

IN THE MATTER OF THE CLAIM	* BEFORE MICHAEL R. OSBORN,
OF RHONDA ADAMS,	* 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 WILL GUZMAN,	*
T/A GUZMAN CONSTRUCTION, LLC	* OAH No.: LABOR-HIC-02-23-27199
RESPONDENT	* MHIC No.: 23 (75) 526

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSION OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On March 13, 2023, Rhonda Adams (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$6,439.99 for actual losses allegedly suffered as a result of defects of a home Will Guzman, trading as Guzman Construction, LLC (Respondent), bought, improved, then sold to the Claimant. Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).² On October 13,

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 Volume of the Maryland Annotated Code.

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 6, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Jessica Kauffman, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent was 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, with the exception of Claimant's Exhibit 2:

Clmt. Ex. 1 - Complaint, October 27, 2022, with attachments

Clmt. Ex. 2 - Not admitted³

Clmt Ex. 3 - Proposal, Handyman on Demand, February 20, 2021

Clmt. Ex. 4 - Terminix proposal for attic insulation, undated

The Respondent did not offer exhibits for admission as evidence.

³ Claimant's Exhibit 2 will remain with the record. COMAR 28.02.01.22C.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, November 2, 2023

Fund Ex. 2 - Transmittal to OAH, undated, with MHIC Hearing Order, October 13, 2023

Fund Ex. 3 - Respondent's MHIC Licensing History, November 29, 2023

Fund Ex. 4 - MHIC letter to the Respondent, April 11, 2023

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other 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 01-117604.⁴
2. At some time prior to April 22, 2022, the Respondent purchased 4201 Morrison Court, Baltimore, Maryland (the Property). The Respondent purchased the Property to make improvements and repairs, then resell the property.
3. At some time prior to April 22, 2022, the Respondent listed the Property through Keller Williams Flagship of Maryland, a real estate listing brokerage company.
4. Prior to April 22, 2022, the Claimant began a search for a home to buy, and worked with a real estate salesperson of ReMax Advantage Realty of Baltimore.

⁴ MHIC records reflect that the Respondent trades as WG Home Remodeling LLC, with a business address in Annandale, Virginia, license number 05 136787. The Claimant's Complaint describes the Respondent as trading as Guzman Construction, LLC, with a business address in Elkridge, Maryland. Her Complaint to the MHIC includes a June 15, 2022, letter on Guzman Construction letterhead, located in Elkridge, Maryland, which includes "MHIC 137216."

5. On April 22, 2022, the Claimant, through her real estate salesperson, made an offer to purchase the Property. On April 27, 2022, the Claimant and the Respondent entered into a Residential Contract of Sale (Contract), prepared on a standard form contract by the real estate professionals involved in the transaction, in which the Claimant agreed to purchase the Property for \$154,900.00.

6. Property Inspection Pros completed an inspection of the Property and issued a 46-page inspection report dated April 28, 2022.

7. The Property Inspection Pros inspection report included several photographs and written descriptions of the poor condition of the Property's roof, among other defects.

8. On June 15, 2022, the Respondent submitted a single-sentence letter to his realtor stating that the roof of the Property was replaced in June 2022, and had a life expectancy of 20-30 years.

9. The Claimant and the Respondent went to settlement on the Contract, and on June 27, 2022, the Claimant took possession of the property.

10. In August 2022, the Property suffered water intrusion due to roof leaks. Rainwater made its way into the Property's attic. Insulation, ceilings, fixtures, walls, floors, and carpeting were damaged on two levels of the Property.

11. The Claimant contacted her realtor, who contacted the Respondent's real estate agent, concerning the roof leaks.

12. The Claimant sent a subcontractor to apply roofing caulk to the roof.

13. After roof caulk was applied the roof continued to leak. The Claimant contacted her realtor, but this did not result in any further response from the Respondent.

14. The Claimant and the Respondent never entered into a contract to perform home improvements to the Property.

15. The Claimant did not pay the Respondent any money to perform home improvements.

16. The Respondent did not perform unworkmanlike, inadequate, or incomplete home improvements pursuant to a home improvement contract with the Claimant.

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. 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.

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. 2023); COMAR 09.08.03.03B(4).

For the following reasons, I find that the Claimant has not 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 Respondent was under no home improvement contract obligation to resolve the Claimant's claims; thus, the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve her claim. *Id.* § 8-405(d) (Supp. 2023).

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). No such claims are made here.

MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

⁵ See *Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute.") The statute here requires an agreement to perform home improvements between a claimant and a contractor as a condition of eligibility for compensation by the Fund.

“If the contractor abandoned the contract without doing any work, the claimant’s actual loss shall be the amount which the claimant paid to the contractor under the contract.” COMAR 09.08.03.03B(3)(a). This formula is inapplicable.

“If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant’s actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.” COMAR 09.08.03.03B(3)(b). This formula is inapplicable.

“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). This formula is inapplicable.

In this case, the Claimant has no actual loss compensable by the Fund because there was no home improvement contract between the Claimant and the Respondent, the Claimant did not pay the Respondent to perform home improvements, and she has no actual loss under the Department’s loss calculation regulations.

PROPOSED CONCLUSION OF LAW

I 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. 2023); COMAR 09.08.03.03B(3)(a)-(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.

February 1, 2024
Date Decision Issued

Michael R. Osborn

Michael R. Osborn
Administrative Law Judge

MRO/ja
#209843

PROPOSED ORDER

WHEREFORE, this 16th day of April, 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**