

IN THE MATTER OF THE CLAIM
OF LAWRENCE LONDON
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF FRANCIS MAYER,
T/A RENAISSANCE CUSTOM
RESTORATIONS, LLC.

* BEFORE GERALDINE A. KLAUBER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-17-33369
* MHIC No.: 17 (75) 801

RESPONDENT

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PROPOSED DECISION

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STATEMENT OF THE CASE

On January 25, 2018, Lawrence London (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$23,659.00 in actual losses allegedly suffered as a result of a home improvement contract with Francis Mayer, trading as Renaissance Custom Restorations, LLC (Respondent).

I held a hearing on June 11, 2018, at the Bel Air Branch Library, 100 E. Pennsylvania Avenue, Bel Air, Md. Code Ann., Bus. Reg. § 8-407(e) (2015). Daniel Kennedy, Esquire

represented the Claimant. Nicholas Sokolow, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing.

Code of Maryland Regulations (COMAR) 28.02.01.23A.¹

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. 2017); 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. #1 - Contractor Agreement, June 29, 2005

Cl. #2 - Renaissance Custom Restorations Invoice, March 17, 2006

Cl. #3 - Residential Building Uses Permit, July 28, 2005

Cl. #4 - Certified Home Remodelers, Inc. Proposal, December 23, 2015

¹ Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on March 20, 2018, COMAR 09.08.03.03A(2). The domestic return receipt was signed on behalf of the Respondent on March 23, 2018. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Respondent had received proper notice and proceeded to hear the captioned matter.

- Cl. #5 - Certified Home Remodelers, Inc. Proposal, January 19, 2017
- Cl. #6 - Certified Home Remodelers, Inc. Proposal, March 23, 2016
- Cl. #7 - Certified Home Remodelers, Inc. Final Invoice, April 20, 2016
- Cl. #8 - District Court of Maryland for Frederick County Complaint, March 23, 2016
- Cl. #9 - District Court of Maryland for Frederick County Judgment, July 18, 2016
- Cl. #10 - Not offered into evidence
- Cl. #11 - Building Permit obtained by Certified Home Remodelers with Building Code

Inspection Approvals

- Cl. #12 - United States Bankruptcy Court for the District of Maryland Chapter 7

Discharge, December 5, 2016

- Cl. #13 - Certified Home Remodelers, Inc., Contractor/Salesman license, expiration
June 7, 2019

- Cl. #14 - Home Builder Registration for Brad Jessop Custom Homes Builders, Inc.,
October 30, 2017

- Cl. #15 - Certification issued to Certified Home Remodelers from Environmental
Protection Agency, February 5, 2015; Leadtec Services, Inc., January 8, 2015; CertainTeed
Shingle Quality Specialist; The Vinyl Siding Institute

I admitted the following exhibits on behalf of the Fund:

- Fund #1 - Notice of hearing, December 8, 2017
- Fund #2 - Notice of hearing, March 20, 2018
- Fund #3 - Hearing Order, October 17, 2017
- Fund #4 - Respondent's MHIC Licensing History
- Fund #5- Affidavit of Charles Corbin, June 5, 2018

Fund #6 - Letter from MHIC to Respondent, March 3, 2017; Claimant's Home Improvement Claim Form, February 8, 2017

No exhibits were offered into evidence on behalf of the Respondent.

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 Maryland licensed home improvement contractor.
2. On June 29, 2005, the Claimant and the Respondent entered into a contract to construct a six-foot by ten-foot addition to an existing kitchen area of the Claimant's residence (Contract). The addition was constructed on an existing pressure treated elevated deck approximately eight feet above ground level.
3. The total contract price was \$20,000.00.
4. On July 28, 2005, the Respondent applied for a Frederick County Building Permit. The permit was granted.
5. On September 12, 2005, the Frederick County Building Inspector failed the framing inspection due to incomplete proper framing techniques and building code violations.
6. The Claimant was not aware of the failed framing inspection.
7. The Respondent did not correct the framing code violations nor have any other inspections performed.
8. The Respondent completed the contract on or about March 2006.
9. The Claimant was given a \$2,000.00 credit toward the contract price for the purchase of doors. The Claimant paid the Respondent a total of \$18,000.00.

10. In 2015, when the Claimant hired a solar panel contractor to install solar panels, he discovered there was an open permit regarding his residence.

11. The Claimant hired Certified Home Remodelers, Inc. (Certified) to inspect the addition constructed by the Respondent and provide an opinion of the work needed to bring the addition into compliance with the Frederick County Code.

12. On or about November 13, 2015, Certified contacted the original building inspector who failed the original framing inspection. The inspector, Brian Wolf, re-inspected the room addition and noted the following requirements for approval of the addition:

- Apply for new building permit, including plot plans and architectural drawings
- Apply for electrical permit
- Remove all under deck plywood and insulation under the addition floor to determine structural integrity
- Remove existing deck boards and vinyl siding along perimeter of room addition to assess the extent of water related damage
- Apply for certified electrical inspection from “approved” electrical testing company to ensure all wiring complies with current code requirements
- Remove all interior drywall and insulation on interior of room addition if electrical certification fails and cannot be remedied through small corrective modifications
- Remedy all foundational, framing and electrical building code violations.

