

<p>IN THE MATTER OF THE CLAIM</p> <p>OF GURINDER SINGH,</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 CARLOS QUIROGA,</p> <p>T/A PACHECO CONSTRUCTION</p> <p>COMPANY, INC.,</p> <p>RESPONDENT</p>	<p>* BEFORE ANN C. KEHINDE,</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-02-23-29548</p> <p>* MHIC No.: 23 (75) 1033</p> <p>*</p>
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**PROPOSED DECISION**

STATEMENT OF THE CASE  
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**STATEMENT OF THE CASE**

On August 3, 2023, Gurinder Singh (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$60,300.00 for actual losses allegedly suffered as a result of a home improvement contract with Carlos Pacheco Quiroga, trading as Pacheco Construction Company, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).<sup>2</sup> On November 15, 2023, the

<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).

<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

MHIC issued a Hearing Order on the Claim and forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 9, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Jonathan Phillips, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented.

After waiting 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 December 19, 2023, the OAH provided a Notice of Hearing (Notice) to the Respondent by certified mail and first-class mail. Bus. Reg §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for February 9, 2024, at 9:30 a.m. at 11101 Gilroy Road, 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 Notice sent by certified mail was returned to the OAH with the notation "unclaimed." The Notice sent by regular mail was not returned by the United States Postal Service. The Respondent did not notify the OAH of any change of mailing address and counsel for the Fund noted that the address used on the Notice matched the current address on file with the MHIC. COMAR 28.02.01.03E. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05.

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 & Supp. 2023); 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 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 - "Contractor Agreement," May 3, 2022
- Clmt. Ex. 2 - Check from Claimant to Respondent, number 145, in the amount of \$25,700.00, May 3, 2022
- Clmt. Ex. 3 - Check from Claimant to Respondent, number 149, in the amount of \$32,800.00, August 18, 2022
- Clmt. Ex. 4 - Four photographs of excavation and damaged wall performed by Respondent
- Clmt. Ex. 5 - Letter from Claimant to Respondent, April 26, 2023
- Clmt. Ex. 6 - Text messages between Respondent and Claimant, July 11, 2023
- Clmt. Ex. 7 - Payments to Tejy, Inc., for new architectural drawings, April 25, 2023, June 20, 2023, and July 3, 2023

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, December 19, 2023
- Fund Ex. 2 - Hearing Order, November 15, 2023
- Fund Ex. 3 - Home Improvement Claim Form, received August 3, 2023
- Fund Ex. 4 - Respondent's licensing history

The Respondent did not appear and therefore did not offer any exhibits.

Testimon

The Claimant testified and did not present other witnesses.

The Fund did not present any witnesses.

The Respondent failed to appear and therefore did not testify or 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 110179.
2. On or about May 3, 2022, the Claimant and the Respondent entered into a contract to excavate and construct an addition at the Claimant's home in Ellicott City, Maryland. The purpose of the addition was for a new kitchen and was to include concrete footings, framing, roofing, gutters, vinyl windows, siding and exterior trim, insulation, interior drywall, additional ducts for HVAC system, electrical, interior trim and painting, relocate existing cabinets and install kitchen island and countertops, and install wood flooring.
3. The original agreed-upon Contract price was 115,020.75.
4. The Contract stated that work would begin on May 3, 2022, and would be completed within twelve weeks.
5. On May 3, 2022, the Claimant paid the Respondent \$25,700.00, as the agreed-upon deposit.
6. The second payment of \$32,800.00 was to be paid when the footing passed inspection and the Respondent was ready to purchase framing materials. The Claimant paid the Respondent \$32,800.00 on August 18, 2022; however, the concrete footings failed three inspections and did not pass until the fourth inspection at the end of October 2022.

7. In the process of excavating for the footings, the Respondent or his workers drove a large truck onto the property and damaged an existing concrete wall that ran parallel to the Claimant's fence. The Respondent did not repair the wall.

8. The Respondent did not perform, or have his workers perform, any work on the Claimant's addition after the footings passed inspection.

9. On or about November 10, 2022, the Claimant called and texted the Respondent with no response.

10. On or about November 20, 2022, the Claimant texted the Respondent and told him that he would have to take the matter to a lawyer. He received no response to his text from the Respondent.

11. On a date sometime in the late Fall of 2022, the Respondent contacted the Claimant and told him he would send workers the next day and he would schedule a meeting with the Claimant to discuss the Claimant's project. The Respondent did not send any workers to the Claimant's property and never contacted him to schedule a meeting.

12. In the Spring of 2023, the Claimant spoke with other contractors to see if they would complete the project the Respondent started. The contractors told the Claimant that they could not understand the architectural drawings supplied by the Respondent. The Claimant contracted with Tejy, Inc., to prepare new architectural drawings and paid the firm a total of \$9,000.00. The Claimant still has a balance due of \$3,500.00 to Tejy, Inc., for the architectural drawings.

13. On April 23, 2023, the Claimant sent the Respondent a letter by certified mail outlining the lack of progress and contact from the Respondent and requesting that the arbitration clause in the contract be waived. The Claimant requested that the Respondent reply to the letter within two weeks. The Respondent did not respond to the Claimant's letter.

14. On July 11, 2023, the Respondent texted the Claimant and asked him if he wanted the Respondent to finish the project. The Claimant told the Respondent that he did not want the Respondent to complete the project.

### 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); 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).

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) (Supp. 2023); *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.

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. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2023). The Claimant resides in the home that is the subject of the claim or does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2023). The parties' Contract contained a clause requiring the parties to submit their disputes to arbitration but the Fund argued that the Respondent waived the arbitration clause by failing to respond and I agree. *Id.* §§ 8-405(c),

8-408(b)(3) (2013 & Supp. 2023). 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. *Id.* § 8-405(f)(1) (Supp. 2023).

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023). From October 2022, when the footings finally passed inspection, until the Respondent texted the Claimant in July of 2023, the Respondent ignored the Claimant's texts, telephone calls and certified letter, asking him when he was going to complete the addition and requesting that he contact him. When the Respondent finally texted the Claimant in July of 2023, he apologized and told the Claimant that he had been very sick and asked him if he wanted the Respondent to complete the work. The Claimant politely told the Respondent that he did not want the Respondent to complete the work and that he had to hire other contractors to complete the work. The Claimant credibly testified that he had retained Tejy, Inc., to prepare architectural drawings in anticipation of finding another contractor who would complete the addition but that he still owed a balance on the drawings and he did not have any further funds to pay for the addition after paying the Respondent.

The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. The photographs depict a poorly excavated area with rusting and crooked rebar coming out the ground. (Clmt. Ex. 4). The Claimant credibly testified that he was unable to find another contractor who was willing to build on the footers installed by the Respondent and he will have to start over once he has new drawings completed. 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. § 8-403(e)(3) (Supp. 2023); 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 is not currently seeking other contractors to complete or remedy that work because he does not have the funds. Accordingly, the Fund argued that the following formula appropriately measures the Claimant's actual loss: "If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor." COMAR 09.08.03.03B(3)(b).

The Claimant paid the Respondent \$58,500.00 and essentially received nothing in return because no contractor will build on the footers installed by the Respondent and contractors have told the Claimant he needs to obtain new architectural drawings because the ones prepared by the Respondent are incomprehensible. Although the second payment was to include the materials for framing, the Respondent never performed any work after the footers finally passed inspection at the end of October 2022, and no framing materials were supplied by the Respondent. Therefore, the Claimant's actual loss is \$58,500.00.

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>3</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR

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<sup>3</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").



09.08.03.03B(2). In this case, the Claimant's actual loss of \$58,000.00 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 loss of \$58,000.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(b). I further conclude that the Claimant is entitled to recover \$30,000.00 from the Fund. Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); 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 \$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;<sup>4</sup> and

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

April 25, 2024  
Date Decision Issued

Ann C. Kehinde  
Ann C. Kehinde  
Administrative Law Judge

ACK/ckc  
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<sup>4</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

*WHEREFORE, this 18<sup>th</sup> day of June, 2024, 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*