

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF CONNIE WILLIAMS,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF BRYAN O. JONES</b></p> <p><b>T/A</b></p> <p><b>BOJ &amp; SONS CONSTRUCTION, LLC,</b></p> <p><b>RESPONDENT</b></p>	<p>* <b>BEFORE ABENA Y. WILLIAMS,</b></p> <p>* <b>AN ADMINISTRATIVE LAW JUDGE</b></p> <p>* <b>OF THE MARYLAND OFFICE</b></p> <p>* <b>OF ADMINISTRATIVE HEARINGS</b></p> <p>*</p> <p>*</p> <p>*</p> <p>* <b>OAH No.: LABOR-HIC-02-22-15289</b></p> <p>* <b>MHIC No.: 22 (75) 964</b></p> <p>*</p>
--	--

\* \* \* \* \*

**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 4, 2022, Connie Williams, (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 \$13,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Bryan O. Jones trading as BOJ & Sons Construction, LLC (Respondent).<sup>1</sup> On June 24, 2022, the MHIC issued a Hearing Order on the

---

<sup>1</sup> Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022). Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

Claim. On June 28, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On October 18, 2022, I held a hearing at the OAH office in Hunt Valley, Maryland.<sup>2</sup> Nikolas Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself.

After waiting twenty 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.<sup>3</sup> On July 11, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States certified mail to the Respondent's address on record with the OAH.<sup>4</sup> The Notice stated that a hearing was scheduled for October 18, 2022, at 9:30 a.m., at OAH in Hunt Valley, Maryland. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service delivered and did not return the Notice to the OAH. The Respondent did not notify the OAH of any change of mailing address.<sup>5</sup> The Respondent made no request for postponement prior to the date of the hearing.<sup>6</sup> I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter.<sup>7</sup>

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure.<sup>8</sup>

---

<sup>2</sup> Bus. Reg. §§ 8-407(a), 8-312.

<sup>3</sup> COMAR 28.02.01.23A.

<sup>4</sup> COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1).

<sup>5</sup> COMAR 28.02.01.03E.

<sup>6</sup> COMAR 28.02.01.16.

<sup>7</sup> COMAR 28.02.01.05A, C.

<sup>8</sup> 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:

- CL Ex. 1 - Contract between the Claimant and the Respondent, August 30, 2021
- CL Ex. 2 - Copy of check #207 in the amount of \$13,000.00 from the Claimant to the Respondent, May 21, 2021
- CL Ex. 3 - NOT ADMITTED
- CL Ex. 4 - Text messages between the Claimant and the Respondent, undated
- CL Ex. 5 - Text messages between the Claimant and the Respondent, undated
- CL Ex. 6 - Text messages between the Claimant and the Respondent, undated
- CL Ex. 7 - Text messages between the Claimant and the Respondent, undated

I admitted the following exhibits offered by the Guaranty Fund:

- GF Ex. 1 - Notice of Hearing, dated July 11, 2022
- GF Ex. 2 - Hearing Order, issued June 24, 2022
- GF Ex. 3 - Bryan Jones Licensing History, dated September 20, 2022
- GF Ex. 4 - Letter from Joseph Tunney, Chairman, MHIC, to the Respondent, April 7, 2022, with Home Improvement Claim Form, signed March 31, 2022
- GF Ex. 5 - Affidavit of Charles Corbin, dated September 22, 2022

The Respondent did not offer any exhibits into evidence.

Testimony

The Claimant testified on her own behalf 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 this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 05-137602.
2. On or about August 30, 2021, the Claimant and the Respondent entered into a contract to perform renovations to the Claimant's home (Contract). Specifically, the Contract provided for the renovation of the kitchen which included the painting of the walls in the kitchen and dining room, the installation of new plumbing and electrical infrastructure, the installation of new soft close cabinets, the installation of a sink, faucet, tile backsplash with granite countertops, new subflooring, tile flooring, baseboard and trim, new kitchen light fixtures, and new kitchen stainless steel appliances.<sup>9</sup>
3. The Respondent agreed to provide the materials for the work to be performed under the Contract.<sup>10</sup>
4. The original agreed-upon Contract price was \$20,000.00.<sup>11</sup>
5. On August 30, 2021, the Claimant paid the Respondent a deposit of \$13,000.00.<sup>12</sup>
6. The work was projected to begin around September 2021 and to be completed in October 2021.<sup>13</sup>

---

<sup>9</sup> CL Ex. 1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Testimony, Claimant.

7. The Claimant contacted the Respondent several times between September 2021 and December 2021. During this time period, the Respondent never returned to the Claimant's home to begin renovations.

8. In January 2022, the Claimant contacted the Respondent to demand that he return her deposit.

9. The Respondent did not return the deposit and all communications between the parties ceased after February 21, 2022.

10. The Respondent did not perform any work under the Contract.

11. The Claimant is not a relative, officer, partner, or employee of the Respondent's company.

12. The Claimant owns the home where the work was done; she owns no other real property.

13. The Claimant has no suit pending against the Respondent and has not filed an insurance or other claim to recover damages allegedly stemming from her contract with the Respondent.<sup>14</sup>

## **DISCUSSION**

### **THE BURDEN OF PROOF AND THE STATUTORY FRAMEWORK**

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence.<sup>15</sup> 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.<sup>16</sup>

---

<sup>14</sup> The MHIC has pending claims against the Respondent.

<sup>15</sup> Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2021); COMAR 09.08.03.03A(3).

<sup>16</sup> *Coleman v. Anne Arundel Cnty. 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.”<sup>17</sup> “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”<sup>18</sup> For the following reasons, I find that the Claimant has proven eligibility for compensation.

#### **STATUTORY PRE-REQUISITES**

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant.<sup>19</sup> The Claimant is neither a relative of the Respondent nor an officer, partner, or employee of his company. The Claimant owns the subject property, which is her home, and owns no other real property. The Claimant has no suit pending against the Respondent nor has the Claimant filed any insurance or other claims to compensate her for any damages allegedly incurred as the result of the Respondent’s work. Accordingly, the Claimant meets the statutory pre-requisites.

#### **THE POSITIONS OF THE PARTIES**

The Claimant testified that after entering into the contract with the Respondent, she contacted him in September after he failed to begin renovations. At that time, she explained, the Respondent told her that he did not receive all of the cabinets that he ordered for her kitchen. The Claimant stated that she contacted the Respondent again in October 2021, and he informed her that the cabinets were on backorder due to the COVID-19 pandemic. She averred that when she contacted him again in December, he advised her that if she gave him an additional \$1,500.00, he could have a vendor expedite the materials. The Claimant also testified that she asked the Respondent for the receipts from any materials that he purchased, and he failed to

---

<sup>17</sup> 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.”).

<sup>18</sup> Bus. Reg. § 8-401.

<sup>19</sup> GF Ex. 3.

provide them. According to the Claimant, she contacted the Respondent again in January 2022 and demanded that he return her deposit to no avail. She stated that she last communicated with the Respondent on February 21, 2022 and to date the Respondent has not performed any renovations on her home.

The Fund asserted that the Claimant has sustained an actual loss of \$13,000.00 and should be compensated by the Fund for that amount. For the reasons that follow, I agree with the Fund's assessment.

#### ANALYSIS

In order to have a compensable claim against the Fund, the Claimant must establish that she suffered an actual loss as a result of an act or omission by a licensed contractor. Further, the Fund may only compensate the Claimant for actual losses she incurred as a result of misconduct by a licensed contractor. I am persuaded by the record before me that the Claimant has met her burden of proof on this point.

As detailed above, an actual loss is specifically defined as “. . . the costs of restoration, repair, replacement, or completion *that arise from an unworkmanlike, inadequate, or incomplete home improvement.*”<sup>20</sup> As such, I am charged with determining whether the Respondent's actions, omissions, or misconduct led to an unworkmanlike, inadequate, or incomplete home improvement.<sup>21</sup> I find that they do.

The terms “unworkmanlike,” “inadequate,” or “incomplete” home improvement are not defined in the statutes or regulations associated with the Fund.<sup>22</sup> However, giving the words their plain meaning, there clearly is no “unworkmanlike” home improvement in this case as no

---

<sup>20</sup> Bus. Reg. § 8-401 (emphasis added).

<sup>21</sup> See *id.*; see also Bus. Reg. § 8-405(a) (Supp. 2022); see also COMAR 09.08.03.03B(2).

<sup>22</sup> See Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411; see also COMAR 09.08.03.01 through .03.

home improvement ever took place. Likewise, there is no “inadequate” home improvement as the Respondent never performed any work on the Claimant’s home.

What remains is whether there was an “incomplete” home improvement. The Fund argued that the appropriate formula to use is the one that applies when a contractor has abandoned the home improvement contract.<sup>23</sup> To determine abandonment, the Court has said that there must be nonperformance or an intent not to perform.<sup>24</sup> The evidence demonstrates an act or omission by the Respondent to abandon the Contract. After taking the Claimant’s deposit, the Respondent never appeared to complete any of the work outlined in the Contract, tried to have the Claimant pay more money to expedite the process, and failed to respond to her attempts to have him begin any work. For these reasons, the Claimant suffered an actual loss entitling her to an award from the Fund.

MHIC’s regulations offer three formulas for measurement of a claimant’s actual loss. COMAR 09.08.03.03B(3) sets forth the various formulas for determining an “actual loss.” According to the Fund, and I agree, the appropriate formula is the following:

- (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.

Using the formula in COMAR 09.08.03.03B(3)(a), the following calculation applies:

\$13,000.00    Representing the deposit paid to the  
Respondent by the Claimant on August 30, 2021

The MHIC may not award more than \$30,000.00<sup>25</sup> from the Fund to one claimant for acts or omissions of one contractor or an amount in excess of the amount paid by or on behalf of the

---

<sup>23</sup> See, COMAR 09.08.03.03B(3)(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.”

<sup>24</sup> *Shade v. State*, 306 Md. 372, 380 (1986).

<sup>25</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,



claimant to the contractor against whom the claim is filed.<sup>26</sup> The claim does not exceed that limit, therefore, the award is \$13,000.00.<sup>27</sup>

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has 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).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$13,000.00; 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;<sup>28</sup> and

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

January 9, 2023  
Date Decision Issued

*Abena Y. Williams*

Abena Y. Williams  
Administrative Law Judge

AYW/at  
#202670

---

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").

<sup>26</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022).

<sup>27</sup> *Id.*

<sup>28</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 14<sup>th</sup> day of February, 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***