

DLLR

STATE OF MARYLAND

DEPARTMENT OF LABOR, LICENSING AND REGULATION

MARTIN O'MALLEY, Governor
ANTHONY G. BROWN, Lt. Governor
THOMAS E. PEREZ, Secretary

Division of Occupational & Professional Licensing
Maryland Home Improvement Commission
Stanley J. Botts, Commissioner

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IN THE MATTER OF
OF KEVIN HUGEL, SR.
AND THE CLAIM OF
VAL AND YVONNE ROGOLINO
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND

* MARYLAND HOME
IMPROVEMENT COMMISSION

* MHIC CASE NO. 07 (90) 1976

* * * * *

FINAL ORDER

WHEREFORE, this 19TH day of November, 2009, Panel B of the Maryland

Home Improvement Commission ORDERS that:

- 1) The Findings of Fact of the Administrative Law Judge are Affirmed.
- 2) The Conclusions of Law of the Administrative Law Judge are Amended as follows:

A) The Claimants have sustained an actual loss of \$6,145.00 as a result of the Respondent's acts and omissions.

B) The Administrative Law Judge made a finding (Finding of Fact No. 6) that the reasonable cost to repair the Respondent's poor workmanship on the deck and the windows totaled \$6,145.00. The Administrative Law Judge found that the Claimants paid \$2,945.00 to repair the Respondent's defective work on the windows, and paid \$3,200.00 to repair the Respondent's defective work on the deck. (ALJ Decision p. 6)

C) In computing the Claimants' actual loss, the Administrative Law Judge included the Claimants' \$2,945.00 expense to repair the windows, but omitted the Claimants' \$3,200.00 expense to repair the deck. Since the Administrative Law Judge specifically found the \$3,200.00 expense to repair the deck to be reasonable and necessary, that expense should be included in the computation of the actual loss.



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D) Pursuant to the formula set forth in COMAR 09.08.03.03B, the correct calculation of the Claimants' actual loss is as follows:

● Amount paid to Respondent	\$ 45,613.00
● Reasonable cost to repair	<u>\$ 6,145.00</u>
● Subtotal	\$ 51,758.00
● Less original contract price	<u>-\$ 45,613.00</u>
● Actual Loss	\$ 6,145.00

3) The Recommended Order of the Administrative Law Judge is Amended as follows:

A) The Claimants are awarded \$ 6,145.00 from the Home Improvement Guaranty Fund.

4) This Final Order shall become effective thirty (30) days from this date. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.

L. Jean White _____
Chairperson - Panel B
MARYLAND HOME IMPROVEMENT
COMMISSION

IN THE MATTER OF THE CLAIM OF	* BEFORE JUDITH JACOBSON,
VAL AND YVONNE ROGOLINO	* AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND HOME	* OF THE MARYLAND OFFICE
IMPROVEMENT GUARANTY FUND	* OF ADMINISTRATIVE HEARINGS
FOR THE ALLEGED ACTS OR	* OAH NO.: DLR-HIC-02-09-38066
OMISSIONS OF KEVIN HUGEL, SR.	* MHIC NO.: 07 (90) 1976

* * * * *

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 November 1, 2007, Val Rogolino (Claimant A) and Yvonne Rogolino (Claimant B) filed a claim with the Maryland Home Improvement Commission (HIC) Guaranty Fund (Fund) for reimbursement of \$7,532.41 for actual losses allegedly suffered as a result of home improvement work performed by Kevin Hugel, Sr. (Respondent). The HIC transmitted the case to the Office of Administrative Hearings (OAH) on September 18, 2008.

I held a hearing on June 3, 2009 at the Maryland Department of Agriculture, Annapolis, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2)(i) (2004 & Supp. 2008). The Claimants both appeared and Claimant A acted as their representative. Eric London, Assistant Attorney General, Department of Labor, Licensing and Regulation, represented the Fund. The Respondent did not appear.

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 (2004 & Supp. 2008), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02.01; and 28.02.01.

The OAH sent notice of the hearing to the Respondent at his address of record with the HIC, on Delmont Road in Severn, Maryland, by regular and certified mail. The postal service did not return the regular mail copy of the notice as undeliverable. The Respondent did not claim the certified mail copy of the notice. I ruled that the hearing would proceed in the Respondent's absence. Md. Code Ann., State Gov't § 10-209 (2004); COMAR 09.01.02.07B, COMAR 09.01.02.09.

ISSUE

Did the Claimants sustain an actual loss compensable by the Fund as a result of the acts or omissions of the Respondent?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimants' behalf:

- Cl. Ex. # 1 - Contract, dated April 28, 2006, with notes; Estimate, dated March 29, 2006, with notes; Estimate, dated August 23, 2006
- Cl. Ex. # 2 - Contract Addendum, dated August 23, 2006, adding sink and cabinet work; Contract Addendum, dated August 23, 2006, adding two windows; Contract Addendum, dated August 23, 2006, adding flooring
- Cl. Ex. # 3 - Copies of Checks, dated April 28, 2006 to August 23, 2006
- Cl. Ex. # 4 - Letter from the Claimants to the Respondent, dated February 1, 2007; Copy of Envelope

- Cl. Ex. # 5 - Complaint Form, undated, with attachment
- Cl. Ex. # 6 - Letter from the HIC to the Claimants, dated May 1, 2007
- Cl. Ex. # 7 - Letter from the Claimants to the HIC, dated May 16, 2007
- Cl. Ex. # 8 - Copies of Photographs
- Cl. Ex. # 9 - Proposal from Lifetime Design and Build, undated, with photographs
- Cl. Ex. # 10 - Summary by Claimants

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

- Fund Ex. # 1 - Notice of Hearing, dated February 23, 2009
- Fund Ex. # 2 - Affidavit of Michael Miller, dated March 25, 2009
- Fund Ex. # 3 - Notice of Hearing, dated March 5, 2009
- Fund Ex. # 4 - Statement by Steven Smitson, dated May 15, 2009
- Fund Ex. # 5 - Hearing Order, dated September 3, 2008
- Fund Ex. # 6 - Claim Form, received November 1, 2007
- Fund Ex. # 7 - Letter from the HIC to the Respondent, dated November 30, 2007

I did not admit any exhibits on the Respondent's behalf.

