

<p>IN THE MATTER OF THE CLAIM</p> <p>OF ARETHA TAYLOR,</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 & SONS CONSTRUCTION,</p> <p>LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE H. DAVID LEIBENSPERGER,</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-02-22-09850</p> <p>* MHIC No.: 22 (75) 522</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On January 26, 2022, Aretha Taylor (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 \$35,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Bryan Jones, trading as BOJ & Sons Construction, LLC, (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015).¹ On

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

April 22, 2022, the MHIC issued a Hearing Order on the Claim. On April 28, 2022, the Office of Administrative Hearings (OAH) received the transmittal of this matter, which was forwarded by the MHIC for a hearing.

On July 18, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Catherine Villareale, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent represented himself.

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 - Email Containing Photographs, October 3, 2021
- Clmt. Ex. 2 - Lower Level Floor Plan, date illegible
- Clmt. Ex. 3 - Contract between MBL Construction, LLC and Mr. and Mrs. Taylor, December 29, 2021
- Clmt. Ex. 4 - Cashier's Check, January 6, 2021, Wells Fargo Check, April 17, 2021, Wells Fargo Check, May 29, 2021, Wells Fargo Check, June 28, 2021, Checkbook Receipt, June 28, 2021
- Clmt. Ex. 5 - Contract between the Respondent and Mr. and Mrs. Taylor, January 1, 2021

Clmt. Ex. 6 - Walgreen Envelope Containing Photographs, June 16, 2022

Clmt. Ex. 7 - Text Messages between the Claimant and the Respondent, September 22, 2021; Email to the Respondent from the Claimant, October 3, 2021; Email from the Respondent to Mr. and Mrs. Taylor, January 4, 2021

The Respondent did not offer any exhibits into evidence.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Correspondence from the MHIC to the Respondent, February 8, 2022, with the Claimant's Home Improvement Claim Form attached, January 25, 2022

Fund Ex. 2 - MHIC Hearing Order, April 22, 2022

Fund Ex. 3 - Notice of Hearing, May 10, 2022

Fund Ex. 4 - MHIC Licensing History for the Respondent, July 5, 2022

Testimony

The Claimant testified and presented the testimony of her husband, Christopher Taylor, and Luis Mejia of MBL Construction, LLC (MBL Construction).

The Respondent testified on his own behalf.

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 number 5750642.

2. On January 6, 2021, the Claimant and the Respondent entered into a contract to remodel the Claimant's basement (Contract).

3. The Contract included the demolition and preparing of the entire basement for the build, an entirely new layout with a new open family entertainment area, bar area, theater room, a bedroom, two full bathrooms, a utility "command center," a storage area under the steps and rear office, new stud walls, drywall, zoned recessed lighting throughout the entire basement, all

new electrical and plumbing infrastructure, painting the entire area with Behr Marquee brand paint, the installation of a sauna,² and the installation of carpet and luxury vinyl plank flooring throughout the entire basement.

4. The original agreed-upon Contract price was \$40,000.00, which included labor and materials.

5. The Contract estimated the time to complete the project would be forty-five to sixty days.

6. On January 6, 2021, the Appellant's husband paid the Respondent \$10,000.00; on April 17, 2021 the Appellant's husband paid the Respondent \$10,000.00; on May 29, 2021 the Appellant paid the Respondent \$10,000.00; on June 28, 2021 the Appellant's husband paid the Respondent \$6,000.00; and on June 28, 2021 the Appellant or the Appellant's husband paid the Respondent \$4,000.00. In total the Appellant and her husband paid the Respondent the entire Contract price of \$40,000.00.

7. The Respondent began work under the Contract in April 2021.

8. The Respondent did some plumbing, electrical work, tile work, and painting and installed most of the drywall.

9. The Respondent last performed work under the Contract in September 2021, never returned to the Appellant's home, and abandoned the project after that. Much of the work under the Contract was incomplete, including but not limited to the installation of lighting, switches and outlets, bathroom finishing, trim work on the walls, the installation of doors, the installation of the sauna, and the installation of flooring.

² The Appellant and the Respondent had a separate verbal agreement for the installation of the sauna as part of the Contract at no additional cost.

10. After September 2021, the Appellant and her husband attempted to contact the Respondent on several occasions, asking him to complete the Contract. However, the Respondent never made any firm commitments regarding completing the Contract, and never returned to the project.

11. On December 29, 2021, the Appellant obtained an offer from MBL Construction to complete the basement project abandoned by the Respondent (MBL Offer). The MBL Offer specifies that MBL would install all new vinyl flooring, install stones over the chimney, paint all the doors, install door trim and baseboard trim, finish all electrical work, complete the tile in two bathrooms, complete all the accessories in two bathrooms, including toilets and sinks, finish all closets, make adjustments to the TV area, change a 33-inch door to a glass door, install a new sauna, and finish the mini bar. The MBL Offer price was \$35,000.00 and included labor and materials.

12. The Appellant has paid MBL Construction approximately \$7,000.00 to perform some of the work pursuant to the MBL Offer, including installing flooring, painting and tile work, installing a toilet, and installing the sauna. The Appellant purchased flooring for approximately \$3,000.00, a vanity for approximately \$1,200.00, another vanity for approximately \$250.00, stone for the chimney for approximately \$1,000.00, paint for approximately \$100.00, and two toilets for approximately \$400.00 combined.

13. The Appellant and her husband also completed some of the work under the MBL Offer themselves by painting two doors and the trim around those doors, a value of \$250.00.

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); 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).

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); *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.

I find that the Claimant has proven eligibility for compensation because there is no dispute that the Respondent abandoned his work under the Contract, leaving the Appellant's basement project substantially incomplete. Bus. Reg. § 8-401. At the hearing, the Respondent apologized to the Appellant and her husband for abandoning the job, explaining that his business fell on difficult financial times, and was put under pressure by the rising costs of materials and labor. While that may be true, the Respondent's "act or omission" of abandoning the project resulted in the actual loss to the Appellant. Bus. Reg. § 8-405(a).

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d). Although at the hearing the Respondent expressed a willingness to complete the Contract, his suggestion was vague and included no firm promises or timeline and therefore cannot be considered to have been a good faith effort.

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 has retained another contractor, MBL Construction, to complete 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). By this measure, the Claimant's actual loss is \$34,750.00 (\$40,000.00 paid to the Respondent under the Contract, plus \$34,750.00 which is the reasonable amount the Claimant will be required to pay MBL Construction to complete the Respondent's work under the MBL Offer,³ minus the original Contract price of \$40,000.00). At the hearing, the Respondent did not contest any of the testimony that the MBL Offer only covers work to complete the Contract, and did not contest any of the evidence regarding the costs the Appellant and her husband have incurred and will incur to complete the work he abandoned (nor did the Respondent contest any of the Claimant's other assertions).

³ The MBL Offer contemplates \$35,000.00 to complete the work abandoned by the Respondent; however, as discussed above, the Claimant and her husband completed \$250.00 of that work themselves.

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 of \$34,750.00 exceeds \$30,000.00. Therefore, the Claimant's recovery is limited to \$30,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$34,750.00 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 \$30,000.00 from the Fund. H.D. 917, 2022 Leg., 444th Sess. (Md. 2022) (to be codified in section 8-405(e)(1) of the Business Regulation Article).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$30,000.00; 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;⁵ and

⁴ H.D. 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). 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").

⁵ 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.

October 6, 2022
Date Decision Issued

H. David Leibensperger

H. David Leibensperger
Administrative Law Judge

HDL/emh
#201171

PROPOSED ORDER

WHEREFORE, this 7th day of December, 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.

Lauren Lake

Lauren Lake

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***