

IN THE MATTER OF THE CLAIM	*	BEFORE LORRAINE E. FRASER,
OF JUDITH YOUNG-ESPEUT,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	OAH No.: DLR-HIC-02-17-18405
FOR THE ALLEGED ACTS OR	*	MHIC No.: 16 (75) 1422
OMISSIONS OF THOMAS	*	
HENNESSEY, T/A T&J HOME	*	
DOCTORS	*	
RESPONDENT	*	

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On October 20, 2016, Judith Young-Espeut (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$5,185.00 in actual losses allegedly suffered as a result of a home improvement contract with Thomas Hennessey, trading as T&J Home Doctors (Respondent).

On August 23, 2017, I held a hearing at the Dorchester County Office Building in Cambridge, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented

herself. Kris King, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the Office of Administrative Hearings 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; 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

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

- Claimant 1 Invoice from the Respondent for \$2,045.00, 5/6/16
- Claimant 2 Invoice from the Respondent for \$1,921.50, 5/13/16
- Claimant 3 Check from the Respondent to the Claimant for \$503.50, 5/18/16
- Claimant 4 Addendum to Complaint filed with MHIC with attachments: invoices for \$2,045.00 and \$1,921.50; check from Respondent for \$503.50; payments to the Respondent \$2,045.00 on 5/17/16, and \$1,921.50 5/17/16; payment for doors \$2,206.44 on 5/4/16; 14 photographs; screen shot of a text 5/21/17
- Claimant 5 Contract M. Phippin Contracting, Inc., 9/11/16
- Claimant 6 Handwritten statement of the Respondent, 6/6/16

The Respondent did not offer any exhibits into evidence.

I admitted the following exhibits on behalf of the Fund:

- Fund 1 Notice of hearing, 6/29/17, with signed certified mail receipts
- Fund 2 Hearing Order, 6/9/17
- Fund 3 The Respondent's licensing history, 8/18/17
- Fund 4 Claim Form, 10/20/16
- Fund 5 Letter to the Respondent from the MHIC, 10/24/16
- Fund 6 Check from the Respondent to the Claimant for \$895.00, 6/6/16

Testimony

The Claimant testified in her own behalf.

The Respondent testified in his own behalf.

The Fund did not present any 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 * 90401.

2. In early May 2016, the Claimant and the Respondent entered into a verbal agreement under which the Claimant would pay the Respondent for his labor and cost of materials to perform various tasks in her home.

3. The Respondent performed work in the Claimant's home over several weeks in May 2016. The Respondent stopped working in the Claimant's home after she complained to him about his performance and overbilling her.

4. On May 17, 2016, the Claimant paid the Respondent \$3,966.50.

5. On May 18, 2016, the Respondent refunded \$503.50 to the Claimant.

6. On June 6, 2016, the Respondent refunded \$895.00 to the Claimant.

7. After deducting refunds, the Claimant paid the Respondent a total of \$2,568.00.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of her claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).¹ "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and

¹ As noted above, "COMAR" refers to the Code of Maryland Regulations.

produces . . . a belief that it is more likely true than not true.” *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

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) (2015); *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.” Md. Code Ann., Bus. Reg. § 8-401 (2015). For the following reasons, I find that the Claimant has not proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the verbal agreement with and performed work for the Claimant. The Claimant has failed to prove, however, that the Respondent performed unworkmanlike, inadequate or incomplete home improvements based on what she paid him. Specifically, the Claimant and the Respondent had a verbal agreement for labor and materials. There is nothing in writing regarding the scope of the work the Respondent was to perform or how much that work would cost. Both the Claimant and the Respondent testified that the Respondent performed various tasks in the Claimant’s home, including installing a support beam, two exterior doors, screen doors, and a tub, and that the work was not finished. The Claimant agreed that the Respondent had performed the tasks listed on his invoices. The Claimant’s disagreement was with the amount the Respondent charged her for labor for those tasks. She complained that his rate of \$60.00 per hour was too high and that he worked too slowly at that rate. She asserted that he should have completed more work for the amount of time he was working at her home and the amount he was charging.

In response to the Claimant's complaints, the Respondent refunded \$1,398.50 to her before she filed her claim with the MHIC. The Claimant did not present any evidence that the work the Respondent performed was unworkmanlike, what another contractor would charge for performing the same work, or what another contractor would charge to repair the Respondent's work.

The Claimant offered into evidence an unsigned contract from M. Phippin Contracting as evidence of what it would cost to complete the work she wanted done. However, this contract does not comment on the work performed by the Respondent or identify any unworkmanlike work. Moreover, the scope of work in the Phippin contract exceeds the work described in the Respondent's invoices in that it includes work such as painting, dry wall, and installing molding, work that was not performed by the Respondent. Finally, the Phippin contract does not itemize the work listed; it just gives a total contract price of \$5,185.00. Thus, the Claimant has failed to present evidence of a specific dollar amount as the cost to repair the Respondent's allegedly unworkmanlike work. The Claimant paid the Respondent \$2,568.00 for work he performed. The Claimant did not prove that the Respondent's work was not worth \$2,568.00. Therefore, I find that the Claimant is not eligible for compensation from the Fund.

One final note, the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015). The maximum the Claimant could have been awarded from the Fund, if she had proven the work was unworkmanlike, would have been limited to the amount she paid the Respondent, which was \$2,568.00. The Claimant's claim for \$5,185.00 far exceeds that amount.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

Signature on File

November 8, 2017
Date Decision Issued

Lorraine E. Fraser
Administrative Law Judge

LEF/sm
#170650

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