

IN THE MATTER OF THE CLAIM

OF SUSANNA YA XU SUNN,

CLAIMANT

AGAINST THE MARYLAND HOME

IMPROVEMENT GUARANTY FUND

FOR THE ALLEGED ACTS OR

OMISSIONS OF RANDY STULL,

T/A R.E. STULL CONTRACTORS, LLC,¹

RESPONDENT

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BEFORE MICHAEL J. WALLACE,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: DLR-HIC-02-17-20873

MHIC No.: 14(90)714

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STATEMENT OF THE CASE

On or about May 30, 2014, Susanna Ya Xu Sunn ("Claimant") filed a claim ("Claim") with the Maryland Home Improvement Commission ("MHIC") Guaranty Fund ("Fund") in the amount of \$27,546.04 for reimbursement for alleged actual losses suffered as a result of a home improvement contract with Randy Stull, ("Respondent") trading as Level 10 Basement, Bathroom and Kitchen Systems (Level 10).

¹ As discussed below, the contract at issue in this case involves home improvement work that was to be performed by Level 10 Basement, Bathroom and Kitchen Systems (Level 10). The Respondent was licensed in the name of Randy Stull, trading as R. E. Stull's Contractors and was also licensed trading as Level 10 on the date of the contract and at all times relevant.

I convened a hearing on September 25, 2017, at the County Office Building in Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).² The Claimant was present and represented herself. The Respondent was also present and represented himself. Eric London, Assistant Attorney General, Department of Labor, Licensing and Regulation (“DLLR”), MHIC, represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the DLLR, 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 (2014 & Supp. 2017), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of any acts or omissions committed by the Respondent?
2. If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

The Claimant submitted nine exhibits for consideration, which were identified as

Claimant Exhibit No. 1-10 as follows:

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|----------------|---|
| Claimant Ex. 1 | Home Improvements Sale and Installation Agreement, dated October 29, 2013 with attached Change Order, dated November 26, 2013 |
| Claimant Ex. 2 | Inspection Report of Majestic Home Improvements, dated December 30, 2013 |
| Claimant Ex. 3 | Copies of cancelled checks and receipts |
| Claimant Ex. 4 | Photographs taken by the Claimant showing “Poor quality and damages to the house.” |
| Claimant Ex. 5 | Inspection Report of North East Home Inspection, dated November 19, 2013 |

² All citations to the Business Regulation Article refer to the 2015 Volume.

- Claimant Ex. 6 Claimant's summary of problems with the Respondent's work including photographs
- Claimant Ex. 7 Copies of Receipts from Handyman, plumber, and electrician from February 19, 2014 through March 19, 2014
- Claimant Ex. 8 Letter to Thomas Marr, MHIC from Claimant, dated May 28, 2014
- Claimant Ex. 9 Photographs of unfinished items in Claimant's house.
- Claimant Ex. 10 Letter from Claimant, undated

I admitted the following exhibits on behalf of the Respondent:

- Resp. Ex. 1 Letter from Respondent Stull to "All Concerned Re: 714-2014, dated March 6, 2014
- Resp. Ex. 2 Advertisement soliciting a licensed home improvement contractor, dated July 18, 2013
- Resp. Ex. 3 Copy of Respondent Still's Contractor/Salesman permit with attached Certificate of \$2,000,000.00 Liability Insurance
- Resp. Ex. 4 Certificate of \$2,000,000.00 Liability Insurance

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 Notice of Hearing, dated August 2, 2017
- Fund Ex. 2 Hearing Order, dated July 3, 2017
- Fund Ex. 3 The Respondent's licensing history, dated September 19, 2017
- Fund Ex. 4 Home Improvement Claim Form, received May 30, 2014
- Fund Ex. 5 Letter from MHIC to Respondent, dated July 5, 2015

Testimony

The Claimant testified on her own behalf. The Respondent testified on his own behalf and presented the testimony of his wife, Cheryl Ridenour. There was no testimony presented on behalf of the Fund.

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/salesman under MHIC license number 01-86401 trading as R.E. Stull Contractors.

2. The Respondent was also licensed under MHIC license number 01-86401-01, trading as Level 10. His license under Level 10 was effective April 27, 2013.

3. On or about June 10, 2013, the Respondent responded to an advertisement posted by Newton Gaynor.

4. Mr. Gaynor was soliciting home improvement contractors. Mr. Gaynor claimed to be a new full service business development firm that solicited clients for home improvement work. Mr. Gaynor wanted to partner with home improvement contractors to do home improvement as well as residential construction work.

5. The Respondent responded to Mr. Gaynor's advertisement and met with him on or about June 23, 2013 to discuss the possibility of a partnership. Mr. Gaynor proposed providing marketing services as well as financing for potential clients if the Respondent would agree to initially perform the home improvement work under the Respondent's license in the name of Level 10. The Respondent further agreed that he would later supervise other craftsmen.

6. The Respondent ultimately agreed to this arrangement and provided Mr. Gaynor with a copy of his MHIC license as well as a copy of his insurance certificate.

7. On or about July 16, 2013, the Respondent added Level 10 to his liability insurance, as well as to his MHIC license under number 01-86401-01 and changed the address on the license to reflect a new address in Largo, Maryland, the address provided by Mr. Gaynor.

8. On or about October 24, 2013, the Claimant entered a written contract ("Contract") with Level 10/Mr. Gaynor to renovate the Claimant's hallway bathroom, master bathroom, first floor powder room and to make repairs to the living room ceiling at the Claimant's residence located at 3920 Commander Drive in Hyattsville, 20782. The work was to be performed at a cost of \$32,000.00.

9. Work was to begin on November 4, 2013 and be completed by November 25, 2013.

10. On October 24, 2013, the Claimant paid the Level 10/ Mr. Gaynor \$7,500.00 as a deposit.

11. On November 26, 2013, the Claimant entered into another contract (Change Order) to cancel the work on the first floor powder room and to instead repair cracks in walls at kitchen area, replace cracked bricks on the chimney (the Claimant to provide the bricks), make repairs to the sun room, and perform work in the attic consisting of installing insulation, building a ceiling, building wood closets, installing carpet, installing a cover over the air conditioning unit and covering some hazardous areas. The Change Order added an additional \$2,500.00 to the cost of the project bringing the total contract price to \$34,500.00.

12. On November 26, 2013, the Claimant paid the Respondent Gaynor/Level 10 an additional \$8,500.00.

13. By December 2013, work had progressed sporadically and at that time, the Claimant learned that the Respondent owned Level 10 and that Mr. Stull and Mr. Gaynor were in business together as Level 10.

14. By December 2013, only a portion of the work had been completed on the project.

15. On December 3, 2013, the Claimant paid an additional \$8,000.00 to Level 10 and on December 11, 2013, she paid \$442.00 bringing her total payments to Level 10 to \$24,442.82.

16. In addition, during the period from November 9, 2013 until December 6, 2013, the Claimant expended an additional \$2,844.66 in materials and supplies for the project that were supposed to be provided by the Respondent under the Contract.

17. In mid-December, the Claimant learned that the Respondent had not paid some of the workers for their services, causing the workers to stop working until they were paid.

18. On December 10, 2013, the Claimant paid a tile installer \$158.61 for his services and on December 13, 2013, paid an electrician \$100.00 for his unpaid services.

19. At this point, the Claimant had paid a total of \$27,546.09 toward the project.

20. On December 13, 2013, after months of suspicions that Mr. Gaynor was defrauding the Respondent as well as several potential clients, the Respondent went to the MHIC to have his MHIC license reissued under T.A. Stull Contractors, to remove Level 10 from his license and to change the address of his business back to his original address in Adelphi, Maryland.

21. In mid-December, Mr. Gaynor requested that the Claimant pay the balance due under the contract. The Claimant, however, refused and demanded that all work under the contract be performed before she paid the balance.

22. Mr. Gaynor/Level 10 ceased doing any work in mid-December and failed to return to the Claimant's house at any time after. Mr. Gaynor also stopped paying any of the sub-contractors for their services so they likewise ceased doing any work under the project.

23. On December 22, 2013, the Respondent removed Level 10 from his license.

24. On December 30, 2013, the Claimant hired Majestic Home Inspections, Inc. to perform an inspection of the work that was to be done under the Contract and assess the quality of the work that was actually completed.

25. The inspector determined that \$34,500.00 to complete the work under the Contract appeared to be unrealistically low. In addition, he determined that only 50.5% of the work had been completed and that the Respondent had caused damages in the amount of \$2,423.00. He determined that the Respondent's work carried a value of \$17,423 before deducting the damage amount.

26. In early January 2014, the Claimant began receiving anonymous emails warning her that Level 10 was no longer licensed and was not insured.

27. On or about January 15, 2014, the Claimant filed a complaint with the MHIC.

28. From February 19, 2014 through March 19, 2014, the Claimant paid an additional \$3,441.00 to various other contractors to repair and complete electrical, plumbing and other tasks not performed by the Respondent.

29. The Claimant paid a total of \$30,987.09 on the project.

30. On or about May 30, 2014, the Claimant filed a claim for reimbursement from the Fund in the amount of \$27,546.04.

DISCUSSION

At a hearing on a claim, a claimant has the burden of proof. Md. Code Ann., Bus. Reg. §8-407(e)(1). A homeowner 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). *See also* COMAR 09.08.03.03B(2) (“The Fund may only compensate claimants for actual losses they incurred as a result of misconduct by a licensed contractor.”) 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. A claimant may not recover from the Fund any amount for “(a) Consequential or punitive damages; (b) Personal injury; (c) Attorney’s fees; (d) Court costs; or (e) Interest.” COMAR 09.08.03.03(B)(1). For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent did not dispute that he was a licensed home improvement contractor under MHIC license number 01-86401 trading as R.E. Stull Contractors. The Respondent argued, however, that while he was also licensed under MHIC license number 01-86401-01, trading as Level 10, he was not liable for the actions taken by Mr. Gaynor acting on behalf of

Level 10. The Respondent argued that Mr. Gaynor did not have any authority to act on his behalf, that the Respondent was the only one who was authorized to sign any contracts and that Mr. Gaynor acted in entering home improvement contracts with homeowners without the Respondent's knowledge. The Respondent stated that he is extremely sorry that individuals were defrauded by Mr. Gaynor and maintained that he was fraudulently induced to enter a partnership with Mr. Gaynor. He argued that it was not his intent to defraud anyone but that he believed in good faith that a partnership with Mr. Gaynor was legitimate and would further the Respondent's business plan. The Respondent stated that because he was defrauded and wrongfully induced to enter into a partnership with Mr. Gaynor, that the Respondent is not responsible for the actions of Mr. Gaynor.

The evidence established that the Respondent's license operating as Level 10 was effective, according to the July 30, 2013 MHIC website, on April 27, 2013. The MHIC records, however, show that this license was effective September 25, 2013 until September 25, 2015. The Claimant produced evidence to show that on July 30, 2013, she went to the MHIC website and found that the Respondent and Level 10 was licensed as a home improvement contractor under license 01-86401-01 effective April 27, 2013. I therefore conclude that Level 10 was licensed under the Respondent's name beginning on April 27, 2013.

The evidence established that sometime around June 10, 2013, the Respondent replied to an internet advertisement posted by "Nordan" Gaynor who was soliciting home improvement contractors. Mr. Gaynor claimed to be a new full service business development firm that solicited clients for home improvement work and wanted to partner with home improvement contractors to do home improvement as well as residential construction work. The Respondent subsequently met with Mr. Gaynor on June 23, 2013 to discuss the possibility of a partnership. Mr. Gaynor proposed providing marketing services as well as financing for potential clients if

the Respondent would agree to initially perform the home improvement work under the Respondent's license in the name of Level 10. The Respondent further agreed that he would later supervise other craftsmen. The Respondent ultimately agreed to this arrangement and provided Mr. Gaynor with a copy of his MHIC license as well as a copy of his liability insurance certificate. The evidence further established that in July 2013, the Respondent added Level 10 to his liability insurance, as well as to his MHIC license under number 01-86401-01 and changed the address on the license to reflect a new address in Largo, Maryland, the address requested by Mr. Gaynor.

The Respondent testified that over the intervening months, he became suspicious that Mr. Gaynor was defrauding the Respondent as well as several potential clients. The Respondent stated that Mr. Gaynor and his associate, Carolyn Bowman, failed to respond to the Respondent's inquiries about why the Respondent had not received a copy of the MHIC license for Level 10 and the Respondent later learned that Mr. Gaynor's name was not Nordan but was Newton. The Respondent further learned that there were home improvement contracts between homeowners and Level 10 that were signed by Mr. Gaynor of which the Respondent was not aware and that the homeowners were either unhappy because of poor work or because Mr. Gaynor had taken money and failed to perform any work at all. Finally, in December 2013, the Respondent contacted MHIC and had Level 10 removed from his license and had the address of his business changed back to his original address in Adelphi, Maryland.

While the Respondent argued that he is not responsible to the clients for the actions of Mr. Gaynor, because he allowed his name and license to be used in Mr. Gaynor's scheme, albeit unknowingly, he is the licensed contractor and is subject to liability on subsequent awards from the Fund. The Respondent certainly acted in good faith but he carelessly placed himself in a perilous situation when he quickly trusted Mr. Gaynor with his license and insurance information

without doing further investigation into Mr. Gaynor's background. While the Respondent contended that he tried to "vet" Mr. Gaynor, he stated that he was induced to believe Mr. Gaynor's name was "Nordan" instead of "Newton." This resulted in a website search with no negative findings.

Unfortunately, while the Respondent might have acted in good faith, he is nonetheless responsible for actions under a license issued in his name. The Fund is geared to protect homeowners from incompetent or unscrupulous home improvement contractors but is not for the protection of the contractors.

The Claimant provided unrefuted testimony and other evidence to establish that on October 24, 2013, she wanted to make renovations to a house that she recently purchased. She entered the Contract with Mr. Gaynor operating as Level 10 to renovate her hallway bathroom, master bathroom, first floor powder room and to make repairs to the living room ceiling at a cost of \$32,000.00. Work was to begin on November 4, 2013 and be completed by November 25, 2013. On October 24, 2013, the Claimant paid Level 10/Mr. Gaynor a deposit of \$7,500.00. As work slowly progressed, she decided to change the scope of the project slightly by not having some work done that was contemplated under the initial agreement and adding other work. On November 26, 2013, the Claimant, thus, entered into the Change Order to cancel the work on the first floor powder room and instead repair cracks in walls at kitchen area, replace cracked bricks on the chimney, make repairs to the sun room, and perform work in the attic. The Change Order added an additional \$2,500.00 to the cost of the project bringing the total contract price to \$34,500.00. On November 26, 2013, the Claimant paid Mr. Gaynor/Level 10 an additional \$8,500.00.

By December 2013, work had progressed slowly and sporadically and the Claimant learned that the Respondent owned Level 10 and that the Respondent and Mr. Gaynor were in

business together as Level 10. By December 2013, the Claimant was becoming increasingly more unsettled over the fact that only a portion of the work had been completed on the project up to that point. On December 3, 2013, she paid an additional \$8,000.00 to Mr. Gaynor and on December 11, 2013, she paid another \$442.00 bringing her total payments to Level 10/Mr. Gaynor to \$24,442.82. In addition, the Claimant also expended an additional \$2,844.66 in materials and supplies for the project that were supposed to be provided by Level 10. By mid-December, the Claimant learned that Level 10 had not paid some of the workers for their services, causing the workers to stop working until they were paid. In order to keep the contractors on the job, the Claimant paid a tile installer \$158.61 for his services and an electrician \$100.00 for his unpaid services.

On December 13, 2013, after months of suspicions that Mr. Gaynor was defrauding him as well as several other homeowners, the Respondent went to the MHIC to have his MHIC license reissued under T.A. Stull Contractors, to remove Level 10 from his license and to change the address of his business back to his original address in Adelphi, Maryland.

The Claimant testified that in mid-December 2013, Mr. Gaynor wanted the balance of the money under the contract but the Claimant balked and told him that she was not paying any more money until all work under the Contract was completed. In response to this, Mr. Gaynor ceased doing any work in mid-December and failed to return to the Claimant's house at any time after. Mr. Gaynor also stopped paying any of the sub-contractors for their services so they likewise ceased doing any work under the project. In the meantime, the Respondent removed Level 10 from his license.

By December 30, 2013, much of the work was incomplete or done in a poor, unworkmanlike manner. In addition, the Claimant noted that Level 10's workers had caused damages around the house during construction consisting of broken screens, cracks in the plaster

walls and other damages. The Claimant, at that point, hired a building inspector to perform an inspection of the work that was to be done under the Contract and assess the quality of the work that was actually completed by Level 10. The inspector determined that the Contract price of \$34,500.00 to complete the work appeared to be unrealistically low based on what was contemplated to be performed. In addition, he determined that only 50.5% of the work had been completed and that the Respondent had caused damages in the amount of \$2,423.00. He determined that the Respondent's work carried a value of \$15,000.00 after deducting the damage amount.

The Claimant further stated that from February 19, 2014 through March 19, 2014, she paid an additional \$3,441.00 to other contractors to repair and complete electrical, plumbing and other tasks not performed by the Respondent.

