

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF NORA KEITH,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF BRYAN JONES, T/A</b></p> <p><b>BOJ &amp; SON'S CONTRUCTION, LLC</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE SUN E. CHOI,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>* OAH No.: LABOR-HIC-02-22-19560</b></p> <p><b>* MHIC No.: 22(75)1139</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p>
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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On July 1, 2022, Nora Keith (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 & Sons Construction, LLC. Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).<sup>1</sup> On July

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

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 12, 2022, I held an in-person hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Eric London, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent failed to appear for the hearing.

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 and first class mail to the Respondent's address on record with the OAH. COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for December 12, 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 Notice sent by certified mail was returned to the OAH with the notation "unclaimed." The second Notice by first class mail was not returned. The Respondent did not notify the OAH of any change of mailing address, email address, or phone number. 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. 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 for a total kitchen transformation, March 31, 2021
- Clmt. Ex. 2 - Claimant's check payment to the Respondent for \$10,000.00, front and back, March 31, 2021
- Clmt. Ex. 3 - Claimant's bank statement, showing the \$10,000.00 check payment cashed, April 1, 2021
- Clmt. Ex. 4 - Invoice from the Claimant's business to the Respondent for \$10,000.00, January 4, 2022
- Clmt. Ex. 5a - Photograph of Claimant's kitchen, undated
- Clmt. Ex. 5b - Photograph of Claimant's kitchen, undated
- Clmt. Ex. 6 - Text messages between the Claimant and the Respondent, various dates

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, August 26, 2022
- Fund Ex. 2 - MHIC's License History for the Respondent, November 19, 2022
- Fund Ex. 3 - Affidavit of David Finneran, August 10, 2022
- Fund Ex. 4 - Hearing Order, July 28, 2022
- Fund Ex. 5 - Home Improvement Claim Form, June 6, 2022
- Fund Ex. 6 - MHIC letter to the Respondent notifying him of the Claimant's Claim, July 7, 2022

Testimony

The Claimant testified and presented the testimony of Jonathan Keith, her spouse.

The Fund did not present the testimony of any witness.

The Respondent failed to appear and did not provide testimony.

**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 #01-118128.
2. On March 31, 2022, the Claimant and the Respondent entered into a contract for a complete "Kitchen Transformation" (Contract). (Clmt. Ex. 1).
3. The original agreed-upon Contract price was \$30,000.00.
4. On March 31, 2021, the Claimant paid the Respondent \$10,000.00 (payment).
5. The Respondent cashed the check on April 1, 2022.
6. Work on the Contract was scheduled to begin in June 2021.
7. Due to an unexpected displacement of Mr. Keith's two children, the Claimant delayed the start of the work on the Contract to consider adding two rooms to the basement to accommodate the two children in lieu of the kitchen transformation.
8. The Claimant ultimately cancelled the Contract as her situation continued to be uncertain.
9. The Respondent agreed to refund the payment of \$10,000.00 to the Claimant, after the Contract was canceled.
10. Despite the Claimant's repeated requests and the Respondent's acknowledgment to pay back the payment, the Respondent did not refund any portion of the payment to the Claimant.

11. The Respondent did not perform any work under the Contract and did not purchase any materials pursuant to the Contract.

### **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. 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 the Respondent entered into the Contract with the Claimant. The Respondent was initially licensed in 2019 having a license number #01-118128. On October 25, 2022, the Respondent license was suspended due to failure to reimburse the Fund for an MHIC payout on an unrelated claim.

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.<sup>2</sup> 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).

On March 31, 2021, the Claimant entered into a Contract with the Respondent for a total kitchen transformation and renovation. (Clmt. Ex. 1). At that time, the Claimant paid the Respondent \$10,000.00 by a check from her personal bank account. (Clmt. Ex. 2). The following day, on April 1, 2021, the Respondent cashed the check payment for \$10,000.00. (Clmt. Ex. 3).

The Contract work was scheduled to begin in June 2021. However, the Claimant had to delay the work due to an unforeseen circumstance concerning her husband's two children who were displaced due to a fire at their home. The Claimant discussed with the Respondent the potential work involved adding two new rooms in their residence, which became a priority over the kitchen transformation and renovation.

Sometime in August 2021, due to the continued uncertainty of whether to add the two new rooms or to proceed with the kitchen transformation, the Claimant discussed with the Respondent the cancellation of the Contract. The Claimant and the Respondent agreed to cancel the Contract. The Respondent agreed to refund the check payment of \$10,000.00 since no work was performed and no materials were purchased. (Clmt. Ex. 5a and 5b).

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<sup>2</sup> The Claimant testified that there is a criminal case against the Respondent that involves approximately twenty-one homeowners or victims, including herself.

Despite the Claimant's repeated texts to the Respondent requesting the refund, the Respondent never paid, although he acknowledged that he needed to pay the refund. (Clmt. Ex. 6). In the text messages to the Respondent, the Claimant was courteous, offered a payment plan, and was patient for many months. (*Id.*). Mr. Keith also testified corroborating the Claimant's testimony that payment was made, no work was performed, and no materials were purchased on their behalf. As of the date of this hearing, the Respondent did not return the \$10,000.00 check payment or any portion of the payment. Finally, Mr. London recommended that the Claimant should be awarded \$10,000.00 from the Fund based on the circumstances. 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) (Supp. 2022); COMAR 09.08.03.03B(1). The 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 failed to return a \$10,000.00 payment after he agreed to cancel the Contract with the Claimant. No work began, and no materials were purchased. The situation is most akin to the Respondent abandoning the Contract. Accordingly, the following formula appropriately measures the Claimant's actual loss: "If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract." COMAR 09.08.03.03B(3)(a).

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.<sup>3</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is \$10,000.00, the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover her 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)(2). I further conclude that the Claimant is entitled to recover \$10,000.00 from the Fund.

### **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

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<sup>3</sup> 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").



under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>4</sup> and

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

February 10, 2023  
Date Decision Issued

*Sun E. Choi*  
Sun E. Choi  
Administrative Law Judge

SEC/ds  
#202411

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<sup>4</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20. The Respondent's MHIC License was suspended as of October 25, 2021, for failure to reimburse the Fund for an MHIC payout in an unrelated claim.

**PROPOSED ORDER**

***WHEREFORE, this 24<sup>th</sup> 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***

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***I Jean White***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***