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|------------------------------|----------------------------------|
| IN THE MATTER OF THE CLAIM   | * BEFORE LEIGH WALDER,           |
| OF BARBARA READY,            | * 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 BRYAN JONES,    | *                                |
| T/A BOJ & SON'S CONSTRUCTION | *                                |
| LLC,                         | * OAH No.: LABOR-HIC-02-23-01510 |
| RESPONDENT                   | * MHIC No.: 23 (75) 40           |

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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 October 3, 2022, Barbara Ready (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 \$33,183.05 for actual losses allegedly suffered as a result of a home improvement contract with Bryan Jones, trading as BOJ & Son's Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp.

2022).<sup>1</sup> On January 6, 2023, the MHIC issued a Hearing Order on the Claim. On January 17, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 2, 2023, 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 represented herself. The Respondent did not appear for 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 January 19, 2023, the OAH sent a Notice of Hearing (Notice) through the United States Postal Services (USPS) to the Respondent's address of record. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Respondent signed a Return Receipt indicating that he received the Notice on January 26, 2023. The Notice stated that a hearing was scheduled for March 2, 2023, at 9:30 a.m., at the OAH located at 11101 Gilroy Road, Hunt Valley, Maryland 21031. The Notice advised the Respondent that failure to attend the hearing might result in "a decision against you." The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, and after determining that the Respondent received proper notice, I proceeded with the hearing. 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.

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<sup>1</sup> Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

## 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 – Packet of documents that consist of the following:

- A&B – Contract, revised October 1, 2021
- C – Printout from the Maryland Department of Assessments and Taxation, printed October 1, 2021
- D – Printout from the Department's website, printed October 1, 2021
- E – Check, dated October 1, 2021
- F – Check, dated December 1, 2021
- G – Building Permit, issued November 9, 2021
- H – USPS receipt, dated June 29, 2022
- I&J – Breach of Contract Notice, dated June 27, 2022
- K – Email from the Claimant to the Respondent, dated July 6, 2022
- L&M – Form filed with the Fund, dated July 7, 2022
- N – Letter from the MHIC to the Respondent, dated July 25, 2022
- O-Q – High Point Buildings forms, dated October 26, 2021
- R – Invoice from High Point Buildings, dated July 6, 2022
- S – Letter from High Point Buildings to the Respondent, dated July 21, 2022
- T-W – High Point Buildings forms, various dates
- X – Claim, dated September 26, 2022
- Y-UU – Text messages between the Claimant and the Respondent, various dates

CL Ex. 2 – Narrative, undated

CL Ex. 3 – Garrety Glass Contract, dated September 26, 2022

No documents were submitted on behalf of the Respondent.

I admitted the following exhibits offered by the Fund:

MHIC GF Ex. 1 – Notice, dated January 19, 2023

MHIC GF Ex. 2 – Hearing Order, dated January 6, 2023

MHIC GF Ex. 3 – Letter from the MHIC to the Respondent, dated November 18, 2022, with the following attachment:

- Claim, received October 3, 2022

MHIC GF Ex. 4 – Licensing History, printed March 1, 2023

Testimony

The Claimant testified on her own behalf.

The Respondent was not present to testify or offer any witnesses.

The Fund did not offer 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 137602.

2. Between September 28, 2021 to October 1, 2021, the Claimant and the Respondent entered into a contract where the Respondent agreed to build a sunroom onto the Claimant's home for \$70,000.00. This price included labor, supplies, and building materials:

3. The contract set out that the Respondent would perform the following work:

- \$5,000.00 (permits/demo/prep) submit plans to the county for approval, demo/prep the entire area for the proposed build.
- \$50,000.00 (build) an extension foundation, footers, framing, insulation, drywall, roofing, siding, downspouts, windows and sliding glass doors as designed by [the Claimant].
- \$2,500.00 (install) new electrical infrastructure, ceiling fans, lighting, switches and receptacles.
- \$2,500.00 (install) a new drainage system for the hot tub. Dig a trench drain down to the sidewalk for the water to drain down the street municipal system.
- \$1,000.00 (install) new indoor/outdoor carpet.
- \$500.00 (demo/prep) the entire rear area.
- \$2,500.00 (install) a new fence for the rear two walls and entrance gates.
- \$2,500.00 (install) a new 12'x12' concrete pad.
- \$3,500.00 (install) a new 10'x10' storage shed.

(CL Ex. 1: A & B).

4. As an incentive, the Respondent agreed to reduce the total contract price to \$65,000.00 as a “promotional discount.” (*Id.*).

5. The Claimant paid the Respondent two \$20,000.00 payments, via check; one payment on October 1, 2021, and another payment on December 1, 2021.

6. In October, November, and December 2021, the Respondent obtained the necessary permits, installed a fence and a shed, and poured a concrete slab.

7. On a date not contained in the record, the Respondent informed the Claimant that he would have to stop construction during the cold months because the ground would be too hard.

8. In April through September 2022, the Claimant sent the Respondent multiple text messages in attempts to get the Respondent to return to her property to construct the sunroom but the Respondent would make various excuses for not returning.

9. On June 27, 2022 and July 6, 2022, the Claimant wrote a letter to the Respondent informing him that unless he resumed construction she would consider his inaction a breach of the contract. The Respondent did not return to the Claimant’s property or respond to the letters.

10. On or about July 6, 2022, the Claimant had to pay \$1,299.05 directly to High Point Buildings for the shed that the Respondent installed on her property.

11. On September 26, 2022, the Claimant contracted with Garrety Glass to continue performing the same work that was supposed to be provided by the Respondent, to complete construction of the sunroom.

12. The total cost for Garrety Glass to complete constructing the sunroom was \$70,500.00.

## DISCUSSION

### Applicable Law

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 proven eligibility for compensation.

### Eligibility for Compensation

The Claimant took the position that she suffered an actual loss incurred as a result of the Respondent’s acts or omissions, entitling her to compensation from the Fund. Specifically, the Respondent stopped performance under the contract, and the Claimant had to retain another contractor to complete the work necessary to finish construction on her sunroom. The Fund agreed that the Claimant suffered an actual loss and is entitled to compensation. For the reasons that follow, I agree with the Claimant and the Fund.

The evidence in this case establishes there are no legal impediments barring the Claimant from filing a claim under sections 8-405 or 8-408 of the Business Occupations Article. The Respondent was a licensed home improvement contractor at the time of the contract. The home

improvement work was to be performed on the Claimant's residence in Maryland. The Claimant is not a relative, employee, officer, or partner of the Respondent; and the Claimant is not related to any of the Respondent's employees, officers, or partners. The Claimant did not reject any efforts by the Respondent to resolve the Claim. The Claimant timely filed the Claim with the MHIC on October 3, 2022. Finally, the Claimant has not taken any other legal action to recover monies from the Respondent.

The Claimant demonstrated that the Respondent performed an incomplete home improvement. The Claimant contracted with the Respondent to build a sunroom onto the Claimant's home, and to construct a fence, a concrete pad, and a storage shed. Prior to stopping work in December 2021, the Respondent obtained the necessary permits, installed a fence and a shed, and poured a concrete slab. However, the Respondent failed to construct the sunroom. The Claimant submitted a thread of text messages that demonstrate that the Respondent did not construct the sunroom and would not return to her property when the Claimant requested that he complete the project. (CL Ex. 1: Y-UU). As a result, the Claimant was left with an incomplete home improvement, requiring the Claimant to contract with Garrety Glass to complete the construction of her sunroom. (CL Ex. 3).

After considering the Claimant's uncontested and credible testimony, and after reviewing the Claimant's corroborating exhibits, I agree with both the Claimant and the Fund that the Respondent performed an incomplete home improvement. *See* Bus. Reg. § 8-401. Thus, the Claimant is eligible for compensation from the Fund. *See Id.* § 8-405(a) (Supp. 2022); *see also* COMAR 09.08.03.03B(2). Having found eligibility for compensation I must determine the amount of the Claimant's actual loss.

Award

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 Claimant calculated on the Claim form that she is entitled to recover \$33,183.05 from the Fund, due to an actual loss that resulted from an act or omission by the Respondent. The Fund argued that the Claimant is eligible to recover the statutory maximum, \$30,000.00, from the Fund.

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 three formulas to measure a claimant's actual loss, depending on the status of the contract work. The following formula applies considering that the Respondent performed some work under the contract, and the Claimant retained another contractor to complete that work:

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 demonstrated that she paid the Respondent a total of \$40,000.00 towards the cost of the \$65,000.00 contract. The Claimant also demonstrated that she had to pay an additional \$1,299.05 directly to High Point Buildings for the shed that the Respondent installed on her property, despite the fact that her contract with the Respondent covered the cost for all building supplies and materials. (CL Ex. 1: E, F, R). Therefore, the Claimant paid a total of \$41,299.05 to, or on behalf of, the Respondent under the original



contract. The Claimant also demonstrated that she will be required to pay \$70,500.00 to Garrety Glass to complete the original contract. (CL Ex. 3). Adding \$41,299.05 to \$70,500.00 equals \$111,799.05. Then subtracting the original contract price (\$65,000.00)<sup>2</sup> from \$111,799.05, equals \$46,799.05. Per this formula, the Claimant's actual loss is \$46,799.05.

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. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss exceeds the amount paid to the Respondent (\$41,299.05), and exceeds the \$30,000.00 statutory cap. 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 \$46,799.05 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 \$30,000.00 from the Fund. Md. Code Ann., Bus. Reg. 8-405(a), (e)(1) (Supp. 2022).

### **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

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<sup>2</sup> When calculating Claimant's actual loss, the Fund used a \$70,000.00 figure as the original contract price. I find the original contract price was \$65,000.00, not \$70,000.00 as the Respondent applied a "promotional discount." (CL Ex. 1: B). Therefore, the Claimant would have only been expected to pay the Respondent \$65,000.00 under the original contract.

<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").

**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.

May 24, 2023  
Date Decision Issued

*Leigh Walder*  
\_\_\_\_\_  
Leigh Walder  
Administrative Law Judge

LW/ja  
#205296

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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 26<sup>th</sup> day of June, 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.***

***Lauren Lake***

***Lauren Lake***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***