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| <p>IN THE MATTER OF THE CLAIM</p> <p>OF BLAIR DAVIS-CARTER,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF BRYAN JONES,</p> <p>T/A BOJ & SON'S CONSTRUCTION</p> <p>LLC,</p> <p>RESPONDENT</p> | <p>* BEFORE MARY PEZZULLA,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-22-19562</p> <p>* MHIC No.: 22 (75) 1046</p> <p>*</p> |
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PROPOSED DECISION

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STATEMENT OF THE CASE

On May 25, 2022, Blair Davis-Carter (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 \$10,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Bryan Jones, trading as BOJ & Son's Construction LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp.

2022).¹ On July 28, 2022, the MHIC issued a Hearing Order on the Claim. On August 9, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On December 13, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Jessica Kaufman, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented.

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 August 26, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States Certified Mail as well as by regular mail delivery to the Respondent's addresses on record with the OAH. COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for December 13, 2022, at 9:30 a.m., at the OAH in Hunt Valley, Maryland. COMAR 09.08.03.03A(2). The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The Certified Mail was returned to the OAH on October 21, 2022 as "unclaimed." However, the Notice that was sent via regular mail to the Respondent was not returned by the United States Postal Service. 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 or on 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.

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

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; 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, signed October 8, 2021
- Clmt. Ex. 2 - Quickbooks payment receipt, October 9, 2021; Cash App receipt, October 9, 2021; Cash App receipt, October 9, 2021
- Clmt. Ex. 3 - Email exchange between the Claimant and the Respondent, December 12, 2021
- Clmt. Ex. 4 - Text messages between the Claimant and the Respondent, various dates
- Clmt. Ex. 5 - Email from the Respondent to the Claimant, January 5, 2022
- Clmt. Ex. 6 - Quickbooks payment receipt, October 28, 2021

The Respondent did not appear and did not offer any exhibits.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, August 26, 2022
- Fund Ex. 2 - Transmittal from the MHIC to the OAH with attached Hearing Order, July 28, 2022
- Fund Ex. 3 - Letter from the MHIC documenting the Respondent's licensing history, May 9, 2022
- Fund Ex. 4 - Letter from the MHIC to the Respondent, May 26, 2022 with attached Home Improvement Claim Form, May 23, 2022

Testimony

The Claimant testified and did not present other witnesses.

The Respondent was not present and did not participate at the hearing.

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 numbers 01-118128 and 05-137602.

2. On October 8, 2021, the Claimant and the Respondent entered into a contract to remodel the Respondent's basement (Contract). The Contract included installing a new waterproofing system in the basement, designing, framing, and building new rooms in the basement, including a bedroom, common area, and bathroom, installing new electrical and plumbing infrastructure, priming and painting the basement, and installing vinyl flooring, baseboards, and trim.

3. The original agreed-upon Contract price was \$28,000.00.

4. On October 9, 2021, the Claimant made three payments to the Respondent in the amounts of \$5,000.00, \$2,500.00, and \$2,500.00, totaling \$10,000.00 as a deposit on the Contract.

5. On October 28, 2021, the Claimant paid the Respondent \$10,000.00 for the installation of the waterproofing system, which had been completed. Per the Contract, the cost of the waterproofing was \$10,000.00.

6. After the waterproofing had been completed, the Respondent was supposed to return to the property to continue the project in late November or early December 2021.

7. No additional work was completed on the project.

8. On or about December 22, 2021, the Respondent met with the Claimant at the property to discuss the project. No work continued on the project.
9. On December 29, 2021, the Claimant asked the Respondent for a refund of his deposit.
10. In an email dated January 5, 2022, the Respondent agreed to refund the Claimant his \$10,000.00 deposit.
11. The Respondent did not refund the Claimant his \$10,000.00 deposit.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; 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 Cnty. 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) (Supp. 2022); *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.

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimant’s recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimant did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022). The Claimant resides in the home that is the subject of the claim or does not own more

than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2022). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022). The Claimant is not a relative, employee, officer, or partner of the Respondent, and is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2022).

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022). The Claimant testified that he was looking forward to having his basement remodeled and utilizing the open space. The Claimant submitted text messages between himself and the Respondent that show that the Claimant was attempting to keep the project moving forward, asked for a copy of the final blue print of the plans for the basement, and set up multiple meetings with the Respondent that the Respondent did not attend.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Claimant presented uncontroverted testimony and evidence showing that the Respondent performed an incomplete home improvement on his home located in Baltimore, Maryland. The Claimant paid the Respondent an initial deposit of \$10,000.00 and then another payment of \$10,000.00 for the waterproofing of the basement. The Claimant testified that the Respondent used a subcontractor for the waterproofing, which was completed in a workmanlike manner. However, after the waterproofing was completed, no additional work was completed. I thus find that the Claimant is eligible for compensation from the Fund because the Respondent did not complete home improvement work pursuant to the Contract.

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) (Supp. 2022); 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 is not seeking 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 is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor." COMAR 09.08.03.03B(3)(b).

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| Amount the Claimant paid to the Respondent: | \$ 20,000.00 |
| Value of materials or services provided by the Respondent: | <u>- \$ 10,000.00</u> |
| Actual loss: | \$ 10,000.00 |

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.² Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(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 their actual loss of \$10,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$10,000.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3)(b). I further conclude that the Claimant is entitled to recover that amount from the Fund. COMAR 09.08.03.03B(4).

² On or after July 1, 2022, the increased cap is applicable to any claim 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").

RECOMMENDED ORDER


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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$10,000.00; 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;³ and

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

February 15, 2023
Date Decision Issued



Mary Pezzulla
Administrative Law Judge

MP/ds
#202664

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

PROPOSED ORDER

WHEREFORE, this 24th day of March, 2023, 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.

J Jean White

I Jean White

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***