IN THE MATTER OF THE CLAIM	*	**BEFORE MARC NACHMAN,**
OF LAURENCE RICHMOND,	*	**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 KARL JOHNSON,	*	
T/A BUILDING CONTRACTORS OF	*	**OAH No.: LABOR-HIC-02-20-24212**
MARYLAND (INC.),	*	**MHIC No.: 19 (05) 1237**
RESPONDENT	*	

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

PROPOSED DECISION

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STATEMENT OF THE CASE

On July 8, 2019, Laurence Richmond, Jr., (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 $27,914.88[2] in actual losses allegedly suffered as a result of a home improvement contract with Karl Johnson,

[1] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation (DLLR) became the Department of Labor.
[2] This number is adjusted below in accordance with the applicable regulation. Nevertheless, the adjustment is immaterial as the applicable regulations cap the actual loss at $20,000.00.

trading as Building Contractors of Maryland (Inc.)[3](Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).[4] On November 2, 2020, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on January 12, 2021, over the Google Meet video platform.[5] Bus. Reg. §§ 8-407(a), 8-312. John Hart, Assistant Attorney General (AAG), Department, represented the Fund. The Claimant represented himself. Bradley R. Stover, Esquire, and Shaffer, McLaughlin Stover, LLC, represented the Respondent, who was present.

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:

Cl. Ex. 1 Summary of claim, dated July 7, 2019

Cl. Ex. 2 HIC claim form, dated July 8, 2019

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[3] The corporate designation will be addressed below.

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

[5] The hearing, initially scheduled for December, 2020, was postponed to allow the Respondent to advise his corporation's Bankruptcy Trustee of the pending action, as a Fund award might bind the Bankruptcy estate. The Trustee did not respond to the Respondent's request, so the hearing took place on January 12, 2021 without the Trustee's participation.

Cl. Ex. 3 Contract, dated June 28, 2018

Cl. Ex. 4 Change Order, dated February 4, 2019

Cl. Ex. 5 Description of work completed by Respondent and by Claimant, undated

Cl. Ex. 6 Spreadsheet showing amount paid to complete work, undated

Cl. Ex. 7 Value of contract work completed by Respondent, undated

Cl. Ex. 8 Baltimore County Maryland inspection scheduling, undated

Cl. Ex. 9 Scope of work under contract, dated June 25, 2018

Cl. Ex. 10 Bills and receipts incurred by Claimant to complete home improvements[6]

Cl. Ex. 11 Photographs[7]

Cl. Ex. 12 Claimant's checks paid to Respondent[8]

I admitted the following exhibits on the Respondent's behalf:[9]

Resp. Ex. 1 - Articles of Incorporation of Building Contractors of Maryland, Inc., dated April 19, 1978

Resp. Ex. 2 - DLLR Contractor/Salesman Certificate (Corp/Part) for Building Contractors of Maryland (, Inc.), expiring May 12, 2020 (Lic. No. 05-6158)

Resp. Ex. 3 - DLLR Contractor/Salesman Certificate for Respondent, expiring May 12, 2020 (Lic. No. 01-92209)

Resp. Exs. 4 and 5 - Withdrawn

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

Fund Ex. 1 - Notice of Hearing, dated November 9, 2020[10]

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[6] In post hearing submissions, the AAG submitted the Claimant's attachments to the Complaint Form, which included receipts for materials and work performed to complete the home improvement, which were admitted into evidence subject to the Respondent's objection, discussed below.

[7] In his post hearing submission, the Claimant submitted before and after photographs of the home improvement, which were admitted into evidence, without objection.

[8] In his post hearing submissions, the AAG submitted the Claimant's checks to the Respondent, which were admitted into evidence without objection.

[9] The Respondent filed two post hearing submissions – one memorandum challenging the claim (discussed below) and one memorandum addressing the Claimant's post hearing submissions.

[10] On December 15, 2020, the OAH issued a subsequent notice, scheduling the hearing for January 12, 2021.

Fund Ex. 2 - Hearing Order, dated October 28, 2020

Fund Ex. 3 - Correspondence from HIC to the Respondent, dated July 9, 2019, enclosing attaching Home Improvement Claim Form, dated July 8, 2019

Fund Ex. 4 - HIC Contractor/Salesman Printout for the Respondent and Building Contractors of Maryland, (Inc.) (Lic. No. 01-92209), printed December 4, 2020

Fund Ex. 5 - HIC Contractor/Salesman Printout ("Corp[oration]/Part[nership]") for the Respondent and Building Contractors of Maryland, Inc. (Lic. No. 05-6158), printed December 4, 2020

Fund Ex. 6 - Notice of Hearing, dated December 15, 2020

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

The Fund did not present the testimony of 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 number 01-92209

2. On June 28, 2018, the Claimant and the Respondent entered into a contract (Contract) to perform the home improvement outlined in the specification sheets attached to the Contract.

3. The scope of the work was to add an addition to the Claimant's house. The work included demolition, construction, and finishing, all as outlined in the attachments to the Contract.

4. The Contract did not state a start or completion date.

5. The original agreed-upon Contract price was $72,295.35. (Cl. Ex. 3).

6. On February 4, 2019, the Claimant and Respondent signed a change order (Change Order) to replace the existing roof on the Claimant's house to match the roof over the new addition. (Cl. Ex. 4).

7. The total cost of the Change Order was $6,693.24.

8. On the following dates, the Claimant paid the Respondent the following amounts, which he made according to the draw schedule in the Contract and at the time that the parties agreed to the Change Order:

Date	Check #	Payee	Amount	Memo line
June 28, 2018	128	BCOM	$ 2,500.00	Deposit
August 18, 2018	132	BCOM	$ 19,188.61	Permits payment
October 15, 2018	136	BCOM	$ 21,688.61	2nd Payment
February 22, 2019	139	BCOM	$ 21,688.61	Payment # 3
February 14, 2019	704	BCOM	$ 6,693.24	Change Order- Roof

(Cl. Ex. 12).

9. The total amount that the Claimant paid the Respondent was $71,759.07.

10. On April 3, 2019, before the work was completed, the Respondent sent the Claimant an email advising him of the following:

> Please be advised that as of March 28, 2019 Building Contractors of Maryland has ceased doing business. It is anticipated that Building Contractors of Maryland will auction off its equipment and property in an effort to raise funds to pay creditors through a Chapter 7 Bankruptcy proceeding. I am sorry for these circumstances and hardship it may cause you, but Building Contractors of Maryland simply does not have the wherewithal to continue.

(Cl. Ex. 10).

11. After the Respondent's April 3, 2019 email, the Respondent performed no further work on the Claimant's house.

12. The Respondent completed the following work before abandoning construction:

- General Demolition: Removal of existing deck, trees and shrubs
- Construction of foundation and insulated floor

- Framing, sheathing and roof trusses
- New addition roofing
- Electrical rough-in
- Insulation
- Drywall (95% complete)
- Main house roofing

13. The Respondent did not complete the following work before abandoning construction:

- Tape and float drywall
- Paint walls and ceiling
- Install eleven casement windows and an exterior door
- Install interior French doors from dining room to new addition
- Completion of electrical work (circuit breakers, receptacles, switches, etc.)
- Water leakage repairs to kitchen; dining room and living room.
- Installation of ductless heat pump
- Remove existing siding (two layers) and installation of new vinyl siding on new addition and main house
- New gutter and soffit entire house
- 16" x 20" paver patio
- Porch/Steps from new addition to paver patio
- Grading and seeding
- Replacement of basement window damaged by backhoe
- Drywell and paint kitchen, dining room and living room walls and ceilings due to water damage.

14. The Claimant assumed the duties of a general contractor, performing some of the work himself (and with friends who volunteered to perform the work), and hiring contractors (such as the original electrician retained by the Respondent), to complete the work he could not do himself.

