

IN THE MATTER OF THE CLAIM	*	BEFORE STEPHEN W. THIBODEAU,
OF ALICE YANG,	*	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 ANYA VERA	*	
MESTANZA,	*	OAH No.: LABOR-HIC-02-23-11446
T/A LS HOME IMPROVEMENT, LLC,	*	MHIC No.: 23 (75) 337
RESPONDENT	*	
* * * * *		

PROPOSED DECISION

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STATEMENT OF THE CASE

On February 16, 2023, Alice Yang (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$11,750.00 for actual losses allegedly suffered as a result of a home improvement contract with Anya Vera Mestanza, trading as LS Home Improvement, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).²

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

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

On April 10, 2023, the MHIC issued a Hearing Order on the Claim. On April 20, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On July 10, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Catherine Villareale, 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 May 19, 2023, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail. COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for July 10, 2023, at 9:30 a.m., at the OAH. 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. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

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); 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, unless otherwise noted:

- Clmt. Ex. 1 - Emails between the Claimant and Melissa Mallory of MJ Home Services, November 13, 2019
- Clmt. Ex. 2 - Contract between the Claimant and the Respondent, November 19, 2019
- Clmt. Ex. 3 - Several photographs of the Claimant's property, taken by the Claimant in March, 2020, sub-numbered as follows:
- 3a: Photo of uninstalled garbage disposal
 - 3b: Photo of ductwork in utility room
 - 3c: Photo of stairs near kitchen and living room
 - 3d: Photo of unfinished kitchen plumbing
 - 3e: Photo of old kitchen cabinets
 - 3f: Photo of upstairs bathroom door off hinge
 - 3g: Photo of unfinished, uncovered electrical outlet in basement
 - 3h: Photo of security bars in window of upstairs den
 - 3i: Photo of uninstalled baseboard in basement bathroom
 - 3j: Photo of painted patio door hinge
 - 3k: Photo of unfinished drywall in basement bathroom
 - 3l: Photo of cubby space underneath stairwell
 - 3m: Photo of flooring in bedroom
 - 3n: Photo of drywall near kitchen sink
 - 3o: Photo of toilet and missing tile in bathroom
 - 3p: Photo of debris left at worksite
 - 3q: Photo of kitchen subfloor, plumbing, and wiring
 - 3r: Photo of floor near fireplace in living room with partial floor leveling cement
 - 3s: Photo of floor near fireplace in living room with partial floor leveling cement
 - 3t: Photo of exposed wiring in kitchen

- Clmt. Ex. 4 - Two screenshots of the Claimant's funds transfers to the Respondent, including a \$3,000.00 payment made November 21, 2019, and a \$2,750.00 payment made November 29, 2019
- Clmt. Ex. 5 - Contract between the Claimant and Diligent Remodeling (Diligent), December 7, 2021 for \$7,394.00; Receipt from Molina Floors (Molina) for \$2,400.00, December 8, 2021
- Clmt. Ex. 6 - Photo of stairs and flooring in living room near fireplace after work by Diligent and Molina, taken by the Claimant, January, 2022
- Clmt. Ex. 7 - Photo of finished plumbing work in kitchen completed by Michael and Sons, taken by the Claimant, January, 2022
- Clmt. Ex. 8 - Report from Joesph Hauser, Project Manager of the Atlantic Design Group, to the Claimant, February 15, 2023 (Not offered or admitted)
- Clmt. Ex. 9 - Estimate from Clinton Electric Company, March 9, 2023
- Clmt. Ex. 10 - Two receipts for the Claimant's payments to J & Electric for Jake Swade Dawson, Master Electrician, for \$290.00 and \$20.00, April 10, 2023

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Letter from the MHIC to the Respondent, February 27, 2023, with attached claim form
- Fund Ex. 2 - Hearing Order, April 10, 2023
- Fund Ex. 3 - Notice of Hearing, May 19, 2023
- Fund Ex. 4 - MHIC Licensing History for the Respondent, printed July 6, 2023

The Respondent did not offer any exhibits.

Testimony

The Claimant testified and did not present other witnesses.

The Respondent and the Fund did not present any 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 5803112.

2. On November 19, 2023, the Claimant and the Respondent entered into a contract (Contract) for a variety of home improvements at 641 Dover Street, Baltimore, Maryland (Property).

3. The Property is the only real property owned by the Claimant in the State of Maryland.

4. The Contract was a labor only contract and did not include the cost of materials. The Contract provided that the Respondent would perform the following labor at the Property: installation of flooring, drywall, and paint in the basement; install flooring on the first floor; install and repair flooring, cabinets, plumbing, dishwasher, garbage disposal, and faucet in the kitchen; and install flooring to a second-floor bathroom.

5. The original agreed-upon Contract price was \$9,000.00. However, the Contract price was subsequently reduced to \$8,500.00 following a deduction for some of the drywall work.

6. The Contract stated that work would begin on November 25, 2019.

7. The Claimant paid the Respondent \$3,000.00 towards the Contract on November 21, 2019, and made another payment to the Respondent towards the Contract for \$2,750.00 on November 29, 2019, for a total of \$5,750.00.

8. The Respondent began work on the Contract on or about November 27, 2019. The only work performed on the Contract was installing cement board in the kitchen, painting some of the ceiling and walls throughout the Property, installation of some baseboard insulation, and installing some of the drywall per the Contract.

9. On or about December 5, 2019, the Respondent demanded more money from the Claimant before performing additional work on the Contract.

10. The Claimant raised concerns regarding the quality of the Respondent's work on the Contract at that time. Specifically, the Claimant noted that the painting was poorly performed, including painting over several door hinges, and the floor had not been leveled before installation of the flooring material in various parts of the Property. As a result, the Claimant refused to pay the Respondent any further money until those issues were resolved.

11. The Respondent subsequently performed sporadic work on the Contract, and the last time the Respondent performed any work on the Contract was March 3, 2020.

12. The last time the Respondent appeared at the Property was August 8, 2020, to collect tools.

13. On December 7, 2021, the Claimant received an estimate from Diligent to finish the project. The total cost of the Diligent estimate was \$7,394.00. The Diligent estimate was for labor only, like the Contract. However, that estimate included a line item of \$1,800.00 for exterior work that was not originally covered in the Contract. The total cost of the Diligent estimate to finish the original Contract, therefore, was \$5,594.00.

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; 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 proven eligibility for compensation.

There is no dispute that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements. The Claimant provided ample evidence, in the form of testimony and exhibits, that the work performed by the Respondent on the Contract was minimal and of poor quality. Despite performing the bare minimum of work on the Contract, and apparently becoming upset with the questions regarding the work by the Claimant, the Respondent demanded more money and then refused to finish the Contract once the Claimant failed to forward additional payment. As a result, I find the Respondent’s work was inadequate and incomplete, and 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. 2022); 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 retained other contractors to complete or remedy that work.³

³ The Fund argued that the appropriate formula in this case is COMAR 09.08.03.03B(3)(a), which is for abandonment of a contract by the contractor. However, I decline to apply this formula in this case, because that formula requires that the Respondent abandon the Contract “without doing *any* work”. COMAR 09.08.03.03B(3)(a). (Emphasis added). In this case, it is undisputed that the Respondent did do some work, though it was minimal.

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).

Here, the Claimant paid the Respondent \$5,750.00 towards the Contract, and paid Diligent \$5,594.00 to remedy the Respondent's poor workmanship.⁴ The original Contract price was \$8,500.00. Therefore, the Claimant's actual loss is \$2,844.00 (\$5,750.00 paid to the Respondent, plus \$5,594.00 paid to Diligent, minus the original Contract price of \$8,500.00 equals \$2,844.00).

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.⁵ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$2,844.00.

⁴ The Claimant also provided receipts for electrical work she had performed by a master electrician in 2023 for the kitchen area, for a total of \$310.00. I have not included this amount in my calculation because the Contract did not provide for electrical work, and the Claimant did not establish how this work was related to the Respondent or the Contract.

⁵ 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").

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$2,844.00 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)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund. Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); 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 \$2,844.00; 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;⁶ and

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

Stephen W. Thibodeau.

October 2, 2023
Date Decision Issued

Stephen W. Thibodeau
Administrative Law Judge

SWT/sh
#207399

⁶ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 9th day of November, 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***

IN THE MATTER OF THE CLAIM OF * MARYLAND HOME
ALICE YANG * IMPROVEMENT COMMISSION
AGAINST THE MARYLAND HOME *
IMPROVEMENT GUARANTY FUND * MHIC CASE NO. 23(75)337
FOR THE ACTS OR OMISSIONS OF * OAH CASE NO. LABOR-HIC-
ANYA VERA MESTANZA AND LS * 02-23-11446
HOME IMPROVEMENTS, LLC *
* * * * *

FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on July 10, 2023. Following the evidentiary hearing, the ALJ issued a Proposed Decision on October 2, 2023, concluding that the homeowner, Alice Yang (“Claimant”) suffered an actual loss as a result of the acts or omissions of Anya Vera Mestanza and LS Home Improvements, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p.7. In a Proposed Order dated November 9, 2023, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to grant an award of \$2,844.00 from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On March 7, 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. The Contractor did not participate. Assistant Attorney General Hope Sachs 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. The Claimant requested leave to present new evidence, but failed to demonstrate that the proposed new evidence was not discovered and, with the exercise of due diligence, could not have been

discovered, before the ALJ hearing. Therefore, the Panel's review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, and the exhibits entered 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 installation of flooring and kitchen cabinets and various other improvements at a house owned by the Claimant. The ALJ found that the Contractor's performance under the contract was unworkmanlike, incomplete, and inadequate. *ALJ's Proposed Decision* p. 7.

On exception, the Claimant argued that the ALJ erred by failing to consider the cost she incurred to have a contractor install her garbage disposal when calculating her actual loss. In support of her argument, the Claimant cited a photograph of a disconnected garbage disposal. (OAH Hearing Claimant's Exhibit 3a.) The Commission finds no error, as the Claimant failed to present evidence of the cost she incurred to have the garbage disposal installed.

The Claimant further argued that the ALJ erred by failing to consider the cost she incurred to correct and complete the electrical work that the Contractor was supposed to have performed when calculating her actual loss. In support of her argument, the Claimant cited email receipts for payments she made to J & Electric. (OAH Hearing Claimant's Exhibit 10.) The Commission finds no error, as the parties' contract did not include electrical work.

At the exceptions hearing, counsel for the Guaranty Fund noted that the ALJ erred in finding that the parties entered into their contract on November 19, 2023. The Commission agrees, and finds that the parties entered into their contract on November 19, 2019.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 22nd day of March 2024, **ORDERED:**

A. That the Findings of Fact of the Administrative Law Judge are **AMENDED**;

- 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 **AMENDED**;
- D. That the Claimant is awarded \$2,844.00 from the Maryland Home Improvement Guaranty Fund;
- E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, *Md Code Ann.*, Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a);
- F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- G. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Joseph Tunney
Chairperson –Panel
Maryland Home Improvement
Commission