

CLAIM OF MENDORA CLARK
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND,
REGARDING THE ALLEGED ACTS
AND OMISSIONS OF TERRANCE HUNT
(FORMERLY T/A REMODELING
INDUSTRY RESOURCES, INC.),
THE RESPONDENT

* BEFORE MARLEEN B. MILLER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH NO.: DLR-HIC-02-12-39843
* (REMAND OF DLR-HIC-02-11-37728
* MHIC NO.: 08(75)1857
*

* * * * *

RECOMMENDED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
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RECOMMENDED ORDER

STATEMENT OF THE CASE

On March 28, 2011, Mendora Clark (the Claimant) filed a claim (the Claim) with the Maryland Home Improvement Commission (the MHIC or the Commission) Guaranty Fund (the Fund), for reimbursement of the actual losses she allegedly suffered as a result of the acts and omissions of Terrance Hunt t/a Remodeling Industry Resources, Inc. (the Respondent). After investigation, the Commission issued an August 5, 2011 Hearing Order and forwarded the case to the Office of Administrative Hearings (OAH).

On February 3, 2012, Administrative Law Judge (ALJ) Shock held a hearing on the Claim, in the Respondent's absence, and issued a Recommended Decision on March 14, 2012.

On May 18, 2012, the Commission issued a Proposed Order affirming ALJ Shock's Recommended Decision. On August 16, 2012, the Commission held a hearing on the Respondent's exceptions to that Proposed Order. Based on evidence presented at the Exceptions Hearing, the Commission issued a September 25, 2012 Remand Order, finding that good cause had been shown for the Respondent's failure to appear at the February 3, 2012 hearing before ALJ Shock and ordering that the case be remanded to OAH for a *de novo* hearing.

On January 16, 2013, I conducted the *de novo* hearing on the Claim at OAH's Administrative Law Building in Hunt Valley, Maryland, pursuant to section 8-407(a) of the Maryland Annotated Code's Business Regulation Article¹ and Code of Maryland Regulations (COMAR) 09.08.02.01B (incorporating the hearing provisions of Business Regulation Article § 8-312 and COMAR 09.01.03). The Claimant and the Respondent represented themselves, and Assistant Attorney General Chris King appeared on the Fund's behalf.

The contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2012); the Commission's Hearing Regulations, COMAR 09.01.03, 09.08.02.01, and 09.08.03; and OAH's Rules of Procedure, COMAR 28.02.01, govern procedure in this case.

ISSUES

Did the Claimant sustain an actual loss as a result of the Respondent's acts or omissions, and if so, what amount is the Claimant entitled to recover from the Fund?

¹ Throughout this Recommended Decision, the 2010 Replacement Volume and 2012 Supplement to the Maryland Annotated Code's Business Regulation Article will be collectively referred to as the Business Regulation Article.

SUMMARY OF THE EVIDENCE

Exhibits

The Claimant submitted the following documents, which I admitted into evidence as the exhibits numbered below:

1. The Claimant's Contract with Remodeling Industry Resources, Inc., dated August 1, 2006
2. \$13,300.00 check from the Claimant to Remodeling Industry Resources, Inc., dated August 1, 2006
3. \$13,300.00 check from the Claimant to Remodeling Industry Resources, Inc., dated August 9, 2006
4. Lowe's Home Center, Inc. receipt, dated August 20, 2006
5. \$5,000.00 check from the Claimant to Remodeling Industry Resources, Inc., dated January 13, 2007
6. \$1,700.00 check from the Claimant to Remodeling Industry Resources, Inc., January 18, 2007
7. Twenty five photographs of the Claimant's home, undated
8. New City Project Proposal, undated
9. July 21, 2006 emails between the Claimant and Michael Soper
10. July 29, 2006 email to the Claimant from Michael Soper
11. July 31, 2006 email to the Claimant from Michael Soper
12. September 1, 2006 emails between the Claimant and Michael Soper
13. The Claimant's March 27, 2008 Complaint to the Commission against Mr. Soper t/a Remodeling Industry Resources, Inc.

The Respondent submitted the following documents, which I admitted into evidence as

~~Resp. Ex. #1:~~

1. Emails between the Claimant, Mr. Soper and the Respondent from July 8, 2008 through November 15, 2009

The Fund submitted the following documents, which I admitted into evidence as the exhibits numbered below:

1. October 15, 2012 Notice of Hearing
2. The Commission's September 25, 2012 Remand Order
3. The Commission's August 5, 2011 Hearing Order
4. The Respondent's licensing history
5. The Claimant's March 28, 2011 Claim

Testimony

The Claimant and the Respondent testified on their own behalves. The Fund presented no witnesses.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. From June 24, 2005 through March 22, 2012, the Respondent was a licensed home improvement contractor, License Number 01-90843.
2. Sometime in late 2005 or early 2006, the Respondent authorized a fellow carpenter, Michael Soper, to use the Respondent's home improvement license number in connection with Mr. Soper's operation of his business, Remodeling Industry Resources, Inc. (the Corporation). In return, Mr. Soper agreed to pay the Respondent, as an employee of the Corporation, ten percent of the fees he received for any home improvement work performed by the Corporation.
3. The Claimant, who lived in Prince George's County, Maryland, purchased a house at 700 North Luzerne Avenue in Baltimore City (the Property), which she intended to move into ~~once she completed all necessary renovations.~~

4. In late July 2006, the Claimant communicated largely by email with Mr. Soper regarding her employing the Corporation to renovate the Property. Mr. Soper provided the Respondent's licensing information in response to the Claimant's inquiry concerning the Corporation's licensure status.

5. On August 1, 2006, the Claimant met with Mr. Soper at the Property and entered into a contract (the Contract) with the Corporation, in which she agreed to pay a total of \$40,000 for the Corporation to perform the following work (the Work) on the Property:

- Exterior – provide and install new front and back entrance doors, reset the marble front steps, provide and install one new window in the front bedroom, repair one existing window in the front bedroom, provide and install two basement slider windows, repair soffit on second and main roof overhangs, install transom window and install ceramic tile in the front foyer.
- Heating, Ventilation and Air Conditioning (HVAC) – provide and install two-ton electric heating and cooling system, return air grills, thermostat and vent.
- Plumbing – provide and install a forty-gallon hot water heater, drain lines from main line in basement to each plumbing fixture in the two bathrooms and kitchen and the hot and cold water line from the water main in the basement; install tub, toilet and vanity in second floor bathroom; install shower, toilet and sink in first floor bathroom and kitchen sink, faucet, disposal, and dishwasher in kitchen; and provide water and waste connections for washer and dryer in the kitchen.
- Electrical – provide and install 150 amp. electrical panel with circuit breakers, replace electrical wiring throughout the house to include outlets, switches, lighting, smoke detectors and wiring to each appliance; provide and install outlet in each bathroom and the kitchen, install an exterior wall-hung light fixture from front and rear façade, provide electrical wiring and main disconnect to the furnace and air conditioning unit, and provide and install electrical wiring to kitchen appliances.
- Interior – install kitchen and bathroom cabinetry; install laminate or cultured marble countertops; install wood flooring in the first floor hall, dining room and living room; install vinyl sheet goods in kitchen and bathrooms; install ceramic tile around the tub and tissue holder, towel bars, door handles and knobs in second floor bathroom; frame all ceilings except hallways, kitchen

and dining room; provide and install drywall to all new walls and ceilings and frame closets in bedrooms and for washer and dryer.

6. Under the Contract, the Claimant was required to provide kitchen and bathroom cabinetry, countertops, door handles, wood and vinyl flooring, plumbing fixtures, kitchen appliances, ceiling fans, light fixtures and other accessories. She was also required to provide and install carpeting and to provide and apply interior paint.

7. On August 20, 2006, the Claimant purchased bathroom fixtures (including a tub, shower, faucets, and cabinets for \$1,553.00) and had them delivered to the Corporation's offices. The fixtures were neither installed at the Property nor returned to the Claimant.

8. The Claimant made the following payments to the Corporation for the Work to be performed under the Contract, totaling \$33,300.00:

- \$13,300.00 on August 1, 2006;
- \$13,300.00 on August 9, 2006
- \$5,000.00 on January 13, 2007
- \$1,700.00 on January 18, 2007

9. Late in August, the Claimant discovered that no permits had been obtained for the Work. Mr. Soper assured the Claimant that he would obtain all necessary permits by the end of the week.

10. Throughout September, Mr. Soper repeatedly assured the Claimant that work was steadily proceeding on the Property.

11. At the end of September 2007, Mr. Soper told the Claimant that he would have the ceiling framed and ready for an electrician by mid-October. The Claimant advised Mr. Soper that she wanted to be in the Property by Thanksgiving, and he agreed to speed things up in an effort to finish the Work in time.

12. At Mr. Soper's behest, the Claimant paid \$3,450.00 to an electrician, who did nothing to significantly contribute to the Work.

13. By November 13, 2007, the Claimant insisted that Mr. Soper meet her at the Property to view the status of the Work and to discuss the anticipated completion date.

14. When the Claimant came to the Property, the door was padlocked and she did not have a key. Neither Mr. Soper nor any other workers appeared to be in the Property, so the Claimant had a friend break the lock so she could enter the Property. For the first time, she discovered that Mr. Soper had been lying to her, had done very little of the Work and had poorly performed the limited Work he had done.

15. Despite further assurances from Mr. Soper, the Corporation failed to perform any more of the Work. Consequently, on or about March 27, 2008, the Claimant filed with the Commission a Complaint against Mr. Soper, trading as the Corporation.

16. The Commission sent notice of the Complaint to the Respondent, as the licensed home improvement contractor responsible for the Corporation's home improvement work.

17. In October 2008, the Claimant and Respondent met at the Property, and the Respondent said he would do what he could to complete the Work.

18. The Respondent installed a front door and framed the ceiling in the Claimant's bedroom. He also repaired the front marble steps. The Respondent was unsuccessful in his repeated attempts to convince Mr. Soper to return the Claimant's fixtures and could not obtain any cooperation or monetary assistance from Mr. Soper. Therefore, the Respondent ceased his efforts to complete the Work and stopped responding to the Claimant's emails and messages after late

January 2009.²

19. After hearing from the Claimant that the Respondent had ceased completing the Work on the Property, on March 17, 2009, the Commission wrote to the Respondent but received no response.

20. The Claimant was forced to forego any further repairs and defaulted on the loan she had obtained for purchase and renovation of the Property, which was auctioned off by her lender.

21. On March 28, 2011, the Claimant filed her Claim with the Fund.

22. The Claimant obtained an estimate for completion of the Work from New City Construction LLC at a contract price of \$76,127.00.

DISCUSSION

Pursuant to Business Regulation Article §§ 8-405(a) and 8-407(e)(1), to recover compensation from the Fund, the Claimant must prove, by a preponderance of the evidence, that she incurred an actual loss, which resulted from a licensed contractor's acts or omissions. Business Regulation Article § 8-401 defines an "actual loss" as "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." For the reasons set forth below, I conclude that the Claimant has met this burden, by proving that the Respondent failed to complete the Work and that the Claimant incurred an actual loss, entitling her to the maximum award of \$20,000.00.

The Respondent made no effort to refute any of the testimony or documents submitted by the Claimant. To the contrary, he expressed genuine concern that the Claimant "has been damaged so much" and asserted that "the Commission needs to do something" to help her.

While the Claimant valued the work the Respondent performed on the Property at around

² The Fund's representative agreed that the Respondent's agreement to complete the Work after the Claimant's timely filing of the Complaint effectively tolled the running of any applicable statute of limitations. After the Respondent abandoned the Work, the Claimant timely filed her Complaint against the Fund.

\$2,000.00, the Respondent valued it at closer to \$5,000.00. Nevertheless, the Respondent acknowledged that the difference is virtually irrelevant in light of the maximum award available from the Fund. Despite this assertion, the Respondent s argued that I should use the older maximum award of \$15,000.00 since the maximum award amount was not increased to \$20,000.00 until after he allegedly separated himself from the Corporation. The Fund's representative rejected that assertion, stating that the Fund has consistently applied the maximum award available when the hearing is held.

Unquestionably, both the Claimant and the Respondent were victims of Mr. Soper, and neither of them gives any value to any of the negligible Work performed by Mr. Soper on behalf of the Corporation. I believe the Respondent when he indicates that Mr. Soper informed him about only some of the Corporation's contracts and paid him commissions on only some of the jobs performed. The Respondent complains that he knew nothing about Mr. Soper's Contract or his dealings with the Claimant and that her situation is not the only one he has had to deal with as a result of his arrangement with Mr. Soper.

I have very little sympathy for the Respondent's situation. The Claimant's deal with Mr. Soper was clearly not the type of arrangement the Commission can endorse. The purpose of giving licenses to only qualified home improvement contractors is defeated when licensed individuals allow unlicensed people to use their MHIC numbers without the licensees' direct supervision of the home improvement work to be performed. As the Respondent testified, he may have notified the Commission that his license was unconnected with the Corporation after January 2007,³ but that does not and should not let him off the hook for allowing the Corporation

³ No documentation was offered into evidence to support the Respondent's testimony that he took such action in January 2007.

to operate throughout 2006 as a licensed home improvement business, by using his name, number and reputation for a price.

Consequently, I conclude that the Claimant has met her burden of proof and is entitled to an award from the Fund. The Fund's representative recommends that the Claimant be awarded the maximum amount of \$20,000.00 and I agree. With respect to awards against the Fund, COMAR 09.08.03.03B(b)(3) provides as follows:

B. Measure of Awards from Guaranty Fund.

....

(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. . . .

Business Regulation Article § 8-405(e)(5) further provides that no claimant may be awarded "an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed."

The Fund's representative correctly stated that any way we look at the damages in this case, the Claimant is entitled to the maximum award available from the Fund. COMAR

09.08.03.03B(b)(3)(a) is inapplicable because the Respondent abandoned the renovation of the Claimant's Property only after having done somewhere between \$2,000.00 and 5,000.00 worth of the Work between 2008 and 2009. Even if I value the Respondent's Work at \$5,000.00 and ignore the \$1,553.00 in fixtures the Corporation (through Mr. Soper) effectively stole from the Claimant), \$33,300.00 minus \$5,000.00 results in an award well in excess of the \$20,000.00 maximum under COMAR 09.08.03.03B(b)(3)(b). Had the Claimant been able, as she initially wanted, to have New City complete the Work at its \$76,127.00 price tag, then the award to which she would have been entitled would be an even larger amount under COMAR 09.08.03.03B(b)(3)(c). Consequently, I conclude that the Claimant has proven that she is entitled to an award from the Fund of the \$20,000.00 maximum.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude that the Claimant has met her burden of proving that she incurred an actual loss as a result of the Respondent's incomplete performance of home improvement work on the Claimant's Property. Business Regulation Article §§ 8-405(a) and 8-407(e)(1). The recoverable amount of that loss is \$20,000.00, which the Claimant should be awarded from the Fund. *Id.*; Business Regulation Article §§ 8-405(e)(5); COMAR 09.08.03.03B(3)(b).

RECOMMENDED ORDER

Upon due consideration, I **RECOMMEND** as follows:

1. The **MHIC ORDER** that the Claimant, Mendora Clark, be awarded \$20,000.00 from the MHIC Fund, for the actual losses she sustained as a result of the Respondent's incomplete home improvement work;

2. The Respondent, Terrance Hunt, be ineligible for an MHIC license, under Business Regulation Article § 8-411(a), until the Fund is reimbursed for the full amount of the award paid pursuant to its Order, plus annual interest of at least ten percent; and
3. The records and publications of the MHIC reflect this decision.

Signature on File

April 8, 2013
Date decision mailed

Marleen B. Miller
Administrative Law Judge

MBMrbs
#141739

**CLAIM OF MENDORA CLARK
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND,
REGARDING THE ALLEGED ACTS
AND OMISSIONS OF TERRANCE HUNT
(FORMERLY T/A REMODELING
INDUSTRY RESOURCES, INC.),**

*** BEFORE MARLEEN B. MILLER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH NO.: DLR-HIC-02-12-39843
* (REMAND OF DLR-HIC-02-11-37728)
* MHIC NO.: 08(75) 1857**

THE RESPONDENT

*** * * * ***

FILE EXHIBIT LIST

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13. The Claimant's March 27, 2008 Complaint to the Commission against Mr. Soper t/a Remodeling Industry Resources, Inc.

The Respondent submitted the following documents, which I admitted into evidence as

Resp. Ex. #1:

1. Emails between the Claimant, Mr. Soper and the Respondent from July 8, 2008 through November 15, 2009

The Fund submitted the following documents, which I admitted into evidence as the exhibits numbered below:

1. October 15, 2012 Notice of Hearing
2. The Commission's September 25, 2012 Remand Order
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**IN THE MATTER OF THE CLAIM
OF MENDORA CLARK
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR ALLEGED VIOLATIONS OF
TERRANCE HUNT
t/a TERRY HUNT, LLC
(formerly t/a INDUSTRY RESOURCES,
INC.)**

*** MARYLAND HOME
* IMPROVEMENT COMMISSION**

*** MHIC CASE NO. 08 (75) 1857**

*** * * * ***

FINAL ORDER

WHEREFORE, this 20TH day of November, 2013, Panel B of the Maryland Home Improvement Commission ORDERS that:

- 1) The Findings of Fact of the Administrative Law Judge are Affirmed.**
- 2) The Conclusions of Law of the Administrative Law Judge are Amended as follows:**

A) Effective October 1, 2008, Business Regulation Article, §8-405(e)(1), Annotated Code of Maryland, was amended to increase the limit on an award from the Home Improvement Guaranty Fund from \$15,000.00 to \$20,000.00. The bill enacted by the General Assembly (Chapter 272, Acts 2008) provides that increase in the award limit "... shall be construed to apply to any claim pending before the Maryland Home Improvement Commission for which the Commission has not issued a final decision prior to the effective date of this Act." Therefore, since the Commission's final decision in this case is issued after October 1, 2008, the award limit of \$20,000.00 is applicable.

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November 20, 2013
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- 3) The Recommended Order of the Administrative Law Judge is Affirmed.**
- 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.**

Andrew Snyder
Chair - Panel B
MARYLAND HOME IMPROVEMENT
COMMISSION
