

**IN THE MATTER OF THE CLAIM
OF BRANDON ALTIERI,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF OSMAN VASQUEZ,
T/A MOSS CONSTRUCTION, L.L.C.,
RESPONDENT**

*** BEFORE ABENA Y. WILLIAMS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: LABOR-HIC-02-21-01304
* MHIC No.: 19 (90) 399
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PROPOSED DECISION

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STATEMENT OF THE CASE

On September 20, 2019, Brandon Altieri (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 \$16,575.00 in actual losses allegedly suffered as a result of a home improvement contract with Osman Vasquez, trading as Moss Construction, L.L.C. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹

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

On January 13, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a video hearing on March 18, 2021 via Webex. COMAR 28.02.01.20B; Bus. Reg. §§ 8-407(a), 8-312; Md. Code Ann., State Gov't § 10-211(a). Justin Dunbar, 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. On February 3, 2021, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail to the Respondent's address on record with the OAH via certified mail. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for March 18, 2021, at 9:30 a.m., via the Webex videoconferencing platform. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The Notice was not returned. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

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. 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, except where otherwise noted:

- CL Ex. 1 Claimant exhibit list, March 18, 2021
- CL Ex. 2 Claimant Timeline of Events, undated
- CL Ex. 3 Original Contract, May 26, 2018
- CL Ex. 4 Second Contract, August 17, 2018
- CL Ex. 5 Checks sent to Respondent, June 8, 2018, June 25, 2018, July 19, 2018, May 26, 2018
- CL Ex. 6 Text Correspondence between Claimant and Respondent, undated
- CL Ex. 7 B Dry Waterproofing Contract, July 19, 2018
- CL Ex. 8 Photographs of Basement Drywall Installation, undated
- CL Ex. 9 Photographs of Basement, undated
- CL Ex. 10 Photographs of Basement floor, undated
- CL Ex. 11 Photographs of Laundry room, undated
- CL Ex. 12 Photographs of Laundry room sink – countertop, undated
- CL Ex. 13 Photographs of Laundry room sink – cabinet, undated
- CL Ex. 14 Springirth Services Home Inspection Report, September 13, 2018
- CL Ex. 15 Receipt for Trash Removal, September 15, 2018
- CL Ex. 16 Basement Masters Contract, September 4, 2019
- CL Ex. 17 Basement Masters Receipt, September 13, 2019

- CL Ex. 18 Tom Hummer Curriculum Vitae, undated
CL Ex. 19 Tom Hummer Signed Affidavit, January 20, 2020
CL Ex. 20 American Arbitration Association Decision, March 4, 2020

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

- Fund Ex. 1 Notice of Remote Hearing, February 3, 2021
Fund Ex. 2 Hearing Order, January 7, 2021
Fund Ex. 3 Home Improvement Claim Form, March 15, 2020
Fund Ex. 4 Letter from the MHIC to the Respondent, April 28, 2020
Fund Ex. 5 MHIC Licensing History, March 9, 2021

Testimony

The Claimant testified on his own behalf. The Respondent was not present and did not testify.

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 133493.
2. At all relevant times, the Claimant resided in the home located on Traymore Avenue in Bethesda, Maryland, which was owned by his wife and mother-in-law and has since been sold.
3. The Claimant is not an employee, officer, or partner of the Respondent, nor is he related to any of the Respondent's employees, officers, or partners.

4. On April 4, 2018, the Claimant's wife was contacted by the Respondent in response to a project request through an online application enabling homeowners to connect with home professionals.

5. On May 26, 2018, the Claimant and the Respondent entered into a Contract to renovate the basement and laundry room of the home which included the following work:

- Frame basement
- Install three new windows
- Install two new doors
- Install two new support beams
- Waterproof basement
- Epoxy basement floor
- Electrical wiring for six five-inch recess lights
- Electrical wiring for six receptacles
- Install drywall in ceiling of basement
- Install new stairs and build shelves
- Install new sink and fluorescent light in laundry room
- Install new floors and cabinets in laundry room
- Install wood countertop in laundry room
- Relocated washer and dryer
- Paint laundry room

6. The Contract contained an arbitration clause.

7. Under the Contract, the Respondent also agreed to the following: (1) all change orders shall be in writing and signed by both parties, (2) the Respondent would, at his own expense, obtain all permits necessary for work to be performed, and (3) the Respondent would remove all debris and leave the premises in broom-clean condition.