Testimony

The Claimants presented the testimony of Claimant A and Chlorinda Stevenson. The Fund did not present any testimony. No testimony was presented for the Respondent.

FINDINGS OF FACT

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

1. The Respondent was a licensed home improvement contractor during the period of November 16, 2005 to November 16, 2007. He is not currently licensed.

2. On April 28, 2006, the Claimants and the Respondent entered into a contract to construct an addition to the Claimants' house. The work included building a deck and installing new windows in the addition and the existing home. The original contract amount was \$40,505.00.
3. There were a series of addenda to the original contract, dated August 23, 2006, which added work and increased the contract price to a total of \$45,613.00.
4. The Claimants paid the Respondent a total of \$51,900.00. They mistakenly paid the Respondent \$1,387.00 more than the price of the original contract and the addenda.
5. The Respondent performed some work on the contract, from April 2006 to about November 2006. His work on the deck and the windows was not workmanlike.
6. The reasonable cost to repair the Respondent's poor work on the deck and the windows is \$6,145.00. The Claimants paid that amount to Lifetime Design and Build, Inc., to repair the Respondent's poor work.

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. 2008). *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 (2004). The Claimants have proven eligibility for compensation.

The Respondent was a licensed home improvement contractor in 2006 when he and the Claimants entered into the contract and its addenda.

The Claimants provided evidence that the Respondent's work on the deck and windows was unworkmanlike.¹ The evidence consisted of photographs of the work and an estimate from another contractor that referred to the Respondent's work on the deck as "improperly constructed," and the windows as "improperly installed." (Cl. Ex. # 9). The Fund did not dispute that the work on the deck and windows was unworkmanlike, and I have accepted the Claimants' evidence as sufficient on this point.

Having found eligibility for compensation, I now turn to the amount of the award, if any. A claimant may not be compensated for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). Unless a claim requires a unique measurement, actual loss is measured by one of the three following formulas:

(a) If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract.

(b) 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.

(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.

COMAR 09.08.03.03B(3).

¹ The Claimants also asserted that the Respondent's work was incomplete, but did not present evidence to show specifically what was not completed under the contract and the addenda.

In this case, I used the third option. The total amount due to the Respondent under the original contract and addenda was \$45,613.00. The Claimants paid the Respondent a total of \$51,900.00. They mistakenly paid the Respondent \$1,387.00 more than the price of the original contract and the addenda. The formula specifies that the actual loss must be calculated using the amount the Claimants paid under the contract. The formula thus does not permit me to consider an amount that was paid beyond the contract price. I have considered the applicable figure to be \$45,613.00, the amount paid under the contract.

The Claimant presented evidence that another contractor, Lifetime Design and Build, Inc., estimated a cost of \$3,200.00 to repair the Respondent's unworkmanlike work on the deck, and \$2,945.00 to repair the Respondent's unworkmanlike work on the windows. (Cl. Ex. # 9). The Claimants paid Lifetime Design and Build to do the work. The Fund did not dispute that the estimate was a reasonable amount required to repair the Respondent's poor work, and I have accepted the estimate as credible evidence that a reasonable total amount to repair the poor work on the deck and windows is \$6,145.00.

Using the formula, the amount the Claimants paid under the original contract was \$45,613.00. Added is the amount the Claimants paid to Lifetime Design and Build, \$2,945.00, for a total of \$48,558.00. Subtracted is the contract price, \$45,613.00. The actual loss is \$2,945.00. I find that the Claimants have shown this amount as their actual loss.

CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual loss of \$2,945.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2004).

RECOMMENDED ORDER


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

ORDER that the Claimants be awarded \$2,945.00 from the Maryland Home Improvement Guaranty Fund; and

ORDER that the Respondent be 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 Commission, Md. Code Ann., Bus. Reg. § 8-411 (2004); and

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

August 17, 2009
Date decision mailed


Judith Jacobson
Administrative Law Judge

JJ
106992

IN THE MATTER OF THE CLAIM OF * BEFORE JUDITH JACOBSON,
 VAL AND YVONNE ROGOLINO * AN ADMINISTRATIVE LAW JUDGE
 AGAINST THE MARYLAND HOME * OF THE MARYLAND OFFICE
 IMPROVEMENT GUARANTY FUND * OF ADMINISTRATIVE HEARINGS
 FOR THE ALLEGED ACTS OR * OAH NO.: DLR-HIC-02-09-38066
 OMISSIONS OF KEVIN HUGEL, SR. * MHIC NO.: 07 (90) 1976

* * * * *

FILE EXHIBIT LIST

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Fund Ex. # 7 - Letter from the IIC to the Respondent, dated November 30, 2007

I did not admit any exhibits on the Respondent's behalf.

PROPOSED ORDER

WHEREFORE, this 28th day of September 2009, 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.

James Chiracol

*James Chiracol
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION