

IN THE MATTER OF THE CLAIM OF * MARYLAND HOME
AMOS ALLEN * IMPROVEMENT COMMISSION
AGAINST THE MARYLAND HOME *
IMPROVEMENT GUARANTY FUND * MHIC CASE NO. 23(75)283
FOR THE ACTS OR OMISSIONS OF * OAH CASE NO. LABOR-HIC-
KYLEN LANE AND CORNERSTONE * 02-23-07322
RESTORATION, LLC *
* * * * *

FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on July 5, 2023. Following the evidentiary hearing, the ALJ issued a Proposed Decision on September 11, 2023, concluding that the homeowner, Amos Allen (“Claimant”) was ineligible for a Home Improvement Guaranty Fund award and failed to prove that he suffered an actual loss as a result of the acts or omissions of Kylene Lane and Cornerstone Restoration, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p. 9. In a Proposed Order dated October 25, 2023, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to deny an award from the Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On January 4, 2024, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant participated without counsel. DiNetta Kerfoot, co-owner of Cornerstone Restoration, LLC, appeared on behalf of the Contractor. Assistant Attorney General Catherine Villareale appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Claimant’s exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. Therefore, the Panel’s review of the record was limited to the preliminary exhibits for the exceptions hearing, the ALJ

Proposed Decision, and the exhibits offered as evidence at the OAH hearing. COMAR 09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for the repair of water damage at the Claimant's home. The Contractor began performing the contract, but a personal matter prevented the Contractor from performing further work on the project and delayed the anticipated completion of the project. As a result of the work stoppage and delay, the Claimant terminated the Contractor and demanded a refund. The Contractor offered the Claimant a refund of \$4,538.54, an amount it calculated by subtracting the value of the labor and materials it provided from the amount the Claimant had paid. The Claimant rejected the offer without explanation as to why the offer was insufficient and demanded a full refund. The ALJ found that the Claimant was ineligible for an award because the Claimant unreasonably rejected the Contractor's good faith offer of a refund to resolve the claim. *ALJ's Proposed Decision* pp. 7-8. The ALJ also found that the Claimant did not suffer an actual loss. The ALJ applied COMAR 09.08.03B(3)(c) to calculate the Claimant's actual loss because the Contractor performed some work under the contract and the Claimant hired another contractor to complete the project. Using the prescribed formula, the ALJ found that the Claimant did not suffer an actual loss because the total amount the Claimant paid to the Contractor and to the contractor that completed the project was less than the original price of the parties' contract. *ALJ's Proposed Decision* p. 8.

On exception, the Claimant argued that the ALJ erred in finding that he unreasonably rejected the Contractor's refund offer because the offer was insufficient. At the exceptions hearing, the Claimant did not explain why the offer was insufficient or identify evidence in the record that supported his position. The Commission finds no error. As the ALJ noted, the Contractor calculated the refund offer using industry-standard estimating software and presented a detailed

written explanation of the calculation (OAH Hearing Respondent's Exhibits 1-2), and the Claimant did not provide a factual explanation as to why the offer was insufficient or present supporting evidence.

Moreover, even assuming that the Claimant did not unreasonably reject the Contractor's offer and, therefore, was eligible for a Guaranty Fund award, the Commission notes that the Claimant still would not be entitled to an award because he did not suffer an actual loss as a result of the Contractor's failure to complete the project. Rather, the Claimant was able to complete his project for less than he would have had to have paid to the Contractor if the Contractor had completed the contract.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 17th day of January 2024, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AFFIRMED**;
- D. That the Claimant's claim is **DENIED**;
- E. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- F. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Michael Newton
**Chairperson – Panel
Maryland Home Improvement
Commission**

<p>IN THE MATTER OF THE CLAIM</p> <p>OF AMOS ALLEN,</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 KYLEN LANE,</p> <p>T/A CORNERSTONE</p> <p>RESTORATION, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE H. DAVID LEIBENSPERGER,</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-02-23-07322</p> <p>* MHIC No.: 23 (75) 283</p>
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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 November 29, 2022, Amos Allen (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$8,385.00 for actual losses allegedly suffered as a result of a home improvement contract with Kylene Lane, trading as Cornerstone Restoration, LLC (Respondent or Cornerstone Restoration).

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

Md. Code Ann., Bus. Reg. §§ 8-401 to 411 (2015 & Supp. 2022).² On March 1, 2023, the MHIC issued a Hearing Order on the Claim. On March 9, 2023, the Office of Administrative Hearings (OAH) received the matter forwarded by the MHIC for a hearing.

On July 5, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Nicholas Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent was self-represented by Dinetta Kerfoot, co-owner of Cornerstone Restoration, LLC.

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); Code of Maryland Regulations (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

The Claimant did not offer any exhibits into evidence.³

I admitted the following exhibits offered by the Respondent:

Resp. Ex. 1⁴ - Letter from the Respondent to the MHIC, October 26, 2022, with attached FedEx Receipt, October 27, 2022, and Delivery Confirmation Email, October 28, 2022

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

³ The Claimant pre-marked exhibits 1 through 50A and, despite more than one reminder that any documents the Claimant wanted me to consider as evidence would need to be moved into evidence, the Claimant offered none. I retained copies of all of these documents with the file. The Fund, however, offered six of the Claimant's exhibits into evidence, as noted below.

⁴ The Respondent's exhibits were all pre-marked with a "(c)" for "contractor" after each exhibit number.

- Resp. Ex. 2 - The Respondent's Calculation of Work Completed on the Claimant's Home, September 19, 2022⁵
- Resp. Ex. 3 - Photograph of the Claimant's Home, undated
- Resp. Ex. 4 - Photograph of the Claimant's Home, undated
- Resp. Ex. 5 - Photograph of the Claimant's Home, undated
- Resp. Ex. 6 - Photograph of the Claimant's Home, undated
- Resp. Ex. 7 - Photograph of the Claimant's Home, undated
- Resp. Ex. 8 - Photograph of the Claimant's Home, undated
- Resp. Ex. 9 - Photograph of the Claimant's Home, undated
- Resp. Ex. 10 - Photograph of the Claimant's Home, undated
- Resp. Ex. 11 - Photograph of the Claimant's Home, undated
- Resp. Ex. 12 - Photograph of the Claimant's Home, undated
- Resp. Ex. 13 - Contract between the Claimant and the Respondent, April 18, 2022

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Remote Hearing, April 10, 2023
- Fund Ex. 2 - Hearing Order, March 1, 2023
- Fund Ex. 3 - Letter from the MHIC to the Respondent, January 5, 2023; MHIC Claim Form, received November 29, 2022
- Fund Ex. 4 - Certification of Custodian of Records Re: the Respondent's MHIC Licensing History, May 24, 2023
- Fund Ex. 5 - Notice of Remote Hearing, June 6, 2023
- Fund Ex. 6 - Incomplete Copy of the Respondent's Estimate for the Claimant's Home, inspected February 3, 2022; Incomplete Copy of the Contract between the Claimant and the Respondent, April 18, 2022 (these documents originally marked as Claimant's Ex. 3)

⁵ The date of the document appears on the second and subsequent pages.

- Fund Ex. 7 - The Respondent's Business Card, handwritten date April 18, 2022; Excerpt of Email Chain between the Claimant and the Respondent, April 18, 2022; Email from the Respondent to the Claimant, May 20, 2022; Excerpt of Emails between the Claimant and the Respondent, May 3, 4, 10, 2022; the Respondent's business card, undated; Excerpt of Email from the Respondent to the Claimant, April 18, 2022⁶ (these documents originally marked as Claimant's Ex. 4)
- Fund Ex. 8 - Check from the Claimant to the Respondent, April 18, 2022; two copies of the Contract between the Claimant and the Respondent, April 18, 2022 (these documents originally marked as Claimant's Ex. 40)
- Fund Ex. 9 - Check from the Claimant to the Respondent, April 18, 2022 (originally marked as Claimant's Ex. 4B)
- Fund Ex. 10 - Estimate from Pro Handyman, LLC, April 3, 2023 (originally marked as Claimant's Ex. 50)
- Fund Ex. 11 - Estimate from Pro Handyman, LLC, April 16, 2023; Check from the Claimant to Pro Handyman, LLC, May 4, 2023 (these documents originally marked as Claimant's Ex. 50A)

Testimony

The Claimant testified and did not present other witnesses.

Thomas J. Kerfoot, Jr., Co-Owner, Cornerstone Restoration, LLC and Dinetta Kerfoot, Co-Owner, Cornerstone Restoration, LLC testified on behalf of the Respondent.

The Fund did not present any witness testimony.

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 01-146323.

⁶ This exhibit contains several duplicate pages.

2. On or about April 18, 2022,⁷ the Claimant and the Respondent entered into a contract to remediate water damage to Claimant's upstairs bathroom and downstairs family room, caused by a hot water pipe that burst (Contract).
3. The original agreed-upon Contract price was \$24,876.91.
4. The damage to the Claimant's home was covered by insurance and, upon the Claimant's agreement with the Respondent, he received a direct payment from his insurance company in the amount of \$23,876.91. The Claimant's insurance had a \$1,000.00 deductible.
5. The Contract estimated that work would begin on June 13, 2022 and would be completed by July 13, 2022
6. On April 18, 2022 the Claimant paid the Respondent \$9,385.00.
7. On or about June 15, 2022, the Respondent began work on the Claimant's home by providing a storage pod, and some of the Claimant's furnishings were loaded into the pod.
8. On July 15, 2022, Mr. Kerfoot and a co-worker performed work on the Claimant's home, including demolition work in the upstairs bathroom.
9. On a date in July 2022, after July 15, 2022, Mr. and Mrs. Kerfoot's son was murdered.
10. Cornerstone Restoration is a family owned and operated business. The death of the Kerfoots' son caused a significant disruption in their ability to complete home improvement projects, including the Claimant's.
11. On a date not contained in the record in early August 2022, Mrs. Kerfoot explained to the Claimant the reason for the delay in the completion of his home improvement project.

⁷ The written agreement states that the date of the agreement is April 18, 2022. On that date, the Claimant also paid the Respondent the down payment. However, the Claimant did not sign the agreement until May 20, 2022.

12. On a date not contained in the record, in August of 2022, the Claimant requested a refund from the Respondent.

13. On or about September 19, 2022, the Respondent performed an estimate of the work it completed on the Claimant's home, using software called Exactomate.

14. Exactomate estimates are used by the majority of insurance carriers in the United States. It is the same estimating software the Respondent used to perform the estimate on the Claimant's home that was submitted to his insurer before work began, and which is also used to report work progress to insurance companies.

15. The Respondent calculated the value of its work as \$4,846.46, and therefore offered the Claimant a refund of \$4,538.54 (\$9,385.00 - \$4,846.46). That offer remained open up to the time of the hearing in this matter.

16. On a date not contained in the record, before October 19, 2022, the Respondent communicated its settlement offer of \$4,538.54 to the Claimant. On October 19, 2022, the Claimant told the Respondent by email that he was considering their offer.

17. On a date not contained in the record, the Claimant rejected the Respondent's offer. On the date of the hearing, the Claimant continued to reject the Respondent's offer.

18. The Claimant rejected the Respondent's offer because he did not feel it was enough money, and he wanted a full refund.

19. The Claimant did not challenge any specific item of work or estimated value contained in the Respondent's Exactomate estimate of work completed in his home.

20. On or about April 3, 2023, the Claimant contracted with Pro Handyman, LLC (Pro) to complete the restoration of his upstairs bathroom and downstairs family room (Pro Contract).

21. On May 4, 2023, the Claimant paid Pro \$8,663.72, the total Pro Contract price.

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 (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. 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.”). “[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 not proven eligibility for compensation.

The Claimant Unreasonably Rejected the Respondent’s Good Faith Offer to Cure

The Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022). The Respondent’s offer to resolve the claim was made in good faith. The Respondent offered the Claimant a refund for all the work that was not completed on the project, using detailed estimating software to determine the refund owed to the Claimant. That offer remained open up until the time of the hearing in this matter.

The Claimant’s only basis for rejecting that offer was that he did not feel it was enough, and instead wanted a full refund. At the hearing, the Claimant explained, “I just didn’t value the

work.” (Claimant, Testimony.) The Claimant lacked any evidence to contradict the Respondent’s detailed estimate of the work it had performed. The Claimant’s rejection of the Respondent’s offer – deeming it too low without any legitimate reason – is the very definition of unreasonable. The Claimant is therefore not entitled any compensation from the Fund.

The Claimant Did Not Sustain an Actual Loss under COMAR 09.08.03.03B(3)(c) Because the Amount He Paid Pro to Complete the Original Contract, was less than the Original Contract Price

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 that where the Respondent performed some work under the Contract, and the Claimant retained another contractor to complete or remedy that work, the Claimant’s actual loss is measured according to the following formula:

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)

Applying this formula, the Claimant paid the Respondent a \$9,385.00 deposit. The amount paid to Pro to complete the work under the original Contract was \$8,663.72. Added together, these amounts only total \$18,048.72, which is less than the amount of the original Contract: \$24,876.91. The Claimant therefore sustained no actual loss. I thus find that the Claimant is not eligible for any compensation from the Fund.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim. Md. Code Ann., Bus. Reg. § 8-405(d) (Supp. 2022). I further conclude that the Claimant has not 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); COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

September 11, 2023
Date Decision Issued

David Leibensperger

H. David Leibensperger
Administrative Law Judge

HDL/ckc
#207199

PROPOSED ORDER

WHEREFORE, this 25th day of October, 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**