15. The Claimant incurred the following costs to complete the work that the Respondent left uncompleted:

Expense Item	Merchant/Source	Date	Cost
Miscellaneous expenses			
Permit transfer	Baltimore County	4/4/19	$29.00
Grass seed	Stabilizing soil	4/9/19	$42.38

Damage repair			
Basement window; replaced window glass	Hodges Window and Glass	4/16/19	$ 0.00[11]
Basement window	Straighten frame and rescreen	4/16/19	
Grass seed	Home Depot	4/25/19	$ 0.00[12]
Drywall	Home Depot	4/13/19	$127.50
Drywall finishing materials	Home Depot	4/20/19	$16.51
Drywall finishing materials			
Electrical			
Material	Home Depot	12/21/18	$17.99
Ceiling fan with light	Home Depot	4/10/19	$211.99
Dimmer	Home Depot	4/28/19	$23.29
Install AC/DC Smoke Detector System	Speedy Electric, Inc.	6/2/19	$1,140.00
Exterior light fixture (2)	Home Depot	6/2/19	$148.34
Finish Electrical work fixtures, receptacles, circuit breakers	Speedy Electric, Inc.	6/5/19	$1,770.00
Exterior light fixture	Lowe's	6/5/19	$45.56
Doors			
Interior French door	John H. Myers	4/17/19	$415.83
Exterior door	John H. Myers	4/17/19	$523.66
Paint for exterior door	Home Depot	5/15/19	$9.52
Material		7/5/19	$3.86
Lockset	Home Depot	4/26/19	$63.57
Floor			
Base molding	Lowe's	5/2/19	$70.72
Base molding	Home Depot	6/24/19	$6.06
Heat pump			
Fujitsu Mini Split heat pump	Alpha Htg. & AC	6/12/19	$5,599.00
Painting			
Material	Home Depot	12/30/18	$8.46
Material	Sherwin-Williams	4/14/19	$233.64
Material	Home Depot	4/23/19	$26.48

[11] See discussion of consequential damages on page on page 16, below.
[12] See discussion of consequential damages on page on page 16, below.

Material	Home Depot	4/23/19	$34.58
Material	Home Depot	4/28/19	$30.19
Material	Home Depot	5/10/19	$2.55
Frog tape	Home Depot	5/11/19	$9.99
Patio			
Material	Lowe's	6/18/19	$17.98
Patio	A & E Design		$6,500.00
Porch and steps			
Material	Home Depot	6/4/19	$79.88
Material	Home Depot	6/5/19	$23.41
Material	Home Depot	6/7/19	$7.64
Material	Home Depot	6/13/19	$149.72
Returned items	Home Depot	6/28/19	($24.53)
Material	Home Depot	6/18/19	$31.08
Material	Home Depot	6/30/19	$38.83
Material	Lowe's	7/6/19	$16.16
Material	Home Depot	7/5/19	$12.59
Siding			
1 x 8 x 6 ft common board	Finish soffit frame	4/25/19	$8.40
Material	Home Depot	6/3/19	$6.77
Material	Lowe's	6/3/19	$31.44
Siding soffit and gutters	Excel Remodeling Co.	6/11/19	$13,260.00
Windows			
11 casement windows (United)	John H. Myers	4/18/19	$3,731.20
Material	Home Depot	4/20/19	$50.54
Material	Home Depot	4/20/19	$92.55
Material	Home Depot	4/23/19	$18.08
Material	Home Depot	4/24/19	$19.05
Material	Home Depot	4/24/19	$35.83
Material	Home Depot	4/29/19	$41.79
Window and door casement	Home Depot	4/30/19	$33.84
Paint	Lowe's	5/2/19	$209.13
Material	Lowe's	5/2/19	$37.04
Material	Home Depot	5/8/19	$10.14

Material	Home Depot	5/10/19	$3.38
Material	Home Depot	6/6/19	$11.10
Total			$35,063.71

(Cl. Ex. 6, with modifications discussed below).

16. The Claimant also paid $21.18 for grading and seeding his neighbor's lawn which was consequentially damaged by the Respondent's equipment when performing the Contract. The Claimant also paid $59.52 to fix windows which were consequentially damaged during the performance of the Contract. (Cl. Ex. 10).

17. The Claimant completed the construction within the scope of the Contract with materials he purchased and contractors he hired, and by performing work and using friends' labor.

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).

The Respondent argued affirmatively at the hearing and in his post-hearing memorandum that, as an individual, he is not the responsible party under home improvement law, as the Fund claim is only against the corporation of which he was vice-president. Accordingly the Respondent bears the burden to show, by a preponderance of the evidence, that the claim is against the wrong party and that individually he was not the responsible party in this claim. COMAR 28.02.01.21K(1), (2)(b).

Claimed misidentification of the Respondent

The Respondent correctly asserts that the MHIC Hearing Order dated October 28, 2020 (Guaranty Fund Exhibit No. 2) identifies the alleged responsible contractor as the Respondent "t/a Building Contractors of MD,[13] Inc." He is also correct that the Claimant's claim identifies the entity without including the corporate designation "Inc."[14] and that the corporate entity was not served. However, none of these contentions is dispositive in this matter.

The Respondent is correct that the Contract and Change Order were written on documents presented by the Respondent – but he is incorrect that the letterhead on which they were written uses the corporate designation "Inc." in identifying the contracting entity. (Cl. Exs. 3, 4 and 9). Not only is there no corporate designation in the heading or in the body of any of these documents, but even the Respondent's email of April 3, 2019, advising the Claimant that the work would stop, fails to include any corporate designation:

> Please be advised that as of March 28, 2019 *Building Contractors of Maryland* has ceased doing business. It is anticipated that *Building Contractors of Maryland* will auction off its equipment and property in an effort to raise funds to pay creditors through a Chapter 7 Bankruptcy proceeding. I am sorry for these circumstances and hardship it may cause you, but *Building Contractors of Maryland* simply does not have the wherewithal to continue.

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[13] The State name is sometimes spelled out and sometimes abbreviated.

[14] The interchange in names even confuses the Respondent. In the same pleading, the following two sentences appear:

> "I. BACKGROUND.
>
> ...
>
> "The MHIC Hearing Order dated October 28, 2020 (Guaranty Fund Exhibit No. 2) identifies the alleged responsible contractor as '[Respondent] t/a Building Contractors of MD, Inc.'." Respondent's Post-Hearing Memorandum, page 1.
>
> ...
>
> "II. PROCEDURAL DEFICIENCY IN CLAIM AND PROPOSED ORDER.
>
> "Both the Claimant's MHIC claim (Guaranty Fund Exhibit No. 4) and the MHIC's Hearing Order (Guaranty Fund Exhibit No. 2) giving rise to this matter identify the contractor subject to the claim as '[Respondent], t/a Building Contractors of MD.' Respondent's Post-Hearing Memorandum, page 2.

With regard to the MHIC Hearing Order, the first quoted sentence is correct.

(Cl. Ex. 10) (emphasis added). Although the Claimant's checks were endorsed on the reverse sides with the corporate designation,[15] they were made payable to "BCOM" without any corporate designation, and they were accepted by the Respondent without reservation. By not referencing a corporate entity in any of his interactions with the Claimant, the Respondent chose to eschew his corporation's identification in the construction documents and appeared to operate as a sole proprietor under a trade name similar to the corporation's name.[16]

Even if the Respondent unintentionally misidentified his entity status, he cannot now claim the benefit of his actions, as his actions and inactions estop him from claiming otherwise. "...[A]n estoppel may arise even when there is no intent to mislead, if the actions of one party cause a prejudicial change in the conduct of the other [citations omitted]." *Creveling v. Gov't Employees Ins. Co.*, 376 Md. 72, 102 (2003), See also, *Byung Mook Cho v. Chong Ok Lim*, 2498, SEPT.TERM,2019, 2021 WL 944215, at 9 (Md. Ct. Spec. App. Mar. 12, 2021). The Respondent's incredulity that he could be the subject of a Fund claim belies his loose identification with either form of entity – either operating as a corporation as he claims, or simply using a trade name, which is consistent with all of the documents in evidence – which the Claimant reasonably relied upon when filing his claim.