13. The Respondent constructed the room addition without the proper structural support beam.

14. The Respondent did not install flashing around the perimeter of the home, which allowed water to infiltrate the transition areas of the addition compromising the plywood, insulation and the joists supporting the structure.

15. The electrical wiring installed by the Respondent did not pass inspection.

16. The Claimant and Certified entered into a contract on January 19, 2016 for Certified to perform the required exterior work necessary to bring the addition into compliance with building code requirements.

17. The Claimant paid Certified \$18,598.00 for the exterior work.

18. Certified retained B&C Electric to perform all necessary electrical wiring corrections. The cost of the electrical work was \$4,578.00.

19. The Claimant paid Certified \$23,659.00 to remedy the deficiencies in the Respondent's work.

20. The scope of the work performed by Certified and B&C Electric did not exceed the scope of the original contract with the Respondent.

21. On March 23, 2016, the Claimant filed a complaint in the District Court of Maryland for Frederick County against the Respondent for damages sustained by the Claimant as a result of the Respondent's unworkmanlike performance of the Contract.

22. On July 18, 2016, the Claimant obtained a judgment against the Respondent in the amount of \$23,659.00.

23. The Respondent filed for Chapter 7 Bankruptcy and on December 5, 2016, the Respondent received an Order of Discharge from the United States Bankruptcy Court for the District of Maryland.

24. The Claimant has not received any reimbursement from the Respondent.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1) (2015); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).² “[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 (3d 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); *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.

On June 29, 2005, the Claimant entered into a Contract with the Respondent to construct a six-foot by ten-foot room addition to an existing kitchen area of the Claimant’s residence. The addition was constructed on an existing pressure treated elevated deck. The Respondent applied for a building permit with the Frederick County Department of Permits and Inspections, but, unbeknownst to the Claimant, the framing work performed by the Respondent failed the initial inspection. The Respondent constructed the addition without correcting the framing violations

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

or having any of the additional work inspected. The Claimant paid the Respondent \$18,598.00, unaware that there was any issue with the work. It was not until 2015, when the Claimant hired another contractor to perform unrelated home improvements that he discovered the building permit had never been closed and the room addition had never passed Frederick County inspections. The Claimant retained Certified to render an opinion regarding the workmanship of the construction of the addition. The owner of Certified, Bradley Jessop, was able to track down the Frederick County inspector, Brian Wolf, who conducted the initial inspection of the framing and failed the Respondent's work. Mr. Wolf re-inspected the property and instructed Mr. Jessop as to what needed to be done to bring the addition into compliance with the building code requirements.

Certified entered into a contract with the Claimant to perform the necessary remedial work. Mr. Jessop, who was accepted as an expert in home improvement estimation and home improvement construction, provided convincing testimony regarding the Respondent's unworkmanlike construction of the addition. He explained that the Respondent failed to construct a proper support beam and failed to install flashing around the perimeter of the structure. The absence of flashing caused the infiltration of water at the transition points of the addition which compromised the integrity of the plywood and insulation. Mr. Jessop testified that structural integrity of the addition as completed by the Respondent was so compromised that he was surprised it had not collapsed.

Mr. Jessop also arranged for Electrical Testing Corporation to perform an electrical certification test. The results of the test showed that the wiring did not comply with code requirements and the addition needed to be rewired. B&C Electric was retained and performed all of the necessary corrections noted in the electrical certification test.

The Claimant paid Certified \$18,598.00 for the removal and replacement of the Respondent's unworkmanlike construction and an additional \$483.00 was added to the contract for the removal and replacement of deteriorated plywood sheathing behind the side perimeter of the addition, which was not originally accounted for. The Claimant paid an additional \$4,578.00 for the necessary electrical wiring. None of the electrical work or construction by Certified was beyond the scope of the work called for in the original contract.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract. The testimony and documents submitted on behalf of the Claimant clearly established that the Respondent's construction of the room addition was an unworkmanlike and inadequate home improvement. I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover.

The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. COMAR 09.08.03.03B(3).

In this case, the Respondent performed work pursuant to his agreement with the Claimant, and the Claimant retained another contractor to remedy the problems with the addition. The Claimant supplied testimony from the contractor who performed the remedial work. That contractor testified and provided documentation as to the cost of the remedial work, which included reconstruction of the addition.

Accordingly, the following formula appropriately measures the Claimant's actual loss:

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). Using this formula, the Claimant's actual loss would be calculated as follows:

Amount paid to the Respondent:	\$18,000.00
Plus amount to correct the contract work	<u>\$23,659.00</u>
	\$41,659.00
Less original contract price	- <u>\$18,000.00</u>
Actual loss	\$23,659.00

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor, and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is more the amount paid to the Respondent. Therefore, the Claimant is entitled to recover \$18,000.00.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$23,659.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$18,000.00. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$18,000.00; 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 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.

Signature on File

August 14, 2018
Date Decision Issued

Geraldine A. Klauber
Administrative Law Judge

GAK/sw
#175199

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

PROPOSED ORDER

WHEREFORE, this 14th day of September, 2018, 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