

IN THE MATTER OF THE CLAIM	BEFORE JOCELYN L. WILLIAMS,
OF ANIL NIMMAGADDA,	* 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 SARATH	*
PUTHUSSERY,	* OAH No.: LABOR-HIC-02-23-27104
T/A BALTIMORE DESIGN AND	* MHIC No.: 23 (75) 460
REMODELING,	*
RESPONDENT	*

* * * * *

PROPOSED DECISION

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ISSUES
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STATEMENT OF THE CASE

On March 13, 2023, Anil Nimmagadda (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$22,533.00 for actual losses allegedly suffered as a result of a home improvement contract with Sarath Puthussery, trading as Baltimore Design and Remodeling² (Respondent). Md. Code

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).
² The Respondent was also trading as Old Bay Remodeling; however, no testimony or explanation was provided during the hearing regarding the two companies.

Ann. Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).³ On August 15, 2023, the MHIC issued a Hearing Order on the Claim. On October 13, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On December 14, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent was present and self-represented.

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); 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

I admitted the following exhibits offered by the Claimant:⁴

- Clmt. Ex. 1 Text messages between the Claimant and the Respondent, with explanations, various dates; cancelled checks from the Claimant made payable to the Respondent, dated January 26, 2022, April 2, 2022 and April 16, 2022; photographs of unfinished gym and media rooms, undated
- Clmt. Ex. 2 Proposal from GloRem, LLC, for \$27,533.00, dated November 18, 2022; Proposal from Clarksville Construction Services, Inc., for \$34,322.81, dated February 22, 2023

³ Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

⁴ The Claimant pre-marked his exhibits and requested the admission of Clmt. Ex. 1 through Clmt. Ex. 5; however, the exhibits appear to have been mismarked, as there are only four exhibits. There is no Clmt. Ex. 4.

receipt from The Claimant and Bruce Young's Drywall, Inc. (BCD) for \$6,140.00, signed March 14, 2023; receipt from The Home Depot for \$1,186.19, dated March 22, 2023; work order/invoice from Mak's Electrical Unlimited, LLC for \$1,840.00, dated May 1, 2023; invoice from The Vertical Connection for \$6,314.49, dated March 28, 2023; proposal from All About Sound & Video, Inc. for \$1,074.97, dated April 25, 2023

Clmt. Ex. 5 Contract between the Claimant and the Respondent for \$18,000.00, dated April 2, 2022

The Respondent did not offer any exhibits for admission into evidence.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 Notice of Hearing, issued November 7, 2023; Hearing Order, dated October 13, 2023
- Fund Ex. 2 Licensing History for the Respondent, dated November 28, 2023
- Fund Ex. 3 Letter from Joseph Tunney, Chairman MHIC, to the Respondent, dated April 11, 2023; Claim, received by MHIC on March 13, 2023

Testimony

The Claimant testified and did not present any additional witnesses.

The Respondent testified and did not present any additional witnesses.

The Fund did not present any testimony or offer 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 01-119037.
2. The Claimant's property subject to this matter is located in Clarksville, Maryland and is the Claimant's residence. (the Property).
3. On or about April 2, 2022, the Claimant and the Respondent entered into a contract to frame and construct an exercise room with laundry room and a media room in the basement of the Property. (Contract). (Clmt. Ex. 5).

4. The original agreed upon Contract price was \$18,000.00 (18k).

5. The Claimant paid a deposit of \$4,000.00 at the time the Contract was signed.⁵

6. Work on the project was to commence on April 4, 2022, and be completed within thirty days of the start date.

7. On April 16, 2022, the Claimant paid the Respondent \$4,000.00 at the start of the project.⁶

8. On April 26, 2022, the Claimant paid the Respondent \$5,000.00 at the start of the second week of work, as specified in the Contract.

9. On or after April 26, 2022, the Claimant inquired regarding permits to complete the project. The Respondent initially told the Claimant that he would not be obtaining permits and was later told that permits were not covered under the Contract, and he would have to pay an additional \$6,000.00.

10. The Claimant maintained that the permits were included under the Contract. The Respondent disagreed.

11. The Claimant applied for a permit for the project from Howard County and paid a fee of \$135.00.

12. The framing inspection for the project passed.

13. The electrical second rough-in inspection for the project passed.

14. On August 15, 2022, the Respondent issued a change order invoice to the Claimant for \$850.00 to obtain an additional electrical permit, which stated as follows:

- (1) Homeowner will pay \$850 for permit fees for electrical permit that was not included in the initial contract. This is only fee for the permit. The actual labor and materials are included in the initial contract.

⁵ The Contract specifies that \$5,000.00 was to be paid at the time of signing. There was no testimony provided as to why a payment of \$4,000.00 was made by the Claimant and accepted by the Respondent.

⁶ The Contract specifies that \$5,000.00 was to be paid at the start of the work. There was no testimony provided as to why a payment of \$4,000.00 was made by the Claimant and accepted by the Respondent.

(b) Homeowner agrees to the delays caused by applying for permit mid-job. The deadline mentioned in the initial contract is voided by this addendum. The new end date will be depending on the permits, inspection and other external factors.

Total Change Due when Electrical Inspection Rough in is passed.

