

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0951

September Term, 2014

WILLIAM BROADDUS, etc.

v.

HOLLY AMIR, et al.

Meredith,
Kehoe,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: September 16, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In this administrative appeal, the appellant is William Broaddus, III, T/A Broaddus & Broaddus Contracting Group, LLC. The appellees are the Maryland Home Improvement Commission Guaranty Fund and Jacob and Holly Amir.

On May 20, 2011, Mr. and Mrs. Amir filed a claim with the Maryland Home Improvement Commission for the reimbursement of \$31,250.00 for actual losses allegedly suffered as a result of a home improvement contract with the appellant. After its own preliminary investigation on July 3, 2012, the Home Improvement Commission issued a hearing order and forwarded the case to the Office of Administrative Hearings ("OAH") on July 5, 2012. On March 19, 2013, a full hearing was conducted by Administrative Judge A.J. Novotny, Jr. Judge Novotny issued his 12-page Recommended Decision on June 17, 2013.

In that Recommended Decision, he concluded that Mr. and Mrs. Amir had suffered an actual loss of \$41,970.27 as a result of the appellant's work "being incomplete and unworkmanlike and in violation of §8-311(a)(10) Md. Code. Ann." Because the Guaranty Fund is limited to making awards of no more than \$20,000, the ALJ recommended an award of that amount. On July 19, 2013, the Commission issued a proposed order affirming the Recommended Decision of the ALJ. The appellant appealed that decision to the Circuit Court for Baltimore City, where Judge Alfred Nance affirmed the decision of the Commission. This appeal has followed. The question for us on appeal, as properly framed by the appellees, is:

"Does the record contain, competent, material, and substantial evidence to support the Commission's determination that Broaddus performed an

unworkmanlike and incomplete home improvement, warranting an award of compensation of \$20,000.00 from the Guaranty Fund to the Amirs?"

Although what is technically before us on this appeal is the decision of Judge Nance in the Circuit Court affirming the Home Improvement Commission, what we actually do on an appeal such as this from an administrative agency is not to look at the decision of Judge Nance but to look through the decision of Judge Nance and to make a de novo assessment of the decision of the administrative agency itself. We are asking whether the findings of the Home Improvement Commission, as it accepted the findings of ALJ Novotny, were "supported by competent, material, and substantial evidence." Maryland Code, State Government Article, §10-222(h)(3)(v).

In applying the substantial evidence test, a court should not substitute its judgment for the expertise of the administrative agency and the agency's decision must be reviewed in the light most favorable to the agency. United Parcel Service, Inc. v. People's Counsel for Baltimore County, 336 Md. 569, 576-77, 650 A.2d 226, 230 (1994). To reverse an agency's finding it is not enough that the court would have arrived at a different finding upon examining the same evidence; the court must conclude that the agency lacked any reasonable basis for its finding. Annapolis v. Annapolis Waterfront Co., 284 Md. 383, 398, 396 A.2d 1080, 1089 (1979).

The substantial evidence test is a deferential one. It requires "restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions."

Supervisor v. Asbury Methodist Home, Inc., 313 Md. 614, 625, 547 A.2d 190, 195 (1988) (quotation omitted). The deference applies not only to obvious fact finding but to the drawing of inferences from the facts. "[I]t is the province of the agency to resolve conflicting evidence [and] where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences." St. Leonard Shores Joint Venture v. Supervisor, 307 Md. 441, 447 (1986) (quotation omitted).

The findings of ALJ Novotny were abundantly supported. On June 23, 2010, the appellant and Mr. and Mrs. Amir entered into a home improvement contract in which the appellant was to remove the front west wall of the Amirs' home at 16938 Flickerwood Road in Parkton and to construct a one-story addition with a new kitchen and family room. The contract also provided for the installment of hardwood flooring in the hallways and bedrooms. An amended contract was executed on October 10, 2010, whereby the appellant agreed to install a patio, skylights, and air conditioning and to renovate the master bedroom and pantry. All work was to be completed by November 1, 2010. The work was not completed by November 1, 2010 and the Amirs terminated the contract.

As the ALJ concluded, based on principles of collateral estoppel, the fact that the appellant performed an incomplete and unworkmanlike home improvement was established by a decision of the Maryland Home Improvement Commission itself following an earlier hearing on June 16 and July 22, 2011. That earlier hearing, as a result of which the appellant had his license as a home improvement contractor suspended for 75 days, ruled that the

appellant, on his contract with the Amirs, had "performed [it] in an unworkmanlike manner ... and had failed to complete all work in a timely manner."

Key to the current finding was an inspection report from and the live testimony of John J. Heyn, a licensed home inspector who was accepted without objection as an expert in the field of residential construction, residential contracting, and cost estimation. He submitted a detailed report, supported with numerous photographs, of an inspection he made of the Amirs' residence on April 18, 2011. In its announcement of its earlier findings after its hearing in 2011, the Commission gave its assessment of Mr. Heyn as an expert witness:

"The record contains competent, material, and substantial evidence, most importantly the report and testimony of John J. Heyn, which establishes unworkmanlike performance by Respondent Broaddus. Heyn's qualifications as an expert in the field of home improvement inspections are well-established. He is a licensed home inspector in the State of Maryland, and has performed home inspections professionally for 42 years. He has performed over 15,000 home inspections, including 500 inspections as a consultant to the Maryland Home Improvement Commission. Heyn has been qualified as an expert witness in over 200 administrative hearings, well as [sic] in District and Circuit Court cases. The Commission finds Heyn's report and testimony regarding the workmanship, set forth in Finding of Fact No. 12 above, to be credible and persuasive."

The detailed Heyn report was before ALJ Novotny in the present case. In addition to the report, Mr. Heyn testified personally about both the nature of the appellant's deficient performance and also about the cost of the damage done and the estimated cost of rectifying the inadequate and incomplete work. Based on the report of Mr. Heyn, ALJ Novotny made the following finding of fact with respect to deficient workmanship:

"The following conditions existed at the Claimants' home at the time the Respondent stopped working:

- The footings were not properly installed
- The Respondent installed the wrong hardwood flooring (Brazilian cherry was specified, cheaper Indonesian hardwood was installed)
- The hardwood floors were installed early during construction, and then damaged by being left unprotected from the weather and subsequent demolition and the other construction.
- The specified entry steps were missing
- The entry doors were improperly installed and were not hung square
- The concrete patio improperly sloped toward the house rather than away from the house
- The bathroom shower stall floor was incorrectly angled to direct water away from the drain
- Painting was unfinished and spotty
- The kitchen cabinets were not all installed
- Roof shingles, flashing and edging were not properly installed."

Mr. and Mrs. Amir obtained a proposal from ALCAP, a licensed home improvement contractor, as to what it would cost to complete and to correct the improvements agreed upon. The estimated cost was \$31,705.00.

The appellant simply counters with generalized assertions that certain alleged instances of deficient workmanship were not actually deficient. The appellant faces a particularly difficult task. The damages found by the ALJ were \$41,970.27. The maximum award that the Commission could make to the Amirs was \$20,000. To prevail, the appellant

would have to succeed in pulling the damages down to less than \$20,000. Such an effort has not even been made.

In any event, the findings and the conclusion of the ALJ in this case were, even if over the objection of the appellant, based on substantial evidence. We affirm.

**JUDGMENT AFFIRMED; COSTS
TO BE PAID BY APPELLANT.**