IN THE MATTER OF THE	*	**BEFORE ROBERT F. BARRY,**
CLAIM OF	*	**AN ADMINISTRATIVE LAW JUDGE**
MONARCH HOMES, LLC,	*	**OF THE MARYLAND OFFICE**
CLAIMANT,	*	**OF ADMINISTRATIVE HEARINGS**
AGAINST THE HOME	*	
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS	*	**OAH No.: LABOR-HIC-02-20-02728**
OR OMISSIONS OF	*	**MHIC FILE No.: 19 (90) 1025**
BRIDGET PSATHAS,	*	
TRADING AS	*	
UNITED RESTORATION &	*	
COMPANY, INC.	*	
RESPONDENT	*	

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PROPOSED DECISION

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STATEMENT OF THE CASE

On October 3, 2019, Monarch Homes, LLC (Claimant), by its sole member, Sawyer A. Martin, filed a claim with the Maryland Home Improvement Commission (Commission) against the Home Improvement Guaranty Fund (Fund) for reimbursement for an actual loss allegedly

suffered as a result of a home improvement contract with Bridget Psathas, trading as United Restoration & Company, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-405(a), 8-406 (2015).[1]

On January 8, 2020, the Commission issued a Hearing Order; on January 13, 2020, the Commission transmitted the case to the Office of Administrative Hearings (OAH). Md. Code Ann., Bus. Reg. § 8-407(c)(2)(i).

On August 20, 2020, I held a hearing at the OAH in Hunt Valley, Maryland. *Id.* Mr. Martin represented the Claimant.[2] The Respondent did not appear. Hope Sachs, Assistant Attorney General, Department of Labor (Department), represented the Fund.

The contested-case provisions of the Administrative Procedure Act; the Department's and the Commission'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. 2020); Code of Maryland Regulations (COMAR) COMAR 09.01.03, 09.08.02.01B and COMAR 28.02.01.

ISSUES[3]

1. Did the Claimant sustain an actual loss arising from the Respondent's incomplete performance of a home improvement contract?

2. If so, what, if any, compensation may the Claimant recover from the Fund?

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[1] Unless otherwise noted, all references to the Business Regulation Article cite the 2015 Replacement Volume.
[2] I accepted the Fund's position that Mr. Martin could represent the Claimant. *See* Md. Code Ann., State Gov't § 9-1607.1(a)(4)(i) (Supp. 2020); Md. Code Ann., Bus. Reg. §§ 8-312; 8-407(a).
[3] The parties and I discussed an additional issue concerning the Claimant's eligibility to make a claim against the Fund when its sole member, Mr. Martin, was also a member of another limited liability company that owned three dwelling places. An owner may not make a claim against the Fund if the owner owns more than three residences or dwelling places. Md. Code Ann., Bus. Reg. § 8-405(f)(2)(ii). Mr. Martin is a member of two limited liability companies that owned five dwelling houses at the time relevant to this case. He is an investor operating through limited liability companies. The Fund argued that the Claimant itself only owned two dwelling houses, but it is not at all clear that the legislature meant the Fund to be available to investors such as Mr. Martin. I will accept the Fund's argument for this case but suggest that the Commission consider issuing a regulation that would treat investors like Mr. Martin to be the alter ego of the limited liability companies they are members of and therefore the owner of all dwellings owned by the limited liability companies.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted ten exhibits into evidence for the Claimant:

CLAIM. #1 - Home Improvement Claim Form, with Supporting Information

CLAIM. #2 - Scopes of Work/Contracts between the Claimant and the Respondent, January 4, 2019, for 114 and 116 South Eaton Street

CLAIM. #3 - Proposal, Chesapeake Contracting, LLC, April 1, 2019, for 114 South Eaton Street

CLAIM. #4 - Estimate, Montesdeoca Brothers Construction, LLC, January 28, 2019, for 116 South Eaton Street

CLAIM. #5 - Proposal, Charis Contractors, LLC, May 2, 2019, for 114 and 116 South Eaton Street

CLAIM. #6 - Supporting Information concerning Mediation

CLAIM. #7 - Photographs of work performed by the Respondent

CLAIM. #8 - Contract between the Claimant and the Respondent, April 6, 2019, for 114 and 116 South Eaton Street

CLAIM. #9 - Certificate of Liability Insurance

CLAIM. #10 - Summary of Payments by the Claimant to the Respondent, with attached proposals and invoices and canceled checks and proof of an electronic payment

The Respondent did not participate in the hearing.