8. The original agreed-upon Contract price was \$12,300.00 which was to be paid in four installments of \$3,075.00. The first installment was due at the signing of the Contract on May 26, 2018, the second due at the start of the project on June 2, 2018, the third due at the start of the second week of the work, and the fourth installment due at the completion of the project.

9. The Respondent's work was to start on June 2, 2018 and be completed by July 2, 2018.

10. Two changes requested by the Claimant increased the Contract price by \$3,900.00 and \$500.00, to a total Contract price of \$16,575.00. The changes included the addition of a laundry sink countertop, rather than a stand-alone sink (\$500.00), and the installation of drywall in the basement including insulation, baseboards, and paint (3,900.00). No document was created to memorialize the changes.

11. On May 26, 2018, the Claimant paid the Respondent \$6,150.00. The Respondent was also paid \$3,525.00 on June 8, 2018, \$3,900.00 on June 25, 2018, and \$3,000.00 on July 19, 2018. The Respondent was paid a total of \$16,575.00

12. The work under the Contract was not completed by July 2, 2018. The Respondent did not appear on several occasions without explanation and on two occasions, he cited his car breaking down or twisting his ankle.

13. The Respondent removed the washing machine, dryer, and sink from the laundry room where there was a leak. He placed a large trash can below the leak that, in his absence, overflowed, flooding the laundry room, and drenching the carpet and floorboards in the adjoining room.

14. On July 24, 2018, due to concerns regarding the ongoing leak, the Claimant's mother in law, Patricia Parmelee, signed a contract with B-Dry Waterproofing (B-Dry) to waterproof the section of the basement that was leaking for \$5,600.00. The work was completed on September 10, 2018.

15. The Respondent completed very little under the Contract, reported that his father died, and that he got into an accident on the way to the Property, resulting in his hospitalization and several injuries.

16. On August 17, 2018, the Claimant prepared another contract (Contract B) that was signed by the Respondent. According to Contract B, the Respondent agreed to complete the

laundry room work described in the Contract by August 20, 2018, complete the basement work under the Contract by September 14, 2018, and return \$5,000.00.

17. After the signing of Contract B, the Respondent failed to meet any of the deadlines or return \$5,000.00 to the Claimant.

18. On or around August 21, 2018, the Respondent stopped responding to the Claimant's communications.

19. The last text communication occurred around August 30, 2018 when the Respondent advised the Claimant, "I [am] ashamed to look at you cause' I know I haven't done my job right..." and offered \$4,000.00 for settlement. The Claimant rejected the offer.

20. The Respondent failed to complete the following items under the Contract:

- Installation of two doors
- Waterproof basement
- Epoxy basement floor
- Install new stairs and build shelves
- Install new floors in laundry room
- Paint laundry room
- Electrical wiring for six five-inch recess lights
- Electrical wiring for six receptacles

21. The Respondent failed to complete the agreed-to additions to the Contract including the installation of drywall in the basement which included insulation, baseboards, and painting.

22. The Respondent also failed to obtain permits to conduct the work that he performed and failed to remove trash and debris left throughout the basement, yard, and carport.

23. On September 13, 2018, the Claimant hired Springirth Services LLC to conduct a home inspection to determine what needed to be replaced. In their report, Springirth identified problems with the Respondent's electrical wiring, plumbing, drywall, tiling, door installation, countertop carpentry and installation, washing machine and dryer lines, stair installation, and cabinet installation.

24. On September 15, 2018, the Claimant hired Bagster, LLC to remove the trash and debris the Respondent left behind and paid \$175.00 for the service.

25. On May 31, 2019, the Claimant met with Tom Hummer, a representative of ACH Group, LLC d/b/a Basement Masters (Basement Masters) (MHIC Registration Number 102925), for an inspection and estimate to complete the work under the Contract. Mr. Hummer noted “the overall work that I observed in [the] basement was not something consistent with a professional contractor/licensed professional” and “all home improvement contractors in the United States are required to obtain building and trade permits to finish a basement.” The Claimant hired Basement Masters on December 7, 2019 and agreed to pay a total of \$43,488.00 which included costs of items outside of the scope of the Contract.

26. The cost for items included under the scope of the Contract that were either not completed or needed to be replaced and repaired by Basement Masters are as follows:

- Base price (including framing, general electrical, drywall, carpentry, and painting), \$27,648.00
- Basement demolition, \$2,000.00
- Old wiring removal, \$700.00
- Permits, \$3000.00
- Insulation, \$806.00
- Basement flooring (Claimant upgraded material, Epoxy under the Contract), \$600.00
- Additional electrical cables, \$125.00
- Laundry room floor tile demolition, \$800.00
- Laundry room flooring, \$1180.00
- Laundry room countertop repair, \$300.00
- Laundry room sink cabinet repair, \$325.00
- Total Amount: \$37,484.00

27. The work performed in excess or outside of the scope of the Contract included:

- Installation of window well, \$6,000.00
- Charges specific to new contractor (not having outside access - \$800.00, protecting existing flooring - \$288.00)
- Work on additional rooms, \$500.00
- Additional television/phone data line, \$125.00
- Access door for water main valve, \$400.00

- Installation of hose adapter for condensation line to drain, \$50.00
- Installation of flooring for basement, \$3,398.00
- Total Amount: \$11,561.00

28. After a ten percent discount, the Respondent paid Basement Masters a total of \$43,488.00.

29. On February 20, 2020, the Claimant, pursuant to the Contract filed a claim with the American Arbitration Association (AAA).

30. On March 4, 2020, an arbitrator granted the Claimant an award of \$7,000.00 which included \$5,000.00 in damages and \$2,000.00 in fees.²

31. On March 15, 2020, the Claimant filed a claim with the MHIC requesting \$16,575.00 from the Fund.

32. The Claimant has no other pending claims related to this matter.

DISCUSSION

LEGAL FRAMEWORK

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).

A claimant 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,

² A claimant shall comply with a written agreement to submit a dispute to arbitration before seeking recovery from the Fund. Md. Code Ann., Bus. Reg. § 8-405(c).

repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401.

A claimant 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); *see also* COMAR 09.08.03.03B(2) (“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.” Md. Code Ann., Bus. Reg. § 8-401.

Certain claimants are excluded from recovering from the Fund altogether. In this regard, a claimant must prove that: (a) the claimant resides in the home as to which the claim is made, or owns no more than three dwelling places; (b) the claimant is not an employee, officer or partner of the contractor; or the spouse or other immediate relative of the contractor or the contractor’s employees, officers or partners; (c) the work at issue did not involve new home construction; (d) the claimant did not unreasonably reject the contractor’s good faith effort to resolve the claim; (e) the claimant complied with any contractual arbitration clause before seeking compensation from the Fund; (f) there is no pending claim for the same loss in any court of competent jurisdiction and the claimant did not recover for the actual loss from any source; and (g) the claimant filed the claim with the MHIC within three years of the date the claimant knew, or with reasonable diligence should have known, of the loss or damage. Md. Code Ann., Bus. Reg. §§ 8-405(c), (d), (f), and (g), 8-408(b)(1); Md. Code Ann., Bus. Reg. § 8-101(g)(3)(i) (Supp. 2019).

The undisputed evidence in this case establishes there are no *prima facie* impediments barring the Claimant from recovering from the Fund. *Id.* For the following reasons, I find that the Claimant has proven eligibility for compensation.

THE PARTIES' POSITIONS

The Claimant asserts that the Respondent's work was unworkmanlike, inadequate, and/or incomplete and as a result, he has sustained an actual loss of \$16,575.00, the amount paid to the Respondent. The Claimant testified that even after the Respondent failed to complete the work under the Contract in July, he tried to work with the Respondent and entered a second agreement, Contract B, which required the Respondent to return \$5,000.00 to the Claimant and established deadlines for the Respondent to complete the work under the Contract. According to the Claimant, the Respondent failed to meet those deadlines, failed to return the \$5,000.00 and offered \$4,000.00 for settlement. (CL. Ex. 4). The Claimant further noted that the Respondent, via text message, admitted he did not perform the work under the Contract correctly, stating, "I [am] ashamed to look at you cause' I know I haven't done my job right..." (CL. Ex. 6). The Claimant last heard from the Respondent on August 30, 2018 via text message. *Id.* The Claimant averred he hired Springearth Services on September 13, 2018 to complete a home inspection of the work completed by the Respondent. (CL. Ex. 14). He explained, according to the report, the Respondent failed to complete the following items adequately and in a workmanlike manner: electrical wiring, plumbing, drywall, tiling, door installation, the laundry room countertop carpentry and installation, installation of washing machine and dryer lines, and carpentry and installation of stairs and cabinets. *Id.* The Claimant also noted the Respondent was required to obtain permits for the basement renovations to be completed under the Contract and never did, causing the Claimant to have to demolish and replace the Respondent's work. The Claimant noted two licensed contractors were hired: B-Dry Waterproofing for waterproofing the basement and Basement Masters for basement renovations. (CL. Exs. 7, 16). The Claimant explained his mother in law hired B-Dry and he did not pay for the service. The Claimant also admitted that some of the work completed by Basement Masters was outside of the scope of the

Contract. (CL. Ex. 16). Neither the Respondent nor his representative were present to present testimony.

The Fund recommended that I find that the Respondent's work was unworkmanlike, inadequate, and incomplete, and that I recommend an award to the Claimant based on my interpretation of the scope of the Respondent's Contract versus the scope of Basement Masters' Contract to remedy the Respondent's work.

THE MERITS OF THIS CASE

The Unworkmanlike, Inadequate, and Incomplete Home Improvements

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. (Fund Ex. 5). The preponderance of the credible evidence establishes that the Respondent performed unworkmanlike, inadequate, and incomplete home improvements. The Claimant submitted into evidence the affidavit of Tom Hummer of Basement Masters, who has twenty years of experience in residential remodeling. Mr. Hummer attested the work he observed, "was not something consistent with a professional contractor/licensed professional" and there were "numerous electrical issues, plumbing issues, and interior (drywall, finishing) work ..." issues. (CL. Exs. 18, 19). The Claimant also included photographs which clearly displayed unworkmanlike, inadequate, and incomplete work performed by the Respondent. (CL. Exs. 8, 9, 10, 11, 12, 13, 14). These photographs include disconnected dryer lines, an uneven laundry room countertop, very large holes in the inside of the sink base cabinet for the plumbing pipes, inadequate installation of flooring in the laundry room, inadequate installation of drywall, uninstalled basement board, and unremoved trash and debris. *Id.*

Based on the clearly visible unworkmanlike, inadequate, and incomplete home improvements displayed in the photos presented by the Claimant, the affidavit of Mr. Hummer,

and the Springearth Services report, I find that the Claimant is eligible for compensation from the Fund.

The Claimant's Actual Loss

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 did not make payments to B-Dry, thus I will not consider the amount paid to B-Dry. He made payments to the Respondent, and also incurred costs paid over and above the Contract to have the Respondent's work remedied and completed by other licensed contractors. I do not find that all of the work performed by Basement Masters was within the scope of the original Contract. The work performed by Basement Masters under the scope of the Contract included framing, general electrical, drywall, carpentry, painting, demolition, old wiring

removal, permits, insulation, additional electrical cables, laundry room floor tile demolition, basement flooring,³ laundry room flooring, laundry room countertop repair, and laundry room sink cabinet repair. The total amount paid by the Claimant to Basement Masters for the scope of work covered under the Contract was \$37,484.00. (CL. Ex. 16). The Claimant also hired Bagster, a waste management company, to pick up the trash and debris the Respondent failed to remove and paid \$175.00.

The Claimant's actual loss is as follows:

Amount paid to Respondent	\$ 16,575.00
Amount necessary for other contractors to remedy the work	+ \$ 37,659.00
<u>TOTAL</u>	<u>\$ 54,234.00</u>
Contract Price	- \$ 16,575.00
Actual Loss	\$ 37,659.00

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 of \$37,659.00 exceeds the amount paid to the Respondent. Therefore, the Claimant's recovery is limited to \$16,575.00, the amount paid to the Respondent. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4). The Claimant is entitled to recover that amount.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$37,659.00 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 \$16,575.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2015); COMAR 09.08.03.03B(4).

³ The Claimant upgraded the flooring from epoxy to tiling, thus only the cost for the epoxy under the Contract was considered.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$16,575.00; 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;⁴ and

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

June 8, 2021
Date Decision Issued

Abena Y. Williams

Abena Y. Williams
Administrative Law Judge

AYW/at
#192525

⁴ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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***