

IN THE MATTER OF THE CLAIM	* BEFORE HARRIET C. HELFAND,
OF DIANE HENDERSON-NEAL,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH NO.: DLR-HIC-02-12- 18834
FOR THE ALLEGED ACTS OR	* MHIC NO.: 09(05) 1495
OMISSIONS OF WILLIAM D. HAYES	*
T/A HAYES CARPENTRY,	*
RESPONDENT	*

* * * * *

RECOMMENDED DECISION

STATEMENT OF THE CASE
ISSUE
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FINDINGS OF FACT
DISCUSSION
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RECOMMENDED ORDER

STATEMENT OF THE CASE

On August 10, 2010, Diane Henderson-Neal (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$17,750.00 for actual losses allegedly suffered as a result of a home improvement contract with William D. Hayes t/a Hayes Carpentry (Respondent).¹

I held a hearing on August 24, 2012 at the Office of Administrative Hearings (OAH), located in Wheaton, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp.

¹ The Claimant's MHIC Claim Form listed the Respondent as "Doug Hayes." The Respondent was later identified as William D. Hayes t/a Hayes Carpentry.

2012). Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented herself. The Respondent failed to appear at the hearing, despite notice to his last address of record.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2012), Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; and 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:

- Cl. #1 Contract, dated April 30, 2008
- Cl. #2 Contract, dated February 5, 2008
- Cl. #3 Copies of Checks, dated February 5, 2008, May 19, 2008, June 4, 2008, and July 9, 2008
- Cl. #4 Letter from Claimant to Respondent, dated November 11, 2008
- Cl. #5 Invoice, Maxsell Design, Build & Maintain LLC (Maxsell), dated June 27, 2011
- Cl. #6 Invoice, Maxsell, dated July 29, 2011
- Cl. #7 Invoice, Precision Overhead Garage Door Service (Precision), undated
- Cl. #8 Proposal, Rosewood Construction LLC (Rosewood), dated August 25, 2009
- Cl. #9 Estimate, Cedar Ridge Remodeling Company (Cedar Ridge), dated June 17, 2011

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

Fund #1 Notice of Hearing, with attachments, dated June 25, 2012

Fund #2 Hearing Order, dated April 25, 2012

Fund #3 Affidavit of Lynn-Michelle Escobar, dated June 28, 2012

Fund #4 Licensing Information for the Respondent

Fund #5 MHIC Claim Form, received August 1, 2010

Fund #6 Letter from MHIC to Respondent, dated August 4, 2012

Fund #7 MHIC Complaint Form, with attachment, dated March 25, 2009

The Respondent did not appear and did not offer any exhibits for admission into evidence.

Testimony

The Claimant testified in her own behalf.

The Fund did not present any witnesses.

The Respondent did not appear at the hearing.

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 # 3896581. The Respondent's license expired on June 24, 2010 and has not been renewed.
2. On or about February 5, 2008, the Claimant and the Respondent entered into a contract to construct a garage adjacent to her home located in Gaithersburg, Maryland. On or about April 30, 2008, the Claimant and Respondent entered into a contract addendum, adding

work to the original contract and increasing the cost of the contract.² The addendum read “[t]his serves as an addendum to the original contract for the construction of a garage at 9413 Poplar Creek Ct., Gaithersburg, MD 20882. A 24’ x 20’ attached garage with two garage doors with openers, one side door, three outside lights, insulate walls and ceiling, drywall inside, brick front, siding on outside, and roof shingles to match existing house. Move electric meter to outside of garage. Install lights in garage.”