(Clmt. Ex 1, p. 6)

15. The Claimant and the Respondent exchanged several text messages. The Respondent refused to continue the project until the Claimant accepted the change order and paid the \$850.00 electrical permit fee.

16. At the time, the Respondent discontinued work on the project, the framing and electrical rough-in had been completed in the gym and media room. Media wiring was still pending. (Clmt. Ex. 1, pp. 9 - 10).

17. On November 18, 2022, the Claimant obtained an estimate from GloRem, LLC, for \$27,533.00 to complete the work on the basement project that the Respondent agreed to complete under the Contract. (Clmt. Ex. 2).

18. On February 22, 2023, the Claimant also obtained an estimate from Clarksville Constructions Services, Inc. for \$34,322.81, to complete the work on the basement project that the Respondent agreed to complete under the Contract. (*Id.*).

19. On March 6, 2023, the Claimant entered into a contract with Bruce Combs Drywall, Inc. for \$6,140.00 to complete the drywall installation for the basement project. (Clmt. Ex. 3).

20. Bruce Combs Drywall, Inc. is not currently licensed as a contractor by the MHIC. It previously held a license with the MHIC that expired several years ago.

21. On March 22, 2023, the Claimant paid The Home Depot \$1,186.19 for supplies to complete the basement project. (*Id.*).

22. On May 1, 2023, the Claimant paid Mak's Electrical Unlimited, LLC \$1,840.00 to complete electrical work for the basement project. (*Id.*). Mak's Electrical is a licensed contractor with the MHIC.

23. On March 28, 2023, the Claimant entered into a contract with The Vertical Connection for \$6,314.49 to install carpet and moldings to complete the basement project. (*Id.*). Licensure with the MHIC is not required for carpet installers.

24. On April 25, 2023, the Claimant entered into a contract with All About Sound & Video, Inc. for \$1,074.97 to prewire and install home theater equipment to complete the basement project. (*Id.*). Only a portion of the contract price totaling \$512.49, was for the same scope of work under the Contract with the Respondent.

25. On March 13, 2023, the Claimant filed a Claim with the MHIC.

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. 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 did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & 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). The Respondent performed unworkmanlike, inadequate, and incomplete home improvements. The Respondent was to complete the project within thirty days of the April 4, 2022 start date. The Respondent failed to obtain the necessary permits for the project, which were required to perform the work, and became hostile when the Claimant insisted on permits and obtained the permit from Howard County. Additionally, the Respondent demanded an additional \$850.00, and the signing of a change order which imputed the responsibility for the delays in the completion of project to the Claimant, because the Claimant required the use of permits. The Claimant was justified in refusing to sign the change order or to pay any additional money under the Contract. The Respondent abandoned the project.

The Claimant provided uncontroverted evidence that the Respondent's work was unworkmanlike, inadequate, and incomplete. The Claimant established, by a preponderance of the evidence, the Contract price, the money paid to the Respondent, and provided evidence of the cost to obtain the items the Respondent did not provide under the contract.

The Fund agreed that the Respondent performed in an inadequate, incomplete and unworkmanlike manner. The Fund argued that the Claimant's credible evidence shows that he sustained a loss from the acts or omissions of the Respondent, and it therefore recommended an award to the Claimant from the Fund. I 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. 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 retained other contractors to complete or remedy that work. The Claimant testified that he has additional invoices for painting, electrical materials, baseboard materials, and other materials used to complete the project. He acknowledged that he did not provide these additional invoices, as he was not prepared for the hearing. I can only review and consider the invoices the Claimant provided as evidence at the hearing. The invoices provided by the Claimant for work performed by licensed contractors other than the Respondent total \$9,853.17. The Claimant provided an additional invoice in the amount of \$6,140.00 from Bruce Combs Drywall, Inc.; however, that invoice cannot be considered in calculating an award from the Fund, because Bruce Combs Drywall, Inc is not an MHIC licensed contractor.

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 net paid or will be required to pay another contractor to repair prior 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 the formula in this case results in the following calculation:

Amount Claimant paid to Respondent:	\$13,000.00
Amount paid to The Home Depot	\$1,186.19
Amount paid to Mak's Electrical Unlimited LLC	\$1,840.00
Amount paid to The Vertical Connection	\$6,314.49
Amount paid to All About Sound and Video, Inc.	\$512.49
(Total paid additional contractors	\$9,853.17)
Total paid to all contractors	<u>\$22,853.17</u>
<u>Less the Contract price:</u>	<u>\$18,000.00</u>
Actual Loss	\$4,853.17

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.⁷ 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

⁷ 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").

Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$4,853.17.⁸

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$4,853.17 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)(c). I further conclude that the Claimant is entitled to recover that \$4,853.17 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

RECOMMENDED ORDER

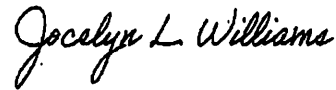
I **RECOMMEND** that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$4,853.17; 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;⁹ and

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

March 13, 2024
Date Decision Issued



Jocelyn L. Williams
Administrative Law Judge

JLW/at
#209840

⁸ The Claimant requested \$22,533.00 for actual losses in his Claim; however, after considering the permissible invoices provided as evidence and applying the relevant statutory formula the actual losses are calculated as \$4,853.17.

⁹ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 7th 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***