IN THE MATTER OF THE CLAIM	*	**BEFORE JOY L. PHILLIPS,**
OF ERIC MILLER,	*	**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 STEPHEN SNYDER,	*	
T/A ALL STATE HOME	*	
IMPROVEMENT COMPANY, INC.,	*	**OAH No.: LABOR-HIC-02-19-33540**
RESPONDENT	*	**MHIC No.: 19 (05) 1040**

* * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE

On August 19, 2019, Eric Miller (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 $24,990 in actual losses allegedly suffered as a result of a home improvement contract with Stephen Snyder, trading as All State Home Improvement Company, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through

8-411 (2015).[1] On October 15, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on December 10, 2020 via a video conferencing platform. Bus. Reg. § 8-407(e). Shara Hendler, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself.

After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. Code of Maryland Regulations (COMAR) 28.02.01.23A. Hearings were scheduled for March 16, 2020 and September 16, 2020 but were postponed. The notice of hearing sent to the Respondent for the March 16, 2020 hearing was returned as undeliverable. The Fund provided a new address for the Respondent and it was used in the subsequent notices of hearing.

The notice sent on September 23, 2020 for the December 10, 2020 hearing was sent by regular and certified mail, COMAR 09.08.03.03A(2), and was not returned as unclaimed or undeliverable. The Respondent did not notify the OAH of any change of address. COMAR 28.02.01.03E. The Respondent did not request the hearing date be postponed. I determined that the Respondent had received proper notice, and I proceeded to hear the captioned matter in his absence.

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. 2020); COMAR 09.01.03; and COMAR 28.02.01.

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

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 - Contract, June 26, 2018
Clmt. Ex. 2 - Claimant's deposit check to Respondent, June 26, 2018
Clmt. Ex. 3 - Email chain between Claimant and Respondent, August 12, 2018 through November 21, 2018
Clmt. Ex. 4 - Email chain between Claimant and Respondent, November 21, 2018, December 3 and 25, 2018, January 10, 2019, and September 6, 2019
Clmt. Ex. 5 - Letter from Deborah and David Meier to Claimant with refund check of $10,000.00, September 20, 2019

The Respondent did not appear or submit any exhibits to be admitted.

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

Fund Ex. 1 - Hearing Order, October 8, 2019
Fund Ex. 2 - Notice of Remote Hearing, September 23, 2020
Fund Ex. 3 - Home Improvement Claim Form, August 13, 2019, received August 19, 2019, and letter to Respondent from MHIC, August 21, 2019
Fund Ex. 4 - Respondent's licensing information, printed February 1, 2020

Testimony

The Claimant testified and did not present other witnesses.

The Respondent did not appear or present witnesses.

The Fund presented no witnesses.

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 71268.

2. On June 26, 2018, the Claimant and the Respondent entered into a contract to do exterior renovation on the Claimant's home, including installing new windows, siding, a porch, and a deck, and replacing hardscaping (Contract). The Contract stated that work would begin approximately on August 13, 2018 and would be completed by approximately September 15, 2018.

3. The original agreed-upon Contract price was $74,990.00.

4. On June 26, 2018, the Claimant paid the Respondent $24,990.00 as a deposit.

5. The Respondent delivered no materials to the Claimant's home and did no work on the home. He never returned to the property.

6. From August 12, 2018 into December 2018, the Claimant and the Respondent emailed each other regarding updates to the job. The Respondent variously promised materials would be delivered, offered excuses why materials were not delivered, blamed the weather, ignored emails, and, on October 26, 2018, promised to call the Claimant but did not.

7. On December 25, 2018, the Respondent wrote to the Claimant, explaining that he had a setback and his family was assisting him.

8. On January 10, 2019, the Claimant requested a refund from the Respondent.

9. On September 6, 2019, the Respondent emailed the Claimant to explain numerous personal problems he had and offered a refund.

10. On September 20, 2019, the Respondent's family sent a check to the Claimant in the amount of $10,000.00 and offered to make payments on the balance. The Claimant deposited this check. No additional payments were made.

11. There is no legal impediment to prevent the Claimant from receiving reimbursement from 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); State Gov't § 10-217 (2014); 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 find that the Claimant has proven eligibility for compensation.

The Claimant presented credible evidence that he and the Respondent contracted for the Respondent to complete a major renovation on the Claimant's home. The Claimant paid the Respondent a deposit of $24,990.00. The Claimant testified that he went on a two-week vacation just after signing the Contract, expecting materials for the job to have been delivered upon his return. Instead, when he returned there was no sign the Respondent had done anything on the job.

In the ensuing months, the Claimant emailed the Respondent to inquire into the status of the job. The Respondent offered excuses or failed to respond at all. The Claimant became increasingly concerned and asked that, at a minimum, the Respondent respond to his emails, even if there were reasons the job could not progress. In October and November 2018, the Claimant mentioned he would be seeking a refund of his deposit and the Respondent always replied that materials would be coming soon and that the weather was to blame.

On December 25, 2018, the Respondent emailed the Claimant that he had a "setback" and was trying to catch up again, with his family's help. In response, the Claimant, on January 10, 2019, offered sympathy, but requested a timeline for a refund of his deposit. He did not receive a reply from the Respondent. On August 19, 2019, the MHIC received the Claim. On September 6, 2019, the Respondent sent the Claimant a lengthy email detailing his many personal problems and offering to return the refund so "we can withdraw these charges." (Clmt. Ex. 4). Two weeks later, the Claimant received a check for $10,000.00 from someone the Claimant understood to be related to the Respondent. In the letter accompanying the check, Deborah and David Meier wrote that they "would like to break up the rest into 5 monthly payments of $2,998.00 to be payed [sic] by [the Respondent.]" (Clmt. Ex. 5). The Claimant never received any additional refund payments.

The evidence established that the Respondent failed to do any work under the Contract. As the Respondent performed incomplete home improvements, I 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.

The Respondent abandoned the Contract without doing any work after taking a deposit. Accordingly, the following formula appropriately measures the Claimant's actual loss: "If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract." COMAR 09.08.03.03B(3)(a). The Claimant paid the Respondent $24,990.00 and was refunded $10,000.00, leaving the Claimant with an actual loss of $14,990.00.

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 is less than the amount paid to the Respondent and less than $20,000.00. Therefore, the Claimant is entitled to recover his actual loss of $14,990.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $14,990.00 as a result of the Respondent's acts or omissions and that the Claimant is entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $14,990.00; 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;[2] and

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

January 28, 2021
Date Decision Issued

Joy L. Phillips
Administrative Law Judge

JLP/kdp
#190182

[2] *See* Bus. Reg. § 8-410(a)(1)(iii); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 31st day of March, 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