

IN THE MATTER OF THE CLAIM	* BEFORE ROBERT B. LEVIN,
OF JERALD WICKS, JR.,	* 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 WILLIAM CULLER,	*
T/A LANDMARK CONSTRUCTION,	* OAH No.: LABOR-HIC-02-23-13706
RESPONDENT	* MHIC No.: 22 (75) 1216
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**PROPOSED DECISION**

STATEMENT OF THE CASE  
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PROPOSED FINDINGS OF FACT  
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RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On October 18, 2022, Jerald Wicks, Jr. (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$26,493.00 for actual losses allegedly suffered as a result of a home improvement contract with William Culler, trading as Landmark Construction (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).<sup>2</sup> On May 10, 2023, the MHIC issued a Hearing

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<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).

<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

Order on the Claim. On May 22, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On July 31, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented.

After waiting more than twenty 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 June 8, 2023, 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. COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for July 31, 2023, at 9:30 a.m., at the OAH, 11101 Gilroy Road, 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 United States Postal Service did not return the Notice to the OAH.<sup>3</sup> 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. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; COMAR 28.02.01.

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<sup>3</sup> The certified mail receipt (green card) retained in the case file for the Notice that the OAH mailed to the Respondent's address at Baltimore National Pike in Ellicott City, Maryland was signed on June 16, 2023 as "received by La-Shawn."

## 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 - Mizan General Construction proposal, August 10, 2022
- Clmt. Ex. 2 - Complaint Form, received by the MHIC, May 3, 2022
- Clmt. Ex. 3 - Email chain among the Claimant, Mykell Robinson (the Claimant's spouse), and Landmark Construction, March 12, 2021, with attached Contract for Residential Premises, March 10, 2021
- Clmt. Ex. 4 - Text messages, various dates<sup>4</sup>
- Clmt. Ex. 5 - Emails between the Claimant and the Respondent, May 25, 2021- June 28, 2021
- Clmt. Ex. 6 - Revised schedule for Basement Rehab, start date: May 24, 2021; completion date: June 4, 2021
- Clmt. Ex. 7 - Email chain among the Claimant, Ms. Robinson, and the Respondent, October 19, 2021- November 30, 2021
- Clmt. Ex. 8 - Email chain among the Claimant, the Respondent and the MHIC, December 17, 2021
- Clmt. Ex. 9 (a) – 9 (i), photographs undated

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<sup>4</sup> These text messages are between the Respondent and either the Claimant or his spouse, but do not identify whether they were from the Claimant or his spouse.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, June 8, 2023, with attached Hearing Order, May 10, 2023

Fund Ex. 2 - MHIC Licensing information printout for the Respondent, printed June 28, 2023

Fund Ex. 3 - Correspondence from Joseph Tunney, Chairman, MHIC, to the Respondent, October 27, 2022, with attached Home Improvement Claim Form, September 9, 2022

Testimony

The Claimant testified and did not present other witnesses.

The Respondent did not appear and did not present any witness testimony.

The Fund did not present any witness 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 01-116571.

2. On March 10, 2021, the Claimant and the Respondent entered into a contract (Contract) for a home improvement project to start on April 1, 2021, and be completed in twenty working days, not including weekends.

3. The scope of the project was to:

- convert the Claimant's living room into a study
- finish one room in the basement and convert it to a gym
- create a play area in the unfinished area of the basement
- create an 84" wet bar,
- install a kitchen back-splash, and
- install cabinets in the laundry room.

4. Prior to entering into the Contract, the Claimant or his spouse provided photographs and mock-ups from the Internet or other sources that showed how they wanted the

project to appear. The Respondent agreed to perform the work in accordance with the photographs and mock-ups.

5. The agreed-upon Contract price was \$23,000, payable in four \$5,750.00 installments.

6. The first payment was due upon execution of the Contract. The second payment was due when the framing, plumbing, electrical, and HVAC were completed. The third payment was due when the drywall was finished and painted. The fourth payment was due upon completion.

7. The Claimant made the first three payments under the Contract, for a total payment of \$17,250.00

8. The Respondent started work during the last week of March 2021. He or his workers put up drywall inside the house including the family room, and brought in cabinetry for the family room and the wet bar, but then stopped coming to the Claimant's house.

9. The Respondent provided a revised schedule with a new completion of June 4, 2021.

10. The project was not completed by June 4, 2021.

11. The Respondent's work was unworkmanlike, inadequate, and incomplete as a result of the following deficiencies:

- incorrect cabinets were installed in the laundry room
- the work crew left items in the house
- light fixtures were left hanging from wires
- the wet bar area was left in disarray
- the required granite countertop, wet bar cabinet, and wine rack for the wet bar were not installed

- the backsplash was not installed, and
- a basement cabinet door was improperly installed and broke.

12. The Claimant obtained an estimate from Mizan General Construction (Mizan), an MHIC-licensed contractor, to remove the incorrectly installed cabinetry and otherwise correct and complete the project as contemplated under the Contract for \$32,243.00. This amount includes \$1,089.00 for patio work that was not included in the Contract, and is therefore not part of the Respondent's contractual obligation to the Claimant. Deducting the portion of Mizan's estimate attributed to the patio, Mizan's estimate to correct and complete the project is \$31,154.00 (\$32,243.00 minus \$1,089.00 equals \$31,154.00).

13. The Respondent ducked calls from the Claimant or his spouse. When reached, he gave excuses such as that his car broke down or he thought the work had been completed.

14. The Respondent never tried to collect the fourth payment under the Contract.

15. The Respondent refused the Claimant's request for a refund.

### 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 and performed work at the Claimant’s home. 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, as there is no evidence that the Respondent ever made such efforts. *Id.* § 8-405(d) (Supp. 2022).

The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. As the Fund noted, the Claimant proved through his testimony, photographs, and documentary evidence that the work was not only incomplete, but that the work he performed was unworkmanlike and inadequate, in that the Respondent failed to follow the photographs and mock-ups to which the contracting parties agreed the work would conform. As the Respondent did not appear, the Claimant’s evidence of the Respondent’s incomplete, inadequate, and unworkmanlike work was undisputed.

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). 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 another contractor (Mizan) 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 application of this formula is straightforward. The amount the Claimant paid the Respondent, \$17,250.00, plus the amount proposed by Mizan to correct and complete the project, \$31,154.00 (which does *not* include the \$1,089.00 Mizan allocated for the patio), minus the original Contract price, \$23,000.00, equals \$25,404.00, the amount of the Claimant's actual loss.

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and (as applicable here) a claimant may not recover more than the



amount paid to the contractor against whom the claim is filed.<sup>5</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss, \$25,404.00, exceeds the amount (\$17,250.00) he paid to the Respondent. Therefore, the Claimant's recovery is limited to \$17,250.00, the amount paid to the Respondent.

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$17,250.00 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)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund.

### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$17,250.00; 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;<sup>6</sup> and

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<sup>5</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").

<sup>6</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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

September 20, 2023  
Date Decision Issued

*Robert B. Levin*  

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Robert B. Levin  
Administrative Law Judge

RBL/at  
#207197

**PROPOSED ORDER**

***WHEREFORE, this 25<sup>th</sup> day of October, 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.***

***Joseph Tunney***

***Joseph Tunney***

***Chairman***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***