



DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
MARYLAND HOME IMPROVEMENT COMMISSION
500 N. Calvert Street, Room 306
Baltimore, MD 21202-3651

IN THE MATTER OF THE CLAIM
OF TUAN VANETTA
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR ALLEGED VIOLATIONS OF
MARKO JOVETIC, t/a
MARKO JOVETIC, LLC

* MARYLAND HOME
IMPROVEMENT COMMISSION
*
* MHIC CASE NO. 15 (05) 756
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FINAL ORDER

WHEREFORE, this 5th day of July 2017, Panel B of the Maryland

Home Improvement Commission ORDERS that:

1) The Findings of Fact of the Administrative Law Judge are Amended as follows:

A) The Administrative Law Judge found that the Claimant contracted with The Roof Doctor (Jerome Faulcon), in the amount of \$4,600.00, to perform roof and window repairs (Finding of Fact No. 12). The Commission takes official notice of its licensing records which reflect that, neither The Roof Doctor, nor Jerome Faulcon, have ever been licensed in any capacity by the Maryland Home Improvement Commission.

B) The Administrative Law Judge found that the Claimant contracted with Noble Drew Ali in July 2015, in the amount of \$3,000.00, to perform deck repairs (Finding of Fact No. 14). The Commission takes official notice of its licensing records which reflect that the home improvement contractor license of Noble Drew Ali (01-48610) expired on July 12, 2013, and has not been renewed since that date.

C) The Administrative Law Judge found that the Claimant contracted with 3 C's Construction in January 2015, in the amount of \$ 452.00, to perform boiler repairs (Finding of Fact No. 12). The Commission takes official notice of its licensing records which reflect that 3 C's Construction has never been licensed in any capacity by the Maryland Home Improvement Commission. The Claimant's contract with 3 C's Construction does reflect a State Board of Heating, Ventilation, Airc Conditioning, and Refrigeration license (no. 9013), associated with Samuel Graves.

D) The Commission takes official notice of its licensing records which reflect that "Fondation Management" has never been licensed in any capacity by the Maryland Home Improvement Commission.

2) The Conclusions of Law of the Administrative Law Judge are Amended as follows:

A) The Commission finds that bills or invoices from an unlicensed contractor, who is operating illegally, do not constitute credible and competent evidence upon which to determine a claimant's actual loss.

B) The Commission further concludes, as a matter of public policy, that authorization of an award from the Guaranty Fund, based upon a payment to an unlicensed contractor, is contrary to the intent of the home improvement licensing laws, and would have the effect of subsidizing and encouraging illegal activity by unlicensed contractors.

C) The Commission finds that the proposed Guaranty Fund award in the present case is, with the exception of the \$452.00 payment to 3 C's Construction, based upon payments to unlicensed home improvement contractors Noble Drew Ali and The Roof Doctor, and, therefore, the Claimant has failed to establish an actual loss which may be compensated from the Home Improvement Guaranty Fund.

D) Pursuant to the formula set forth in COMAR 09.08.03.03B, the correct calculation of the Claimant's actual loss is as follows:

● Amount paid to Respondent	\$20,000.00
● Amount paid to <u>licensed contractors</u> to repair and complete work	+ \$ 452.00
● Subtotal	\$20,452.00
● Less original contract price	- <u>\$22,578.00</u>
● Actual Loss	(\$ 2,126.00)
	(No Actual Loss)

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3) The Recommended Order of the Administrative Law Judge is Amended as follows:

A) The Home Improvement Guaranty Fund claim of the Claimant is Denied.

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 _____
Chairperson - Panel B
MARYLAND HOME IMPROVEMENT
COMMISSION

IN THE MATTER OF THE CLAIM
OF TUAN VANETTA,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF MARKO JOVETIC,
T/A MARKO JOVETIC, LLC
RESPONDENT

* BEFORE MICHAEL J. WALLACE,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-15-27360
* MHIC No.: 15(05)756

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSION OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On March 6, 2015, Tuan Vanetta (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) in the amount of \$8,070.00 for reimbursement for alleged actual losses suffered as a result of a home improvement contract with Marko Jovetic, trading as Marko Jovetic LLC (Respondent).

