

<p>IN THE MATTER OF THE CLAIM</p> <p>OF MICHELE L. BECKER,</p> <p>CLAIMANT,</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF VICTOR CORBI,</p> <p>T/A JOE CORBI HOME</p> <p>IMPROVEMENT COMPANY, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE NICOLE PASTORE KLEIN,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH NO.: DLR-HIC-02-12-26792</p> <p>* MHIC NO.: 11 (05) 344</p> <p>*</p>
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RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On September 24, 2010, Michele L. Becker (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$43,817.06 for actual losses allegedly suffered as a result of the acts or omissions of Victor Corbi, trading as Joe Corbi Home Improvement Company, LLC (Respondent). On March 22, 2012, the Claimant amended her claim for reimbursement

to \$13,143.89, removing the damages allegedly suffered which she believed were not compensable by the MHIC Fund.

I conducted a hearing on January 3, 2013, at the Office of Administrative Hearings (OAH), in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312 and 8-407 (2010 & Supp. 2012). Peter Martin, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the MHIC Fund. The Claimant represented herself. The Respondent did not appear for the hearing after being properly notified.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations of the DLLR, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2012); Code of Maryland Regulations (COMAR) 09.01.03.01, 09.08.02.01; and COMAR 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

The Fund submitted the following exhibits, which I admitted into evidence:

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|-------------|--|
| Fund Ex. #1 | August 28, 2012 Notice of Hearing, sent regular mail, with August 29, 2012 certified mail receipts |
| Fund Ex. #2 | December 17, 2012 MHIC Licensing printout for Respondent |
| Fund Ex. #3 | November 26, 2012 Affidavit of Thomas Marr, IV |
| Fund Ex. #4 | November 15, 2012 MHIC Record for Respondent |
| Fund Ex. #5 | January 31, 2011 Correspondence from the MHIC to the Respondent, with September 24, 2010 MHIC Claim Form |

Fund Ex. #6 April 9, 2012 Correspondence from the MHIC to the Respondent, with March 22, 2012 MHIC Amended Claim Form

The Claimant submitted the following exhibits, which I admitted into evidence:

Cl. Ex. #1	Claimant's Narrative of the case, with Payment History Log
Cl. Ex. #2	Contract with Respondent
Cl. Ex. #3	Itemization of Supporting Documentation for Payments
Cl. Ex. #4	Subcontractors' Business Cards
Cl. Ex. #5	Photographs taken of project prior to completion
Cl. Ex. #6	Photographs taken of project after completion
Cl. Ex. #7	December 15, 2009 E-mail correspondence between the Claimant and one of the Respondent's subcontractors
Cl. Ex. #8	Claimant's Payment Notes and Receipts

Testimony

The Claimant testified on her own behalf. The Fund did not present any testimony.

FINDINGS OF FACT

I find the following 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 01-99840 and 05-127239. His licenses expired on May 7, 2011 and have not been renewed. Fund Ex. #2.
2. On June 4, 2009, the Claimant and the Respondent entered into a contract for the Respondent to construct a custom four-car garage to the Claimant's residence at 243 Klees Mill Road, Sykesville, Maryland, 21784 (the Contract). The work included, among other things: foundation and grading; building of a wall system and new cathedral roof; installing electrical, radiant heated floors, windows and doors; pouring asphalt; landscaping; and utilizing specialty finishes and equipment. Cl. Ex. #2.
3. The Contract price was \$89,656.40. Cl. Ex. #s 1 and 2.

4. The Contract called for the Respondent to be paid according to an installment schedule of seven payments. Cl. Ex. #2. On June 4, 2009, in accordance with the Contract, the Claimant paid the Respondent the initial installment of \$35,000.00 (check number 1188), before the Respondent performed any work under the Contract. Cl. Ex. #s 1-3.

5. Soon thereafter, the Respondent began to perform work under the Contract.

6. The Claimant made two additional payments to the Respondent under the Contract: on October 23, 2009 for \$4,600.00 (check number 1262) and on December 29, 2009 for \$10,000.00 (check number 1167), for a total of \$49,600.00 of the Contract price. Cl. Ex. #s 1 and 3.

7. The Claimant made other numerous payments to various subcontractors on behalf of and as directed by the Respondent under the Contract totaling \$53,200.29. Cl. Ex. #s 1, 3, 4 and 8.

8. In total, the Claimant paid the Respondent or subcontractors on behalf of the Respondent \$102,800.29 for work done under the Contract, approximately \$13,000.00 more than the original Contract price.

9. On March 15, 2010, the Respondent abandoned the project without completing it. The Respondent held a meeting with the Claimant and her husband and informed them that he and his company would cease work as he might be filing for bankruptcy. Cl. Ex. #1.

10. From April 2010 through January 2011, the Claimant continued to make payments to the Respondent's former subcontractors to complete the work they began

under the Contract. Cl. Ex. #s 1, 3, 4 and 8. The Contract remains incomplete due to the Claimant running out of funds.