I admitted three exhibits into evidence for the Fund:

FUND #1 - Notices of Hearing for May 20, 2020 and August 20, 2020

FUND #2 - Respondent's licensing history with the Commission, August 5, 2020

FUND #3 - Letter from the Commission to the Respondent, October 8, 2019, with Home Improvement Claim

Testimony

Mr. Martin testified for the Claimant.

The Fund did not present any witnesses.

FINDINGS OF FACT

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

1. The Respondent was licensed by the Commission as an individual home improvement contractor under registration number 01-80042 between June 25, 2001 and June 25, 2019. She was also the individual licensed contractor responsible for the home improvement work of United Restoration & Company, Inc., which was licensed by the Commission under corporate registration number 05-131846.[4] (FUND #2).

2. At all times relevant to this claim, Mr. Martin was the sole member of the Claimant, which owned for investment purposes two adjoining houses at 114 and 116 South Eaton Street in Baltimore.

3. At all times relevant to this claim, Mr. Martin was one of three members of FLIPMARYLAND, LLC (the other members were Mr. Martin's parents), which owned for investment purposes a property divided into three residential units at 130, 132, and 134 South Eaton Street. Mr. Martin held a controlling (sixty percent) interest in FLIPMARYLAND, LLC.

4. On January 4, 2019, the Claimant and the Respondent entered into separate but identical written agreements whereby the Respondent agreed to renovate 114 and 116 South Eaton for $111,500.00 each. (CLAIM. #2).

[4] The first page of the Respondent's licensing history appears to indicate that the Respondent holds a current license, with an expiration date of June 25, 2021, but page three of the licensing history indicates that the Respondent's license expired on June 25, 2019. (FUND #2). Ms. Sachs also indicated that the Respondent's license expired on June 25, 2019.

5. Each agreement included identical line items totaling $25,000.00 for roofing, framing, and structural framing:

Roofing:	$8,000.00
Framing:	$12,000.00
Structural Framing:	$5,000.00

6. The Respondent performed work on the home improvement contracts, but then stopped showing up.

7. When the Respondent stopped showing up, the Claimant had made payments totaling $25,320.00[5] to the Respondent for work on the two home improvement contracts:

December 9, 2018	$3,600.00
December 29, 2018	$2,500.00
January 3, 2019	$4,220.00
January 5, 2019	$5,000.00
January 9, 2019	$3,000.00
January 11, 2019	$7,000.00

8. The Claimant filed a complaint with the Commission against the Respondent., which was referred to mediation.

9. To prepare for mediation, the Claimant solicited proposals to complete the work at 114 and 116 South Eaton for a total of $38,463.00.

[5] The Claimant also presented evidence concerning a payment of $3,627.00 made by FLIPMARYLAND to the Respondent on December 13, 2018. The $3,627.00 was for work included on a December 9, 2018 proposal from the Respondent. The proposal includes work at 114 and 116 South Eaton for the Claimant and work at 130, 132, and 134 South Eaton for FLIPMARYLAND. The Claimant excluded $2,277.00 from the claim against the Fund for that portion of the proposal related to work performed by the Respondent for FLIPMARYLAND. I excluded the entire $3,627.00 because the payments were not made to the Respondent by the Claimant. (Mr. Martin testified that the Claimant did not have the funds at the time to make the payment.)

10. The Claimant received a proposal from Chesapeake Contracting, LLC to complete framing at 114 South Eaton for $10,363.00.

11. The Claimant received a proposal from Montesdeoca Brothers Construction, LLC to complete framing and structural framing at 116 South Eaton for $16,000.00 and to make the roof ready for installation of roofing for $4,000.

12. The Claimant received a proposal from Charis Contractors, LLC to complete roofing at 114 and 116 South Eaton for $8,100.00.

13. On April 6, 2019, the Claimant and the Respondent settled the complaint through mediation, with the Respondent agreeing to complete its work on the home improvement contracts. The Respondent agreed to complete the roofing, framing, and structural framing between April 15 and 26, 2019.

14. The Respondent did not do any additional work on the home improvement contract.

15. The contractors from whom the Claimant had obtained proposals completed the roofing, framing, and structural framing as detailed in the proposals.

16. The Claimant paid $38,463.00 to the three contractors to complete the roofing, framing, and structural framing left incomplete by the Respondent.

