

IN THE MATTER OF THE CLAIM
OF KAREN MAZER,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF KEVIN REDDING,
T/A KEVIN REDDING &
ASSOCATES, LLC,
RESPONDENT

* BEFORE PATRICIA M. DEMAIO,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-22-16705
* MHIC No.: 22(75)860

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REVISED PROPOSED DECISION¹

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

On May 10, 2022, Karen Mazer (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 \$13,735.00² for actual losses allegedly suffered as a result of a home improvement contract with Kevin Redding, trading as Kevin

¹ COMAR 28.02.01.27C provides that a final decision may be revised at any time on the judge's initiative due to a clerical mistake. The Proposed Decision issued on February 9, 2023 had an incorrect Maryland Home Commission File No. of 21 (75) 860. This Revised Decision is issued to correct that clerical mistake.

² Amount provided on lines 8 and 11 of the Home Improvement Claim Form. The Claimant entered \$34,835.00 on line 10 of the Home Improvement Claim form.

Redding & Associates, LLC (Respondent). Md. Code Ann., Bus. Reg.

§§ 8-401 to 8-411 (2015).³ On July 8, 2022, the MHIC issued a Hearing Order and forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On November 15, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-407(a), 8-312. Catherine Villareale, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent failed to appear for the hearing.

After waiting over thirty 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 July 28, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by standard and certified United States mail to the Respondent's address on record with the OAH. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for November 15, 2022, at 9:30 a.m., at the OAH. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

On August 3, 2022, the OAH received a signed copy of the return receipt acknowledging receipt of the Notice. The signature section on the receipt was signed "Kevin Redding." 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.

³ Unless otherwise noted, all references 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 an unworkmanlike, inadequate, or incomplete home improvement by the Respondent?
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, November 26, 2021 - \$21,100.00
- Clmt. Ex. 2 Cancelled check paid to the Respondent, November 26, 2021 - \$6,600.00
- Clmt. Ex. 3 Longboard Billing Statement, April 28, 2022 - \$1,235.00
- Clmt. Ex. 4 Check paid to the Respondent, November 26, 2021 - \$6,600.00
- Clmt. Ex. 5 Photograph of check paid to the Respondent, November 1, 2021 - \$14,500.00; Text message from Respondent to Cherie Leeman, undated
- Clmt. Ex. 6 Check paid to Shane Buzby, May 4, 2022 - \$1,235.00
- Clmt. Ex. 7 Complaint Form, undated⁴
- Clmt. Ex. 8 Longboard Billing Statement, March 13, 2022 - \$6,700.00
- Clmt. Ex. 9 Robey Stucco Proposal, February 14, 2022 - \$5,800.00
- Clmt. Ex. 10⁵ Deed for Unit No. 200 Windjammer Condominium, executed May 25, 2018, recorded June 18, 2018

⁴ This exhibit contains three pages. The Claimant marked the pages in sequential order as 7a, 7b, and 7c.

⁵ During the Claimant's closing argument, she requested an opportunity to submit additional documents to establish ownership of the property described as Condominium Unit No. 200 in the Windjammer Condominiums in Ocean City, Maryland. The Fund did not object, and by defaulting the Respondent waived any right to object; therefore, I granted the Claimant's request. The Claimant was advised that the record would be held open until November 22, 2022, for the Claimant to submit proof of ownership but that no additional testimony would be accepted. The Fund

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 Letter to the Respondent from Joseph Tunney, Chairman MHIC, May 23, 2022 with attached Claim
- Fund Ex. 2 Hearing Order, July 1, 2022
- Fund Ex. 3 Notice of Hearing, July 28, 2022
- Fund Ex. 4 Department I.D. registration printout – Respondent, printed November 14, 2022

The Respondent did not attend the hearing and did not offer any exhibits.

Testimony

The Claimant testified and presented the testimony of her assistant, Cherie Leeman. The Respondent did not attend the hearing and the Fund did not present any witnesses.

PROPOSED FINDINGS OF FACT

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 01-116298. (Fund Ex. 4).
2. The Claimant and her husband, Millard Mazer, purchased the property at issue in this matter, which is located at 6 Halston Court, Baltimore County, Maryland (the Property), for Mr. Mazer's parents⁶ to reside in.
3. At the time of purchase, the Property was deeded to the Claimant, Mr. Mazer, and Mr. Mazer's parents.

was given until November 29, 2022, to object to the admissibility of any documents the Claimant submitted. On November 22, 2022, the Claimant submitted an email to the OAH with one attachment. The attachment is a letter dated November 22, 2022, from the Claimant to Ms. Villareale explaining the Claimant's position regarding the deed. While the Claimant stated that the deed was attached it was not. The body of the Claimant's email contained the same language provided in the letter to Ms. Villareale. I find the statement contained in the Claimant's November 22, 2022 letter and email testimonial and inadmissible. Because the Claimant indicated that the deed was included as an attachment to the email, I advised an administrative aide at the OAH to request that the Claimant resubmit a copy of the deed. By February 2, 2023, I had not received a copy of the deed. However, because the original administrative assistant had been on extended leave, I requested another administrative assistant email the Claimant to advise that her November 22, 2022 submission did not include the deed. On February 3, 2023, the Claimant emailed the OAH, advised that she did not receive the earlier email and attached the deed. Ms. Villareale was included on all correspondence and has not objected to the admissibility of the deed. It is marked as Claimant's exhibit 10 and admitted into evidence.

⁶ Mr. Mazer's parents are Arlene and Bernard Mazer.

4. On October 31, 2021, the Claimant and the Respondent entered into a contract to remove and replace the existing 12 x 18 deck (deck project) attached to the Property (Contract). (Clmt. Ex. 1).

5. The agreed upon Contract price was \$21,000.00 which included labor and materials.

6. The Contract stated that the work would begin on November 1, 2021 and end on January 1, 2022.

7. Between October 31, 2021 and November 2, 2021, the Respondent began working on the deck project.

8. On November 1, 2021, the Claimant paid the Respondent \$14,500.00, which was the amount due at the start of the deck project as specified in the Contract. (Clmt. Exs. 1, 5).

9. On a date not specified in the record, while working on the deck project, the Respondent broke a basement window at the Property. The Respondent purchased but did not install a new window.

10. The Respondent stopped working on the deck project sometime around Thanksgiving 2021. The deck project was substantially incomplete.

11. On or about November 26, 2021, the Respondent advised Ms. Leeman that he did not have sufficient funds to complete the deck project. The Respondent requested the balance of the Contract price be paid before he completed the deck project.

12. On November 26, 2021, the Claimant paid the Respondent \$6,600.00 which was the balance of the Contract price. (Clmt. Exs. 1, 2, 4).

13. The Respondent did not return to the Property.

14. On or about January 28, 2022, the Respondent sent a text message to Ms. Leeman stating that the Claimant should get someone else to finish the deck project. (Clmt. Ex. 5).

15. The Claimant paid \$13,735.00 to other contractors to complete the deck project and install the new basement window (Clmt. Exs. 6, 8, 9). The deck project was completed on or about March 15, 2022.

16. The Claimant and her husband jointly own their primary residence located at 2 High Greene Lane, Lutherville, Maryland (Property No. 2).

17. The Claimant and her husband own a condominium located in the Gateway Grand Residences in Ocean City, Maryland (Property No. 3).

18. The Claimant is the exclusive beneficiary of the Karen A. Mazer trust.

19. On May 28, 2018, the Claimant's mother, Lois Elkin, conveyed to the Claimant and Louis Katz as trustees of the Karen A. Mazer trust, a condominium described as Condominium Unit No. 200 located in the Windjammer Condominiums in Ocean City, Maryland (Property No. 4). The Claimant purchased the property for \$315,000.00. (Clmt. Ex. 10).

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., 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 Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). Regarding the burden of persuasion and the weight of evidence, a trier of fact can properly accept all, some, or none of the evidence offered. *See Sifrit v. State*, 383 Md. 116, 135 (2004); *Edsall v. Huffaker*, 159 Md. App. 337, 341 (2004).

An owner may recover compensation from the Fund, "for an actual loss that results from an act or omission by a licensed contractor." Md. Code Ann., 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.” Md. Code Ann., Bus. Reg. § 8-401.

By statute, certain claimants are excluded from recovering from the Fund altogether. In this regard, a claimant must prove that: (1) the claimant resides in the home as to which the claim is made, or owns no more than three residences or dwelling places; (2) the claimant is not an employee, officer or partner of the contractor, or the spouse or other immediate relative of the contractor or the contractor’s employees, officers or partners; (3) the work at issue did not involve new home construction; (4) the claimant did not unreasonably reject the contractor’s good faith effort to resolve the claim; (5) the claimant complied with any contractual arbitration clause before seeking compensation from the Fund; (6) there is no pending claim for the same loss in any court of competent jurisdiction and the claimant did not recover for the actual loss from any source; and (7) the claimant filed the claim with the MHIC within three years of the date the claimant knew, or with reasonable diligence should have known, of the loss or damage. Md. Code Ann., Bus. Reg. §§ 8-405(c), (d), (f), and (g) (Supp. 2022); Bus. Reg. §8-408(b)(1), (3); Bus. Reg. § 8-101(g)(3)(i) (Supp. 2022).

Several of the factors necessary to establish statutory eligibility can be disposed of easily. Based on the Claimant’s testimony, it is clear that the Claimant is not a relative, employee, officer, or partner of the Respondent; the Claimant is not related to any of the Respondent’s employees, officers, or partners. The Claimant did not reject any efforts by the Respondent to resolve the claim. The Contract between the Claimant and the Respondent does not contain an arbitration provision. Additionally, the Claimant has not taken any other legal action to recover financially for the same loss and the Claimant did not recover for the actual loss from any source.

Further, the Claimant timely filed the Claim with the MHIC on May 10, 2022. Md. Code Ann., Bus. Reg. §§ 8-405(c), (d), (f)(1) and (g) (Supp. 2022), Bus. Reg. § 8-408(b)(1); Bus. Reg. § 8-101(g)(3)(i) (Supp. 2022).

The remaining factor requires more discussion. As explained above, an owner may make a claim against the fund only if the owner: (1) resides in the home as to which the claim is made; or (2) does not own more than three residences or dwelling places. Md. Code Ann., Bus. Reg. § 8-405(f)(2). An “owner” includes a homeowner, tenant, or other person who buys, contracts for, orders, or is entitled to home improvement.” Md. Code Ann., Bus. Reg. § 8-101(k). A person is defined as “an individual, receiver, trustee, guardian, personal representative, fiduciary, representative of any kind, partnership, firm, association, corporation, or other entity.” Md. Code Ann., Bus. Reg. § 1-101(6); *See also* COMAR 09.01.02.02B(16). For the following reasons, I find that the Claimant has not met her burden to prove that she is eligible for compensation from the Fund.

The Claimant testified that while she is a joint owner of the Property, she does not reside there. The Claimant explained that she and her husband purchased the Property for Mr. Mazer’s parents. The Claimant averred that at all times relevant to this matter, Mr. Mazer’s parents resided in the Property. Thus, I find that the Claimant does not meet the statutory requirement of Section 8-405(f)(2)(i) of the Business Regulation Article of the Maryland Annotated Code.

Accordingly, the issue that remains is whether the Claimant owned more than “three residences or dwelling places” such that she is precluded from making a claim against the Fund. Md. Code Ann., Bus. Reg. § 8-405(f)(2)(ii). On cross examination, the Claimant was asked several questions regarding the number of residences or dwelling places she owns. The Claimant originally stated “I own four living places.” The Claimant explained that she owns “[her] primary residence, [her] in-laws house, a condominium in Ocean City, Maryland and a

second condominium that [she] inherited from [her] father's passing away." Based on additional cross-examination questions, the Claimant further clarified her testimony and stated that when she filed the claim, she owned four dwelling places. The Claimant averred that she jointly owns three of the four properties with her husband. The Claimant stated, "one of the condos, the one I inherited, actually is myself and the trust that it's owned by." The Claimant asserted that she is the beneficiary of the trust, and her name is on the deed to the condominium at issue. The Claimant further testified that she purchased the condominium "outright" when they were doing the estate planning so that once her father passed away, the property would pass to the Claimant.⁷ The Claimant emphasized her ownership interest by stating "in fact it should have been in my name all along but it wasn't." The Claimant also stated that her parent's attorney favored trusts.

Based on the Claimant's testimony, the Fund argued that the Claimant owns four residences or dwelling places. The Fund contended that the statute does not provide for any exclusions that would allow the Claimant to recover under the circumstances. The Fund relied on the statutory definition of an owner found in Section 8-101(k) of the Business Regulations Article of the Maryland Annotated Code. The Fund emphasized that to the extent that there are no exclusions or exceptions in the statute allowing a claimant who owns more than three dwelling places to recover from the Fund, the claim should be denied.

After hearing the Fund's closing argument, the Claimant requested an opportunity to supplement the record with additional documentation to explain her ownership interest in Property No. 4. On February 3, 2023, the Claimant submitted to the OAH a copy of the deed for Property No. 4. (Clmt. Ex. 10). The deed shows that in consideration of the sum of \$315,000.00, the Claimant's mother conveyed Property No. 4 to the Claimant and Louis Katz as trustees of the Karen A. Mazer trust. But for the definition of "owner" discussed above, the

⁷ The Claimant did not explain who "they" were.

Business Regulations Article of the Maryland Annotated Code does not further define the term “own.” The Claimant would like for me to find that because the deed to Property No. 4 states that it was conveyed to the Claimant as the trustee for a trust, that she does not “own” the property. The Claimant’s exhibit does not persuade me that the Claimant is not an owner of Property No. 4.

In this instance, the Claimant appears to be both a trustee and the beneficiary of the Karen A. Mazer trust. The deed to Property No. 4 corroborates the Claimant’s testimony that she was the intended owner of Property No. 4: (Clmt. Ex. 10). The Claimant’s testimony was clear. The Claimant emphasized that she purchased Property No. 4 “outright” and that it should have been her name on the deed exclusively. I find the Claimant’s initial testimony the most reliable evidence of her ownership interest in Property No. 4. Further, based on my clarifying questions, the Claimant stated that she is the sole beneficiary of the Karen A. Mazer trust. The Claimant also stated, “it’s a mess, my parents attorney likes trusts.” The Claimant offered no additional testimony regarding the structure of the trust, such that one can draw any other conclusion except that she purchased Property No. 4 and placed it in a trust that she both controls and benefits from.⁸ To the extent that the Claimant’s testimony and the deed are contradictory, I find the Claimant’s testimony the most reliable evidence regarding her ownership interest in Property No. 4.

⁸ Generally, a trustee holds title to the trust property and trust property may not be considered property or an available resource of the beneficiary. Md. Code Ann., Est. & Trusts §14-402 (a)(1), (2) (2022). However, under the Estates and Trusts Article of the Maryland Annotated Code, the trustee and beneficiary have distinct roles. A “[b]eneficiary” means an individual for whose present benefit property is held by a trustee in accordance with this subtitle.” Md. Code Ann., Est. & Trusts §14-401(c). A “trustee” means a person authorized by law to act as a trustee who is designated as trustee of a trust under this subtitle or successor to the person designated.” Md. Code Ann., Est. & Trusts §14-401(p). Based on the evidence contained in the record, it appears that the Claimant is both the beneficiary and trustee, thus I do not find that she can use the trust as a shield to allow her to circumvent the Fund’s inability to compensate the Claimant in this case.

Based on all of the evidence contained in the record, I find that the Claimant has not sustained her burden to prove that she is eligible for compensation from the Fund. The Fund may not compensate a claimant who does not reside in the home as to which the claim is made and owns more than three residences or dwelling places. Md. Code Ann., Bus. Reg. § 8-405(f)(2)(ii).

PROPOSED CONCLUSION OF LAW

Based on the Findings of Fact and Discussion, I conclude that the Claimant has not sustained an actual loss that is compensable by the Fund because she does not reside in the home as to which the claim is made, and the Claimant owns more than three residences or dwelling places. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(f)(2) (2015 & Supp. 2022).

RECOMMENDED ORDER

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

April 13, 2023
Date Decision Issued

Patricia M. DeMaio

Patricia M. DeMaio
Administrative Law Judge

PMD/cj
#204506

PROPOSED ORDER

WHEREFORE, this 24th day of May, 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**