11. On September 24, 2010, the Claimant filed a claim with the MHIC Fund for reimbursement of \$43,817.06 for actual losses allegedly suffered as a result of the acts or omissions made by the Respondent. Fund Ex. #5. On March 22, 2012, the Claimant amended her claim for reimbursement to \$13,143.89, removing the damages allegedly suffered which she believed were not compensable by the MHIC Fund. Fund Ex. #6.

12. The Claimant's actual loss is \$13,143.89 due to the acts and omissions of the Respondent—the Claimant paid the Respondent a total of \$49,600.00, plus \$53,200.29 to other contractors to perform uncompleted work under the Contract, less the Contract price of \$89,656.40.

13. The MHIC notified the Respondent of the Claimant's MHIC Fund claim, amended MHIC Fund claim and hearing by way of notices sent to his address on record with the MHIC as well as with the Maryland Motor Vehicle Administration (which address was the same). Fund Ex. #s 1-6. There was no mail returned as undeliverable by the United States Post Office. On August 29, 2012, the certified mail receipt pertaining to the hearing notice was received and signed for at the Respondent's address. Fund Ex. #1. The Respondent did not appear for the hearing.

DISCUSSION

The Respondent's Failure to Appear

Section 8-312(d) of the Business Regulation Article states: "The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission [MHIC]." Based

upon Finding of Fact 13, I determined that proper notice had been made and proceeded with the hearing in the Respondent's absence. Md. Code Ann, Bus. Reg. §§ 8-309 and 8-312(h) (2010 & Supp. 2012); COMAR 28.02.01.20.

The Merits of the Claim

Maryland law provides that 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) (Supp. 2012). Section 8-401 of the Business Regulation Article defines "actual loss" as "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). The burden of proof to establish the incomplete, unworkmanlike or inadequate home improvement and any actual loss suffered is on the Claimant. Md. Code Ann., Bus. Reg. § 8-407(e)(1) (2010).

For the following reasons, I find that the Claimant has proven eligibility for compensation. First, the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. Second, the Respondent failed to complete the home improvement. Third, the Claimant suffered an actual loss as the Respondent took the Claimant's money and failed to fulfill his obligations under the terms of the Contract.

The Claimant credibly testified and presented documentary evidence that she paid the Respondent a total of \$49,600.00 for work to be performed on a custom garage to her residence. She stated that the Respondent performed some work on the project and would have preferred that he complete the work but he called a meeting with her to inform her that he was considering filing for bankruptcy and could no longer to continue

to work for her. During the course of the Contract as requested by the Respondent and thereafter in completing the work under the Contract, the Claimant made \$53,200.29 in additional payments to various of the Respondent's subcontractors.

In light of the evidence presented by the Claimant, the Fund agreed that the Claimant is entitled to an award—the amount alleged in the Claimant's amended MHIC Form, which I agree with and will be outlined below. I find that the Respondent failed to complete his obligations under the Contract with the Claimant, thereby abandoning it when it was clearly not completed. The Claimant testified that she wanted the Respondent to complete the project but he refused. As the Respondent failed to appear for the hearing to contest the Claimant's contentions, I find that the Claimant made all good faith efforts to work with the Respondent and have him complete the Contract.

Having found eligibility for compensation, I now turn to the amount of the award, if any. COMAR 09.08.03.03 states in pertinent part:

B. Measure of Awards from Guaranty Fund.

- (1) The Commission may not award from the Fund any amount for:
 - (a) Consequential or punitive damages;
 - (b) Personal injury;
 - (c) Attorney's fees;
 - (d) Court costs; or
 - (e) Interest.

...

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

- (a) If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract.
- (b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the

claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

(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 appropriate section to use herein is subsection (c). Accordingly, I calculate the Claimant's award as follows.

Amount paid by or on behalf of Claimant to Respondent	\$ 49,600.00
Plus amount paid to other contractors for work performed	+\$ <u>53,200.29</u>
Minus original contract price	- <u>\$ 89,656.40</u>
Actual loss	\$ 13,143.89

Therefore, I find that the Claimant has proved an actual loss of \$13,143.89 that she can recover from the Fund for this claim.

CONCLUSIONS OF LAW

I conclude as a matter of law that the Claimant has sustained an actual loss of \$13,143.89 as a result of the Respondent's acts and omissions, which is compensable by the Fund. Md. Code Ann., Bus. Reg. § 8-401 (2010); COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

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

ORDER that the Claimant be awarded \$13,143.89 from the Maryland Home Improvement Guaranty Fund;

ORDER that the Respondent be 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.

Signature on File

March 27, 2013
Date Decision Mailed

Nicole Pastore Klein
Administrative Law Judge

NPK
#141453

IN THE MATTER OF THE CLAIM * BEFORE NICOLE PASTORE KLEIN,
OF MICHELE L. BECKER, * 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 VICTOR CORBI, * *
T/A JOE CORBI HOME * OAH NO.: DLR-HIC-02-12-26792
IMPROVEMENT COMPANY, LLC, * MHIC NO.: 11 (05) 344
RESPONDENT * *

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EXHIBIT LIST

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Cl. Ex. #8

Claimant's Payment Notes and Receipts

PROPOSED ORDER

WHEREFORE, this 18th day of April 2013, 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