

IN THE MATTER OF THE CLAIM	*	BEFORE GERALDINE A. KLAUBER,
OF JEFFREY MCKOWN	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF BRETT	*	
SCHOOLNICK T/A BAYWOOD	*	OAH No.: DLR-HIC-02-18-24271
DESIGN/BUILD GROUP INC.,	*	MHIC No.: 18 (75) 265
RESPONDENT	*	

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On January 9, 2018, Jeffrey McKown (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$8,649.70 in actual losses allegedly suffered as a result of a home improvement contract with Brett Schoolnick, t/a The Baywood Design/Build Group Inc. (Respondent).

I held a hearing on December 6, 2018, at the office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented himself. Eric London, 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.<sup>1</sup>

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?

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<sup>1</sup> Notice of the hearing (Notice) was mailed to the Respondent at the address of record by regular and certified mail on September 26, 2018. COMAR 09.08.03.03A(2). Notice was also sent to the Respondent's attorney of record, Barton Sidle, on September 26, 2018. The domestic return receipt was signed on behalf of the Respondent's then attorney on October 1, 2018. (Mr. Sidle had notified the MHIC by email dated September 19, 2017, that "my client, Brett Schoolnick of the Baywood Design/Build Group, Inc., is willing to waive arbitration in all complaints made to the Maryland Home Improvement Commission."). The Respondent's Notice was returned by the United States Postal Service (USPS) with the notation "forwarding time has expired." On October 9, 2018, Notice was reissued to the Respondent at an alternate address provided by Respondent's attorney. The Notice was returned by the USPS with the notation "forwarding time has expired." On November 5, 2018, the Fund contacted Barton Sidle, Esquire, who represented that he no longer represented the Respondent but provided the Fund with what he had on file as the Respondent's address of record. On November 7, 2018, a third Notice was mailed to the Respondent to the address provided by Mr. Sidle, which was the same address for the Respondent as reflected on Maryland State Department and Taxation web site under the real property data search. The Notice sent by certified mail was returned by the USPS with the notation "unclaimed." The Notice sent by regular mail was not returned. I find that diligent and reasonable efforts were made to mail Notice to the Respondent at all available addresses and that his attorney received Notice on behalf of the Respondent. The 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.

## SUMMARY OF THE EVIDENCE

### Exhibits

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

Clmt #1 - Contract, January 17, 2017

Clmt #2 - Fifteen checks made payable from Claimant made payable to Respondent, January 19, 2017, January 24, 2017, January 31, 2017 (two checks), February 13, 2017, February 14, 2017, February 28, 2017, March 6, 2017 (two checks), April 18, 2017, April 24, 2017, May 19, 2017, May 25, 2017, June 5, 2017 and July 3, 2017

Clmt #3 - Change Order regarding basement windows, January 31, 2017

Clmt #4 - Change Order regarding basement door, January 31, 2017

Clmt #5 - Change Order regarding layout and framing, February 14, 2017

Clmt #6 - Change Order regarding sound proofing, March 6, 2017

Clmt #7 - Change Order regarding plumbing upgrade, March 6, 2017

Clmt #8 - Ehrhardt Brothers revised job bid, February 28, 2017

Clmt #9 - Change Order regarding caulking and stairwell repair, April 17, 2017

Clmt #10 - Electric Allowance Upgrade, April 24, 2017

Clmt #11 - Tri Star Electric (Tri Star) Proposal, April 1, 2017

Clmt #12 - Five photographs of electrical wiring issues

Clmt #13 - Photograph of uninstalled light underneath bar

Clmt #14 - Photographs of vanity area where mirror not installed and uninstalled shower doors and grab bar

Clmt #15 Photograph of improperly installed barn door

Clmt #16- Four Photographs of openings where vents were not installed

Clmt #17 - Photographs of unfinished door framing

Clmt #18 - Photograph of kitchen area where backsplash was not installed

Clmt #19 - Five photographs of incomplete sound deadening work

Clmt #20 - Correspondence from the Respondent to the Claimant, August 13, 2017

Clmt #21 - Tri Star Proposal, August 22, 2017, with attached check in the amount of \$5,595.00

Clmt. #22 - Tri Star Proposal, August 22, 2017, with attached check in the amount of \$3,630.00

Clmt #23 - Tri Star Proposal, October 11, 2017, with attached check in the amount of \$365.00

Clmt #24 - Peak Carpentry (Peak) Proposal, October 5, 2017, with attached check in the amount of \$1,350.00

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

Fund #1 - Notice of hearing, November 7, 2018

Fund #2 - Motor Vehicle Administration (MVA) Driving Record Information, September 12, 2017

Fund #3 - MVA Driving Record Information, August 17, 2018

Fund #4 - Department I.D. Registration, September 12, 2017

Fund #5 - Real Property Data Search, September 12, 2017

Fund #6 - Letter from Barton Sidle to MHIC, March 15, 2018

Fund#7 - Hearing Order, July 30, 2018

Fund #8 - MHIC Licensing History, November 5, 2018

Fund #9 - Home Improvement Claim Form, January 2, 2018

Fund #10 - Letter from MHIC to Respondent, January 17, 2018

Fund #11 - Email exchange between Kevin Niehuhr, MHIC, and Barton Sidle, Esq.,  
September 14 and September 19, 2017

Testimony

The Claimant testified in support of his claim.

The Fund offered no 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 0121664
2. On January 17, 2017, the Claimant and the Respondent entered into a contract to remodel the Claimant's basement (Contract). The Contract was to be completed by June 20, 2017.
3. The original agreed-upon Contract price was \$61,732.00.
4. The parties entered into the following seven change orders that totaled \$20,007.87.
  - January 31, 2017, replacement of cellar door - \$2,492.00;
  - January 31, 2017, replacement of basement window - \$2,058.00;
  - February 14, 2017, layout and frame changes - \$8,291.00;
  - March 6, 2017, soundproofing between utility room and media room - \$1,322.00;
  - March 6, 2017, plumbing upgrades - \$2,290.00;
  - April 18, 2017, exterior caulking and repairs - \$804.87;
  - April 24, 2017, electrical upgrade - \$2,750.00.
5. Including the change orders, the total agreed upon contract price was \$81,739.87.

6. The Claimant paid the Respondent a total of \$76,507.57.
7. The Respondent failed to complete the electrical work provided for in the contract. The Respondent had punched out the wrong areas for the wire installation of the baseboard heat, which required removal and rewiring. Six baseboard heaters were not installed, as provided for in the contract. Trim work needed to be removed and redone, and an electrical line had to be relocated in order to be up to code.
8. Under cabinet lighting in the bar area was not purchased or installed by the Respondent, as provided for in the contract.
9. The Respondent failed to install a grounding cable strap from an electrical box to the gas line outside.
10. The Respondent failed to install the shower door, shower grab bar, and mirror over the vanity.
11. The Respondent failed to finish framing an exterior door in basement.
12. The barn door leading to the exercise room was installed too close to the drywall and needed to be taken down and rehung.
13. The Respondent failed to install numerous wall vents and ceiling vents.
14. The Respondent failed to install a backsplash in the bar/kitchen area.
15. The Claimant failed to construct the sound deadening wall between utility room and media room. The Claimant had paid the Respondent \$2,142.00 for this wall.
16. The Claimant paid the Respondent \$800.00 for a tile backsplash in the bar area. The Respondent failed to install the backsplash.

17. The Respondent's last day of work on the contract was August 12, 2017. On August 13, 2017, the Respondent notified the Claimant in writing that the Respondent was filing for bankruptcy and ceasing operation of its business.

18. The Claimant had weekly meetings with the Respondent to discuss schedules to get the work done. The Claimant frequently called the Respondent to address the issue of the Respondent not showing up and work not being performed. Despite the Respondent's reassurances that the work would get done, the work was not completed.

19. The Claimant paid Tri Star \$3,630.00 as settlement for monies owed to them by the Respondent for work already completed and to return to the job in order to perform repairs and the balance of the work.

20. The Claimant paid Tri Star \$5,595.00 to complete the unfinished electrical work. The Claimant paid Tri Star \$365.00 to add bonding to the gas piping that should have been done by the Respondent when the generator was installed.

21. The Claimant paid Peak Carpentry, a licensed home improvement contractor, \$1,350.00 to complete trim work provided for in the original contract, but not completed by the Respondent.

22. The Claimant has not obtained a contractor to install the sound deadening wall or the tile backsplash.

23. The Contract included an arbitration clause. The Respondent waived arbitration of the Complaint.

## 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>2</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>3</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. The Claimant established through testimony, documentation and photographs that the Respondent performed unworkmanlike, inadequate and incomplete home improvements. The Claimant hired the Respondent to do a tear down and remodel of the basement area of the Claimant’s home. The original contract price was \$61,732.00. The parties agreed to \$20,007.00 of change orders that brought the total contract price to \$81,739.00. The Contract was to be completed by June 2017. In August 2017, the work was still not finished

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<sup>2</sup> As noted above, “COMAR” refers to the Code of Maryland Regulations.

<sup>3</sup> Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.



when the Respondent advised the Claimant he was filing for bankruptcy, and would not be returning to the job. The Claimant had paid the Respondent \$76,507.00.

The incomplete and inadequate electrical work as described and documented by the Claimant included the installation of baseboard heat, installation of vents, and faulty wire installation that needed to be completely redone because the Respondent had punched out the wiring in the wrong locations for the baseboard heat. The Claimant paid Tri Star \$9,590.00 to repair and complete the electrical work. The Claimant also hired a licensed contractor, Peak Carpentry, to finish various trim work left incomplete by the Respondent, rehang an improperly installed door and to finish projects such as installation of shower doors, hanging a mirror, dart board and television stand. The Claimant paid Peak \$1,350.00. Thus, the Claimant has established he 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, and the Claimant has retained other contractors to complete or remedy some of that work. The Contract included the installation of tile and the Claimant had paid the Respondent \$800.00 toward this project. The Contract also provided for the installation of a sound deadening wall for which the Claimant paid \$2,142.00. The Claimant has not obtained a contractor to complete these two projects.

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.

Using this formula, I have computed the Claimant's actual loss as follows:

Amount paid the Respondent	\$76,507.57
	+
Amount paid to other contractors	<u>\$13,882.00<sup>4</sup></u>
	\$90,389.57
	-
Original contract price	<u>\$81,739.87</u>
	\$8,649.70

COMAR 09.08.03.03B(3)(c).

Based on this calculation, the Claimant is entitled to recover for the total actual loss of \$8,647.70. 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 less than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled recover his actual loss of \$8,647.70.

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<sup>4</sup> The Claimant paid the Respondent \$2,142.00 for sound deadening wall that was never installed and \$800.00 for tile backsplash that was not done. The Claimant has not retained another contractor to complete the work. I believe, however, that the amounts charged by the Respondent and paid by the Claimant are reasonable and will have to be paid to complete those projects. I have included them in the cost of repair and completion.

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$8,647.70 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 \$8,647.70 amount from the Fund.

**RECOMMENDED ORDER**


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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$8,647.70; 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.

February 19, 2019  
Date Decision Issued

  
\_\_\_\_\_  
Geraldine A. Klauber  
Administrative Law Judge

GAK/sw  
#177322

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

**PROPOSED ORDER**

***WHEREFORE, this 25<sup>th</sup> day of March, 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.***

***Michael Shilling***

***Michael Shilling  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**