DISCUSSION

The Respondent's Notice of Hearing

The procedures for notice and hearings for disciplinary actions against home-improvement contractors also apply to proceedings to recover compensation from the Fund. Md. Code Ann., Bus. Reg. § 8-407(a). Section 8-312 of the Business Regulation Article requires the Commission to give the person against whom disciplinary action is contemplated

an opportunity for a hearing. Md. Code Ann., Bus. Reg. § 8-312(a). The Commission is required to send a hearing notice to the person against whom disciplinary action is contemplated at least ten days before the hearing by certified mail to the business address on record with the Commission. *Id.* § 8-312(d). If, after due notice, the person against whom disciplinary action is contemplated does not appear, nevertheless the Commission (or by delegation the OAH) "may hear and determine the matter." *Id.* § 8-312(h).

In this case, the Respondent has not been licensed by the MHIC since her registration expired on June 25, 2019. On May 28, 2020, OAH sent a Notice of Hearing to the Respondent by certified mail to the address listed in the Respondent's licensing history with the Commission. On October 28, 2020 the United States Postal Service eventually returned the hearing notice to the OAH, indicating that the hearing notice was unclaimed. The Commission, by the OAH, complied with the statutory requirement of sending notice to the business address of the licensee on file with the Commission. Therefore, it is appropriate for me to hear and determine this claim against the Fund even in the Respondent's absence.

Fund Claim

A homeowner "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). An "'actual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." *Id.* § 8-401. The Commission may not award from the Fund an amount for consequential damages, *id.* § 8-405(e)(3), which are losses that result indirectly from any unworkmanlike, inadequate, or incomplete home improvement. The Commission may deny a claim if it finds that "the claimant unreasonably

rejected good-faith efforts by the contractor to resolve the claim." *Id.* § 8-405(d). (There is no issue of good-faith efforts by the contractor in this case.)

A claimant has the burden of proof at a Fund hearing. *Id.* § 8-407(e)(1). In the circumstances presented here, the Claimant has the burden to establish that: (1) the Respondent performed an incomplete home improvement; and (2) the Claimant had an actual loss due to the costs of completing the home improvement. As explained below, I find that the Claimant met his burden of proof as to both elements of his claim against the Fund.

Incomplete Home Improvement

The Claimant asserted and the Fund conceded that the Respondent failed to complete the home improvement contracts, specifically, the structural and internal framing and the roof of each house. Additionally, the Claimant and the Fund conceded that the Claimant paid $38,463.00 to other contractors to complete the home improvement. While I concur with these two concessions by the Fund, as explained in footnote five above, I do not concur with its concession concerning a payment of $3,627.00 made by FLIPMARYLAND to the Respondent on December 13, 2018. I reduced the amount that the Claimant paid to the Respondent for the incomplete work to $25,320.00.

Actual loss due to the costs of restoration, repair, or replacement

COMAR 09.08.03.03B, which governs the calculation of awards from the Fund, provides, in pertinent part, as follows:

> B. Measure of Awards from Fund.
>
> . . .
>
> (2) The Fund may only compensate claimants for actual losses they incurred as a result of misconduct by a licensed contractor.

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

. . .

(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.

(4) The Commission may not award from the Fund an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed.

I am recommending an award under COMAR 09.08.03.03B(3)(c):

Amount Paid to the Respondent -	$25,320.00
Plus	
Amount paid by the Claimant to complete -	$38,463.00
Subtotal -	$63,783.00
Less	
Amount of contracts[6] -	$50,000.00
Claim	$13,783.00

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude:

(1) the Claimant suffered an actual loss as a result of the Respondent's acts and omissions, specifically her incomplete performance of a home improvement. Md. Code Ann., Bus. Reg. § 8-401;

[6] This is the amount of the portion of the two contracts for framing, structural framing, and roofing - $25,000.00 for each contract – that the Respondent actually worked on.

(2) the Claimant is entitled to recover an award of $13,783.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a); COMAR 09.08.03.03B(3)

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Claimant be awarded $13,783.00 from the Home Improvement Guaranty Fund; and

ORDER that the Respondent remain 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 (10%) as set by the Commission, Md. Code Ann., Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a); and

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

November 17, 2020
Date Decision Issued

Robert F. Barry
Administrative Law Judge

RFB/kdp
#188314

PROPOSED ORDER

WHEREFORE, this 4th day of February, 2021, 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.

Joseph Tunney

Joseph Tunney
Chairman
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION