IN THE MATTER OF THE CLAIM	*	**BEFORE LORRAINE E. FRASER,**
OF KYLE GOLT,	*	**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 NICHOLAS FROCK,	*	
T/A NCF HOME IMPROVEMENTS,	*	**OAH No.: LABOR-HIC-02-21-02082**
LLC,	*	**MHIC No.: 19 (05) 1277**
RESPONDENT	*	

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PROPOSED DECISION

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STATEMENT OF THE CASE

On October 28, 2019, Kyle Golt (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 $8,995.00 in actual losses allegedly suffered as a result of a home improvement contract with Nicholas Frock, trading as NCF Home

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

Improvements, 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 24, 2021, via videoconferencing. Bus. Reg. §§ 8-407(a), 8-312. Nicholas Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. 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:

Clmt. Ex. 1A Photograph of water behind drain spout, 7/17/18
Clmt. Ex. 1B Photograph of water behind drain spout, 7/17/18
Clmt. Ex. 1C Photograph of water on floor, 9/11/18
Clmt. Ex. 1D Photograph of beam ceiling, 9/11/18
Clmt. Ex. 1E Photograph of floor with fan, 9/11/18
Clmt. Ex. 1F Photograph of exterior, back of house, 9/11/18
Clmt. Ex. 1G Invoice Ewing's Roofing & Siding Co., Inc., 10/23/18
Clmt. Ex. 1H Letter from Velocity HVAC & Stove Works, 5/20/19; invoice, 5/10/19
Clmt. Ex. 1I Estimate from Mueller Builders, Inc., 3/12/21
Clmt. Ex. 2A Photograph underside of house, exterior corner, taken from crawl space, 11/11/18

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

Clmt. Ex. 2B	Photograph underside of house, exterior east wall, corner, taken from crawl space, 11/11/18
Clmt. Ex. 2C	Photograph underside of house, exterior east wall, taken from crawl space, 11/11/18
Clmt. Ex. 2D	Photograph underside of house, exterior south wall, taken from crawl space, 11/11/18
Clmt. Ex. 2E	Photograph underside of house, exterior south wall, corner, taken from crawl space, 11/11/18
Clmt. Ex. 2F	Photograph underside of house, subflooring, corner, taken from crawl space, 11/11/18
Clmt. Ex. 2G	Photograph underside of house, subflooring, corner, taken from crawl space, 11/11/18
Clmt. Ex. 2H	Amended Proposal, Mueller Builders, Inc., 12/7/18
Clmt. Ex. 2I	Emails between the Claimant and Foam Works, LLC, 11/27/18
Clmt. Ex. 3	Invoice from Mueller Builders, Inc., 2/16/19; ten photographs of flashing and siding repair
Clmt. Ex. 4	Invoice from Mueller Builders, Inc., 3/21/19; forty-two photographs of flashing and siding repair
Clmt. Ex. 5	Invoice from Mueller Builders, Inc., 4/12/19; thirteen photographs of flashing and siding repair; Builders First Source invoice, 2/28/19
Clmt. Ex. 6	Invoice from Mueller Builders, Inc., 5/22/19; twenty-nine photographs of flashing and siding repair
Clmt. Ex. 7	Home inspection, ADS Home Inspections, 7/29/19
Clmt. Ex. 8	Emails between the Claimant and the Respondent, 12/18/17-12/19/17
Clmt. Ex. 9	Emails between the Claimant and the Respondent, 10/29/17-10/31/17

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 MHIC, 11/1/19; Home Improvement Claim Form, 10/28/19
Fund Ex. 4	The Respondent's licensing history, 2/28/21

Testimony

The Claimant testified and presented the testimony of Jeffrey Mueller, Mueller Builders, Inc., who was accepted as an expert in home improvements.

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 number 01-103955 and 05-129559.

2. Sometime in October 2017, the Claimant and the Respondent entered into a verbal agreement to remove and replace siding and replace rotted wood on the Claimant's home to repair water damage and stop rain water from leaking into the home (Contract).

3. On October 12, 2017, the Respondent began repairs to the east side of the Claimant's home. By December 2017, the Respondent had performed repairs on the east, south, and west sides (the sides and back) of the Claimant's home.

