IN THE MATTER OF THE CLAIM	*	**BEFORE EDWARD J. KELLEY,**
OF LEIA NEFT,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	**OAH No.: LABOR-HIC-02-22-06106**
FOR THE ALLEGED ACTS OR	*	**MHIC No.: 21 (75) 1115**
OMISSIONS OF JAMES BURTON,	*	
T/A REVELATIONS CONTRACTING,	*	
LLC,	*	
RESPONDENT	*	

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On September 24, 2021, Leia Neft (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 $12,320.00 for actual losses allegedly suffered as a result of a home improvement contract with James Burton, trading as Revelations Contracting, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 411 (2015).[1] On March

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

2, 2022, the MHIC issued a Hearing Order on the Claim. On March 17, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 16, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Code of Maryland Regulations (COMAR) 28.02.01.20B. The Claimant represented herself. Andrew Brouwer, Assistant Attorney General, Department, represented the Fund. The Respondent did not appear.

After waiting over 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. COMAR 28.02.01.23A. On March 29, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail and certified mail to the Respondent's address on record with the OAH, the MHIC, and the Motor Vehicle Administration (MVA).[2] Bus. Reg. § 8-312(d); COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for May 16, 2022, at 9:30 a.m., at the OAH in Hunt Valley, Maryland. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service did not return the Notice to the OAH. 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.

[2] The Respondent's address with the MVA was established by the Fund's Ex. 5.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); 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 offered by the Claimant:

Clmt. Ex. 1 - Contract between the Claimant and the Respondent, August 18, 2020

Clmt. Ex. 2 - Contract between the Claimant and the Respondent, September 27, 2020

Clmt. Ex. 3 - Letter from the Respondent to the Claimant, January 13, 2021

Clmt. Ex. 4 - Screenshots of text messages, various dates

Clmt. Ex. 5 - Photographs of project, various dates

Clmt. Ex. 6 - Payment details, various dates

Clmt. Ex. 7 - Contract Proposal, Quick Service Plumbing, Inc., May 3, 2021

Clmt. Ex. 8 - Complaint Form, May 10, 2021

I admitted the following exhibits offered by the Fund:

Fund Ex. 1: Hearing Order, March 2, 2022

Fund Ex. 2: Notice of Hearing, March 29, 2022

Fund Ex. 3: MHIC Claim Form and Letter from Joseph Tunney, Chairman, MHIC, September 24, 2021

Fund Ex. 4: The Respondent's licensing history, April 26, 2022

Fund Ex. 5: Affidavit of Thomas Marr IV, April 29, 2022

The Respondent did not appear at the hearing or offer any exhibits for admission.

Testimony

The Claimant testified and did not present other witnesses.

The Fund did not present any witnesses.

The Respondent did not appear at the hearing.

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 01-114363.

2. In August 2020, the Claimant and the Respondent entered into a labor only contract for the completion of home improvements at the Claimant's residence (Contract).

3. The Claimant and the Respondent agreed that the work would begin on or about August 13, 2020, and would be completed within three months.

4. The Contract specifically identified the tasks to be completed by the Respondent and the cost for each task.

5. The original agreed-upon Contract price was $4,200.00.

6. On September 9, 2020, the Claimant paid the Respondent $1,697.50.

7. In September 2020, the Claimant and the Respondent agreed to add a roofing project to the Contract. Specifically, the Claimant agreed to pay the Respondent an additional $4,800.00 to add a spray rubber overlay to the Claimant's roof, increasing the Contract price to $9,000.00.

8. On September 22, 2020, the Claimant paid the Respondent $2,400.00.

9. On October 2, 2020, the Claimant paid the Respondent $1,500.00.

10. Between August and November 2020, the Respondent made progress toward completing the Contract, focusing primarily on an upstairs bathroom and the roof.

11. In October 2020, the Respondent stopped coming to the residence consistently and offered a series of excuses for his absences, such as illness, unavailability, and other conflicts.

12. In December 2020, the Respondent informed the Claimant that the roof was completed.

13. On December 9, 2020, the Claimant paid the Respondent $2,000.00.

14. In December 2020, significant aspects of the project remained unfinished, but the Respondent only came to the residence once per week.

15. In January 2021, the Claimant met with the Respondent and demanded that the project be completed no later than the end of January, and the Respondent agreed to this demand.

16. In January 2021, the Respondent informed the Claimant that he had installed the bathroom tub in the upstairs bathroom and that all that needed to be finished in the bathroom was tiling.

17. The Respondent did not complete the project by the end of January 2021 as agreed.

18. The last day the Respondent came to the residence was February 21, 2021.

19. In March 2021, the Claimant terminated the Contract and demanded a refund from the Respondent, which he refused based on the lack of resources.

20. In April 2021, the Claimant hired another contractor to finish the tile work in the bathroom.

21. On April 27, 2021, the Claimant used the bathtub in the upstairs bathroom for the first time. Because the Respondent did not properly install the bathtub and connect the overflow valve, a flood occurred that went through the ceiling into the Claimant's living room.

22. In May 2021, the Claimant obtained a quote from Quick Service Plumbing, Inc., for $7,820.00 to repair the bathroom and properly reinstall the tub to the Contract's specifications.

23. In May 2021, the Claimant notified the Respondent of the flooding that resulted from the improperly installed bathtub, and the Respondent did not respond.

DISCUSSION

LEGAL FRAMEWORK

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 (2021); 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).

Certain claimants are excluded from recovering from the Fund altogether. Therefore, 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. Bus. Reg. §§ 8-405(c), (d), (f), and (g), 8-408(b)(1); Bus. Reg. § 8-101(g)(3)(i) (Supp. 2021).

If not excluded on these grounds, 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, 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.

ANALYSIS

The undisputed evidence shows that the Respondent performed an inadequate and incomplete home improvement by failing to timely and competently complete the project as required by the Contract. The Claimant testified credibly about all facets of the project, and her unrefuted testimony was fortified by exhibits, which included pictures demonstrating the status of the Respondent's incomplete and inadequate work months after it was supposed to be completed. The Claimant fulfilled her contractual obligation by paying the Respondent the amounts due on the Contract, and she was more than patient as the project was delayed well beyond a reasonable completion date.

The Respondent did not fulfill his obligation to perform an adequate and complete home improvement; indeed, the Respondent clearly took advantage of the Claimant's patience and goodwill and never delivered on his part of the Contract despite accepting $7,597.50 in payments. He proffered dubious excuses for his delayed performance and misrepresented to the Claimant what projects were completed. His unworkmanlike installation of the bathtub resulted

in significant damage to the Claimant's residence. The Fund agreed that the Respondent failed to meet the standards of a licensed home improvement contractor and recommended an award. I thus 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.

The Respondent performed some work under the Contract, and the Claimant intends to retain 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).

Here, the Claimant proved she paid the Respondent $7,597.50. The Claimant then obtained a reasonable estimate to remedy and complete the project for $7,820.00. When these figures are added together, the total is $15,417.50. Based on the above-referenced formula, the

Claimant's actual loss is the $15,417.50 minus the original Contract price, $9,000.00, which comes to $6,417.50.[3]

Effective July 1, 2022, a claimant's recovery is capped at $30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.[4] In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than $30,000.00. Therefore, the Claimant is entitled to recover her actual loss of $6,417.50.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $6,417.50. 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 $6,417.50 from the Fund. 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 $6,417.50; 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

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[3] The Fund recommended that the Claimant receive the amount paid to the Respondent, $7,597.50, but I find that under the applicable formula, the proper award is $6,417.50.

[4] H.B. 917, 2022 Leg., 444th Sess. (Md. 2022) (to be codified in Section 8-405(e)(1) of the Business Regulation Article). *See also* Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4), D(2)(a). The increased cap is applicable to any claim on or after July 1, 2022, regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. *See Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;[5] and

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

August 5, 2022
Date Decision Issued

Edward J. Kelley
Administrative Law Judge

EJK/da
#200064

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

PROPOSED ORDER

WHEREFORE, this 16th day of September, 2022, 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.

Chandler Louden

Chandler Louden
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION