

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF GARY E. HOWARD,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF GEORGE DENNIS</b></p> <p><b>GOODE, T/A GOODE DESIGN</b></p> <p><b>CONTRACTING, INC.,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE ROBERT B. LEVIN,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>* OAH No.: DLR-HIC-02-15-31387</b></p> <p><b>* MHIC No.: 15 (90) 1078</b></p>
---	---

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On July 8, 2015, Gary E. Howard (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of Two Thousand Nine Hundred Seventy-Five Dollars (\$2,975.00) of alleged actual losses suffered as a result of a home improvement contract with George Dennis Goode, trading as Goode Design Contracting, Inc. (Respondent).

I held a hearing on April 22, 2016 at the Bel Air Branch of the Harford County Public Library, 100 E. Pennsylvania Avenue, Bel Air, Maryland 21014. Md. Code Ann., Bus. Reg. §§

8-312(a), 8-407(e) (2015).<sup>1</sup> The Claimant represented himself. The Respondent, who was present, was represented by Wayne S. Goddard, Esquire. Kris M. King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, 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:

Clmt. Ex. 1 - Packet of documents consisting of: October 19, 2015 Invoice from George Korb Co., Inc.; 3" by 5" business card of George Korb Co., Inc.; October 27, 2015 check written on the account of Kara Howard; October 27, 2015 copy of check ledger entry; and October 19, 2015 report of George Korb Co., Inc.

Clmt. Ex. 2 - March 19, 2015 CertaPro Painters Interior Proposal

Clmt. Ex. 3 - Eleven photographs, marked Cl. Exs. 3A through 3K.

I admitted the following exhibits on behalf of the Respondent:

Resp. Ex. 1 - DLLR license report for Claimant

Resp. Ex. 2 - January 19, 2016 letter from Wayne S. Goddard, Esq. to Claimant

---

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

Resp. Ex. 3 - March 7, 2016 report of Slater Painting and Home Improvements

Resp. Ex. 4 - March 8, 2016 email from Wayne S. Goddard, Esq. to Claimant

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - January 19, 2016 OAH Notice of Hearing, with attached Certified Mail Receipts addressed to Claimant and Respondent

Fund Ex. 2 - September 10, 2015 HIC Hearing order

Fund Ex. 3 - April 18, 2016 HIC registration inquiry for George Dennis Goode, t/a Goode Design Contracting

Fund Ex. 4 - July 8, 2015 Home Improvement Claim Form

Fund Ex. 5 - July 22, 2015 letter from Joseph Tunney, Chairman, HIC, to George Dennis Goode

Fund Ex. 6 - November 18, 2014 Interior painting proposal from Respondent to Claimant

Fund Ex. 7 - Interior painting contract with notation "Paid in full cash 11/28/14"

### Testimony

The Claimant testified on his own behalf. The Respondent, who was present, presented the testimony of Jason Goode and Keith Ryan Slater, whom I accepted as an expert in the area of residential painting. The Fund did not offer 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 38883.
2. The Claimant is also a licensed home improvement contractor, t/a Perry Hall Remodeling, under MHIC license number 16055.
3. On or about November 18, 2014, the Claimant and the Respondent entered into a contract (Contract for the Respondent to paint the following areas of the interior of the Claimant's

residential property: family room ceiling and crown molding; kitchen ceiling, walls, and trim/doors; foyer: ceiling, walls and trim/doors; dining room ceiling; hallway to garage (ceiling, walls, and trim/doors); and to clean and furnish urethane for the top of the small railing. ) (Fund Ex. 7).

4. The agreed-upon contract price was \$3,100.00.
5. On or about November 26, 2014, the Respondent's team performed and completed the work called for under the Contract.
6. After the Respondent's team painted the portions of the house called for under the Contract, the Claimant noticed paint "runs," *i.e.* blotches of paint on the trim around the doors that were painted. He also noticed that certain decorative boxes had been painted the incorrect shade of white. He called the Respondent to complain.
7. In response, the Respondent's son Jason Goode, who works in the Respondent's business, returned to the Claimant's home the next day, November 27, 2014, together with another worker. They removed the runs from the trim and repainted the boxes appropriately. The Claimant expressed his satisfaction with the repairs.
8. On or about November 28, 2014, the Claimant made a cash payment of \$3,100.00 to the Respondent, representing payment in full of the Claimant's payment obligation under the Contract.
9. In January 2015, the Claimant observed problems with the appearance of the "mudwork" (which is synonymous with spackle work) in the following areas: the family room ceiling, the kitchen bulkheads, the wall between the family room and the kitchen, and around the kitchen island. The Claimant conveyed his concerns to the Respondent.
10. In response to the Claimant's January 2015 complaints, the Respondent dispatched his son Jason and a worker to the Claimant's home. They performed repairs.

11. After the Respondent performed these repairs in January 2015 the Claimant was satisfied.

However, later that month the Claimant again complained to the Respondent about the appearance of the mudwork and the trim.

12. The Respondent was willing to undertake additional repairs.

13. The Claimant refused to permit the Respondent to return to his home for any additional repair work.

14. The Claimant requested from the Respondent a full refund of his \$3,100.00 payment.

15. The Respondent refused to refund the Claimant's payment of \$3,100.00.

16. The Respondent's work was workmanlike, but several areas are inadequately painted and need repair. Those areas and their respective costs to repair are:

- a) The kitchen "ceiling side" of the bulkhead above the cabinets has two or three rough areas that need sanding and repainting to achieve a smoother finish. The cost of this repair is \$55.00
- b) The kitchen "reverse tray" ceiling detail over the cooktop requires sanding and painting. The cost of this repair is \$55.00
- c) Paint brush strokes are visible on a portion of the drywall adjacent to the wall oven unit. The cost of this repair is \$30.
- d) The small accent wall by the family room shows an irregularity in the texture of the paint, requiring sanding and repainting. The cost of this repair is \$60.00.
- e) The paint texture in the hallway to the garage (across from the mural wall) is inadequate. The cost to lightly sand and repaint this area with a 3/8" nap roller is \$65.00
- f) Caulked areas on the molding in the foyer ceiling and the kitchen by the refrigerator are opening. The cost of recaulking these areas is \$108.00.

- g) A small paint smudge is on the underside of the wood overhang at the base of the second floor hallway railing. The cost to remove the smudge is \$5.00.
  - h) A drywall seam in the family room ceiling is opening in an approximate 24" area. The cost of this repair is \$135. (Resp. Ex. 3).
17. The total cost to repair the items described in the preceding paragraph is \$513.00, which would cover the cost of two workers working eight hours each, including materials. (Resp. Ex. 3).
18. The Claimant has not paid anyone to do further repairs and has left the home in the same condition since January 2015.
19. The Claimant's loss is \$513.00.

### DISCUSSION

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

I find that the Respondent's work was both "workmanlike" and "complete," however, the evidence also established that several areas were "inadequately" painted. Bus. Reg. § 8-401.

These inadequately painted areas are shown in the photographs taken by the Claimant in late January 2015. These photographs show small painted surfaces that are marred by color variations (Cl Exs. 3-H; 3-J), textural irregularities (Cl. Ex. 3-B; 3-I; 3-C), or "opened" caulk (Cl. Ex. 3-D).

The inadequately painted areas were more precisely identified by Respondent's expert witness Keith Slater, a long-time residential painter and the only expert witness to testify at the hearing. Mr. Slater inspected the painting work on March 5, 2016. During this inspection, the Claimant pointed out to Mr. Slater all areas of the painting project that the Claimant found to be unsatisfactory.

Two days later Mr. Slater catalogued each of the Claimant's areas of concern in an inspection report, which I admitted. (Resp. Ex. 3.) In his report, Mr. Slater found eight areas that needed repair, which he carefully identified. These areas include surface roughness, gaps between cabinets or molding and the ceiling, visible paint brush strokes, other textural irregularities, and one small paint smudge. Mr. Slater opined that the total cost of repairing the problem areas that he observed is \$513.00.

I find Mr. Slater's testimony credible. He is a full-time residential painting contractor licensed by the Home Improvement Commission with no history of discipline. His report meticulously described the areas that were not properly painted. His credibility was enhanced by an examination of the Claimant's photographs, because the conditions they depict are consistent with Mr. Slater's description in his report of the inadequately painted areas. Resp. Ex. 3; Cl. Ex.

3. Thus, objective evidence in the form of the Claimant's photographs corroborates Mr. Slater's testimony concerning the nature and scope of the inadequate work. Moreover, his demeanor on direct and cross-examination was straightforward and non-argumentative.

For these reasons, I gave substantial weight to Mr. Slater's testimony and report, and conclude that: (a) the areas or conditions described in his report are the only areas of the Respondent's work that are inadequate home improvement work under Bus. Reg. § 8-401, and (b) the cost to repair all of the areas of concern he identified is \$513.00. (Resp. Ex. 3.)

The Claimant argued that the Respondent's work was so deficient that its total value is merely \$125.00 (Fund Ex. 4), and that the cost of repairs exceeds \$2,000.00. The Claimant's own photographs, however, which he hand-picked to illustrate what he described as a virtually worthless painting job, depict only relatively minor imperfections in a large painting job.

While the Claimant exaggerated the deficiencies in the job and overstated the repair costs, Mr. Slater identified with precision each item in need of repair, cogently explained the cost to repair the items, and persuasively testified that the total cost to repair all items is \$513.00. I therefore give Mr. Slater's opinions substantially greater weight than the Claimant's testimony as to both the scope of the problems as well as the costs of repair.

The Claimant presented no expert testimony concerning the repair costs. Instead, he offered: (1) a report of George Korb (Cl. Ex. 1) and (2) a painting proposal of CertaPro Painters (Cl. Ex. 2). Mr. Korb quoted a cost of "about \$2,500.00" to remedy the following conditions: buckling of "some" spackling tape, improperly sanded areas, "some" painted surfaces not smooth but stippled, and portions of wood trim improperly sanded. CertaPro Painters quoted a price of \$2,109.00 to paint the ceilings in the family room and kitchen, the brown wall and bulkhead in the kitchen and the crown moulding in the family room. I do not accept either



proposal as an accurate measure of the cost to repair the inadequately painted areas as described in Mr. Slater's report.

Mr. Korb's business card (included in Cl. Ex. 1) describes him as primarily a roofer. His card does not mention painting in listing the kinds of work he performs. By contrast, Mr. Slater is a full-time painter. Unlike Mr. Slater, Mr. Korb did not testify and was not subjected to cross examination. The conditions depicted in the Claimant's photographs are more consistent with Mr. Slater's \$513.00 repair cost estimate than Mr. Korb's \$2,500.00 estimate. For these reasons, Mr. Slater's opinion that the inadequately painted areas would cost \$513.00 to remedy, is more reliable than Mr. Korb's estimate.

In determining the scope of the work that requires correction and the reasonable repair costs, I gave no weight to CertaPro Painters' \$2,109.00 repainting proposal. No representative of CertaPro testified at the hearing. As described by Mr. Slater and as shown on the Claimant's photographs, the limited areas of inadequacy do not require the substantial "do over" proposed by CertaPro.

Having found that the items identified in Respondent's Exhibit 3 constitute "inadequate" home improvement work, I find 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 formulae for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The formula set forth in COMAR 09.08.03.03B(3)(c) offers an appropriate measure to determine the amount of actual loss in this case:

(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.

I find this measure of actual loss to fit the facts of this case. The Claimant paid \$3,100.00 to the Respondent. As explained above, I find that the cost to correct the areas of inadequate work is \$513.00; the figure provided by Mr. Slater, whose testimony I have accepted. Employing the COMAR 09.08.03.03B(3)(c) formula, I add to the \$3,100.00 paid by the Claimant to the Respondent, the sum of \$513.00, the cost to repair the inadequately painted areas, resulting in a subtotal of \$3,613.00, from which I subtract the original contract price of \$3,100.00. Thus, I find that the Claimant's actual loss is \$513.00.

I will not employ the COMAR 09.08.03.03B(3)(b) formula, because the Claimant *has* solicited other contractors (Mr. Korb and CertaPro) to complete the contract. Moreover, I reject those contractors' estimates of the repair costs as excessive. Nor will I employ the COMAR 09.08.03.03B(a) formula, because the Respondent did not "abandon the contract without doing any work."

Finally, I conclude that the Claimant's recovery is not barred by Bus. Reg., §8-405(d), which provides that "[t]he Commission may deny a claim if the Commission finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim." The Respondent did act in good faith, by making efforts to repair the inadequate work on two separate occasions. While the Claimant refused to allow the Respondent any additional opportunities to repair, I conclude nevertheless that the Claimant did not "unreasonably reject" the Respondent's additional efforts to resolve the claim. I so conclude because despite two

efforts by the Respondent to remedy the inadequately painted areas, work in need of repair still remains. Having lost confidence in the Respondent, the Claimant did not act unreasonably in refusing to allow the Respondent the opportunity to attempt additional repair work. Therefore, Bus. Reg., §8-405(d) does not bar the Claimant's recovery.

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. Bus. Reg. § 8-405 (e)(1), (5). The Claimant's actual loss, recoverable from the Fund, is \$513.00.

### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$513.00 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 award the Claimant \$513.00; 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 (10%) as set by the Maryland Home Improvement Commission;<sup>2</sup> and

---

<sup>2</sup> See Md. Code Ann., Bus. Reg. § 8-410(a) (2015); COMAR 09.08.01.20.

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

**Signature on File**

June 2, 2016  
Date Decision Issued

\_\_\_\_\_  
Robert B. Levin  
Administrative Law Judge

RBL/emh  
#162555

**PROPOSED ORDER**

***WHEREFORE, this 3rd day of August, 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.***

***Joseph Tunney***

***Joseph Tunney  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**