

IN THE MATTER OF THE CLAIM	* BEFORE EDWARD J. KELLEY,
OF STEPHANIE ROSS,	* 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 BRYAN JONES,	*
T/A BOJ & SON'S CONSTRUCTION,	* OAH No.: LABOR-HIC-02-22-14028
LLC,	* MHIC No.: 22 (75) 899
RESPONDENT	*

\* \* \* \* \*

**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSIONS OF LAW  
\* RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On April 8, 2022, Stephanie Ross (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 \$12,600.00 for actual losses allegedly suffered because of a home improvement contract with Bryan Jones, trading as BOJ & Son's Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp.

2022).<sup>1</sup> On June 8, 2022, the MHIC issued a Hearing Order on the Claim. On June 13, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On December 8, 2023, I held a 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 present and self-represented. The Respondent did not appear.

After waiting over 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 June 22, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by first-class mail and certified mail to the Respondent's address on record with the OAH and the MHIC. COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for September 30, 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 Respondent received notice of the hearing because on September 27, 2022, the OAH postponed the hearing at his written request based on a documented court conflict. At that time, the Respondent did not notify the OAH or the MHIC of any change of mailing address. COMAR 28.02.01.03E.

On October 4, 2022, the OAH provided a Notice by first-class mail and certified mail to the Respondent's address of record that the hearing was rescheduled for December 8, 2022, at 9:30 a.m., at the OAH in Hunt Valley, Maryland. COMAR 09.08.03.03A(2). The United States Postal Service did not return the Notice sent by first-class mail.

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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.

The Notice sent by certified mail was not returned to the OAH, but the file does not contain a return receipt confirming delivery to the Respondent.

The Respondent made no request for postponement prior to the date of the rescheduled 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 because 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, April 27, 2021
- Clmt. Ex. 2: Revised Contract between the Claimant and the Respondent, April 29, and June 28, 2021
- Clmt. Ex. 3: Checks from the Claimant to the Respondent, April 28, and July 11, 2021
- Clmt. Ex. 4: Email correspondence between the Claimant and Respondent, August 16-20, 2021.
- Clmt. Ex. 5: Pictures of the project, undated
- Clmt. Ex. 6: Job Estimate, The Chavez Brothers (Chavez), March 29, 2022

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1: Notice of Hearing, October 4, 2022
- Fund Ex. 2: Hearing Order, June 8, 2022
- Fund Ex. 3: Notice of Hearing, June 22, 2022
- Fund Ex. 4: Letter from Joseph Tunney, Chairman, MHIC, April 18, 2022
- Fund Ex. 5: MHIC Claim Form, April 8, 2022
- Fund Ex. 6: The Respondent's licensing history, August 9, 2022
- Fund Ex. 7: Affidavit of David Finneran, August 10, 2022
- Fund Ex. 8: MHIC Complaint Form, February 16, 2022
- Fund Ex. 9: Picture of the project, undated

The Respondent, who did not appear, did not offer any exhibits.

Testimony

The Claimant testified and did not present other witnesses.

The Respondent did not appear.

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 01-118128.
2. On April 29, 2021, the Claimant and the Respondent entered a contract to renovate the first-floor kitchen and a second-floor bathroom at the Claimant's residence (Contract).

3. The original agreed-upon Contract price of \$29,000.00 was initially reduced to \$27,000.00, but the Claimant and the Respondent later agreed to a final Contract price of \$28,000.00.
4. On April 28, 2021, the Claimant paid the Respondent \$9,000.00.
5. The Claimant and the Respondent agreed that work would begin on June 28, 2021, and would be completed in thirty days.
6. The Respondent did not begin working on the project on June 28, 2021, because of a death in his family. It was agreed that the project would start on July 12, 2021.
7. On July 11, 2021, the Claimant paid the Respondent \$15,000.00.
8. The Respondent began work on or about July 12, 2021, but he assigned only one employee to the project and the work progressed slowly.
9. As of August 1, 2021, neither the first-floor kitchen nor the second-floor bathroom functioned.
10. On August 16-20, 2021, the Claimant emailed the Respondent to identify the extensive work that still needed to be done and to demand timely completion of the project.
11. The Respondent continued to work on the project through August and September 2021, finally delivering a functional second-floor bathroom at the end of September.
12. In the process of remodeling the kitchen, the Respondent convinced the Claimant to have him remove a load bearing wall separating the kitchen from the dining room, which would open the floor plan on the first floor of the residence.
13. The Respondent's removal of the load bearing wall on the first floor of the residence caused an area of flooring on the second level of the residence to sag approximately two inches.

14. In October 2021, the Respondent assessed the sagging floor and acknowledged that it resulted from his removal of the load bearing wall. He stated he would fix the problem within thirty days, but he never did.

15. The Claimant repeatedly contacted the Respondent in October and November 2021, but he ignored these communications and never returned to the residence to fix his defective work.

16. In addition to the sagging floor, several other elements of the Contract remained incomplete when the Respondent stopped working on the project in October 2021. Specifically, the Respondent did not install a rear door or any light fixtures, he left an open hole to the outside in the back wall of the residence, and he improperly installed the bathroom vanity.

17. In March 2022, the Claimant contracted with Chavez, a licensed contractor, to complete the project to the Contract's specifications and correct the Respondent's deficient work.

18. Chavez completed the project in two days, and the Claimant paid Chavez \$15,600.00.

## **DISCUSSION**

### **LEGAL FRAMEWORK**

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).

Certain claimants are excluded from recovering from the Fund altogether. Specifically, an award from the Fund may occur only if the evidence shows: (a) the claimant resides in the home as to which the claim is made, or owns no more than three dwelling places; (b) 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; (c) the work at issue did not involve new home construction; (d) the claimant did not unreasonably reject the contractor's good faith effort to resolve the claim; (e) the claimant complied with any contractual arbitration clause before seeking compensation from the Fund; (f) 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 (g) 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. Bus. Reg. §§ 8-405(c), (d), (f), and (g), 8-408(b)(1); Bus. Reg. § 8-101(g)(3)(i) (Supp. 2021).

If not excluded on these grounds, a claimant 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. For the following reasons, I find that the Claimant has proven eligibility for compensation.

## ANALYSIS

Based on the evidence presented at the hearing, I find that the Claimant was not subject to any of the statutory exclusions for recovery from the Fund. Additionally, the undisputed evidence demonstrated that the Respondent performed an inadequate, unworkmanlike, and incomplete home improvement by failing to timely and competently complete the project as required by the Contract. The Claimant testified credibly about all facets of the project, and her unrefuted testimony was corroborated by exhibits, which included pictures demonstrating the status of the Respondent's incomplete and deficient work. The Claimant fulfilled her contractual obligation by paying the Respondent \$24,000.00, and she was more than patient as the project was delayed well beyond a reasonable completion date.

The Respondent did not fulfill his obligation to perform an adequate, workmanlike, and complete home improvement; indeed, the Respondent clearly took advantage of the Claimant's patience and goodwill and never delivered on his part of the Contract despite accepting \$24,000.00. The project was supposed to be completed by the middle of August 2021, but that did not occur; indeed, by mid-October 2021, the project still was not completed. The Respondent did not install a rear door or any light fixtures, he left an open hole to the outside in the back wall of the residence, and he improperly installed the bathroom vanity.

Not only did the Respondent fail to timely complete the project, but some of his work was defective. The Respondent's removal of a load bearing wall on the first level of the residence caused the upstairs flooring in the bedroom to sag approximately two inches. The Respondent persuaded the Claimant to have him perform this work, and he did it deficiently. This deficiency not only was unsightly, but it reasonably caused the Claimant to question the safety of her home. Ultimately, after the Respondent refused to correct the deficiencies and



complete the project, the Claimant was forced to hire Chavez to remedy the Respondent's errors and complete the project to the Contract's specifications for \$15,600.00.

The Claimant argued that the Respondent performed an incomplete and unworkmanlike home improvement. The Fund agreed with the Claimant and recommended an award. 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 performed some work under the Contract, and the Claimant retained Chavez to remedy and 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).

The Claimant paid the Respondent \$24,000.00 under the Contract and then paid Chavez \$15,600.00 to repair and complete the project to the Contract's specifications. These figures added together total \$39,600.00. When the \$28,000.00 Contract price is subtracted from \$39,600.00, the actual loss calculation is \$11,600.00.

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>2</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$11,600.00 is less than the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover \$11,600.00 from the Fund.

#### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$11,600.00 because 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 \$11,600.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015 & Supp. 2022); COMAR 09.08.03.03B(4).

#### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$11,600.00; and

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<sup>2</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").

**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>3</sup> and

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

February 23, 2023  
Date Decision Issued

*Edward J. Kelley*

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Edward J. Kelley  
Administrative Law Judge

EJK/sh  
#202988

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<sup>3</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 24<sup>th</sup> day of April, 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.***

***Robert Altieri***

***Robert Altieri***

***Panel B***

**MARYLAND HOME IMPROVEMENT  
COMMISSION**