Assuming, *arguendo*, that the Respondent was not estopped by choosing the identity that serves his purpose, he is still individually responsible for any successful claim against the Fund. In his post-hearing memorandum advancing his argument against being responsible on the claim,

[15] The Claimant would not have seen the endorsements before writing the checks.
[16] None of the construction documents prepared by the Respondent show that he operated under a corporate entity, and no HIC license number, identifying the Respondent individually or working through a corporate entity, is specified.

the Respondent cites section 8-407(b) of the Business Regulation Article and COMAR 09.08.03.03A(1), as follows:

> § 8-407. Actions on claim
>
> . . . .
>
> (b) On receipt of a claim, the Commission shall:
> (1) send a copy of the claim to the contractor alleged to be responsible for the actual loss; and
> (2) require a written response to the claim within 10 days.

COMAR 09.08.03.03 concerns the adjudication of claims:

> A. Claim Hearings.
> (1) Parties.
> (a) The claimant who brought the claim, and the contractor alleged to be responsible for the monetary loss of the claimant, shall be parties in all claim hearings.

The Claimant and Fund argued that the Claimant did name the Respondent, individually, as a proper party to these proceedings as he had a right to do, citing section 8-101 (c) and (j) and section 8-405 (a) of the Business Regulation Article, as follows:

> § 8-101. Definitions
>
> . . .
>
> (c) "Contractor" means a person, other than an employee of an owner, who performs or offers or agrees to perform a home improvement for an owner.
> . . .
> (j) "Licensed contractor" means a person who is licensed by the Commission to act as a contractor.
>
> § 8-405. Claims
>
> (a) Subject to this subtitle, an owner may recover compensation from the Fund for an actual loss that results from an act or omission by a licensed contractor or a violation of § 8-607(4) of this title as found by the Commission or a court of competent jurisdiction.
> (b) For purposes of recovery from the Fund, the act or omission of a licensed contractor includes the act or omission of a subcontractor, salesperson, or

employee of the licensed contractor, whether or not an express agency relationship exists.

Assuming that the corporation was the proper party, the Respondent remains responsible for its acts and omissions related to a Fund claim. COMAR 09.08.01.04 discusses issues relating to Corporate or Partnership Licensure:

> A. A corporation or partnership may not act as a home improvement contractor unless it obtains a corporate or partnership home improvement contractor's license.
> B. In order to obtain and maintain a corporate or partnership home improvement license, the corporation or partnership shall employ *one individual licensed contractor who shall be in responsible charge of the corporation's or partnership's home improvement work.*
> C. The corporation or partnership and the individual in responsible charge of the corporation's or partnership's home improvement work shall *be jointly and severally responsible* for:
> (1) Payment of any fees required by Business Regulation Article, §§8-302, 8 -303, 8-308, and 8-404, Annotated Code of Maryland;
> (2) Filing of a bond or other evidence of financial responsibility required by Business Regulation Article, §8-303(c), Annotated Code of Maryland;
> (3) Repayment to the Home Improvement Commission Guaranty Fund pursuant to Business Regulation Article, §8-410, Annotated Code of Maryland, for any payments made to claimants from the Fund on account of violations by the corporation or partnership *or the individual in responsible charge.*

(emphasis added). The Respondent is an officer and perhaps owner of the corporate entity. The credible evidence shows that he served in a fiduciary capacity for the corporation, forming an agency relationship. "Agency is the fiduciary relation which results from the manifestation of consent by one person [the principal] to another [the agent] that the other shall act on his behalf and subject to his control and consent by the other so to act." *Ins. Co. of North America, et. al. v. Miller*, 362 Md. 361, 373 (2001). Therefore, even if the corporation were a proper party in this claim, I find that the Claimant properly alleged in its claim that the Respondent, individually, could be responsible for an actual loss. Bus. Reg. § 8-407 and COMAR 09.08.01.04B and C.