The Claimant presented numerous pieces of detailed evidence to verify her home improvement-related expenditures, including detailed receipts and cancelled checks. The Claimant submitted detailed lists of materials and photographs depicting the state of the house when Level 10 abandoned the project in December 2013 and to show what needed to be done to repair and complete the project.

The Claimant meticulously documented her expenditures. She pre-numbered all of her exhibits showing the receipts and invoices that made up those exhibits and coordinated her narrative to demonstrate what she spent. The Respondent did not contest these expenditures. Consequently, I find the evidence that the Claimant offered to document what she had to pay to continue work on her unfinished home improvement project to be credible and unrefuted.

The Claimant asserts that she paid a total of \$30,987.09 toward completing the work under the Contract. This amount included the payments that she made to Level 10 as well as the amounts that she paid to other contractors to perform some tasks and the amounts that she paid

for supplies and materials. The Claimant maintains that given these expenditures, she is entitled to recover the maximum amount of \$20,000.00 from the Fund.

The Respondent did not refute any of the Claimant's testimony or other evidence. I found the Claimant to be credible and I found that she paid the Respondent, operating as Level 10, a sum of money to provide a home improvement. Level 10, however, provided an unworkmanlike and incomplete project thereby forcing the Claimant to expend sums of money in an attempt to complete the work under the project.

Assuming eligibility for compensation, I must now determine the amount of the award, if any, to which the Claimant is entitled. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). In the present case, the Claimant testified that she paid \$24,442.82 to Level 10, plus an additional \$258.61 to the unpaid subcontractors of Level 10, \$3,441.00 to other subcontractors to perform some work and \$2,844.66 in materials and supplies. The work performed by Level 10 carried a value of \$17,423.00 according to the Claimant's home inspector. The inspector deducted \$2,423.00, for damages. Damages, however, are not covered by the Fund.

MHIC's regulations provide three formulas for measurement of a claimant's actual loss; for instances where the contractor abandoned the project; performed poor and/or incomplete work that needed to be repaired and the claimant hired other contractors to complete the work under the contract; and instances where the claimant did not solicit other contractors to complete the work under the contract. COMAR 09.08.03.03B(3). This regulation also allows for a unique measurement if the formulas provided do not allow for an equitable amount. While COMAR 09.08.03.03B(3)(c) provides for situations where a claimant is soliciting another contractor to finish the project, the Claimant in this case has expended additional amounts to complete the

project and has hired some contractors to handle specific tasks. The Claimant, however, has not yet completed the project and has only received a value of approximately half of the contract amount. Subtracting the full contract amount pursuant to COMAR 09.08.03.03B(3)(c), therefore, would not be a fair measure of the Claimant's losses. The Claimant's actual loss, therefore, requires a unique measurement and is calculated after considering that she contracted with the Respondent for a total amount of \$34,500.00 and paid him \$24,442.82 but only received work with a value of \$17,423.00. In addition, the Claimant was required to pay an additional \$2,844.66 in materials and \$3,699.61 to other contractors to perform specific tasks because the Respondent failed to complete some of the work under the contract and where he did perform work, did so in a shoddy and unworkmanlike manner. While the inspector determined a value of \$15,000.00 for the Respondent's work, this determination was made after deducting damages in the amount of \$2,423.00. As noted above, the Fund may not award any amounts for consequential damages.

The award from the fund is, therefore, computed as follows:

Amount paid to the Respondent	\$24,442.82
Amount paid to repair, restore and complete work	+ \$6,544.27
Value of Respondent's work	- <u>\$17,423.00</u>
Award amount	\$13,564.09

Based on the above considerations, the Claimant is entitled to reimbursement from the Fund. Md. Code Ann., Bus Reg. §8-405 (e)(1).

PROPOSED CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant has sustained an actual loss compensable by the MHIC Fund as a result of the Respondent's alleged acts and omissions. I, therefore, recommend, for the reasons stated above, an award in the amount of \$13,564.09. Md. Code Ann., Bus. Reg. §§ 8-401 and 8-405 and COMAR 09.08.03.03B(3).

PROPOSED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$13,564.09;

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 (10%) as set by the Maryland Home Improvement Commission;

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

Signature on File

November 29, 2017
Date Proposed Decision Issued

Michael J. Wallace
Administrative Law Judge

MJW/da
#170781

PROPOSED ORDER

WHEREFORE, this 25th day of January, 2018, 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