

IN THE MATTER OF THE CLAIM  
OF BRUCE HAYDEN,  
CLAIMANT,  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF RICK HEISTON,  
T/A MORGAN ASHLEIGH CUSTOM  
BUILDERS,  
RESPONDENT

\* BEFORE LORRAINE E. FRASER,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH NO.: DLR-HIC-02-13-09062  
\* MHIC NO.: 12(90)201  
\*  
\*  
\*  
\*

\* \* \* \* \*

**RECOMMENDED DECISION**

STATEMENT OF THE CASE  
ISSUE  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On October 31, 2011, Bruce Hayden (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$36,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Rick Heiston, t/a Morgan Ashleigh Custom Builders (Respondent).

I held a hearing on July 8, 2013 at the St. Mary's County Public Library in Leonardtown, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2012). Eric London,

Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented himself. The Respondent failed to appear after notice was sent to his 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 Office of Administrative Hearings (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. Ex. 1 Home Improvement Contract between the Respondent and the Claimant, 6/27/11; cancelled check from Claimant to the Respondent for \$36,000.00, 6/27/11
- Cl. Ex. 2 Proposal, Marc Hawes, Hawes Inc., 7/1/12
- Cl. Ex. 3 Contracts between Tom Raley Contracting (TRC) and the Claimant, 8/25/11 and 9/11/12; cancelled checks from the Claimant to TRC for \$16,190.00, 8/30/11, and for \$1,450.00, 11/7/11
- Cl. Ex. 4 Notice of Bankruptcy Case Filing, 4/30/11
- Cl. Ex. 5 Two photographs taken on 7/30/11, one before the deck was dismantled and one of the wood from the dismantled deck
- Cl. Ex. 6 Two photographs taken on 8/15/11 of the partially built foundation

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

- Fund Ex. 1 Notice of Hearing, 3/18/13
- Fund Ex. 2 Memorandum re: undeliverable mail, 3/29/13; Notice of Hearing, 3/18/13; Hearing Order, 3/1/13; Returned certified mail (forwarding time expired); Returned regular mail (forwarding time expired)
- Fund Ex. 3 Affidavit of Thomas Marr, IV, 4/16/13
- Fund Ex. 4 Notice of Hearing, 3/29/13, sent to new address
- Fund Ex. 5 The Respondent's Licensing History, 6/28/13
- Fund Ex. 6 Hearing Order, 3/1/13
- Fund Ex. 7 Home Improvement Claim Form, received 10/31/11
- Fund Ex. 8 Letter to the Respondent from John Borz, Chairman, MHIC, 11/4/11

The Respondent did not offer any exhibits.

### Testimony

The Claimant testified and presented the testimony of Marc Hawes, general contractor, who was accepted as an expert in home improvements including deck dismantling; and Thomas Raley, subcontractor, who built the foundation for the addition at issue.

The Fund did not present any testimony.

The Respondent did not present any testimony.

### 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 96508. His license has been suspended since October 31, 2011.

2. On June 27, 2011, the Claimant and the Respondent entered into a contract to build an addition to his house, which included a sun room with a gas fireplace over a walk-out basement and a bathroom. The contract stated the Respondent would dismantle and reconstruct the deck on the back of the Claimant's house. The contract also stated that work would begin on July 5, 2011 and would be completed by September 9, 2011.
3. The original agreed upon contract price was \$110,000.00.
4. On June 27, 2011, the Claimant paid the Respondent \$36,000.00.
5. On July 30, 2011, the Respondent dismantled the Claimant's existing deck.
6. On August 1, 2011, the Respondent's subcontractor, Thomas Raley, began building the foundation for the addition and walkout basement.
7. On August 15, 2011, the Claimant called the Respondent because Mr. Raley had a question. The Respondent had a message on his answering machine stating that he had filed for bankruptcy on April 30, 2011, and that he was no longer performing work on any projects.
8. The Claimant agreed to pay Mr. Raley directly to finish constructing the foundation for the addition.
9. On August 30, 2011, the Claimant paid Mr. Raley \$16,190.00 for constructing the foundation. The Respondent did not pay Mr. Raley for his work on the Claimant's home.
10. The Respondent did not perform any work on the Claimant's property after July 30, 2011.
11. The Claimant has not heard from the Respondent since August 10 or 11, 2011.
12. The value of the work performed by the Respondent, namely dismantling the deck, was \$750.00.

13. The Claimant's actual loss is \$35,250.00 (\$36,000.00 - \$750.00 = 35,250.00).

### 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, the Respondent did not perform the majority of the home improvement work contained in his contract with the Claimant. The contract was to build an addition and dismantle and reconstruct the deck. The only work the Respondent performed was dismantling the Claimant's deck. The Respondent's subcontractor, Mr. Raley, began building the foundation for the addition when Mr. Raley and the Claimant learned the Respondent had filed bankruptcy and was no longer performing work on any projects. As a result, the Claimant contracted directly with Mr. Raley to construct the foundation and paid him for his work. The Respondent did not pay Mr. Raley for any of the work he performed at the Claimant's home. Further, the Respondent did not perform any more work on the Claimant's home under the contract. Thus, the Respondent's home improvement work was incomplete.

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 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 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." COMAR 09.08.03.03B(3)(b).

The formula in COMAR 09.08.03.03B(3)(b) is the appropriate way to measure the Claimant's loss in this case because the Claimant did not solicit another contractor to complete the work as described in the Respondent's contract. Instead, the Claimant contracted directly with Mr. Raley to construct the foundation and he contracted with Marc Hawes to build the addition. Mr. Hawes testified that he did not review the Respondent's contract, but that he understood there were differences between his contract and the Respondent's contract, including additional work not contained in the Respondent's contract.

Mr. Hawes was accepted as an expert in home improvement, including dismantling decks. Mr. Hawes estimated the value of the Respondent's dismantling of the Claimant's existing deck as \$750.00. The Claimant paid the Respondent \$36,000.00. The Claimant's actual loss is calculated as follows:

Amount paid to the Respondent under the contract	\$36,000.00
Value of the Respondent's services	<u>- 750.00</u>
Actual loss	\$35,250.00

However, the Claimant is entitled to only a portion of his actual loss from the Fund. The maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of a claimant to a licensed contractor. Md. Code Ann., Bus. Reg. § 8-405 (e)(1) and (5) (Supp. 2012). The Claimant's actual loss of \$35,250.00 exceeds the \$20,000.00 limit on

awards from the Fund. As a result, the Claimant is entitled to the maximum award from the Fund: \$20,000.00.

**CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual loss of \$35,250.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010); COMAR 09.08.03.03B(3)(b). The Claimant is entitled to the maximum award from the Fund, \$20,000.00. Md. Code Ann., Bus. Reg. § 8-405 (e)(1) and (5) (Supp. 2012).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; 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**

September 25, 2013  
Date Decision Mailed

Lorraine E. Fraser  
Administrative Law Judge

LEF  
# 145061

**PROPOSED ORDER**

***WHEREFORE, this 23rd day of October 2013, Panel B of the Maryland Home Improvement Commission approves the Recommended Decision 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, Chairman  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**