4. The Claimant paid the Respondent $8,995.00.

5. After the Respondent completed the work in December 2017, rain water continued to leak into the Claimant's home in the areas repaired by the Respondent.

6. Throughout 2018, the Claimant asked the Respondent to correct the continued leaks on the east, south, and west sides of the house. The Respondent attempted to do so but was unsuccessful.

7. On October 23, 2018, the Claimant hired Ewing's Roofing & Siding Co., Inc. (Ewing's). Ewing's repaired an incorrectly installed J-channel around windows on the rear of the house and incorrectly installed flashing on a rear corner of the house.

8. The Claimant paid Ewing's $150.00.

9. On November 29, 2018, Jeffrey Mueller inspected the exterior and crawl space of the Claimant's home. Mr. Mueller found that none of the windows had a drip cap or were sealed to the vinyl J-channel. He also found missing flashing on a gable on the east side and a gap

between the porch fascia metal and the J-channel at the same location. He noted wet areas in the crawl space on the box sill (along the exterior wall) on new wood that lined up with windows, outside corners, or roof and fascia intersections.

10. Mr. Mueller proposed the following: Remove the siding above the windows, remove the top J-channel, install a custom bent aluminum drip cap, reinstall the J-channel in a bed of silicone, and reinstall the siding. Seal all the J-channel to the window trim. Remove siding around fascia and roof returns, install flashing, and reinstall the siding. Remove siding at the front right porch corner, install flashing, and reinstall the siding.

11. On February 14, 2019, Mr. Mueller and his crew removed the siding and J-channel, installed a drip cap, and reinstalled the J-channel and siding on the windows on the east side of the Claimant's house.

12. On February 26-28, 2019, Mr. Mueller and his crew made additional repairs on the east side of the Claimant's house. The repairs included: removing siding, J-channel, fascia, gutter, and soffit; removing and replacing water-damaged plywood, re-taping Tyvek paper, re-installing insulation board, installing flashing and drip caps; and reinstalling siding, fascia, gutter, and soffit.

13. On March 27, April 16, 17, 18, and 22, 2019, Mr. Mueller and his crew made similar repairs installing drip caps and flashing to the south and west sides of the Claimant's house.

14. The Claimant paid Mr. Mueller $4,813.21.

15. The Claimant did not have any rain water leak into his home after Mr. Mueller completed his repairs on April 22, 2019.

16. The Claimant paid a total of $4,963.21 for repairs to prevent rain water from entering his house on the east, west, and south sides of the house – areas that were previously repaired by the Respondent.

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 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 Contract with the Claimant. The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. Specifically, the Claimant paid the Respondent to make repairs to his home to prevent rain water from entering. The Respondent made repairs on the east, west, and south sides of the home. However, the Claimant continued to experience rain water entering the home on those sides. The Claimant testified that he did not have the Respondent perform repairs on the north side of the home because of the continued leaks after the Respondent's work

on the other sides. The Claimant stated that he told the Respondent that rain water was still entering the home and the Respondent attempted to make repairs but was unable to correct the problem. The Claimant hired Ewing's to make some repairs on the south side of the house. The Claimant then hired Mr. Mueller to inspect and repair all of the east, west, and south sides of the house. Mr. Mueller's repairs corrected the problem and rain water no longer entered the home.

The Respondent stated that his crew attempted to correct the problem of rain water entering. He said initially his crew was just supposed to repair one corner of the house but as they began work they discovered more problems. He agreed that his attempted repair did not stop the rain water from entering the house. He also agreed that the Claimant reasonably expected his repairs to stop rain water from entering the house.

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 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 retained 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 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).

The Claimant's actual loss is calculated as follows:

Amount paid to the Respondent	$8,995.00
Amount paid to repair/complete work	+4,963.21
	$13,958.21
Minus the original contract price	-8,995.00
Actual loss	$4,963.21

The Claimant presented evidence regarding rain water damage to his new hardwood floor that occurred after the Respondent's repairs, and the cost to repair the damage to the floor. The damage to the Claimant's floor is a consequential damage, and 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 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 $4,963.21.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $4,963.21 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 $4,963.21 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $4,963.21; 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

May 28, 2021
Date Decision Issued

Lorraine E. Fraser
Administrative Law Judge

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192323

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

PROPOSED ORDER

WHEREFORE, this 9th day of July, 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