I convened a hearing on January 12, 2016, at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).¹ The Claimant was present and represented himself. The Respondent failed to appear for the hearing. Hope Sachs, 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), 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

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

- Cl. Ex. 1 Original contract between Claimant and Respondent, dated June 26, 2014
- Cl. Ex. 2 Updated contract/addendum between Claimant and Respondent, dated September 25, 2014
- Cl. Ex. 3 Two photographs of Respondent's work
- Cl. Ex. 4 Email from Claimant to Respondent, dated September 24, 2014
- Cl. Ex. 5 Email from Respondent to Claimant, dated September 25, 2014, with attachment

¹ Unless otherwise noted, all citations of the Business Regulation Article hereinafter refer to the 2015 Replacement Volume.

- Cl. Ex. 6 Email from Claimant to Respondent, dated October 2, 2014
- Cl. Ex. 7 Email from Claimant to Respondent, dated November 13, 2014
- Cl. Ex. 8 Email from Claimant to Asha Gael, dated November 24, 2014
- Cl. Ex. 9 Email from Asha Gael to Claimant, dated November 24, 2014
- Cl. Ex. 10 Email from Respondent to Claimant, dated November 25, 2014
- Cl. Ex. 11 Email from Claimant to Kelly Makerney, dated November 27, 2014
- Cl. Ex. 12 Proposal from 3C's Construction and Remodeling, dated February 18, 2015
- Cl. Ex. 13 Series of text messages between the Claimant and Respondent from December 5, 2014 to December 24, 2014
- Cl. Ex. 14 Spreadsheet from The Construction Lender, dated November 5, 2014
- Cl. Ex. 15 Invoice from the Roof Doctor, dated December 6, 2014
- Cl. Ex. 16 Proposal from Noble Drew-Ali for work at 3701 Kimble Road and 3616 Yolanda Road
- Cl. Ex. 17 Invoice from 3C's Construction and Remodeling, dated January 29, 2015
- Cl. Ex. 18 Invoices from R. E. Michel Company, dated January 29, 2015
- Cl. Ex. 19 Series of five cancelled check invoices

The Respondent did not submit any documents for consideration.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 Notice of Hearing, dated October 9, 2015 with attached MHIC Hearing Order, dated August 7, 2015
- Fund Ex. 2 The Respondent's licensing history, dated January 11, 2016
- Fund Ex. 3 Claim Form cover letter to Respondent, dated March 17, 2015 with attached Home Improvement Claim Form

Testimony

The Claimant testified on his own behalf. Neither the Respondent nor the Guaranty Fund presented any witness testimony.

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 under MHIC license number 01-106902. He is not currently licensed.

2. On or about June 26, 2014, the Claimant and the Respondent entered into a contract to remodel, repair and refurbish the Claimant's house located at 3701 Kimble Road, Baltimore, Maryland. The contract called for the following:

- Install new replacement vinyl windows
- Patio door 60" slider, replace trim and casing
- Repair leak on roof, replace damaged slate tile, secure downspouts
- Demo drop ceiling, and install new ¼" drywall on ceiling and finish and sand
- Repair the existing boiler system copper pipes and test system. Install 2 radiators
- Repair damaged and cut water lines
- Replace damaged hardwood floor and install new ¼" plywood sheeting. Sand floor bumps and install new vinyl laminate flooring throughout 1st floor
- Install 5 new interior slab doors with locks
- Grout existing tile shower
- Replace electrical panel. Upgrade to 200 amp service, inspect and repair existing switches and outlets. Price may carry after initial inspection.
- Install new kitchen sink, disposal and faucet
- Install new party wall in basement and install new door and one closet door, drywall and finish, remove existing cabinets
- Replace porch roof ceiling panels and scrape and paint porch posts, beams and ceiling
- Replace damaged window trim as necessary

3. The contract price was \$20,000.00.

4. Work on the project was to begin at the time of contract execution on June 26, 2014 and was to be completed within 31 days.

5. By July 28, 2014, the work had not been completed. Specifically only twelve of fifteen windows had been installed and none of the windows were "wrapped," meaning trim and

weather proofing had not been installed. In addition, the roof continued to leak causing additional interior damage, the two radiators were improperly installed and leaked, and the electrical panel was never upgraded.

6. The Claimant continuously sent emails and attempted calls to the Respondent to ascertain when the Respondent would address these problems and finish the work under the contract.

7. On September 25, 2014, the Claimant and Respondent entered into an "Updated Contract." within which the parties reiterated the unfinished items and added the replacement of an exterior deck. The total cost of this addendum was \$8,258.00 but included items contained in the first contract of June 26, 2014. The only additional cost was for the deck at a cost of \$2,578.00 bringing the total contract amount with the Respondent to \$22,578.00.

