

IN THE MATTER OF THE CLAIM
OF TAMARA MCKINNEY,
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

* BEFORE MICHAEL J. WALLACE,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
* OAH No.: DLR-HIC-02-17-20899
* MHIC No.: 14(05)726
*

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PROPOSED DECISION

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STATEMENT OF THE CASE

On or about July 7, 2014, Tamara McKinney ("Claimant") filed a claim ("Claim") with the Maryland Home Improvement Commission ("MHIC") Guaranty Fund ("Fund") in the amount of \$18,876.46 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 one exhibit for consideration, which was identified as Claimant Exhibit No. 1. This exhibit had the following attachments:

1. Letter from Claimant, undated
2. Series of cancelled checks and proof of payments made by Claimant
3. Proposals and estimates from Modern Carpet One
4. Home Improvement Claim Form, dated June 15, 2014 and HIC Complaint, undated

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

5. Series of emails between Claimant and Carolyn Bowman, dated June 19-20, 2013
6. DLLR Results for Active Licensed Home Improvement, dated July 30, 2013, with attached business card of R.E. Stull and HIC Contractor/Salesman License of R.E. Stull
7. Service Contract with Level 10 Systems (1st and 2nd contracts), dated June 13, 2013 and June 25, 2013, respectively
8. Email from Claimant and Aaron Tircuit, dated June 19, 2013
9. Estimate from Conestoga Tile, dated June 25, 2013
10. Documentation regarding mold removal services
11. Permit from Prince George's County Department of Permitting, Inspections and Enforcement Permitting Center, dated July 31, 2013; Invoice from Prince George's County Department of Environmental Resources, dated September 11, 2013; copies of inspection notices, dated December 17, 2013 and November 1, 2015
12. Series of 26 photographs showing poor workmanship

I admitted the following exhibits on behalf of the Respondent:

- Resp. Ex. 1 Advertisement soliciting a licensed home improvement contractor
- Resp. Ex. 2 Level 10 Systems Basement and Bath Systems Service Contract, dated June 13, 2013, First and Second Contracts
- Resp. Ex. 3 Letter from Mold Control Services L.L.C. to R.E. Stull, dated September 24, 2017
- Resp. Ex. 4 Copy of check in the amount of \$750.00 payable to Respondent
- Resp. Ex. 5 Payment Receipt Confirmation, dated July 18, 2013
- Resp. Ex. 6 Certificate of \$2,000,000.00 Liability Insurance
- Resp. Ex. 7 Letter from Respondent to MHIC, dated January 27, 2014

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 Respondent's licensing history, dated September 19, 2017
- Fund Ex. 4 Home Improvement Claim Form, received July 7, 2014
- Fund Ex. 5 Letter from MHIC to Respondent, dated July 10, 2014

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 internet 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 (01-86401) as well as a copy of his liability 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. Beginning in June 2013, the Claimant was planning to remodel her residence and contacted Mr. Gaynor. Mr. Gaynor initially gave her a price that she thought too high, so Mr. Gaynor promised a lower price if the Claimant would agree to allow Mr. Gaynor's "new" company to do the home improvement work.

9. The Claimant was then introduced to Carolyn Bowman on or about June 13, 2013 who was claimed by Mr. Gaynor to be his business associate. Both assured the Claimant that Level 10 was licensed.

10. On or about June 25, 2013, the Claimant entered into a written contract ("Contract") with Level 10 to remodel the Claimant's basement including the construction of an entertainment wall, remodeling the master bathroom by replacing the tile and toilet, and renovating the basement bathroom, including the addition of a shower, at the Claimant's residence located at 5513 Barker Place in Lanham, Maryland 20706 at a cost of \$19,242.00.

11. The Contract was signed by the Claimant as well as by Mr. Gaynor.

12. At the time the contract was signed, the Claimant paid Level 10 \$13,880.00 by check. On the same date, she paid the Bowman Company, allegedly a subsidiary of Level 10, \$2,242.00 via PayPal.

13. Work was to begin on or about June 25, 2013 but due to issues with the installation of windows at the residence, work under the Contract did not begin until sometime around August 1, 2013.

14. On or about June 30, 2013, Mr. Stull came to the Claimant's residence along with Mr. Gaynor. Both indicated to the Claimant that they were in business together as Level 10.

15. On or about August 1, 2013, a laborer for Level 10 arrived and began demolition for the basement bathroom renovation. At that time, mold was discovered behind the wall that the Claimant believed began approximately ten years prior when her basement was flooded due to a sewage backup.

16. The Claimant hired another contractor to remediate the mold issue at a cost of \$2,500.00 and when it was completed approximately one week later, work resumed under the Contract.

17. Work progressed sporadically under the Contract by many workers including Mr. Stull.

18. On September 4, 2013, the Claimant paid an additional \$1,000.00 to Level 10 for plumbing work not covered under the original Contract bringing the Contract total to \$20,242.00 and bringing her total payments to Level 10 to \$17,122.00.

19. On September 11, 2013, the Claimant learned that no permit was obtained by the Respondent prior to the beginning of the plumbing work being performed in the basement under the Contract. On that date, she had a permit issued and paid the Prince George's County Department of Environmental Resources \$5.00 for the permit.

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. On December 17, 2013, the plumbing performed by the Respondent failed the building inspection. In addition, the entertainment wall would not accommodate any of the Claimant's electrical components, the floor tile in the basement bath did not extend to the walls, leaving a gap between the tiles and the wall, the inside of the basement shower threshold was missing tiles, the threshold at the basement bathroom door was not completely installed, the door to the bathroom did not fit, and debris was left on site.

22. On December 22, 2013, Mr. Stull advised the Claimant that he had removed Level 10 from his license.

23. On or about January 4, 2014, the Claimant contracted with Modern Carpet One to repair and complete the work on the basement bath at a cost of \$6,390.00.

24. On or about June 15, 2014, the Claimant filed a claim for reimbursement from the Fund in the amount of \$18,876.46. The Claim was received by the Fund on July 7, 2014.

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 individuals 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, the Respondent is not responsible for the actions of Mr. Gaynor.

The evidence established that the Respondent’s license under 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 doing business as 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 answered 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 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

individuals and Level 10 that were signed by Mr. Gaynor of which the Respondent was not aware and that these individuals 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 various individuals 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 evidence to establish that sometime in June 2013, she was planning to remodel her residence. She contacted Mr. Gaynor, who initially gave her a price that she thought too high. Ultimately, Mr. Gaynor promised a lower price if the Claimant would agree to allow Mr. Gaynor's "new" company, Level 10, to do the home improvement work. The Claimant was then introduced to Carolyn Bowman on or about June 13, 2013 who was claimed by Mr. Gaynor to be his business associate. Both assured the Claimant that Level 10 was

licensed and the Claimant eventually entered a written Contract with Level 10 to remodel her basement including the construction of an entertainment wall, remodeling the master bathroom by replacing the tile and toilet and renovating the basement bathroom, including the addition of a shower. The cost of this work was set at \$19,242.00 and the Contract was signed by the Claimant as well as by Mr. Gaynor. The Claimant paid Mr. Gaynor \$13,880.00 by check and in addition, paid the Bowman Company, allegedly a subsidiary of Level 10, \$2,242.00 via PayPal.

Work was to begin on or about June 25, 2013, but due to issues with the installation of windows at the Claimant's residence, unrelated to the Contract, work under the Contract did not begin until sometime around August 1, 2013. On or about June 30, 2013, the Respondent came to the Claimant's residence along with Mr. Gaynor and indicated to the Claimant that he was in business with Mr. Gaynor, doing business as Level 10. On or about August 1, 2013, a laborer for Level 10 arrived and began demolition for the basement bathroom renovation. At that time, mold was discovered behind the wall that occurred after an unrelated incident approximately ten years prior. To address the mold issue, the Claimant hired another contractor at a cost of \$2,500.00 and when this work was completed approximately one week later, work resumed under the Contract.

Work progressed sporadically under the Contract by many workers including the Respondent and on September 4, 2013, the Claimant paid an additional \$1,000.00 to Level 10 for needed plumbing work that was not included under the Contract, bringing the Contract total to \$20,242.00 and bringing her total payments to Level 10 to \$17,122.00.

The Claimant ultimately discovered that no permit was obtained by the Respondent prior to the beginning of the plumbing work under the Contract being performed in the basement so she took it upon herself to have a permit for the work issued and paid \$5.00 for the permit.

By December 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.

On December 17, 2013, the plumbing work performed by Level 10 failed the building inspection. In addition, the entertainment wall would not accommodate any of the Claimant's electrical components, the floor tile in the basement bath did not extend to the walls leaving a gap between the tiles and the wall, the inside of the basement shower threshold was missing tiles, the threshold at the basement bathroom door was not completely installed, the door to the bathroom did not fit, and debris was left on site. By this time, the Respondent advised the Claimant that he had removed Level 10 from his license.

Because the work under the Contract, particularly the basement, was unfinished and the Claimant's residence was in disarray, she contracted with Modern Carpet One to repair and complete the work on the basement bath at a cost of \$6,390.00.

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 contract with another contractor to finish some of the work.

Assuming eligibility for compensation, I must now determine the amount of the award, if any, to which the Claimant is entitled. In the present case, the Claimant testified that she paid \$20,242.00 to Level 10, plus an additional \$5.00 for a building permit that the Respondent was to secure. In addition, the Claimant paid \$6,390.00 to Carpet One to repair and complete the work contracted to the Respondent. MHIC's regulations provide three formulas for measurement of a

claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss in this case:

(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.

COMAR 09.08.03.03B(3)(c).

The Claimant's actual loss is calculated after considering that she contracted with the Respondent for a total amount of \$19,242.00 and paid him an additional \$1,000.00 for plumbing work that should have been included in the original Contract. In addition, the Claimant was required to pay \$5.00 for a building permit that the Respondent was to secure. Because the Respondent failed to complete the work under the Contract and performed shoddy work, the Claimant was forced to hire another contractor to perform additional work under the original scope of work with Respondent and she paid \$6,390.00 to the second contractor. There is no evidence to establish what value the Respondent's work carried.

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

Amount paid to the Respondent	\$20,242.00
Amount paid to restore and complete work	+ \$6,390.00
Amount paid for permit	+ \$5.00
Contract price	- <u>\$20,242.00</u>
Award amount	\$6,395.00

Based on the above considerations, the Claimant is entitled to reimbursement from the Fund in the amount of \$6,395.00. 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 \$6,395.00. Md. Code Ann., Bus. Reg. §§ 8-401 and 8-405 and COMAR 09.08.03.03B(3)(c).

PROPOSED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$6,395.00;

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
#170134

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