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| IN THE MATTER OF THE CLAIM | * | BEFORE LORRAINE E. FRASER, |
| OF PAULINE MOLDER, | * | 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 FRANK | * | |
| AMBROSINO, | * | OAH No.: LABOR-HIC-02-21-02087 |
| T/A ADDITIONS ETC., LLC, | * | MHIC No.: 19 (05) 1043 |
| RESPONDENT | * | |

* * * * *

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 August 12, 2019, Pauline Molder (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),¹ for reimbursement of \$21,200.00 in actual losses allegedly suffered as a result of a home improvement contract with Frank Ambrosino, trading as Additions

¹ On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

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Etc., LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).² On January 27, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on March 29, 2021 via videoconference. Bus. Reg. §§ 8-407(a), 8-312. Nicholas Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent represented himself.

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); Code of Maryland Regulations (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 on the Claimant's behalf:

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| Claimant Ex. 1 | Complaint Form, 1/31/18 |
| Claimant Ex. 2 | Proposal from the Respondent for \$31,600.00, 8/30/17 |
| Claimant Ex. 3 | Payments made by the Claimant to the Respondent |
| Claimant Ex. 4 | Check to Anne Arundel County from the Claimant for \$500.00, 8/8/18 |
| Claimant Ex. 5 | Invoice from Landtech Associates Inc., 11/12/18 |
| Claimant Ex. 6 | Anne Arundel County cash receipt for \$500.00, 8/8/18 |
| Claimant Ex. 7 | Check to the Respondent from the Claimant for \$10,533.00, 8/30/17 |
| Claimant Ex. 8 | Check to the Respondent from the Claimant for \$8,000.00, 9/11/17 |
| Claimant Ex. 9 | Check to the Respondent from the Claimant for \$6,000.00, 9/28/17 |
| Claimant Ex. 10 | Check to the Respondent from the Claimant for \$6,000.00, 10/4/17 |

² Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

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- Claimant Ex. 11. Check to Kevin Smith from the Claimant for \$1,650.00, 6/21/18
- Claimant Ex. 12. Payments to Universal Carpet, \$1,131.32, 6/20/18, & \$1,734.46, 6/21/18
- Claimant Ex. 13. Check to Kevin Smith from the Claimant for \$1,300.00, 6/28/18
- Claimant Ex. 14. Payment to Universal Carpet, \$321.18, 7/19/18
- Claimant Ex. 15. Proposal from the Respondent for \$6,300.00, 9/1/17
- Claimant Ex. 16. Check to the Respondent from the Claimant for \$3,000.00, 9/21/17
- Claimant Ex. 17. Payments made by the Claimant to others
- Claimant Ex. 18. Contract with Walter's Home Improvement for \$1,700.00, 2/1/19
- Claimant Ex. 19. Contract with Walter's Home Improvement for \$10,700.00, 2/16/19
- Claimant Ex. 20. Invoice Masterpiece Painting, Inc., for \$3,700.00, 7/27/19
- Claimant Ex. 21. Check to Robert Simms from the Claimant for \$1,000.00, 12/20/18
- Claimant Ex. 22. Check to Bob Simms from the Claimant for \$1,100.00, 1/9/19
- Claimant Ex. 23. Contract with Walter's Home Improvement for \$6,600.00, 8/8/19

The Respondent did not offer any exhibits for admission into evidence.

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

- Fund Ex. 1. Notice of Remote Hearing, 2/9/21
- Fund Ex. 2. Hearing Order, 1/20/21
- Fund Ex. 3. Letter to the Respondent from the MHIC, 8/15/19; Home Improvement Claim Form, 8/12/19
- Fund Ex. 4. The Respondent's licensing history, 2/18/21
- Fund Ex. 5. Affidavit of Kevin Niebuhr, 2/23/21

Testimony

The Claimant testified.

The Respondent testified.

The Fund did not present any 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 numbers 01-105832 & 05-130542.
2. On August 30, 2017, the Claimant and the Respondent entered into a contract to remove and replace the front porch and install new flooring in the family room, office, three

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bedrooms, two sets of stairs, and second floor hallway in her home (Contract 1). The contract was for materials and labor.

3. On September 21, 2017, the Claimant and the Respondent entered into a contract to build a roof over a cellar way on the back of the Claimant's home (Contract 2). The contract was for materials and labor.

4. The original agreed-upon price for Contract 1 was \$31,600.00.

5. The original agreed-upon price for Contract 2 was \$6,300.00.

6. Between August 30, 2017 and October 4, 2017, the Claimant paid the Respondent \$30,533.00 under Contract 1.

7. On September 21, 2017, the Claimant paid the Respondent a \$3,000.00 deposit for Contract 2.

8. The Respondent started work on the front porch and the flooring in September 2017.

9. Between June 21 and 28, 2018, the Claimant paid Kevin Smith \$2,950.00 directly for work on the flooring. Mr. Smith was a subcontractor for the Respondent but the Respondent did not pay him for his work.

10. Between June 20 and July 19, 2018, the Claimant purchased \$3,186.96 in flooring materials from Universal Carpet. The flooring materials were supposed to be provided by the Respondent under Contract 1.

11. After July 17, 2018, the Respondent (or his subcontractors) did not perform any work at the Claimant's home. The Respondent's work on the front porch and flooring was incomplete. The Respondent had not performed any work on the back cellarway roof.

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12. The Claimant contacted the Respondent multiple times to complete the work under the contracts but he did not do so.

13. The Respondent failed to obtain a permit for his work on the front porch. As a result, Anne Arundel County issued a stop work order on the front porch and fined the Claimant \$500.00. The Claimant paid the fine on August 8, 2018.

