009 Notice of Hearing and attached Hearing Order
- FUND #2 Licensing records information for the Respondent from the MHIC
- FUND #3 April 30, 2009 letter from the MHIC to the Respondent with attached claim form

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

- RESP #1 May 11, 2007 letter from Rebecca Carter to Cornerstone Design and Remodel (Cornerstone) with attached punch-out list and hand written notes
- RESP #2 May 17, 2007 letter from Cornerstone to Ms. Carter
- RESP #3 April 18, 2009 letter from Claimant with attached claim form, invoices, receipts and a January 30, 2009 Estimate from Fieldstone Services, Inc.
- RESP #4 June 11, 2007 Complaint Form and attached June 7, 2007 letter from the Claimant to the MHIC
- RESP #5¹ June 19, 2007 and July 17, 2007 letters from the Better Business Bureau of Greater Maryland (BBB) to Christopher Washington

Testimony

The Claimant testified and presented testimony from Lillian Thomas, Hidden Levels, LLC, who was accepted as expert in the field of Home Improvement.

The Respondent testified on his own behalf.

The Fund did not call any additional witnesses.

FINDINGS OF FACT

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

¹ I inadvertently marked two exhibits as Resp. Ex. #4. In the interest of clarity, I am remarking this exhibit as Resp. Ex. #5

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license numbers 3486035, 3665125 and 3794348.
2. In March 2007, the Claimant and the Respondent entered into a contract (Contract)² for home improvement calling for the Respondent to replace hardwood floors, a vanity in the master bathroom, installing a new Jacuzzi tub in the master bathroom, replacing the bathroom floor with ceramic tile and painting the walls of the master bathroom and foyer.
3. The Respondent began working on the Contract on March 24, 2007.
4. The Respondent had progressed with work on the Contract but the Claimant was not satisfied with the quality of the Respondent's work. Before May 4, 2007, the Claimant showed the Respondent the areas of work that she was dissatisfied with. The Respondent told the Claimant that his workers would stay on the job and finish the work.
5. On May 1, 2007, the Claimant produced a Punch-Out Repair List (Punch-Out List) which detailed the corrections the Claimant sought from the Respondent. The Respondent received the Punch-Out List on either May 1, 2, or 3, 2007.
6. The Respondent continued working on the Contract through May 3, 2007.
7. The Respondent arrived at the Claimant's home on May 4, 2007 to continue work with the Contract but was locked out of the house. The Respondent knocked on the front door and stayed there for over two hours without a response from the Claimant. The Claimant's car was parked at the house on May 4, 2007 and the Respondent made several telephone calls to the Claimant but she did not answer those calls.

² A contract was submitted into evidence but was not admitted due to an objection by the Respondent. It is clear that the parties entered into a contract but the specifics as to the cost of the contract and the duration of the contract are not in evidence.

8. The Respondent's tools remained in the Claimant's home after he was locked out on May 4, 2007.
9. On May 11, 2007, the Claimant's attorney, Rebecca A. Carter, sent a letter to the Respondent which indicated that the Claimant was terminating the Contract and that she was seeking a refund of the \$9,519.00 that was paid by the Claimant to the Respondent.
10. On May 17, 2007, the Respondent responded to Ms. Carter and expressed a desire to work with the Claimant to investigate the issues that the Claimant had with their work. The Respondent also requested that the Claimant return his tools that remained at the Claimant's home.
11. The Claimant received the Respondent's May 17, 2007 letter to Ms. Carter. The Claimant did not respond to this letter or communicate with the Respondent because she did not believe that he was capable of completing the Contract to her satisfaction. The Claimant did not allow the Respondent to return to her home to retrieve his tools.
12. The Claimant filed a complaint about the Respondent with the MHIC on June 11, 2007.
13. On or about July 3, 2007, the Respondent received the complaint filed with the MHIC. In July 2007, Rene Crawley, MHIC, interviewed the Respondent regarding the June 11, 2007 complaint filed by the Claimant. The Respondent told Ms. Crawley that he wanted to complete the job with the Claimant.
14. The Claimant filed a claim with the Fund on April 23, 2009.
15. In January 2010, Lillian Thomas, Co-Owner of Hidden Levels, LLC, went to the Claimant's home and inspected the work performed by the Respondent. In her opinion, the work performed by the Respondent was unprofessional. She found that the tub was not sealed

properly, the medicine cabinet was improperly installed and the insulation used did not meet the Contract specifications³.

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). But the Fund may deny a claim if “the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim.” Md. Code Ann., Bus. Reg. § 8-405(d) (2010). I find that the Claimant has not proven eligibility for compensation because she decided that she absolutely would not work further with the Respondent and she rebuffed the Respondent’s good faith efforts to resolve their differences.

There is no dispute that the Claimant prevented the Respondent from entering her home in early May 2007. Clearly the Claimant was dissatisfied with the Respondent’s work and created a Punch-Out List for the Respondent detailing the items that needed to be addressed. The Respondent, however, was never provided an opportunity to finish the Contract and address the Punch-Out List. After locking out the Respondent from her home in May 2007, the Claimant’s attorney sent a May 11, 2007 letter that terminated the Contract. The Respondent sent a May 17, 2007 letter to the Claimant’s attorney seeking to investigate any issues with

³ Ms. Thomas was the only witness for the Claimant that was qualified as an expert in Home Improvement. The evidence submitted regarding Micro Construction and Fieldstone Services, Inc. was given little weight as it they were merely proposals to address the Punch-Out List. Neither proposals from Micro or Fieldstone addressed the Respondent’s workmanship.

workmanship in an effort to complete the Contract. The Claimant admitted that she received the Respondent's May 17, 2007 letter but did not respond to it and had no further communication with the Respondent. The Claimant also admitted that she held the Respondent's tools in her home and did not allow him to retrieve them.

I think the critical fact that bars recovery in this case is that the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the matter. The Claimant insisted that the work performed by the Respondent was unworkmanlike and that many issues needed to be fixed. However, the Claimant locked the Respondent out of the house only days after providing him with the Punch-Out List and terminated the contract a mere ten days later. The Respondent never abandoned the project and indicated to the MHIC in July 2007 that he wanted to finish the job. The Respondent indicated in his May 17, 2007 letter to the Claimant's attorney that he wanted to meet to resolve any issues with the contract. The Claimant admitted that she received the May 17, 2007 letter, yet failed to respond. Further, the Claimant admitted that she retained the Respondent's tools on her property and is still holding those tools as of the date of this hearing. Ultimately, the Claimant steadfastly refused to engage in any discussion with the Respondent.

Although Ms. Thomas found that the work that was completed was unprofessional, there is no indication that the Respondent had finished his work on the Contract. The Respondent was denied his good faith attempts to address the Punch-Out List and finish the Contract. This is not a case where the construction was so shabby that it would be unreasonable to expect the Claimant to allow the Respondent to continue.

For all these reasons, I recommend that the Claimant not be awarded any money from the Fund.


CONCLUSIONS OF LAW

I conclude that the Claimant is not entitled to recover against the Fund because she unreasonably rejected good faith efforts by the contractor to resolve the claim. Md. Code Ann., Bus. Reg. § 8-405(d) (2010).

RECOMMENDED ORDER

I **PROPOSE** that the Maryland Home Improvement Commission:
ORDER that the Maryland Home Improvement Guaranty Fund claim be **DENIED**; and
ORDER that the records and publications of the Maryland Home Improvement Commission reflect this decision.

June 4, 2010
Date Decision Mailed



Brian Zlotnick
Administrative Law Judge

BMZ/
Document #114391

PROPOSED ORDER

WHEREFORE, this 26th day of July 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.

Joseph Tunney

Joseph Tunney

Panel B

MARYLAND HOME IMPROVEMENT COMMISSION