3. Neither contract contained a start or completion date.
4. The April 30, 2008 addendum cited a cost of \$36,000.00, with the following payment schedule:
 - (1) 10%-\$3,600.00-upon signing of contract. Paid \$3,400.00 Balance \$150.00
 - (2) 20%-\$7,200.00-upon completion of excavation.
 - (3) 20%-\$7,200.00-upon completion of framing of new garage.
 - (4) 20%-\$7,200.00-upon completion of rough-in for electric.
 - (5) 20%-\$7,200.00-upon completion of new roof and siding.
 - (6) 10%-\$3,600.00-upon completion of job.
5. On February 5, 2008, the Claimant paid the Respondent \$3,450.00.
6. On May 19, 2008, the Claimant paid the Respondent \$7,350.00, representing the second payment along with the \$150.00 balance on the first payment.
7. On June 4, 2008, the Claimant paid the Respondent \$7,200.00.
8. On July 9, 2008, the Claimant paid the Respondent \$7,200.00.

² The scope of work for the February 5, 2008 contract was “[a] 24’ x 20’ detached garage with two garage doors, two dormers, one side door, insulated walls & ceiling and brick front to match existing house. Electric to consist of new panel box in garage, three outside lights, lights in garage, and electrical outlets in ceiling and walls. Insulate new roof and siding on garage (same as house). All construction to conform with Montgomery County building codes.” The cost of the contract was \$34,500.00.

9. The Respondent began working on the garage during the first week of May 2008. At that time, the Respondent told the Claimant that the project would take about five months to complete.

10. The Respondent's work on the project was sporadic. During some weeks, the Respondent had workers at the site for three or four days; on other weeks, no one showed up to work. At the mid-point of the project in the summer, no one came to work on the job for two weeks.

11. The garage was to be built adjacent to an existing kitchen window. The local building code does not permit a window between a home and a garage.

12. At one point during construction, before the Respondent put a roof on the garage, the Claimant noticed rain entering the kitchen window. The Respondent had not sealed the window between the kitchen and the garage; he had simply taped cardboard over the window. The Respondent later installed sheetrock over the window.

13. Prior to construction, the Claimant informed the Respondent that the yard near the proposed garage contained an underground sprinkler system, so that he would avoid the sprinklers when building the garage. The Respondent forgot to mark the sprinklers and during the excavation of the foundation for the garage, he damaged the sprinklers. The Respondent never fixed the problem he created.

14. The Respondent placed an entrance door on the side of the garage; however, the Respondent raised the entrance too high from the ground. Also, the concrete floor of the garage was higher than the driveway, necessitating alteration of the driveway to meet the floor of the garage.

15. After the Claimant's July 9, 2008 payment under the contract, the Respondent requested more money, even though the work triggering further payments had not been completed. Specifically, the rough-in for the electrical work had not yet been done and the siding was not completed. The Claimant's payments to the Respondent were current at this time. The Respondent informed the Claimant that he could perform no more work on the project unless the Claimant paid him for work not yet completed.

16. The Respondent stopped working on the project on August 11, 2008.

17. At this point, the Claimant contacted another contractor to obtain an estimate to finish the garage. In the process, the Claimant learned that the Respondent had never obtained a permit for the project. As a result, the Claimant had to secure a permit for the structure.

18. Shortly thereafter, the Claimant's Homeowner's Association (HOA) informed her that the garage was unsightly and unacceptable, since no doors had been installed. To satisfy the HOA, the Claimant had to engage another contractor to install the garage doors.

19. During this time, the Claimant made many attempts to contact the Respondent, who did not respond to her calls.

20. On November 11, 2008, the Claimant wrote to the Respondent, notifying him that because he had not completed the job, and had not fulfilled other aspects of the contract, such as the use of better-grade materials and obtaining permits, she would have to engage another contractor to complete the job.

21. The Claimant eventually engaged Maxsell Design, Build and Maintain LLC (Maxsell) to perform some of the work on the garage the Respondent left incomplete.

This work included insulation, the installation of drywall, electrical work, and fixing the transition between the garage floor and the driveway. The Claimant paid Maxsell \$6,510.00 to perform this work. Through Maxsell, the Claimant also had Precision Garage Doors, Inc. (Precision) provide and install garage doors, for which she paid \$2,200.00.