14. In order to obtain the required permit, the Claimant paid \$350.00 to Landtech Associates, Inc., (surveyors) for a special purpose plat on November 12, 2018.

15. Between December 20, 2018 and January 9, 2019, the Claimant paid Robert Simms to remove concrete. The removal of the concrete was necessary to reduce the amount of impervious surface on the Claimant's property to counterbalance the increase in impervious surface after the front porch was enlarged under the Respondent's contract.

16. On February 1, 2019, the Claimant paid \$1,700.00 to Walter's Home Improvement (Walter's) to remove portions of the Respondent's work on the front porch in order to allow for inspection by Anne Arundel County and to determine whether a permit could be issued for the work on the front porch.

17. On February 16, 2019, the Claimant entered into a contract with Walter's to repair work on the front porch that had been performed by the Respondent and to complete the work under Contract 1. The repairs were necessary to pass inspection. The repairs included additional footers, posts, lag bolts, and lumber on roof joists. In addition, the footings had to be dug deeper and concrete added. Also, there was a leak in the garage ceiling where the Respondent had improperly attached the porch roof, which Walter's repaired.

18. The Claimant paid Walter's \$10,700.00 to repair and complete the work on the front porch under Contract 1.

19. On July 27, 2019, the Claimant paid Masterpiece Painting, Inc., (Masterpiece) \$3,700.00 to finish work on the flooring and front porch under Contract 1. Inside, Masterpiece installed flooring on the steps, thresholds, shoe molding, trim, and painted risers and stringers. On the front porch, Masterpiece painted the rails and posts, and stained the decking.

20. The Claimant's actual loss under Contract 1 is \$21,169.96, calculated as follows:

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| Amounts paid to or on behalf of the Respondent | \$30,533.99 |
| | + 2,950.00 |
| | <u>+ 3,186.96</u> |
| | \$36,669.96 |
| Plus costs to complete the work | + 12,400.00 |
| | <u>+ 3,700.00</u> |
| | \$52,769.96 |
| Minus original contract price | <u>- 31,600.00</u> |
| Actual loss | \$21,169.96 |

21. The Claimant's actual loss under Contract 2 is \$3,000.00.

22. The Claimant's total actual loss is \$24,169.96.

DISCUSSION

In this case, 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 (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

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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 Contracts with the Claimant. The Respondent performed an unworkmanlike, inadequate, or incomplete home improvement. Specifically, the Respondent, and his subcontractors, started work on the Claimant’s flooring and front porch under Contract 1 but did not complete the work. In addition, some of the Respondent’s work on the front porch had to be removed and repaired because it was completed improperly and without the required building permit, as described in the facts above. Further, the Respondent did not perform any work on the roof over the rear cellarway under Contract 2.

The Claimant explained her attempts to get the Respondent to complete the work. She identified the amounts she paid to the Respondent, his subcontractor, and for materials that were supposed to be included in the contract. She described having a stop work order issued and a fine levied, and the additional costs she incurred because the Respondent did not obtain the required permit and did not perform the work properly.

The Respondent did not dispute the Claimant’s claim. He explained that he had a stroke and did not realize the extent to which his cognitive abilities had been impacted. He stated that he hired subcontractors to perform the work for the Claimant but he was unaware that they were not performing the work properly. He apologized to the Claimant. He stated that he is disabled and can no longer work.

Thus, 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

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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 Contract 1, but did not complete the work and some of the work performed had to be repaired. The Claimant hired other contractors to complete and remedy the Respondent's work. Accordingly, the following formula appropriately measures the Claimant's actual loss under Contract 1:

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.

COMAR 09.08.03.03B(3)(c).

As detailed in the findings of fact above, the Claimant paid the Respondent \$30,533.00 directly. She also paid \$2,950.00 to one of the Respondent's subcontractors whom the Respondent had not paid, and \$3,186.96 for materials that were supposed to be included in the contract. Thus, she paid \$36,669.96 to or on behalf of the Respondent under the original contract. The Claimant paid an additional \$16,100.00 to other contractors to repair and complete the Respondent's work under Contract 1. In sum, the Claimant paid \$52,769.96 to complete the work contracted for under Contract 1. Contract 1's original price was \$31,600.00. Subtracting the original contract price from the amounts the Claimant ultimately paid to complete the work reveals the Claimant's actual loss under Contract 1 to be \$21,169.96.

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Also, the Respondent abandoned Contract 2 without doing any work. Accordingly, the following formula appropriately measures the Claimant's actual loss under Contract 2: "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).

Under Contract 2, the Respondent was to build a roof over a cellar way at the rear of the Claimant's home. The Claimant referred to this as a back porch. The original contract price was \$6,300.00. The Claimant paid the Respondent \$3,000.00 as a deposit on this contract. The Respondent did not perform any work under Contract 2. Thus, the Claimant's actual loss under Contract 2 is \$3,000.00.

In addition, the Claimant presented evidence regarding other costs associated with the work, including a fine, a special purpose plat, and the removal of concrete to counter balance the increase in impervious surface of the larger front porch. The fine, the need for a special purpose plat, and the removal of concrete were not specified in the original contracts and are all consequential costs not compensable by the Fund.

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 \$24,169.96 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).

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PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$24,169.96 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)(a), (c). I further conclude that the Claimant is entitled to recover \$20,000.00 from the Fund. Md. Code Ann., 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;³ and

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

Lorraine E. Fraser

June 15, 2021
Date Decision Issued

Lorraine E. Fraser
Administrative Law Judge

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192445

³ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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PROPOSED ORDER

WHEREFORE, this 30th day of August, 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***