If there were an actual loss, I would find that both the Respondent – either as a sole licensed contractor, acting as a sole proprietorship or as an officer of the corporate entity – and the corporate entity are proper parties to these proceedings and responsible for that loss. Assuming that the Respondent acted solely under a trade name – and not a corporate entity – the analysis ends with the Respondent being personally responsible for the claim. Assuming that the corporate entity is the only proper party, there is credible evidence that the Respondent, as *the individual in responsible charge*, agreed to perform and bind the corporation to perform a home improvement for the Claimant, making him the responsible licensed home improvement contractor. Bus. Reg. § 8-101(c), (j).

Therefore, both the Respondent and his corporation, individually and collectively, are responsible, jointly and severally for any proven actual loss. COMAR 09.08.01.04.

Course of construction

The Claimant's evidence concerning the performance of the Contract and the completion of the construction project was largely uncontested. On June 28, 2018, the parties entered into the Contract to add a four seasons room to his house in Lutherville, Baltimore County, Maryland (Finding of Fact nos. 2 and 3). The scope of the Contract, outlined in the attachments to the Contract, included demolishing and removing his existing wooden decks and shrubbery, building the addition, installing an HVAC system, laying a paver patio, adding a porch and steps to the new patio, and installing new vinyl siding (after tearing off two layers of existing siding), soffit and gutters to the addition and main house (Finding of Fact no. 3). The agreed upon Contract price was initially $72,295.35 (Finding of Fact no. 5). On February 4, 2019, the parties entered into a Change Order to re-shingle the main house roof to match the new addition for an additional cost of $6,693.24 (Finding of Fact nos. 6 and 7). Payments were made according to a

draw schedule, and the price of the change order was paid upon its signing (Finding of Fact no. 8). The total paid to the Respondent was $71,759.07 (Finding of Fact nos. 8 and 9).

The Claimant testified that the Respondent obtained a building permit on August 17, 2018 and work started in September 2018. The Claimant further testified that work progressed slowly.

Sometime in March 2019, the Respondent stopped working on the property, even though he was paid to complete the construction. On April 3, 2019, the Respondent sent the Claimant an email, advising him that "Building Contractors of Maryland"[17] ceased operations on or about March 28, 2019, as it filed for Chapter 7 Bankruptcy protection (Finding of Fact no. 10). On or about April 4, 2019, as a result of the Respondent's abandoning the Contract, the Claimant had the Baltimore County building permit transferred to himself so he could complete the work on his own. Some of the work was completed (Finding of Fact no. 12), but some was not (Finding of Fact no. 13). After receiving the Respondent's email on April 3, 2019 (Finding of Fact no. 10), the Claimant took over as general contract to complete the construction (Finding of Fact no. 14). With few exceptions (discussed below), there were no serious contentions about what construction was completed by the Respondent under the Contract and Change Order (Finding of Fact no. 12), and the amount of work left incomplete before the Respondent abandoned the work (Finding of Fact no. 13). Nor was there any serious contention that the work completed by the Claimant after the Respondent abandoned his work, presented through testimony and carefully organized bills and receipts (Finding of Fact no. 15), was within the scope of the original contract, with the few exceptions noted below.

[17] No corporate designation was noted.

Actual loss

The Respondent performed inadequate and incomplete home improvements, having abandoned the Contract before construction was completed. Regarding the adequacy of the work, little had to be redone. The building was under roof, and a large portion of the work had been completed by the Respondent or his subcontractors. However, the Claimant testified that during construction of the addition's foundation, a subcontractor damaged a basement window with a backhoe.

There is also no serious contention that the Respondent abandoned work on the project. He performed no further work after his company filed for Bankruptcy protection, as evidenced by the email the Respondent sent to the Claimant on April 3, 2019 (Finding of Fact no. 10). He never returned to the jobsite to complete the construction, nor did he arrange for or pay subcontractors to complete significant portions of the contract (e.g., electricians, masons, landscapers, and heating and air conditioning contractors) or ensure the delivery of equipment and materials required by these subcontractors to complete their work. The day after the Claimant received the Respondent's email, he took over construction, acting as his own general contractor.

Actual loss

For the following reasons, I find that the Claimant has proven eligibility for compensation. 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.

I agree with the Respondent that not all of the charges claimed by the Claimant are compensable. To that end, I have backed out the Hodges Windows and Glass invoice for $59.22 and the Home Depot April 25, 2019 invoice of $21.18[18] as they represent consequential damages.[19]

On the other hand, I disagree with the Respondent's contention that the claimed charge from Alpha Heating and Air Conditioning, LLC, for $5,559.00, was overstated. He contends that there was proof of only one $2,799.50 payment being made. However, the second page of the Alpha invoice shows that the Claimant made two equal payments $2,799.50 – one shown as a deposit on the first page of the invoice, and a second installment paid upon completion of the work. The memo line of the check submitted into evidence also indicates that it was for the "Final payment" and the Claimant testified that he paid the entire amount of $5,559.00. There is no evidence to the contrary showing that the Claimant did not pay the initial deposit and the subsequent "final" payment.

Similarly, I agree with the Respondent that the initial Excel Remodeling invoice was not clear, but the Claimant produced a typed invoice which I was able to review and find that the scope of Excel's work within the scope of the Contract. The Claimant testified without contradiction that he retained Excel to complete the unfinished work, and I find that it is compensable.

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[18] The Respondent claims that the Home Depot invoice was for $29.58, which seems to include two invoices. Although I agree that the grass seed receipt for $21.18 is a consequential damage, there is no evidence that the $8.40 receipt from the same date for siding material fit that category.

[19] See items referenced by fns. 11 and 12.

Likewise, although the documentary proof of the Claimant's payment to John Myers is not explicitly shown, the Claimant's testimony was credible and uncontradicted that he paid that invoice.

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 performed some of the work himself[20] and has retained other contractors to complete work that he could not do (e.g., electrical, heating and air conditioning, landscaping, masonry, etc.). 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.

COMAR 09.08.03.03B(3)(c). Those calculations are as follows:

$65,065.83	Amount paid by the Claimant to the Respondent under the Contract, plus
$6,693.24	Amount paid by the Claimant to the Respondent under any addendum, plus
$71,759.07	Total Amount paid by the Claimant to the Respondent, plus
$35,063.71	Fair market cost to make corrections and complete Respondent's work
$106,822.78	Subtotal, less

[20] The Claimant is not making any monetary claim for his own work or that of his friends.

-$72,295.35 Original contract price
-$6,693.24 Price of the addendum equals
$27,834.19 Amount of the Actual Loss to the Claimant

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 $27,834.19 exceeds $20,000.00. Therefore, the Claimant's recovery is limited to $20,000.00. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03D(2)(a); COMAR 09.08.03.03B(4).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $27,834.19 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 $20,000.00 from the Fund. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03D(2)(a); COMAR 09.08.03.03B(4)

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;[21] and

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

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

Marc Nachman

April 12, 2021
Date Decision Issued

Marc Nachman
Administrative Law Judge

MN/kdp
#191368

PROPOSED ORDER

WHEREFORE, this 21st day of June, 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.

Lauren Lake

Lauren Lake
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION

IN THE MATTER OF THE CLAIM OF LAURENCE RICHMOND AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMISSIONS OF KARL JOHNSON T/A BUILDING CONTRACTORS OF MD, INC.	* * * * * * *	**MARYLAND HOME IMPROVEMENT COMMISSION** **MHIC CASE NO. 19(05)1237** **OAH CASE NO. LABOR-HIC-02-20-24212**

* * * * * * *

FINAL ORDER

This matter was originally heard before an Administrative Law Judge ("ALJ") of the Office of Administrative Hearings ("OAH") on January 12, 2021. Following the evidentiary hearing, the ALJ issued a Proposed Decision on April 12, 2021, awarding Laurence Richmond ("Claimant") $20,000.00 from the Home Improvement Guaranty Fund for his actual loss resulting from the acts or omissions of Karl Johnson t/a Building Contractors of MD, Inc. ("Contractor"). *ALJ Proposed Decision* p. 19. In a Proposed Order dated June 21, 2021, the Maryland Home Improvement Commission ("MHIC" or "Commission") affirmed the Proposed Decision of the ALJ to grant an award from the Fund. The Contractor subsequently filed exceptions to the MHIC Proposed Order.

On February 18, 2020, a three-member panel ("Panel") of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant participated without counsel. Bradley Stover, Esq., represented the Contractor. Assistant Attorney General Shara Hendler 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) Contractor'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 a contract between the parties for the construction of an addition to the Claimant's home. The ALJ found that the Contractor abandoned the contract without completing several components of the project. *ALJ's Proposed Decision* pp. 5-6.

On exception, the Contractor argued that the ALJ erred in finding 1) that Karl Johnson, in his individual capacity, was a proper party to this proceeding, 2) that Building Contractors of Maryland, Inc. ("BCM"), was a party to the proceeding, and 3) that BCM and Mr. Johnson were jointly and severally liable for the Claimant's claim. (Exceptions Hearing Exhibit 3.) The Commission finds no error with the ALJ's findings of fact or conclusions of law.

Under COMAR 09.08.01.04, to obtain a corporate home improvement license, a corporation "must employ one individual licensed contractor who shall be in responsible charge of the corporation's . . . home improvement work," and the corporation and the responsible individual are jointly and severally responsible for repaying the Guaranty Fund for payments made to claimants "on account of violations by the corporation . . . or the individual in responsible charge." COMAR 09.08.03.03(a) provides that "[t]he claimant who brought the claim, and the contractor alleged to be responsible for the monetary loss of the claimant, *shall be parties* in all claim hearings." (Emphasis added.)

In this case, the Claimant entered into a contract with BCM. (OAH Hearing Claimant's Exhibit 3.) Karl Johnson executed the contract on behalf of the Contractor, and the contract did not identify BCM as a corporation. (OAH Hearing Claimant's Exhibit 3.) The Claimant filed a claim against Karl Johnson trading as BCM (OAH Hearing Claimant's Exhibit 2). At all times pertinent to this proceeding, BCM held a corporate Maryland home improvement contractor license, Mr. Johnson held an individual Maryland home improvement contractor license, Mr. Johnson was the responsible individual licensee for BCM, and Mr. Johnson's trade name on his

individual license was BCM. (OAH Hearing Guaranty Fund Exhibits 4-5.) The Commission and OAH, respectively, sent the Claimant's claim and the hearing notice to Karl Johnson and BCM at the business address that Mr. Johnson and BCM provided to Commission. (OAH Hearing Guaranty Fund's Exhibits 1 and 3.)

Therefore, the Commission holds that Karl Johnson and BCM are proper parties in this proceeding and that each is jointly and severally liable for Claimant's actual loss.

However, in light of BCM's filing of a bankruptcy petition, the Commission finds that the ALJ's recommended order that BCM and Mr. Johnson be ineligible for a home improvement contractor's license until the Guaranty Fund is reimbursed for monies disbursed to the Claimant must be amended. The Commission may only suspend Mr. Johnson's individual license if he and BCM fail to reimburse the Guaranty Fund for the Claimant's award. In the event that Mr. Johnson's individual license is suspended for failure to reimburse the Guaranty Fund, BCM may be eligible to hold a corporate license if its obligation is discharged and it employs another licensed individual contractor.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 15th day of September 2021, **ORDERED:**

A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;

B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;

C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AMENDED;**

D. That the Claimant is awarded $20,000.00 from the Maryland Home Improvement Guaranty Fund;

E. That Karl Johnson shall remain ineligible for a Maryland Home Improvement Commission

license until the Contractor 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);

F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and

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

Jean White
Chairperson –Panel
Maryland Home Improvement Commission