

**IN THE MATTER OF THE CLAIM OF * MARYLAND HOME
DORINDA BROWN * IMPROVEMENT COMMISSION
AGAINST THE MARYLAND HOME *
IMPROVEMENT GUARANTY FUND * MHIC CASE NO. 22(75)1297
FOR THE ACTS OR OMISSIONS OF * OAH CASE NO. LABOR-HIC-
OLIVER OJIH AND CONTINENTAL * 02-23-11530
BUILDING ENTERPRISES, LLC ***

* * * * *

FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on July 20, 2023. Following the evidentiary hearing, the ALJ issued a Proposed Decision on September 20, 2023, concluding that the homeowner, Dorinda Brown (“Claimant”) failed to prove that she suffered an actual loss as a result of the acts or omissions of Oliver Ojih and Continental Building Enterprises, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p. 11. In a Proposed Order dated October 25, 2023, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to deny an award from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On December 7, 2023, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant and Contractor participated without counsel. Assistant Attorney General Hope Sachs appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Claimant’s exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. Therefore, the Panel’s review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, and the exhibits offered as evidence at the OAH hearing. COMAR

09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for structural repairs and the installation of a cement floor at the Claimant's home. The ALJ found that the Contractor's performance under the contract was incomplete, but held that the Claimant was not entitled to an award because she failed to prove the amount of her actual loss because she did not present evidence of the value of the labor and materials provided by the Contractor and did not present evidence of the cost she would incur to complete the contracted project. *ALJ's Proposed Decision* pp. 10-11.

On exception, the Claimant argued that the ALJ erred in denying her an award because she provided her only copy of an estimate from another contractor for the completion of her project to MHIC Investigator Thomas Marr, and therefore was unable to present the estimate during the OAH hearing. The Commission finds no error. As the ALJ noted, the Commission's hearing order expressly advised her that she should bring printed copies of all photographs and documents she wished to have the ALJ consider, even if she already submitted them to the Commission. The Commission issued the hearing notice on April 10, 2023, and the OAH hearing occurred on July 20, 2023, so the Claimant had ample time to obtain a copy of the completion estimate from Mr. Marr so she could offer it as evidence. Because she failed to do so, the estimate is not part of the record of this proceeding, and the Commission concludes that the Claimant is not entitled to an award from the Guaranty Fund because she failed to prove the amount of her actual loss.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 7th day of March 2024, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;

- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AFFIRMED**;
- D. That the Claimant's claim is **DENIED**;
- E. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- F. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Joseph Tunney

**Chairperson –Panel
Maryland Home Improvement
Commission**

<p>IN THE MATTER OF THE CLAIM</p> <p>OF DORINDA BROWN,</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 OLIVER OJIH,</p> <p>T/A CONTINENTAL BUILDING</p> <p>ENTERPRISES, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE DENISE O. SHAFER,</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-02-23-11530</p> <p>* MHIC No.: 22 (75) 1297</p> <p>*</p>
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PROPOSED DECISION

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

STATEMENT OF THE CASE

On December 5, 2022, Dorinda Brown (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for \$11,002.10 reimbursement for actual losses allegedly suffered as a result of a home improvement contract with Oliver Ojih, trading as Continental Building Enterprises LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).² On April 10, 2023, the MHIC issued a

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).
² All references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

Hearing Order on the Claim. On April 20, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On July 20, 2023, I held a remote hearing by video as scheduled. Bus. Reg. §§ 8-407(a), 8-312; COMAR 28.02.01.20B(1)(b). Ernie Dominguez, Assistant Attorney General, Department, represented the Fund. The Claimant and the Respondent were self-represented.

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 due to 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 Copy of check to Respondent in the amount of \$1,000.00, April 15, 2022
- Clmt. Ex. 2 Copy of check to Respondent in the amount of \$653.00, April 29, 2022
- Clmt. Ex. 3 Copy of check to Respondent in the amount of \$3,500.00, March 23, 2022
- Clmt. Ex. 4 Copy of check to Respondent in the amount of \$5,000.00, March 3, 2022
- Clmt. Ex. 5 Copy of check to Respondent in the amount of \$10,076.50, November 23, 2021
- Clmt. Ex. 6 Contract, October 5, 2021
- Clmt. Ex. 7 Contract, March 2, 2022
- Clmt. Ex. 8 Denial letter to Claimant from SECU, March 3, 2022

Clmt. Ex. 9 Three photographs of Claimant's basement

Clmt. Ex. 10 Deed for the Claimant's home

The Respondent submitted a binder of documents and photographs, which I admitted into evidence:

Resp. Ex. A Complaint filed by Claimant, November 29, 2022

Resp. Ex. B Response to the complaint, December 22, 2022, updated July 15, 2023, with the following attachments:

Resp. Ex. 1 Seventy-one photographs of the Claimant's home at various stages of construction, undated

Resp. Ex. 2 Construction Contract Agreement (Amendment), March 3, 2022

Resp. Ex. 3 Respondent's HIC licensing information, April 19, 2022

Resp. Ex. 4 Respondent's Certificate of Liability Insurance, June 3, 2021

Resp. Ex. 5 Building Permit and Inspection Card, December 8, 2021

Resp. Ex. 6 Letter from Respondent to Claimant, June 10, 2022, with attached emails

Resp. Ex. 7 Respondent's estimate from work at Claimant's home, various dates

Resp. Ex. 8 Invoice, July 15, 2023

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 Notice of Remote Hearing, May 19, 2023

Fund Ex. 2 Hearing Order, April 10, 2023

Fund Ex. 3 Home Improvement Claim Form, November 29, 2022

Fund Ex. 4 Respondent's MHIC licensing history, July 14, 2023

Testimony

The Claimant testified and did not present other witnesses. The Respondent testified and did not present other witnesses. The Fund presented no 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 01-107865.

2. On or about October 5, 2021, the Claimant and the Respondent entered into a home improvement contract to repair the basement of the Claimant's home (Contract), which was severely damaged.

3. The scope of work included labor and materials to 1) install two temporal walls; 2) install steel I-beam; 3) basement concrete flooring; and 4) first-floor frame repair.

4. The original agreed-upon Contract price was \$20,153.00. At the time of the Contract, the Respondent discussed with the Claimant that the repairs needed were more extensive and that the full repair would cost twice as much. The Respondent had worked for the Claimant before and wanted to help her. They negotiated the scope of the work and the cost to come to a price the Claimant could afford.

5. The Respondent, who contracted COVID and was involved in a lengthy divorce proceeding, did not start the job in October or November.

6. In December of 2021, the Respondent engaged a structural consultant who produced a plan for shoring up the house and repairing the damage. The Claimant was present during the walk-through and the engineer and the Respondent advised her that the cost to complete the entire repair would exceed the contract price.

7. The Respondent submitted the plan to the Department of Housing and Community Development, which was approved. The Respondent began work in December.

8. On November 23, 2021, the Claimant paid the Respondent \$10,076.50. On March 3, 2022, the Claimant paid the Respondent \$5,000.00. On March 23, 2022,

the Claimant paid the Respondent \$3,500.00. On April 15, 2022, the Claimant paid the Respondent \$1,000.00. On April 29, 2022, the Claimant paid the Respondent \$653.00. In total, the Claimant paid the Respondent \$20,229.50 for the work performed.³

9. After starting work, the Respondent discovered that the existing joist had significant termite damage and could not support the new steel beam. The Respondent advised the Claimant of the problem and replaced fifteen joists in order to shore up the house. This work was not part of the Contract but was necessary for the agreed-upon work to move forward. After buying and replacing the joists, the Respondent had used up all of the material expenses.

10. The Respondent told the Claimant that the Contract price did not cover the cost associated with replacing the rotten joists. Aware that the Claimant could not afford to pay any more, the Respondent continued to work on the project without asking for additional funds.

11. After the Respondent replaced the joists and began to sister them, he discovered that the top plate was also rotten and that the wood beam was sitting directly on cracked concrete. This development required significantly more materials and the Respondent requested an additional \$5,400.00 to address the rotted wood and complete the job.

12. On March 3, 2022, the parties entered into an amended contract to complete the temporal wall for \$5,400.00.

13. On or about March 5, 2022, the Claimant's bank denied her request for a \$5,400.00 loan.

14. As the Claimant was unable to secure additional funding, the Respondent offered to "swap out" the concrete floor called for in the original contract to continue to work to support the house. No written change order was executed to that effect.

³ The Claimant was unable to explain why the payments to the Respondent exceeded the Contract price.

15. The Respondent continued to work to stabilize the home. When doing so, he discovered that the central beam had inappropriately overlapping joists with wide gaps where termites had destroyed the beam. This fix would require forty additional joists and a twenty-foot beam to address the issue. The Respondent advised the Claimant that this repair would cost in excess of \$7,000.00 but that he was willing to do it if she would buy \$2,500.00 worth of materials.

16. The Claimant declined and advised the Respondent that she would sue him if he did not finish the work.

17. The Respondent again offered to switch the estimated cost of the first-floor repair and the concrete floor resurfacing (which did not pose a safety hazard) to cover the cost for the structural repairs (which did pose a safety hazard). The Claimant did not agree to this change.

18. The Claimant has not allowed the Respondent to return to her home to complete the repairs or to retrieve his tools and equipment.

19. The record contains no estimate from another contractor about the cost to complete the work.

DISCUSSION

Applicable Law

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.

Burden of Proof

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. *Id.* § 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).

Parties' Positions

The Claimant argued that the Respondent performed an incomplete home improvement by failing to properly complete the work under the Contract, including installing the steel beam and completing the temporal wall. The Claimant asserted that the Respondent was taking advantage of her and never advised her of the potential for additional costs. The Claimant stated that she did not know she was signing a contract on March 3, 2022, and she would not have agreed to pay the additional \$5,400.00 if she had known that her bank would fail to give her a loan. The Claimant asserted that she had another contractor come in to give her an estimate, but she did not submit that estimate at the hearing.⁴

The Respondent argued that he spent well in excess of the amount of the Contract trying to finish the job. He spent his own money buying supplies. He pointed to before and after photographs showing the extensive and unforeseen termite damage throughout the frame of the home. He stated that he wanted to work with the Claimant within her budget and was willing to do the work if she would either secure more funds or agree to switch out the other repairs. He was frustrated with her lack of understanding about the extent of the damage and the safety concerns it presented.

⁴ The Claimant asserted that she gave the estimate to the MHIC. I note that the MHIC hearing order specifically advises: “IMPORTANT . . . the Claimant and the Contractor should bring with them to the hearing . . . all documents . . . and photographs they wish to have the Administrative Law Judge consider, even if they have already submitted such documents and photographs to the Home Improvement Commission.” (Fund Ex. 2)

The Fund argued that the Claimant failed to meet her burden to demonstrate that she sustained an actual loss as a result of an act or omission by the Respondent.

Analysis

For the reasons that follow, I conclude that the Claimant has not proven eligibility for compensation from the Fund.

The evidence establishes that the Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. The Fund presented the Respondent's license information at the time of the Contract, reflecting an issued date of April 2014 and an expiration date of April 2024.

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 and 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).

It is undisputed that the work agreed upon in the October 2021 Contract remains unfinished. The Respondent began the work but uncovered significant, unforeseen problems with the structure of the home. In an effort to address the safety concerns caused by the significant termite damage, the Respondent began additional work to shore up the home so that he could begin the actual work. The Respondent testified credibly that he advised the Claimant

and her son of the problems at every stage. I found his testimony credible because the Respondent documented, through detailed photographs, each stage of the project and described each instance where one unseen issue being addressed led to another. The photographs tell a compelling story – the Claimant’s home was all but destroyed by termites and decay, and it was impossible to complete the agreed-upon repairs safely unless the structural defects were addressed. The Respondent completed some of the structural repairs but continued to discover more. The Claimant was aware of his concerns. On March 3, 2022, she agreed to furnish an additional \$5,400.00 to allow the Respondent to purchase the materials needed. Unfortunately, the loan for this amount was not forthcoming.

At that point, the Respondent was still trying to assist and offered to complete the work at no additional cost if the Claimant was willing to forego having the concrete floor repair and/or the first-floor framing repair. The Claimant declined this offer and work did not continue.

While the Claimant has established that the work is incomplete, as the Respondent argued, she rejected his good faith efforts to resolve the Claim. *See* Bus. Reg. § 8-405(d) (Supp. 2022). The Respondent was diligent in doing the work and in documenting his progress and the pitfalls he encountered. He performed work above and beyond the amount the Claimant paid him. Yet, the Claimant felt taken advantage of, and it was clear that she did not fully grasp the purpose of the Guaranty Fund, the significance of signing an amendment to the Contract on March 3, 2022, or the scope of the unforeseen damage to her home. Therefore, I do not find that the Claimant’s unwillingness to continue to work with the Respondent is evidence that she was unreasonable when she rejected his good faith offer to continue to work on the project.

Actual Loss

Though the Claimant is eligible for compensation from the Fund for the incomplete work, she has failed to meet her burden to demonstrate the amount of actual loss. The MHIC’s

regulations provide the following three formulas to measure a claimant's actual loss, depending on the status of the contract work:

(a) 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.

(b) 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.

(c) 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)(a)-(c).

There is no evidence on this record to support a finding that the Respondent abandoned the contract without doing any work; accordingly, the first formula does not apply. Assuming that the Claimant was not soliciting another contractor to complete the Contract, on this record, I am unable to calculate the value of any materials or services that the Respondent provided to complete the calculation under the second formula. The Contract only provides a lump sum of \$20,153.00 for all of the work to be performed. Moreover, the uncontroverted testimony at the hearing was that the Respondent performed work significantly in excess of the contract price in order to get the home in a stable enough condition that he could start on the contracted scope of work. The Claimant did not offer evidence to rebut this testimony, and I find that she failed to establish that the amount paid exceeded the value of the work performed.

Further, I am unable to calculate an award under the third formula. The Claimant did not submit a proposal from any other contractor. Therefore, even assuming that the Claimant could

be eligible for compensation from the Fund, no proposal identifies how much the Claimant would be required to pay to complete the work.

For the reasons stated above, although the Claimant has established that there was an incomplete home improvement, she has failed to meet her burden to demonstrate the amount of actual loss. Accordingly, I do not recommend an award from the Fund.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss 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).

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.

September 20, 2023
Date Decision Issued

Denise O. Shaffer

Denise O. Shaffer
Administrative Law Judge

DOS/ja
#207023

PROPOSED ORDER

WHEREFORE, this 25th 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**