

IN THE MATTER OF THE CLAIM	* BEFORE ANGELA C. DIEHL,
OF TONYA REEDER,	* 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 WILLIAM	*
GARGANO,	* OAH No.: LABOR-HIC-02-24-15051
T/A JW CORNERSTONE	* MHIC No.: 23 (75) 1467
REMODELERS LLC,	
RESPONDENT	

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On February 6, 2024, Tonya Reeder (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of for actual losses allegedly suffered as a result of a home improvement contract with William Gargano, trading as JW Cornerstone Remodelers LLC (Respondent). Md. Code Ann., Bus. Reg.

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).

§§ 8-401 to 411 (2015 & Supp. 2024).² On June 3, 2024, the MHIC issued a Hearing Order on the Claim. On the same date, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On October 8, 2024, I held a hearing via the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). 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. COMAR 28.02.01.23A. On June 25, 2024, 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 October 8, 2024, at 9:30 a.m., on the Webex videoconferencing platform. 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 United States Postal Service did not return the Notice to the OAH. The Respondent did not notify the OAH of any change of mailing address. 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.,

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

State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2024); 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 - Home Improvement Contract (Contract) between the Claimant and Respondent, August 22, 2022
- Clmt. Ex. 2 - Copy of cancelled check from the Claimant to the Respondent for \$28,500.00, September 6, 2022
- Clmt. Ex. 3 - Copy of cancelled check from the Claimant to the Respondent for \$25,000.00, November 21, 2022
- Clmt. Ex. 4 - Screenshots of text messages between the Claimant and Respondent, November 16, 2022
- Clmt. Ex. 5 - Screenshot of text messages between the Claimant and Respondent, March 20, 2023 to June 20, 2023
- Clmt. Ex. 6 - Screenshot of text messages between the Claimant and Respondent, June 20, 2023 to November 17, 2023
- Clmt. Ex. 7 - Letter from the Claimant to the Respondent, December 15, 2023
- Clmt. Ex. 8 - Contract with NTS Consulting and the Respondent, October 22, 2023
- Clmt. Ex. 9 - Contract with BW Brothers and the Respondent, February 14, 2024 and addendum, May 14, 2024
- Clmt. Ex. 10 - Invoice from Maryland Clover Plumbing Gas, March 19, 2024
- Clmt. Ex. 11 - Invoice from Got Electric, LLC, March 8, 2024
- Clmt. Ex. 12 - Photographs depicting unfinished work in basement, undated
- Clmt. Ex. 13 - Permit Renewal from Prince George's County Department of Permitting, Inspections and Enforcement, February 14, 2024

As the Respondent failed to appear, no exhibits were offered or admitted.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice, June 25, 2024
- Fund Ex. 2 - Hearing Order, June 3, 2024
- Fund Ex. 3 - Home Improvement Claim Form, February 6, 2024
- Fund Ex. 4 - Printout of the Respondent's MHIC licensing history

Testimony

The Claimant testified and did not present other witnesses.

The Respondent failed to appear and did not present any 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 01-138912.
2. In August 2022, the Claimant and the Respondent entered into a Contract to remodel her 1,753 square foot basement, which included the addition of a standard bathroom, theater, and wet bar with a granite countertop; installation of luxury vinyl flooring and thirty recessed lights with dimmers; and two coats of paint on the installed drywall.
3. The Contract price was \$100,200.00, which covered all materials and labor for the basement remodel.
4. The Contract stated that work would begin on or about September 22, 2022 and would be completed by November 30, 2022. The Contract provided the following payment schedule: initial deposit of \$28,500.00 to secure the Contract; 20% of the Contract price upon completion of the framing; 20% after the rough ins for the plumbing and electrical passed inspection; 15% upon the complete installation of the drywall; 10% after the completion of the bathroom; and 10% after substantial completion of the project. The Claimant agreed to pay the final amount of the Contract when the Respondent completed any outstanding work.
5. On September 6, 2022, the Claimant paid the Respondent \$28,500.00 as the initial deposit.

6. Before November 21, 2022, the Respondent completed the installation of the framing and the plumbing and electrical rough-ins.
7. On November 21, 2022, the Claimant paid the Respondent a total of \$25,000.00: \$19,800.00 for the framing and \$5,200.00 for an upgraded electrical panel.
8. In March of 2023, the Respondent stopped performing any work on the basement remodel.
9. Starting on March 30, 2023, the Claimant sent numerous texts to the Respondent about the delay regarding the work on her basement in an effort to have him complete the remodel of the basement.
10. On April 13, 2023, the Claimant texted the Respondent again to advise them that no work had been done in her basement for a month and it was her understanding that they were just waiting for the plumber to return and then move onto inspections.
11. On May 2, 2023, the Claimant requested a meeting with the Respondent to discuss how to move the project along. The Respondent failed to respond to the Claimant's request for a meeting.
12. On May 4, 2023, the Claimant advised the Respondent that the permitting fee to the Prince George's County Office had not been paid.
13. On June 20, 2023, the Respondent advised the Claimant that his company was insolvent. The Respondent did not ask for more money to complete the work but explained that he has no money to pay the subcontractors or permitting fees.
14. On December 15, 2023, the Claimant sent a letter to the Respondent and requested that they participate in binding arbitration as stipulated in their Contract to resolve their dispute. The Respondent's agent requested a meeting, but the Claimant again asked that they participate in arbitration. The Respondent failed to respond thereafter.

15. On February 6, 2024, the Claimant filed a Claim with the MHIC.

16. On February 14, 2024, the Claimant retained BW Brothers Waterproofing LLC (BW) to complete the remodel of her basement. The original contract price was \$74,560.00 to complete the remodel of her basement. The contract with BW (BW Contract) provided that BW would remodel the entire basement according to plans to include all drywall installation, two coats of paint, and payment for all permits. The BW Contract provided that the Claimant would provide paint, vanity, toilet, fixtures, countertops for bar, tile for the shower, and an additional \$2,500.00 would be added for the purchase of the shower glass door.

17. On May 14, 2024, the Claimant and BW agreed to increase the BW Contract price to \$125,156.00 because BW had to remove and reinstall the framing and electrical work completed by the Respondent; and the original contract price with BW did not include the cost to soundproof the theatre, or the materials for the flooring, paint, shower glass door or the installation of cabinets.

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. 2024); *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. 2024). The Claimant resides in the home that is the subject of the claim. *Id.* § 8-405(f)(2) (Supp. 2024). 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. 2024).

The parties did enter into an agreement to submit their disputes to arbitration, and claimants are required to comply with written agreements to submit disputes to arbitration before seeking recovery from the Fund. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2023). However, “[t]he Maryland Home Improvement Law is a regulatory statute enacted for the protection of the public.” *Brzowski v. Maryland Home Imp. Comm’n*, 114 Md. App. 615, 628 (1997) (citing *Harry Berenter, Inc. v. Berman*, 258 Md. 290, 294 (1970)). Further, the MHIC is empowered to adopt and enforce regulations to carry out the Maryland Home Improvement Law, which is codified at Md. Code Ann, Bus. Reg. sections 8-101 to 8-802. Bus. Reg § 8-207(a). The MHIC has adopted an express regulation, COMAR 09.08.01.25, to address arbitration provisions in “home improvement contract[s].”³

³ The Maryland Home Improvement Law defines a “home improvement contract” as an “oral or written agreement between a contractor and owner for the contractor to perform a home improvement.” Bus. Reg § 8-101(h). Because the MHIC has regulatory authority in a public protection scheme over licensed contractors, who with limited exception are the only individuals who may act, or offer to act, as contractors or enter home improvement contracts in Maryland, I afford great weight to COMAR 09.08.01.25A’s mandates. *See* Bus. Reg. § 8-601 (The Maryland Home Improvement Law’s criminal prohibition against unlicensed conduct). In essence, the MHIC requires that its licensee’s home improvement contracts include specific advisements regarding arbitration when such a provision is included.

In pertinent part, COMAR 09.08.01.25A provides that a mandatory arbitration clause in a home improvement contract shall include the following:

- (1) The name of the person or organization that will conduct the arbitration;
- (2) Whether any mandatory fees will be charged to the parties for participation in the arbitration and include the fee schedule;
- (3) Whether the arbitrator's findings are binding; and
- (4) A disclosure that, under Business Regulation Article, §8-405(c), Annotated Code of Maryland, a claim against the Home Improvement Guaranty Fund by an owner shall be stayed until completion of any mandatory arbitration proceeding.

COMAR 09.08.01.25A. It further mandates that “[t]he parties shall affix their initials and date immediately adjacent to any mandatory arbitration clause in a home improvement contract, at the time of execution of the contract.” COMAR 09.08.01.25B.

The arbitration provision in the Contract complies with COMAR 09.08.01.25A. The Claimant contacted the Respondent to participate in arbitration but the Respondent failed to respond to her request in her December 15, 2023 letter. Clmt. Ex. 7.

COMAR 09.08.03.02E provides a mechanism for addressing binding arbitration provisions. It provides as follows:

E. Compulsory Binding Arbitration. When a contract between a claimant and a contractor requires that all contract disputes be submitted to binding arbitration, the claimant shall either:

- (1) Submit their dispute to binding arbitration as required by the contract; or
- (2) Provide evidence to the Commission that the claimant has made good faith efforts to bring the dispute to binding arbitration which the contractor has either rejected or not responded to. The Commission shall then give the contractor written notice that, if the contractor does not agree to binding arbitration, the Commission will consider the compulsory arbitration clause to be void and process the claimant's claim pursuant to this chapter.

COMAR 09.08.03.02E. Since the Respondent failed to respond to the Claimant's December 15, 2023 letter or any other attempts to complete the work in the Contract, I conclude that the MHIC could properly determine that the arbitration clause was void pursuant to COMAR 09.08.03.02E,

without requiring the Claimant to go through the futile exercise of sending the Respondent a request for arbitration that the Respondent would in all likelihood refuse or ignore.

In addition, even if the arbitration clause was not void, the Respondent has waived it. The Respondent could have raised any arbitration issues at, or before, the hearing in this case. Yet despite receiving proper notice, the Respondent did not appear or raise any issues. Accordingly, I conclude that the Respondent has waived any contractual arbitration right that it may have had by advising the MHIC that it would not take any additional steps to defend itself in January 2023, and by failing to raise any issues before or during these proceedings.

Regarding whether the Claimant rejected any good faith efforts by the Respondent, the Claimant tried numerous times via text messaging and telephone calls to contact the Respondent to complete the basement remodel. When those efforts failed, the Claimant contacted the Respondent to participate in arbitration as provided in the Contract. The Respondent did not participate in arbitration. Further, by June 2023, the Respondent advised the Claimant that his company was financially insolvent and it could not pay subcontractors or any permitting fees. As the Respondent made it clear that it could not and would not complete the basement remodeling work called for in the Contract, I find that the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2024).

By June 20, 2023 when the Respondent advised the Claimant that his company was financially insolvent, only the framing for the basement had been completed. As such, approximately twenty percent of the Contract had been completed. The Claimant then retained BW in February 2024 to complete the project.

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. 2024); 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.

The Respondent performed some work under the Contract, and the Claimant has retained other contractors to complete or remedy 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).

Application of the regulatory formula results in an actual loss to the Claimant of \$78,456.00, calculated as follows:

\$53,500.00	amount paid by the Claimant to the Respondent
+ <u>\$125,156.00</u>	amount required to complete the Contract
\$178,656.00	total paid by the Claimant
- <u>\$100,200.00</u>	original Contract price
\$78,456.00	actual loss per formula

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.⁴ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2024); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$78,456.00 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 and compensable loss of \$78,456.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2024); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$30,000.00 from the Fund.

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;⁵ and

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

November 15, 2024
Date Decision Issued

ACD/ja
#214817

Angela C. Diehl

Angela C. Diehl
Administrative Law Judge

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").

⁵ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 21st day of March, 2025, 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.

Michael Shilling

Michael Shilling

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***