

IN THE MATTER OF THE CLAIM	* BEFORE M. TERESA GARLAND,
OF BONITA WRIGHT,	* 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 BRIAN MADRID,	*
T/A MADRID CONSTRUCTION, LLC,	* OAH No.: LABOR-HIC-02-21-00660
RESPONDENT	* MHIC No.: 19 (90) 714

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
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STATEMENT OF THE CASE

On March 7, 2019, Bonita Wright (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 \$20,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Brian Madrid, trading as Madrid Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).²

¹ On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.
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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On December 29, 2020, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on April 7, 2021 via the Webex videoconferencing platform. Md. Code Ann., Bus. Reg. §§ 8-407(a), 8-312. Hope Miller Sachs, Assistant Attorney General, 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 exhibit on the Claimant's behalf:

Clmt. Ex. 1 - An unmarked, unnumbered packet of documents containing the following:

- Claimant's handwritten timeline, undated
- HomeBridge Financial Services Conflict of Interest Certification, November 29, 2017
- Correspondence from the Department to the Claimant, February 22, 2019
- Demand for Arbitration form completed by the Claimant, undated
- Correspondence from American Arbitration Associates to the Claimant and the Respondent, July 17, 2019
- Complaint Form, November 16, 2018
- HomeBridge Financial Services Contractor's Acknowledgement Consultant 203(k) Program, November 29, 2017
- Homeowner/Contractor Agreement, December 4, 2017
- Homeowner/Contractor 203K Certification, December 4, 2017
- Specification of Repairs (18 pages), December 1, 2017

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- Change Order, July 10, 2018
- Request for Acceptance of Change Order, July 10, 2018
- Email from Claimant to Todd Sporn, October 24, 2018
- Email from Todd Sporn to Claimant, October 24, 2018
- BGE Home Estimate, November 12, 2018
- Correspondence from the Department to the Respondent, January 24, 2019
- Correspondence from the Department's Board of Plumbing to the Claimant, January 2, 2019
- Correspondence from Ancona & Associates, Inc. to the Respondent, May 11, 2018
- Invoice, June 27, 2018
- Uniform Borrower Assistance Form, March 11, 2019

I admitted the following exhibit on the Respondent's behalf:

Resp. Ex. 1 - An unmarked, unnumbered packet of documents containing the following:

- Notice of Remote Hearing, January 14, 2021
- Hearing Order, December 21, 2020
- Email from John Horn, WSSC, to Robin Bailey, Department, January 7, 2019
- Correspondence from the Respondent to the Department, February 15, 2020
- Homeowner/Contractor Agreement, November 29, 2017³
- Homeowner/Contractor 203K Certification, November 29, 2017⁴
- HomeBridge Financial Services Conflict of Interest Certification, November 29, 2017
- Contractor Profile Report and Recap Subtotals, December 6, 2017
- Change Order, September 21, 2018
- Respondent's Bid/Detail of Repairs, December 1, 2017

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

Fund Ex. 1 - Notice of Remote Hearing, January 14, 2021; Hearing Order, December 21, 2020

Fund Ex. 2 - Respondent's Licensing History, undated

Fund Ex. 3 - Correspondence from the Department to the Respondent, March 18, 2019, with attached Home Improvement Claim form, March 1, 2019

Testimony

The Claimant testified and did not present other witnesses.

³ This is the same document the Claimant countersigned on December 4, 2017. The Claimant's signature does not appear on this document. Thus, I have cited the date the Respondent signed the document.

⁴ See footnote 3, above.

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The Respondent testified and did not present other witnesses.

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 87697.
2. The Claimant was the owner of a residential property in Upper Marlboro, Maryland (Property).
3. On or about November 29, 2017, the Claimant and the Respondent entered into a contract to complete kitchen and bathroom renovations, remove and replace the existing roof, remove carpeting and sand and finish hardwood flooring, furnish and install new granite countertops, clean all ducting and remove existing and replace all ceiling registers throughout the Property (Contract).
4. The Contract did not include a new HVAC system.
5. The Contract was funded by an FHA 203K loan. There was no information regarding the date the Claimant closed on the loan, but work was to have begun within thirty days of closing and completed within five months.
6. The scope of work to be performed by the Respondent was governed by a consultant/plan reviewer to the lender.
7. The original agreed-upon Contract price was \$68,055.00.
8. On or about July 9, 2018, the Claimant and the Respondent entered into a Change Order to have the Respondent repair faulty/damaged electric, re-run additional electric to code, repair broken and deteriorated water and wastewater pipe and re-run water and wastewater pipe as necessary to code. The cost of the Change Order was \$6,805.00.

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9. The additional cost of the Change Order brought the Contract to the maximum amount of the loan, \$77,410.50.⁵
10. There is no information as to when draw payments were made to the Respondent pursuant to the loan, but the Respondent has been paid the full Contract price.
11. All work performed by the Respondent pursuant to the Contract was inspected by the FHA lender and approved.
12. On a date uncertain in the fall of 2018, the Claimant experienced a lack of heat in the Property because of a failed HVAC system.
13. The Respondent's scope of work did not encompass the HVAC system, nor did any work he performed impact the HVAC system.
14. The Claimant is not entitled to compensation from the Fund.

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." Md. Code Ann., 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

⁵ The loan provided for a construction cost subtotal of \$68,055.00 and a contingency reserve of 10% of the subtotal, which was \$6,805.00.

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incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has not proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. There are no statutory impediments to the Claimant collecting from the Fund.

The Respondent did not perform unworkmanlike, inadequate, or incomplete home improvements. The Respondent performed the work in accordance with the Contract. The Claimant asserts that the Respondent cut a pipe, which caused her HVAC system to fail. In the winter of 2018, she had no heat and was using space heaters to heat her home. She said she incurred heating bills of over \$1,000.00 per month which, in turn, caused her to default on her mortgage. Fortunately, the Claimant was successful in modifying the terms of her mortgage. Unfortunately, the Claimant presented no evidence that the Respondent cut a pipe or, if he did, that the cut pipe was the proximate cause of her HVAC system failure. While I am sympathetic to the troubles the Claimant has experienced, I cannot find the Respondent is responsible for those troubles.

I thus find that the Claimant is not eligible for compensation from the Fund.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss of \$20,000.00 as a result of the Respondent’s acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

June 29, 2021
Date Decision Issued

M. Teresa Garland

M. Teresa Garland
Administrative Law Judge

MTG/dlm
#192853

STATE OF TEXAS

County of _____

Know all men by these presents, that _____

of the County of _____ State of Texas

do hereby certify that _____

is the true and correct copy of _____

as the same appears from the _____

PROPOSED ORDER

WHEREFORE, this 6th day of September, 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.

Wm Bruce

Quackenbush

Wm Bruce Quackenbush

Panel B

**MARYLAND HOME IMPROVEMENT
COMMISSION**

THE UNIVERSITY OF CHICAGO

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