22. The Claimant also sought estimates from two other contractors to complete and repair the garage. Rosewood Construction LLC offered an estimate of \$6,900.00 to complete and install the framing, insulation, drywall, electrical work and garage doors. The Claimant also obtained an estimate from Cedar Ridge Remodeling Company. This estimate, for \$9,385.00, included extension of a dryer vent, electrical work, drywall, trim, painting, installation of garage doors, installing exterior trim and fixing the driveway to meet the floor of the garage. The Claimant chose Maxsell because it could do the job sooner than the other contractors.

23. The Claimant's garage remains incomplete. The side entrance door with its excess height has not been fixed; the Claimant's sprinklers remain damaged, the garage was never painted, faulty wood trim must be replaced, and the access door remains without steps for a safe entrance and exit. Fixing and/or completing these items would cost the Claimant approximately \$4,000.00.

DISCUSSION

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) (Supp.2012). *See also* COMAR 09.08.03.03B(2). 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 (2010). For the following reasons, I find that the Claimant has proven eligibility for compensation.

First, the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant.

Second, there is no dispute that the Claimant is an owner and that there is no impediment barring her from recovering from the Fund. Md. Code Ann., Bus. Reg. § 8-405(f) (2010).

Third, the Respondent performed an unworkmanlike, inadequate and incomplete home improvement. The Claimant persuasively testified about the problems that arose from the project, almost from the start. When digging the foundation, the Respondent ruined the Claimant’s sprinkler system, the floor of the garage was improperly elevated over the driveway, and the window to the adjoining structure was improperly covered. As time went on, the Respondent failed to install garage doors, paint, install trim or properly site a side entrance for safe ingress and egress. In addition, although the payment schedule provided for payment subsequent to work performed, the Respondent demanded payment prior to work. When the Claimant protested, the Respondent failed to return her calls. Although the Claimant gave the Respondent numerous opportunities to correct or complete the project, after several months she decided to terminate the relationship. Following many frustrated attempts to have the Respondent complete or fix his work, the Claimant decided to engage another contractor to perform some of the work and obtain estimates for most of the work constituting the balance.³

Having found eligibility for compensation, I now turn to the amount of the award, if any. The Fund may not compensate a claimant for consequential or punitive damages, personal

³ It is noted that although the Claimant has paid or must pay another contractor a substantial sum to complete the project, she only paid the Respondent a portion of the original contract.

injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3).

One of those formulas, as follows, offers an appropriate measurement 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).

Accordingly, I find the Claimant's actual loss as follows:

Amount Paid to Respondent	\$25,200.00
Amount Paid and Amount Needed to Complete	+ <u>12,710.58</u>
Total	\$37,901.58
Total Original Contract Price	- <u>36,000.00</u>
Actual Loss	\$1,910.58

CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual/compensable loss of \$1,910.58 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$1,910.58 and

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 as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

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

Signature on File

November 13, 2012
Date Decision Mailed

Harriet C. Helfand
Administrative Law Judge

HCH/kkc
137023

<p>IN THE MATTER OF THE CLAIM</p> <p>OF DIANE HENDERSON-NEAL,</p> <p>CLAIMANT,</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF WILLIAM D. HAYES</p> <p>T/A HAYES CARPENTRY,</p> <p>RESPONDENT</p>	<p>* BEFORE HARRIET C. HELFAND,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH NO.: DLR-HIC-02-12-18834</p> <p>* MHIC NO.: 09 (05) 1495</p> <p>*</p> <p>*</p> <p>*</p>
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FILE EXHIBIT LIST

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The Respondent did not appear and did not offer any exhibits for admission into evidence.

PROPOSED ORDER

WHEREFORE, this 20th day of February 2013, 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.

I. Jean White

I. Jean White
Panel B

MARYLAND HOME IMPROVEMENT COMMISSION