8. During this time, the Claimant paid the Respondent a total of \$20,720.00. Of this amount, the Respondent reimbursed the Claimant \$720.00 for paint that the Claimant purchased out of pocket.

9. In October and November 2014, the Claimant and Respondent continued to communicate regarding the completion of the work under the contract. At this point, the Respondent made some attempts to repair the unworkmanlike condition of the completed work but without success. Other items under the contract including the electric upgrade, work on the boiler and the deck had not been done. The roof continued to leak as well.

10. By the end of December 2014, the Claimant was still in contact with the Respondent but no more work was done despite the Respondent's many promises to do so. At this point, work under the contract was either incomplete or not yet started.

11. In December 2014, the Claimant began to obtain estimates from various contractors to complete the work under the contract.

12. The Claimant contacted the Roof Doctor who repaired the roof at a cost of \$2,800.00 and finished the work on the windows at a cost of \$1,800.00.

13. The Claimant contacted 3Cs Construction in January 2015 and hired the company to complete work on the boiler at a cost of \$452.00.

14. The Claimant contacted another contractor, Noble Drew-Ali, in July 2015 and ultimately hired the company to complete work on the deck at a cost of \$3000.00.

15. The Claimant paid a total amount of \$8,052.00 to other contractors to repair or complete the work under the original contract with the Respondent.

DISCUSSION

Respondent's Failure to Appear

Section 8-312 of the Business Regulation Article provides that the MHIC shall give the person against whom the action is contemplated an opportunity for a hearing. Md. Code Ann., Bus Reg. § 8-312(a), § 8-407(a). On October 9, 2015, the OAH mailed a Notice to the Respondent via regular and certified mail using his address of record with the MHIC. The Notice advised the Respondent that a hearing on the Claimant's claim against the Fund was scheduled for January 12, 2016, that it would begin at 9:30 a.m., and would be held at the OAH at 11101 Gilroy Road in Hunt Valley, Maryland 21031. The Respondent failed to accept delivery of either of the Notices. The address on the Notices, however, is the address in the MHIC data base and is the Respondent's address of record. As such, it is presumed that the Respondent received adequate notice of the hearing.

On January 12, 2016, I convened the hearing in accordance with the Notice. The Respondent, however, failed to appear for the hearing. After waiting approximately fifteen minutes to give the Respondent an opportunity to appear for the hearing, he still failed to appear. Since the Respondent received due notice of the hearing, I conclude that he was afforded an opportunity to participate in the hearing, but failed to appear. Accordingly, I found it appropriate to proceed in the Respondent's absence.

Merits of Claimant's Claim

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) ("actual losses . . . 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." Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. The Respondent performed unworkmanlike, inadequate or incomplete home improvements on the Claimant's home.

It is undisputed that on or about June 26, 2014, the Claimant and the Respondent entered into a \$20,000.00 contract to remodel, repair and refurbish the Claimant's house. The contract called for the following:

- Install new replacement vinyl windows
- Patio door 60" slider, replace trim and casing
- Repair leak on roof, replace damaged slate tile, secure downspouts
- Demo drop ceiling, and install new ¼" drywall on ceiling and finish and sand

- Repair the existing boiler system copper pipes and test system. Install 2 radiators.
- Repair damaged and cut water lines
- Replace damaged hardwood floor and install new ¼" plywood sheeting. Sand floor bumps and install new vinyl laminate flooring throughout 1st floor
- Install 5 new interior slab doors with locks
- Grout existing tile shower
- Replace electrical panel. Upgrade to 200 amp service, inspect and repair existing switches and outlets. Price may carry after initial inspection.
- Install new kitchen sink, disposal and faucet
- Install new party wall in basement and install new door and one closet door, drywall and finish, remove existing cabinets
- Replace porch roof ceiling panels and scrape and paint porch posts, beams and ceiling
- Replace damaged window trim as necessary

Work on the project was to begin at the time of contract execution on June 26, 2014 and was to be completed within 31 days. By July 28, 2014, however, the work had not been completed as all of the windows had not been installed and none of the windows were "wrapped." In addition, the roof continued to leak causing additional interior damage, the two radiators were improperly installed and leaked, and the electrical panel was never upgraded. The Claimant remained in contact with the Respondent who made some unsuccessful attempts to repair and complete the work under the contract. By September, the Claimant was frustrated and ready to terminate the Contract but the Respondent told him that he already purchased the windows and promised to complete the project.

