

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF DOROTHY CONAWAY,</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 JASON ZABEC,</b></p> <p><b>T/A INNOVATIVE ELEMENTS, INC.,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE JENNIFER L. GRESOCK,</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>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>* OAH No.: LABOR-HIC-02-19-08692</b></p> <p><b>* MHIC No.: 18 (05) 1069</b></p>
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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On July 11, 2018, Dorothy Conaway (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$23,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Jason Zabec, trading as Innovative Elements, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On March 21, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on June 27, 2019, at the OAH in Hunt Valley, Maryland. Bus. Reg. § 8-407(e). Shara Hendler, Assistant Attorney General, Department of Labor (Department),<sup>1</sup> represented the Fund. The Claimant represented herself. After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing in the Respondent's absence. Code of Maryland Regulations (COMAR) 28.02.01.23A.<sup>2</sup>

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); 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 the compensable loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

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

Clmt. Ex. 1 - Innovative Elements Information Sheet, undated; Draft Contract (unsigned), dated November 26, 2017; Contract, dated January 11, 2018; check for \$23,000.00 to Respondent

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<sup>1</sup> On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.  
<sup>2</sup> Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on May 3, 2019, COMAR 09.08.03.03A(2). The certified mail was returned as unclaimed on June 17, 2019. 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 am satisfied that notice was sent to the current address of record of the Respondent. Accordingly, I determined that the Respondent had received proper notice and proceeded to hear the captioned matter.

Clmt. Ex. 2 - Proposed Additions & Alterations, undated

Clmt. Ex. 3 - Letter from the Baltimore City Department of Housing & Community Development, dated February 27, 2018

Clmt. Ex. 4 - Online Permit Application, undated

Clmt. Ex. 5 - Letter from the Claimant to the Respondent, dated April 2, 2018

Clmt. Ex. 6 - Complaint Form, dated April 3, 2018

Clmt. Ex. 7 - Letter from the MHIC to the Claimant, dated May 3, 2018

The Respondent was not present to offer any exhibits for admission into evidence.

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Hearing Order, dated March 15, 2019

Fund Ex. 2 - Notice of Hearing, dated May 3, 2019

Fund Ex. 3 - Home Improvement Claim Form, dated July 6, 2018

Fund Ex. 4 - Registration printout, printed May 29, 2019

#### Testimony

The Claimant testified and presented the testimony of Danny R. Collins, sales representative for the Respondent.

The Respondent was not present to testify or offer any witnesses. The Fund did not offer any witness 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 98060.

2. On January 11, 2018, the Claimant and the Respondent entered into a contract to remove the Claimant's existing deck and replace it with an addition (Contract). The project included extensive kitchen renovations, expanding the master bedroom closet, adding a window in the master bedroom, painting the master bedroom, bathroom, and kitchen, and installing a new concrete sidewalk.

3. The Contract included a fee of \$700.00 for the architectural blueprint drawings.

4. The Contract did not state when work would begin or when the anticipated completion date was.

5. The original agreed-upon Contract price was \$74,740.00.

6. On January 11, 2018, the Claimant paid the Respondent \$23,000.00.

7. On February 27, 2018, the Claimant learned that the check the Respondent had submitted to the Baltimore City Department of Housing & Community Development for a permit for the project was returned by the bank as invalid.

8. In early March 2018, the Claimant received the architectural drawings for the project.

9. Throughout March 2018, the Claimant contacted the Respondent's employees about the status of the work and her concern regarding the returned check. They assured her the project would be completed.

10. The Respondent never completed any of the work specified in the Contract, except for providing the blueprints to the Claimant.

## 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).<sup>3</sup> “[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)<sup>4</sup>; *see also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). “[A]ctual 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. This issue was not in dispute. In addition, there was no evidence of any relationship between the Claimant and the Respondent that would bar recovery from the Fund. Md. Code Ann., Bus. Reg. § 8-405(f).

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<sup>3</sup> As noted above, “COMAR” refers to the Code of Maryland Regulations.

<sup>4</sup> Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

The Claimant submitted the January 11, 2018 Contract and explained that she contracted with the Respondent because he and several of his employees had completed work for her previously as part of a different company (called Homeview) and she had been satisfied with the work. She explained that she and the Respondent discussed the Contract at length, and that she paid the initial \$23,000.00 deposit at the time she signed the Contract. When the Respondent did not begin work, she became concerned. In late February, she learned that the check the Respondent had provided for the permit did not clear, which added to her concern. She called Danny Collins, who was a sales representative with the Respondent and had signed the Contract with the Claimant on the Respondent's behalf. When the Claimant contacted Mr. Collins, he was no longer employed by the Respondent, as he had left for health-related reasons. Mr. Collins assisted the Claimant in reaching some of the Respondent's employees, including Kenneth Hood and Val Seifert, both of whom reassured the Claimant that the project would be completed. The Claimant called these contacts repeatedly throughout March 2018. However, the Respondent never performed any work at all. The Claimant testified that the only part of the Contract that was completed were the blueprints that she received.

Mr. Collins testified on the Claimant's behalf, confirming that he had been a sales representative for the Respondent. He testified that the Respondent's company was reputable and did good work, and that his customers were happy with the completed projects. Mr. Collins expressed sympathy for the Claimant and stated because he left the company shortly after the Contract was signed due to knee surgery and other health issues, he did not know why the Respondent failed to perform the work. He emphasized that he did not leave his job because he was unhappy or had any issues with the Respondent, his customers, or his work. He further testified that he was devastated that this happened to the Claimant, as she had a vision for the

work she wanted done, and he was pleased to have contributed to the project in its early stages. He noted that the blueprints the Respondent had obtained for the Claimant were excellent. Mr. Collins said nothing like this had ever happened with the Respondent, and that he had never had a customer with a negative experience like this.

Based on the evidence before me, I am persuaded that the Respondent failed to perform any of the work specified in the Contract, other than providing the Claimant with the blueprints for the work. The Claimant credibly testified that she signed the Contract in mid-January, but that the Respondent did not begin work. By March 2018, she was in frequent contact with the Respondent's employees to find out the status of the project, but the Respondent never started the project. The Claimant's testimony that the Respondent performed no work other than providing her with the blueprints is credible and unrefuted. 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.

In this case, the Respondent performed some work under the Contract because he did provide the Claimant with the blueprints. However, the Claimant is not seeking other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss: "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.” COMAR 09.08.03.03B(3)(b). The calculation is thus as follows: \$23,000.00 (the amount the Claimant paid to the Respondent) minus \$700.00 (the Contract price for the blueprints) = an actual loss of \$22,300.00.

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 of \$22,300.00 exceeds \$20,000.00. Therefore, the Claimant’s recovery is limited to \$20,000.00. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

#### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$22,300.00 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)(b). I further conclude that the Claimant is entitled to recover \$20,000.00 from the Fund, as she is limited to that amount. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

#### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; 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;<sup>5</sup> and

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

## Signature on File

September 24, 2019  
Date Decision Issued

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Jennifer L. Gresock  
Administrative Law Judge

JLG/kdp  
# 182170

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<sup>5</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



**PROPOSED ORDER**

***WHEREFORE, this 26<sup>th</sup> day of November, 2019, 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.***

***Lawrence Helminiak***

***Lawrence Helminiak***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***

REPORT

The first part of the report deals with the general situation of the country. It is a very interesting and well-written account of the country and its people. The author has done a great deal of research and has gathered a wealth of material. The second part of the report deals with the political situation. It is a very interesting and well-written account of the political situation and the various parties and movements. The author has done a great deal of research and has gathered a wealth of material. The third part of the report deals with the economic situation. It is a very interesting and well-written account of the economic situation and the various industries and movements. The author has done a great deal of research and has gathered a wealth of material. The fourth part of the report deals with the social situation. It is a very interesting and well-written account of the social situation and the various classes and movements. The author has done a great deal of research and has gathered a wealth of material. The fifth part of the report deals with the cultural situation. It is a very interesting and well-written account of the cultural situation and the various arts and movements. The author has done a great deal of research and has gathered a wealth of material. The sixth part of the report deals with the military situation. It is a very interesting and well-written account of the military situation and the various armies and movements. The author has done a great deal of research and has gathered a wealth of material. The seventh part of the report deals with the foreign relations situation. It is a very interesting and well-written account of the foreign relations situation and the various countries and movements. The author has done a great deal of research and has gathered a wealth of material. The eighth part of the report deals with the future of the country. It is a very interesting and well-written account of the future of the country and the various possibilities and movements. The author has done a great deal of research and has gathered a wealth of material.

REPORT  
BY  
[Name]  
[Date]