

**IN THE MATTER OF THE CLAIM
OF MARCIA GOLDSTEIN,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF CHRISTOPHER
BELCHER T/A ALL IN ALL
CONTRACTING, LLC
RESPONDENT**

*** BEFORE DANIEL ANDREWS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-16-25063
* MHIC No.: 16 (90) 799**

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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 May 13, 2016, Marcia Goldstein (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of alleged actual losses suffered as a result of a home improvement contract with Christopher Belcher, trading as All In All Contracting, LLC (Respondent).

I held a hearing on February 14, 2017, at the Department of Natural Resources, 580 Taylor Avenue, Room C-1A, Annapolis, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a),

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 failed to appear for the hearing. After waiting fifteen minutes or more, without the Respondent or anyone authorized to represent him appearing, I proceeded with the hearing.

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 (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
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:

- CL Ex. 1 Contract between Claimant and Respondent, July 30, 2015
- CL Ex. 2 Bank Statement, August 8 through September 8, 2015, with notation of payments made to Respondent
- CL Ex. 3 Email from Claimant to Justin Fiorenza, August 25, 2015
- CL Ex. 4 Annapolis, On the Level, Home Improvement and Maintenance, Estimate, September 30, 2015, with attached Invoice, October 28, 2015
- CL Ex. 5 Claimant's handwritten note, September 18, 2015
- CL Ex. 6 Several photographs of work performed by the Respondent
- CL Ex. 7 Claimant's letter to Respondent, September 21, 2015

CI Ex. 8 Claimant's statement regarding termination of Respondent and improperly performed or incomplete work, undated
The Respondent did not submit any exhibits into evidence.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 OAH Memorandum regarding unclaimed mail, November 21, 2016, with attached OAH Notice of Hearing, October 19, 2016, for hearing scheduled on February 14, 2017, MHIC Hearing Order, August 2, 2016, and certified mail return receipt
- Fund Ex. 2 MHIC Hearing Order, August 2, 2016
- Fund Ex. 3 Affidavit of Keyonna Penick, MHIC, February 13, 2017
- Fund Ex. 4 MHIC licensing history for Respondent, February 13, 2017
- Fund Ex. 5 Home Improvement Claim Form, May 13, 2016
- Fund Ex. 6 MHIC Complaint Form, December 7, 2015
- Fund Ex. 7 MHIC Order to Respondent, December 16, 2015

Testimony

The Claimant testified in her own behalf.

The Fund did not present the testimony of any witnesses.

There was no testimony presented on the Respondent's behalf.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant, the Respondent was a MHIC licensed home improvement contractor under license number 4662462. His most current MHIC license was issued February 10, 2015 and was not due to expire until February 10, 2017.
2. As of July 30, 2015, the Respondent's home address of record with the MHIC was located in Davidsonville, Maryland and his business address of record was located in Odenton, Maryland.

3. On July 30, 2015, the Claimant entered into a home improvement contract with the Respondent to remodel a master bedroom and hallway bathroom. The contract also required the Respondent to repair wall damage in the kitchen, and move a kitchen light switch and telephone jack.

4. To perform the contract, the Respondent engaged the services of an associate, Justin Fiorenza, who is also identified in the contract.¹

5. The total contract price was \$13,022.00.

6. The work required by the contract included:

- Demolishing and removing existing showers, toilets, vanities,
- Removing the outside shower wall in master bedroom as well as the existing linen closet
- Furnishing and installing custom shower mud pans
- Moving a shower drain in the master bedroom to accommodate a revised floor plan
- Installing approximately 300 square feet of tile to include walls in both showers as well as bathroom floors
- Installing a soap dish and a marble shower shelf in both showers
- Installing new toilets in both bathrooms
- Installing new vanity and sinks in master bedroom
- Installing a pedestal sink in hallway bathroom
- Installing sinks, faucets, shower diverters, and shower heads
- Installing a mirror in both bathrooms

¹ In this decision, I refer to both Mr. Belcher and Mr. Fiorenza collectively as "Respondent," unless the context requires otherwise.

- Making the drywall paint ready in both bathrooms
- Painting both bathrooms
- Repairing damaged drywall in the kitchen and dining room
- Moving a kitchen light switch and removing a telephone jack

7. The Respondent was required to begin work by August 10, 2015 and complete all work by September 7, 2015.

8. On July 30, 2015, the Claimant paid the Respondent \$4,297.00.

9. On or about August 11, 2015, the Respondent began the demolition work in the master bedroom and began installing tile.

10. On August 11, 2015, the Claimant paid the Respondent \$4,297.00.

11. Sometime prior to August 24, 2015, the Claimant and Respondent orally agreed to a change order in the original contract which required the Respondent to install a new pocket door and closet door in her master bathroom at a cost of \$1,700.00.

12. The change order increased the total contract cost to \$14,722.00.

13. On August 24, 2015, the Claimant paid the Respondent \$1,700.00. As of this date, the Claimant had paid the Respondent a total of \$10,294.00.

14. On August 24, 2015, the Respondent began work to install the new closet and pocket doors, but did not finish and after leaving the Claimant's home never returned to complete the home improvement contract.

15. From the end of August through September, 2015, the Claimant called and emailed the Respondent several times in an attempt to get the Respondent to return to her home and complete the contract; however, the Respondent never returned her calls or messages.

16. During this same time period, the Claimant contacted an attorney to discuss her options. After the attorney contacted the Respondent, the Respondent called the Claimant and indicated he would return to work. The Respondent, however, only returned to work for one day in the month of September 2015 and then never returned to finish the contract.

17. On September 21, 2015, the Claimant mailed a letter to the Respondent which informed the Respondent that he was fired from the job because he breached the contract and he was not responding to her telephone calls. The Claimant also informed the Respondent that she was hiring another contractor.

18. On September 30, 2015, the Claimant entered into another home improvement contract with Annapolis On the Level Home Improvement and Maintenance (On the Level) to complete the original contract with the Respondent and to repair any work performed by the Respondent. On the Level is an MHIC licensed contractor.

19. The contract with On the Level required the following work to be performed:

- In the Master Bedroom –
 - provide bracing to shower head plumbing in the wall currently not attached to anything
 - supply and install molding between the ceiling and tiled wall to fill gap left by previous contractor
 - caulk rear wall corner seams where grout is cracked caused by flexing in the rear wall installed by the previous contractor
 - supply and install door trim to pocket door installed by previous contractor
 - install wooden trim to cover gaps between vanity and walls and a hole left in the wall by the previous contractor
 - supply and install one six-inch can light and LED bulb in center of shower area and connect to existing lighting circuit switch
 - supply and install two four-inch electrical boxes and rough-in wiring to take vanity light fixtures, centered over the sinks
 - supply and install a GFCI and two switches in white with matching cover plates
 - supply and install wooden baseboard to walls
 - skim walls with joint compound, repair holes and imperfections and prepare for paint

- paint ceiling with two coats
- paint walls with two coats
- paint baseboard, pocket door and trim with two coats
- install diverter T-valve to shower head and take to hand shower
- install grab bar in shower
- install two vanity lights
- install faucets, drains, and waste plumbing in the two sinks
- install two mirrors centered above sinks
- supply and install extractor fan to existing ducting
- supply and install HVAC vent in ceiling and connect to existing duct for bedroom by inserting a T-Joint into the duct and run flexible tubing to new vent

- **In the Hallway Bathroom –**

- remove two rows of tiles from shower area installed by previous contractor
- remove shower curb and pan installed by previous contractor
- remove existing tiled wall in front of shower valve
- remove shower valve, tighten connections and reinstall with blocking to correct the errors by previous contractor
- supply and install mold resistant sheet rock to wall
- clean subfloor and prepare for installation
- rough-in waste plumbing for shower pan
- supply and install Schluter Kurty shower pan and membrane
- tile and grout shower walls as required
- remove sheet rock from wall in sink area
- reframe to suit new configuration of plumbing and electrical
- modify water supply plumbing to suit pedestal sink
- supply and install sheet rock to wall
- supply and install four-inch electrical box and rough-in wiring to take vanity wall light fixture centered over sinks
- install pedestal sink and faucet and waste plumbing
- install toilet
- install mirror
- install vanity light
- supply and install a GFCI and two switches, in white with matching cover plates
- supply and install extractor fan to existing ducting
- supply and install wooden baseboard to walls
- skim walls with joint compound, repair holes and imperfections and prepare for paint
- paint ceiling with two coats
- paint walls with two coats
- paint baseboard and trim with two coats

- In the Laundry –
 - repair holes in sheet rock used to access the shower valves
 - skim joint compound and prepare for paint
 - paint walls with two coats

20. The contract with On the Level also required the following work:

- prepare and paint walls in the master and guest bedrooms
- prepare and paint walls in the dining and living room, and entry lobby and hallway
- prepare and paint walls in the study
- prepare and paint the wall opposite of the cabinets in the kitchen and repair drywall

21. The contract with On the Level also required the purchase and installation of six panel bi-fold doors in the entry lobby and guest bedroom.

22. The total cost of the contract with On the Level was \$9,250.00.

23. On the Level completed its contract on October 28, 2015 and was paid in full by the Claimant.

24. On May 13, 2016, the Claimant filed a Home Improvement Claim Form with the MHIC seeking for reimbursement from the Fund. At the time, the Respondent's home and business address of record with the MHIC continued to be located in Davidsonville, Maryland.

25. On August 1, 2016, a search of the Maryland Motor Vehicle Administration (MVA) records by the MHIC revealed that the Respondent was issued a driver's license on or about April 8, 2016, with an address located on Old Hanover Road, Reisterstown, Maryland (most current address of record).

26. On October 19, 2016, the OAH mailed a Notice of Hearing to the Respondent using the most current address of record by certified mail and regular first class mail. The United States Postal Service returned the certified mail as unclaimed. The Notice mailed by regular first class mail was not returned.

27. The Notice of Hearing mailed to the Respondent informed the Respondent that a hearing was scheduled for February 14, 2017, at 10:00 a.m., at the Department of Natural Resources, Tawes State Office Building, Room C-1A, Annapolis, Maryland, 21401. The Notice also informed the Respondent that “at issue is whether the Claimant has suffered and actual monetary loss as a result of unworkmanlike, inadequate, or incomplete home improvement work by the Licensee.”

28. The Claimant’s actual loss is \$4,822.00.

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). “[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.” Md. Code Ann., Bus. Reg. § 8-405(a) (2015);² *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.

² Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

Respondent's Failure to Participate in the Hearing

The licensing information submitted into evidence by the Fund demonstrates that the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant on July 30, 2015. The Respondent's MHIC license was not due to expire until February 10, 2017. On August 1, 2016, by researching the Respondent's address with the MVA, the MHIC discovered that the Respondent changed the address for his driver's license to the most current address of record located in Reisterstown, Maryland. As of February 13, 2017, the Respondent's home and business address of record with the MHIC was located in Davidsonville and Odenton, Maryland, respectively. The Respondent is required to notify the MHIC in writing, within 10 days, of a change of address or trade name of the licensee. COMAR 09.08.01.11. The record demonstrates that the Respondent failed to update his address of record with the MHIC.

On October 19, 2016, the OAH mailed a Notice of Hearing to the Respondent, by certified mail, using the Respondent's most current address of record. The Notice of Hearing informed the Respondent of the date, time and location of the scheduled hearing. The Notice of Hearing was mailed by both certified mail and regular mail. The copy sent by certified mail was returned as unclaimed but the copy sent by regular mail was not returned.

The hearing began as scheduled on February 14, 2017. After waiting for approximately fifteen minutes or more, neither the Respondent nor anyone representing the Respondent appeared for the hearing. Based on this record, I determined the Respondent had an opportunity to participate in the hearing, after proper notice, but failed to appear, and proceeded with the hearing in the Respondent's absence. Md. Code Ann., Bus. Reg. § 8-312(h); COMAR 09.08.03.03A(2).

Merits of Claim

The Claimant testified that she bought her home on or about June 29, 2015 and it needed considerable work especially in the bathrooms. The Claimant searched for contractors to remodel her home, interviewed several contractors for this purpose, eventually choosing the Respondent, and executed a contract for her home improvement on July 30, 2015.

The contract between Respondent and Claimant required the Respondent to perform the work as described in Proposed Finding of Fact number five and the total contract price was \$13,022.00. Upon signing the contract on July 30, 2015, the Claimant paid the Respondent \$4,297.00. When the Respondent began to perform the contract on August 11, 2015, the Claimant made a second payment of \$4,297.00.

The Claimant testified that on August 11, 2015, the Respondent started the work required by the contract by demolishing the master bathroom. The Respondent removed the existing shower and toilet and installed tile in the shower area walls and floor. As of August 11, 2015, the Claimant testified that total work performed by the Respondent included demolishing the master bathroom and partially tiling the bathroom. The Claimant testified that the Respondent performed this work in approximately three days. Otherwise, the hall bathroom was not even demolished. Sometime after August 11, 2015 but before August 24, 2016, the Claimant and Respondent orally agreed to a change to the contract for the purpose of installing a paneled closet pocket door in the master bathroom at a cost of \$1,700.00, which increased the total contract price to \$14,722.00. However, after August 11, 2015, the Respondent did not return to the Claimant's home to continue work required by the contract.

On August 24, 2015, Mr. Fiorenza, the Respondent's associate on the contract, began installing the closet pocket door but did not finish. Mr. Fiorenza, also requested that the Claimant pay him \$1,700.00 in cash for the pocket doors. The Claimant agreed to make the

payment and, and after withdrawing money from her bank account paid the Respondent \$1,700.00, in a combination of cash and personal check. As of August 24, 2015, the Claimant had paid to the Respondent a total of \$10,294.00. After August 24, 2015, neither the Respondent nor anyone working for him returned to the Claimant's home to complete the contract.

On Tuesday, August 25, 2015, the Claimant sent an email to the Respondent expressing that she was upset and concerned that he was not showing up on the job and has failed to contact her. The Claimant also reminded the Respondent that the contract required the work to be completed by September 7, 2015. With this background, the Claimant requested that the Respondent contact her that day to explain what was going on. The Respondent, however, never contacted the Claimant.

Because of the lack of contact, the Claimant used an attorney to contact the Respondent about his failure to complete the contract. As a result, Mr. Fiorenza contacted the Claimant to discuss what her issue was and promised to return to work the next day. By this time, based on the work performed, the Claimant was skeptical that the work would be completed on time. The Claimant testified that Mr. Fiorenza did come back and worked for one day but then did not return to perform any further work. On September 21, 2015, because neither the Respondent nor his associate had returned to complete the contract and were not responding to her telephone calls, the Claimant mailed a letter to the Respondent which informed him that he was being fired and no longer permitted in her home.

On September 30, 2015, the Claimant contracted with On the Level to complete the original contract with the Respondent and to repair any work performed by the Respondent. The contract with On the Level required all the work described in Proposed Finding of Fact numbers 18, 19, and 20, at a cost of \$9,250.00. On the Level, in its contract, described the work to be performed included work was necessary to repair work previously done by the Respondent.

Through several photographs offered into evidence by the Claimant she was able to demonstrate the inadequately or improperly installed tile, cracked grouting, and where a hole had to be cut into another wall to gain access to interior plumbing which required repair. One photograph showed a hole had to be cut in a laundry room wall. The Claimant explained that On the Level had to repair plumbing work installed by the Respondent, then covered by tile. As a result, the only way to access the plumbing was through the Laundry room wall. Due to cutting the hole in the wall, On the Level then had to repair the wall and paint it.

The pictures also show other work which was left incomplete by the Respondent. These photographs corroborated the repair work described by On the Level. In her direct testimony and on cross examination, the Claimant testified that On the Level completed all the work required and was paid \$9,250.00. The Claimant also testified that the contract with On the Level included all the work which should have been done by the Respondent and did not include any work not contained in her original contract with the Respondent.

Based on the evidence presented, Mr. King, the Fund's attorney, did not oppose an award from the Fund to the Claimant because, in his opinion, the Claimant established an actual loss as a result of an inadequate or incomplete home improvement performed by the Respondent. The evidence presented by the Claimant was un rebutted. Without any dispute, the Respondent failed to complete the home improvement contract he entered into with the Claimant. Through her testimony, photographic evidence, and other documents, the Claimant demonstrated that much of the work performed by the Respondent was performed inadequately and had to be repaired by On the Level. As a result, I am in agreement with Mr. King. I am persuaded by the evidence presented that the Respondent performed an inadequate and incomplete home improvement which caused the Claimant to sustain an actual loss. Therefore, the Claimant is eligible for an award from the Fund.

MHIC's regulations provide three formulas for measurement of a Claimant's actual loss.

COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss 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).

Thus, I calculate the Claimant's loss as follows:

Amount Claimant paid Respondent	\$ 10,294.00
Plus amount Claimant paid On the Level	<u>+ 9,250.00</u>
	\$ 19,544.00
Less original contract price with Respondent	<u>- 14,722.00</u>
	\$ 4,822.00

Accordingly, based on the above formula, the Claimant is entitled to reimbursement from the Fund in the amount of \$4,822.00.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$4,822.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Home Improvement Commission **ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$4,822.00; 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

PROPOSED ORDER

WHEREFORE, this 8th day of June, 2017, 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

under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;³ and

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

May 8, 2017
Date Decision Issued

Signature on File *u*

Daniel Andrews
Administrative Law Judge

DA/da
#166742

³ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.