On September 25, 2014, the Claimant and Respondent entered into an "Updated Contract" within which the parties reiterated the unfinished items and added the replacement of an exterior deck. The total cost of this addendum was \$8,258.00 but included items contained in the first contract of June 26, 2014. The only additional cost was for the deck at a cost of \$2,578.00 bringing the total contract amount with the Respondent to \$22,578.00.

To date, the Claimant paid the Respondent a total of \$20,720.00 but this amount included \$720.00 for paint that the Claimant ultimately purchased out of pocket. The Respondent later reimbursed the Claimant for this amount.

By October and November, the work still was not completed and the Respondent only worked on the project sporadically. The Claimant and Respondent continued to communicate, however, regarding the completion of the work under the contract but at this point, the Respondent had only made some unsuccessful attempts to repair the unworkmanlike condition of the completed work. Other items under the original contract including the electric upgrade, work on the boiler and the deck still remained undone and the roof continued to leak.

By the end of December 2014, the Claimant was still in contact with the Respondent but no more work was done despite the Respondent's many promises to do so. At this point, work under the contract was still either incomplete or had not yet started. In December 2014, the Claimant began to obtain estimates from various contractors to complete the work under the contract. He contacted the Roof Doctor who ultimately repaired the roof at a cost of \$2,800.00 and finished the work on the windows at a cost of \$1,800.00. The Claimant contacted 3Cs Construction in January 2015 and hired the company to complete work on the boiler at a cost of \$452.00. In July 2015, the Claimant contacted another contractor, Noble Drew-Ali, and ultimately hired the company to complete work on the deck at a cost of \$3,000.00. The Claimant Paid Drew-Ali \$3,200.00 but of this amount, only \$3,000.00 was associated with the deck work at the Claimant's Kimble Road address. The Claimant also produced cancelled checks payable to "Foundations Management" totaling \$1,900.00 but it was not established what this expense was for. It is, thus, not clear if this amount was paid to complete, replace or repair work contracted to the Respondent.

The Claimant, therefore, paid a total amount of \$8,052.00 to these other contractors to repair or complete the work under the original contract with the Respondent along with the \$20,000.00 that he paid to the Respondent.

The Respondent did not refute the claims of the Claimant as he was not present during at the hearing, despite being notified of the hearing. I find, therefore, that the Respondent abandoned the job and left the work incomplete. I find, therefore, that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I now turn to 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). 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.

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.

COMAR 09.08.03.03B(3)(c).

The Claimant's actual loss is calculated after considering that the Claimant contracted with the Respondent for a total amount, including a change order for the repair/construction of a deck, in the amount of \$22,578.00 but only paid \$20,000.00. The Claimant asserted that he

actually paid \$20,275.00 from his construction loan to the Respondent, but \$275.00 of that amount was for inspection costs and a title update, neither of which was associated with work contracted to the Respondent. (Cl. Ex. 14). In addition, the Claimant stated that he paid \$720.00 out of pocket for additional paint costs but that amount was reimbursed by the Respondent as the Claimant noted in an email dated November 24, 2014 (Cl. Ex. 8). The Claimant also asserted that he spent an additional \$9,952.00 to replace or repair the Respondent's work. \$1,900.00 of this amount was detailed in cancelled checks to "Foundations Management" but there was no connection established between the Claimant and any entity known as Foundations Management. The Claimant, therefore, failed to establish that this amount was for costs associated with the replacement, repair or completion of work contracted to the Respondent. Of the total \$9,952.00 claimed by the Claimant, he supported \$8,052.00, with invoices detailing costs and payments associated with repairs to the Respondent's work.

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

Amount paid to the Respondent	\$20,000.00
Amount paid to complete/repair work contracted to Respondent	<u>+ 8,052.00</u>
Subtotal	\$28,052.00
Minus original contract price	<u>-22,578.00</u>
Award amount	\$ 5,474.00

Based on the above considerations, the Claimant is entitled to a reimbursement from the Fund of \$5,474.00. Md. Code Ann., Bus Reg. §8-405 (e)(1).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$5,474.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405.

PROPOSED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,474.00;

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;² and

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

Signature on File

March 4, 2016
Date Decision Issued

Michael J. Wallace
Administrative Law Judge

per moc

MJW/da
160798

² See Md. Code Ann., Bus. Reg. § 8-410(a); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 13th day of April, 2016, 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.

Jeffrey Ross

***Jeffrey Ross
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION