

**IN THE MATTER OF THE CLAIM OF * MARYLAND HOME
VERNON GENTILE * IMPROVEMENT COMMISSION
AGAINST THE MARYLAND HOME *
IMPROVEMENT GUARANTY FUND * MHIC CASE NO. 18(75)611
FOR THE ACTS OR OMISSIONS OF * OAH CASE NO. LABOR-HIC-
BRIAN GUIDO AND ALL PRO HOME * 02-22-00452
IMPROVEMENT, LLC ***

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FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on February 18, 2022. Following the evidentiary hearing, the ALJ issued a Proposed Decision on May 12, 2022, concluding that the homeowner, Vernon Gentile (“Claimant”) failed to prove the amount of the actual loss he suffered as a result of the acts or omissions of Brian Guido and All Pro Home Improvement, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p. 7. In a Proposed Order dated July 20, 2022, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to deny an award from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On November 17, 2022, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant and Contractor participated without counsel. Assistant Attorney General Hope Sachs appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Claimant’s exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. Therefore, the Panel’s review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, and the exhibits offered as evidence at the OAH

hearing. COMAR 09.01.03.09(G) - (I).

The claim in this proceeding relates to an oral contract between the parties for the completion of a screened-in porch and deck at the Claimant's home on a time and materials basis. The Claimant had initially entered a contract with another contractor, Prestige Contractors, under which the Contractor had been performing work on the project as Prestige's subcontractor. The ALJ found that the Contractor's performance under the parties' oral contract was inadequate and incomplete, but that the Claimant did not suffer an actual loss because the value of the labor and materials that the Contractor provided was equivalent to the amount the Claimant paid to the Contractor. *ALJ's Proposed Decision* pp. 5-6.

On exception, the Claimant argued that the ALJ erred in calculating his actual loss. He argued that he should be awarded the value of the materials that he had to repurchase because of the Contractor's inadequate performance, which he asserted was \$6,185.50. Assistant Attorney General Sachs argued that the Claimant should be awarded compensation for the materials that the Claimant had to repurchase because of the Contractor's inadequate performance, but not the materials he had to purchase to complete the project, because, since the parties' contract was a time and materials contract, the Claimant had not yet paid for the materials necessary for the incomplete portion of the project.

The Commission finds that the Claimant is not entitled to an award because he failed to prove the amount of his actual loss, but, in part, for reasons different than the ALJ. The Commission finds that the Claimant failed to prove the amount of his actual loss with respect to the Contractor's inadequate performance because the Claimant did not present sufficient evidence that he paid for the materials that he alleges he had to repurchase. Rather, he only presented evidence that he purchased new materials after the Contractor ceased working on his project. The

Claimant did not present evidence that the Contractor, rather than Prestige, purchased the allegedly incorrect material, or that he, rather than Prestige, paid for any of the materials that had to be repurchased.

In addition, although the Contractor was performing the contract on behalf of Prestige before the Claimant terminated Prestige, it is Prestige that is liable for inadequate performance that occurred prior to its termination, and there is no evidence in the record before the Commission as to what work was performed or materials purchased under Prestige and what work the Contractor performed and materials the Contractor purchased as the primary contractor.

Regarding the additional materials, as opposed to the replacement materials, the Commission agrees with the Fund that, because the contract between the parties was a time-and-materials contract, the Claimant is not entitled to an award because there is no evidence that he paid the Contractor for the materials and did not receive them.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 12th day of December 2022, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AMENDED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AMENDED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AMENDED**;
- D. That the Claimant's claim is **DENIED**;
- E. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and

F. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Bruce Quackenbush
Chairperson –Panel
Maryland Home Improvement
Commission

IN THE MATTER OF THE CLAIM
OF VERNON GENTILE,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR ACTS OR OMISSIONS
ALLEGED AGAINST BRIAN
GUIDO, T/A ALL PRO, LLC,
RESPONDENT

* BEFORE WILLIAM SOMERVILLE,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-22-00452
* MHIC No.: 18 (05) 611

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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 September 28, 2020, Vernon Gentile (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$6,367.42 for actual losses he alleges he suffered as a result of a home improvement contract with Brian Guido, trading as All Pro, LLC, (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015).¹

¹ Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

On December 6, 2021, the MHIC issued a Hearing Order on the Claim. On December 16, 2021, the MHIC referred the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 18, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Justin Dunbar, Assistant Attorney General, represented the Fund. The Claimant represented himself. The Respondent failed to appear.

After determining that the hearing notice was issued to the Respondent's correct address on record, and that the notice was not returned by the United States Postal Service, I determined that the Respondent had received proper notice, and I proceeded to hear the case. Code of Maryland Regulations (COMAR) 28.02.01.05A, C.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; and 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 offered by the Claimant:

Clmt. Ex. 1 - Packet of photographs, tabbed A through E

Clmt Ex. 2 - Invoice, 10-27-2017

Clmt Ex. 3 - Receipt, 10-20-2017

Clmt Ex. 4 - Receipts, 10-26-2017, 11-20-2017

Clmt Ex. 5 - Receipt, 6-19-2018

Clmt Ex. 6 - Proposal for two projects, 7-23-2017

Clmt Ex. 7 - Photograph of a double or sliding door

No other exhibits were offered.

Testimony

The Claimant testified and did not present other witnesses. No other witnesses were offered.

PROPOSED FINDINGS OF FACT

Having considered demeanor evidence, testimony, and other evidence, 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. He held the license for his business, All Pro, LLC (Company).
2. In the summer of 2017, the Claimant entered into a home improvement contract with Prestige Contractors to rebuild a deck at his residence for about \$22,000.00 and to build a screened-in porch on the deck for about \$18,000.00. Details and specifications were reduced to writing and the Claimant paid the contractor some money. (Clmt Ex. 6.)
3. On or about September 1, 2017, the contract was terminated and the work on the project was not completed.
4. Prestige Contractors had used the Respondent's Company as a subcontractor on the project.
5. Once the contract with Prestige Contractors was terminated, the Respondent's Company verbally agreed to complete the work, as set forth in the contract document that described the agreement between the Claimant and Prestige Contractors. The Company agreed to complete the project, however, on a labor and material basis.

6. On September 18, 2017, the Company began working on the project.

7. On September 18, 2017, the Claimant paid the Company \$1,000.00 by check.

8. On September 22, 2017, the Claimant paid the Company \$3,622.65 by check.

9. On October 5, 2017, the Claimant paid the Company \$1,500.00 by check.

10. On October 13, 2017, the Claimant paid the Company \$2,240.00 by check. At that time, the Claimant asked employees of the Company to get rid of some trash and debris. They also took some of the building materials such as used insulation.

11. On October 17, 2017, the Company installed some ceiling boards on the covered porch, and at some point that day, employees of the Company “walked off the job.”

(Testimony.)

12. On October 29, 2017, the Claimant contacted the Company and told the Respondent to pick up the Company’s tools.

13. The Claimant has not had any communication with the Respondent or the Company since October 29, 2017.

14. The Claimant bought additional materials to finish these unfinished or incomplete items, as follows:

Proper length deck boards	\$5,204.69
Additional ceiling boards	\$732.67
Siding*	\$190.40
Insulation*	\$28.79
House wrap*	\$28.95
Flashing	amount not claimed

* There was no mention of these three items in the contract document, but the parties discussed these items, and these items would be contemplated as necessary to finish the project in a workmanlike, adequate, and complete manner.

15. On September 28, 2020, the Claimant filed a claim against the Fund.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2021); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor." Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for 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 conclude that the Claimant has proven that the Respondent, a licensed home improvement contractor at the time, had his Company perform some unworkmanlike, inadequate, or incomplete home improvement work.

In this case, the Respondent's Company abandoned the project, Bus. Reg. § 8-605(1), and left it incomplete. Bus. Reg. § 8-401. (Finding of Fact 11.) Additional ceiling boards had to be added. Insulation, house wrap, flashing, and siding had to be installed. (Finding of Fact 14.) In addition, there was credible evidence from the Claimant that the deck boards that were

installed by the Company were not the proper length such that the resulting work product was inadequate. (Finding of Fact 14.) The Claimant was credible and unchallenged on these points.

Having found eligibility for compensation, I will 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). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Respondent's Company performed some work under the Contract, and 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).

Under the facts of the instant case, the formula appears as follows:

Amount paid to the Company toward finishing the project	\$8,362.65
Minus the value of materials & services provided ²	<u>-\$8,362.65</u>
Actual Loss	\$ 0

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 amount of \$0 is less than the

² The original contract price with the Company was an unspecified, fair and reasonable amount for "labor and materials." (Finding of Fact 5.) He paid a fair and reasonable amount of \$8,362.65 for materials and services to the Company. The Claimant offered no fact evidence or opinion evidence to show a specific value of materials and services provided by the Company which was lower than \$8,362.65.

amount paid to the Respondent's Company and less than \$20,000.00. Therefore, the Claimant is entitled to recover actual loss in the amount of \$0.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has not demonstrated the amount of an actual and compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015). I further conclude that the Claimant has not shown that he is entitled to recover from the Fund. COMAR 09.08.03.03B(3)(b).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

May 12, 2022
Date Decision Issued

William J.D. Somerville III

William J.D. Somerville III
Administrative Law Judge

WS/emh
#197586

PROPOSED ORDER

WHEREFORE, this 20th day of July, 2022, 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.

J Jean White

I Jean White

Panel B

**MARYLAND HOME IMPROVEMENT
COMMISSION**