IN THE MATTER OF THE CLAIM	*	**BEFORE KRISTIN E. BLUMER,**
OF LATESHA COAXUM,	*	**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 MARTY MINTON,	*	
T/A STONE GUYS, LLC,	*	**OAH No.: LABOR-HIC-02-22-28218**
RESPONDENT	*	**MHIC No.: 22 (75) 931**

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PROPOSED DECISION

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STATEMENT OF THE CASE

On May 31, 2022, Latesha Coaxum (Claimant) filed a claim (Claim)[1] with the Maryland Home Improvement Commission (MHIC)[2] Guaranty Fund (Fund) for reimbursement of $15,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Marty Minton, trading as Stone Guys, LLC (Respondent).[3] On October 26, 2022, the MHIC

[1] The Claimant dated the Claim form May 31, 2022. The Maryland Home Improvement Commission received the Claim form on June 8, 2022.
[2] The MHIC is under the jurisdiction of the Department of Labor.
[3] Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022). Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

issued a Hearing Order on the Claim. On November 7, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On Friday, January 20, 2023,[4] Melissa K. Rashbaum, Esquire, filed a pleading on behalf of the Respondent, entitled "Suggestion of Stay" (Motion). In the fax cover sheet to the Motion, Ms. Rashbaum indicated that she represented the Respondent in bankruptcy proceedings and that she did not intend to enter her appearance on behalf of the Respondent in the instant case. The Motion stated that the Respondent had filed for bankruptcy in the United States Bankruptcy Court for the District of Maryland on June 23, 2022, and that, consequently, "the commencement or continuation of any proscribed action including property of estate is stayed" pursuant to 11 U.S.C.A. § 362(a).[5, 6, 7]

On January 20, 2023, Jessica B. Kaufman, Assistant Attorney General, filed an Opposition to Motion to Stay (Opposition) on behalf of the MHIC and the Fund, arguing that the bankruptcy proceedings did not preclude the instant case from proceeding to hearing, because the Claimant filed the Claim against the Fund, not the Respondent, and any award would be paid by the Fund. The MHIC conceded that the Respondent's bankruptcy proceedings may affect its ability to recover from the Respondent any amount paid from the Fund to the Claimant, but asserted that the Claimant's ability to seek recovery from the Fund did not meet the automatic stay provisions of 11 U.S.C.A. § 362(a).

On January 20, 2023, an OAH docket clerk advised Ms. Rashbaum that the Respondent was required to appear for the hearing in this matter because the Motion was filed one business day prior to the hearing, which was scheduled for Monday, January 23, 2023.

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[4] The Motion is dated January 19, 2023, but it was received at the OAH on January 20, 2023.
[5] "U.S.C.A." is an abbreviation for the United States Code Annotated. Unless otherwise noted, all citations herein to the U.S.C.A. are to the 2017 bound volume.
[6] A filed bankruptcy petition or application operates as an automatic stay in certain actions involving the debtor or the property of the debtor's estate. *See* 11 U.S.C.A. § 362(a)(1)-(8).
[7] Motion, p. 1.

On January 23, 2023, I held a hearing by video.[8] Jessica B. Kaufman, Assistant Attorney General, represented the Fund. The Claimant was self-represented. The Respondent was self-represented.

As a preliminary matter, I addressed the Respondent's Motion and the Fund's Opposition with the parties. The Claimant objected to the Respondent's Motion on the record. The Respondent and the Fund did not present any additional argument. I denied the Respondent's Motion, finding that the proceedings before me met an exception to the automatic stay as set forth in 11 U.S.C.A. § 362(b)(4).[9]

The contested case provisions of the Administrative Procedure Act, the Department of Labor's hearing regulations, and the Rules of Procedure of the OAH govern procedure.[10]

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: Copy of check, August 14, 2020

Clmt. Ex. 2: Community Credit Union account statement, August 1, 2020 to August 31, 2020

Clmt. Ex. 3: Email communications between the Claimant and the Respondent, various dates

Clmt. Ex. 4: Notice of the Respondent's chapter 13 bankruptcy, filing date June 23, 2022

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[8] Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b).

[9] This enumerated exception to the automatic stay states that a bankruptcy filing does not operate as a stay "of the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power. . . ." 11 U.S.C.A. § 362(b)(4).

[10] Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; COMAR 28.02.01.

Clmt. Ex. 5: Not admitted

I admitted the following exhibits offered by the Fund:

Fund Ex. 1: Notice of Remote Hearing, December 1, 2022

Fund Ex. 2: Transmittal, October 26, 2022, and MHIC Hearing Order, October 26, 2022

Fund Ex. 3: MHIC Licensing Information for the Respondent, printed December 21, 2022

Fund Ex. 4: Letter to Respondent from MHIC, June 16, 2022, with the following attachment: Claimant's Home Improvement Claim Form, May 31, 2022

The Respondent did not offer any exhibits.

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

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 01-119854.

2. At all relevant times, the Respondent's corporate entity was a licensed home improvement contractor under MHIC license number 05-138253.

3. At all relevant times, the Claimant owned and resided in a home located in Bowie, Maryland (the Residence). The Claimant does not own any other residential properties in Maryland.

4. On a date not specified in the record, the Respondent provided the Claimant an estimate to remodel the kitchen and a bathroom in the Residence (Estimate).[11]

[11] The Claimant and the Respondent disputed the cost of the project quoted in the Estimate.

5. On August 14, 2020, the Claimant paid the Respondent $15,000.00 by check as a deposit for the work in the Estimate.

6. On a date not specified in the record, the Respondent came to the Residence to perform measurements and discuss design concepts.

7. Between August and October 2020, the scope of the work changed to remodeling the bathroom only, due to the Claimant's budget constraints.

8. On October 26, 2020, the Claimant and the Respondent entered into a contract for the bathroom remodel for $21,442.50 (Contract).

9. The Respondent did not schedule a start date for the work under the Contract.

10. The Respondent did not order materials for the work or begin the work under the Contract after October 2020.

11. The Respondent's business was negatively impacted by labor shortages and supply chain delays in 2020 and 2021.

12. The Respondent never started or attempted to start work under the Contract between October 2020 and the summer of 2021.

13. During the summer of 2021, the Claimant requested to cancel the Contract and asked the Respondent to refund the deposit because no work had been scheduled or started.

14. In October 2021, the Respondent agreed to refund the Claimant's deposit once he received funds sought through a small business association loan.

15. As of January 2022, the Respondent did not refund the Claimant's deposit or make any attempt to complete the Contract.

16. On June 23, 2022, the Respondent filed for bankruptcy.

DISCUSSION

Legal Framework

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence.[12] 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.[13] An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor."[14] "'[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement."[15]

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.[16] The Claimant resides in the home that is the subject of the claim.[17] The parties did not enter into a valid agreement to submit their disputes to arbitration.[18] 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.[19]

For the following reasons, I find that the Claimant has proven eligibility for compensation.

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[12] Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; COMAR 09.08.03.03A(3).
[13] *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).
[14] 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.").
[15] *Id.* § 8-401.
[16] *Id.* §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022).
[17] *Id.* § 8-405(f)(2) (Supp. 2022).
[18] *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022).
[19] *Id.* § 8-405(f)(1) (Supp. 2022).

Analysis

The parties agree that the Claimant paid the Respondent a deposit of $15,000.00[20] for kitchen and bathroom renovation work that was never started or completed. The parties further agree that the project was scaled back to the bathroom renovation in October 2020 for a cost of $21,442.50. The parties dispute some details of the agreements and events between them, which I address in brief; however, these disputes ultimately do not affect the issues in this case about which the parties agree.

The Respondent testified that the original price to renovate the kitchen and bathroom was approximately $45,000.00, and that the $15,000.00 deposit represented one-third of the total cost of the project. The Claimant asserted that the original amount was less than $45,000.00, but could not recall the specific figure. She testified that she paid more than one-third of the total cost as a deposit to ensure that she dedicated sufficient funds to the project for her budgeting purposes. However, neither the Claimant nor the Respondent offered any documentation to support their respective positions as to the original estimated cost to renovate the kitchen and bathroom.

The Claimant testified that, during their negotiations over the refund, the Respondent attempted to withhold $5,000.00 from the refund to cover the costs of the design work. The Claimant refused to agree to any reduction and maintained her demand of a full refund. She stated that the Contract did not identify any costs associated with that work. The Respondent testified that there was a cost for the generation of the designs. He explained that other contractors may generate a basic design for free as part of an initial consultation but that his company put more effort into its designs at that stage of the project. However, at the hearing, the

[20] Clmt. Exs. 1, 2.

Respondent provided no documentation or other evidence to justify any costs related to the design work.[21]

The Respondent further testified that the Claimant cancelled the Contract outside of the rescission period and should be assessed a fee for doing so. The Claimant disputed that there were any terms related to the timing of any cancellation in the Contract or assessment of fees for doing so. Again, neither party offered the Contract or any other documentation into evidence to support their respective positions. Moreover, the Respondent did not identify the amount of the fee that should be assessed.

It is undisputed that the Respondent ultimately agreed to refund the Claimant's $15,000.00 deposit in an email to the Claimant in October 2021.[22] The Respondent testified that he intended to pay the Claimant using funds from a loan that the company sought as part of the COVID-19 pandemic economic relief for small business. He stated that it did not work out and that the deposit was never refunded. He apologized to the Claimant for the failure to complete the work.

I find that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements by the failure to start or complete the work under the Contract. It is undisputed that the Claimant paid a deposit of $15,000.00 for work that was never done. The points of dispute between the parties are immaterial to this analysis, as the parties' assertions are uncorroborated. 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

[21] The Respondent stated that he has no access to any of the business' records due to the bankruptcy filing.
[22] Clmt. Ex. 3.

fees, court costs, or interest.[23] MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Respondent abandoned the Contract without doing any work. Accordingly, the following formula appropriately measures the Claimant's actual loss: "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."[24]

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.[25] In this case, the Claimant's actual loss is equal to the amount paid to the Respondent and less than $30,000.00. Therefore, the Claimant is entitled to recover her actual loss of $15,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $15,000.00 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)(a). I further conclude that the Claimant is entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a) (Supp. 2022); COMAR 09.08.03.03B(3)(a).

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[23] Bus. Reg. § 8-405(e)(3) (Supp. 2022); COMAR 09.08.03.03B(1).
[24] COMAR 09.08.03.03B(3)(a).
[25] Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). 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").

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $15,000.00; 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;[26] and

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

Kristin E. Blumer

April 13, 2023
Date Decision Issued

Kristin E. Blumer
Administrative Law Judge

KEB/dlm
#204479

[26] *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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