

IN THE MATTER OF THE CLAIM	* BEFORE JOCELYN L. WILLIAMS,
OF BRANDY SELBY,	* 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 JAHMAH WILSON,	*
T/A HANDYMAN MALL410 LLC,	* OAH No.: LABOR-HIC-02-23-07320
RESPONDENT	* MHIC No.: 23 (75) 56

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On November 7, 2022, Brandy Selby (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$10,378.40 for actual losses allegedly suffered as a result of a home improvement contract with Jahmah Wilson, trading as Handyman Mall410 LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).² On March 1, 2023, the MHIC issued a Hearing Order

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.

on the Claim. On March 9, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 5, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Mackenzie Read, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent was not present, and the Fund reported that he was deceased as of August 27, 2022. The case was transmitted to the OAH after the Respondent's death and the OAH had received signed certified mail receipts from Handyman Mall410 LLC, indicating that the business was still operating.³ I found good cause to postpone the hearing.

On July 24, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Ms. Read represented the Fund. The Claimant was self-represented. The Respondent's widow, Markita Wilson, appeared and stated that she and her husband both owned Handyman Mall410 LLC, that she intended to participate in the hearing and wanted to be represented by counsel. I found good cause to postpone the hearing to allow Mrs. Wilson an opportunity to retain counsel.

On September 25, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Ms. Read represented the Fund. The Claimant was self-represented. Mrs. Wilson represented Handyman Mall410 LLC.⁴

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.,

³ I requested that the MHIC send an investigator to the business address to ascertain the current status of the business and whether a business partner or relative was operating the business.

⁴ I asked Mrs. Wilson whether she had any documentation regarding Handyman Mall410 LLC and whether she was authorized to represent the business. Mrs. Wilson did not bring any paperwork related to the business with her to the hearing. The MHIC indicated that Handman Mall410 LLC was licensed as a sole proprietorship and Mrs. Wilson's name was not listed in any of the paperwork on file with the MHIC.

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:

- Clmt. Ex. A Claim, dated November 1, 2022; estimate from Next Day Floors for \$10,378.78, dated October 21, 2022; MHIC Complaint Form with attached explanation, dated June 16, 2022; Letter To Whom it May Concern from the Respondent, dated August 20, 2022; Contract between the Respondent and the Claimant for \$21,331.55, dated December 14, 2021; cancelled check from the Claimant payable to the Respondent for \$7,082.53, dated December 20, 2021; cancelled check from the Claimant payable to the Respondent for \$8,500.00, dated December 22, 2021; cancelled check from the Claimant payable to the Respondent for \$4,500.00, dated December 30, 2021
- Clmt. Ex. B Text messages between the Claimant and the Respondent, dated February 1, 2022 through March 16, 2022
- Clmt. Ex. C Photographs of the Claimant's kitchen at various stages of the project, undated

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

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 Rescheduled Notice of Hearing, issued June 6, 2023; Notice of Hearing, issued April 10, 2023; Hearing Order, dated March 1, 2023
- Fund Ex. 1A Rescheduled Notice of Hearing, issued July 25, 2023
- Fund Ex. 2 Licensing Record for the Respondent, effective October 15, 2019, deceased as of August 27, 2022, expires October 15, 2023
- Fund Ex. 3 Letter from Joseph Tunney, Chairman MHIC to the Respondent, dated November 15, 2022; Claim, dated November 1, 2022

Testimony

The Claimant testified and did not present other witnesses.

The Respondent did not present any testimony or offer any witnesses.⁵

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 01117995.
2. The Claimant's property subject to this matter is located in Windsor Mill, Maryland and is the Claimant's residence. (the Property).
3. On December 14, 2021, the Claimant and the Respondent entered into a contract to demolish existing kitchen, remove a non-load bearing wall, remove existing flooring, install new luxury vinyl flooring, install new cabinets and hardware, install new plumbing, install new appliances, install backsplash, install new granite countertops, install new kitchen faucet, install recessed lighting and pendant lights, install base trim in dining room, install window casings, and paint entire dining room. (Contract). (Clmt. Ex. A).
4. The original agreed-upon Contract price was \$21,331.55. *Id.*
5. On December 20, 2021, the Claimant paid the Respondent \$7,082.53.
6. On December 22, 2021, the Claimant paid the Respondent \$8,500.00.
7. The Respondent started the work on the kitchen project on December 22, 2021.
8. On December 30, 2021, the Claimant paid the Respondent \$4,500.00.

⁵ Mrs. Wilson did not offer any testimony. During closing argument, she said she would like an opportunity to remediate the home improvement stating the company is "under new management"; however, it is of note that Mrs. Wilson made no effort to resolve the claim from July 24, 2023 - September 25, 2023, when I postponed the hearing for her to obtain counsel and rescheduled the hearing.

9. On a date unknown from the record, the Claimant paid the Respondent \$300.00 by electronic transfer using Zelle for an additional cabinet.
10. On a date unknown from the record, the Claimant paid \$1,200.00 directly to a sub-contractor for the plumbing work at the Property, which the Respondent deducted from the amount owed under the Contract.
11. On date unknown from the record, the Claimant purchased the tile for the backsplash for \$500.00 which the Respondent deducted from the amount owed under the Contract.
12. The Respondent completed the work on the kitchen project on December 31, 2021.
13. On February 1, 2022, the Claimant contacted the Respondent by telephone and text message after noticing the kitchen floors were buckling and splitting.
14. On February 2, 2022, the Respondent visited the Property to inspect the kitchen flooring.
15. On February 8, 2022, February 9, 2022, February 10, 2022, February 21, 2022 and March 3, 2022, the Claimant contacted the Respondent by text message to follow up on the status of the kitchen floor repair. (Clmt. Ex. B).
16. On March 8, 2022, the Claimant sent two workers to the Property to repair the kitchen flooring. The workers damaged the walls and baseboards in the course of their flooring repair and left trash in the driveway of the Property. The Claimant was dissatisfied with the repair work that was performed.
17. On March 8, 9, and 10, 2022, the Claimant texted the Respondent photographs of the damages, and condition of the kitchen flooring repair performed by his workers.

18. Sometime after March 10, 2022, the kitchen flooring started buckling and splitting again.
19. On June 16, 2022, the Claimant filed a Complaint with the MHIC.
20. On August 12, 2022, the Respondent visited the Property to inspect the kitchen flooring.
21. On August 20, 2022, the Respondent issued a response to the Complaint, in which he stated:

the flooring was installed correctly but did show signs of indentation months after installation. At this time, the solution would be to remove the ceramic tile flooring from beneath the vinyl flooring and then replace the vinyl flooring. [The Claimant] agrees with the plan of action to resolve the complaint. I will reach out to [the Claimant] to compare schedules and see when the best time is to have this completed.

(Clmt. Ex A).

22. On August 27, 2022, the Respondent died.
23. The Respondent had not completed the remediation work prior to his death.
24. On October 21, 2022, the Claimant obtained an estimate from Next Day Floors to remove the vinyl flooring and the ceramic tile underneath and install new flooring for a total cost of \$10,378.78. This is the same scope of work that the Respondent agreed to complete prior to his death.
25. On November 1, 2022, 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). On August 20, 2022, the Respondent agreed to remove the existing vinyl flooring and the ceramic tile underneath, and to replace the vinyl flooring. However, the Respondent died on August 27, 2022 before he could schedule and complete the remediation work.

The Respondent performed unworkmanlike, inadequate, and incomplete home improvements. The Respondent failed to remove the existing ceramic floors as detailed in the Contract and as a result the vinyl flooring installed in the kitchen began to buckle and split. The

Claimant provided uncontroverted evidence that the Respondent's work was unworkmanlike, inadequate and incomplete. The Claimant provided photographs of the unworkmanlike and inadequate kitchen flooring. 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 remediate the kitchen flooring.

The Fund agreed that the Respondent performed in an inadequate and unworkmanlike manner. The Fund argued that the Claimant's credible evidence shows that she 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 intends to retain other contractors to complete or remedy that work. 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).

Applying the formula in this case results in the following calculation:

Amount Claimant paid to Respondent:	\$20,082.53
Amount of Next Day Floors repair estimate	\$10,378.78
Total to be paid to all contractors:	<u>\$30,461.31</u>
<u>Less the Contract price:</u>	<u>\$21,331.55</u>
Equals	\$9,129.76

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.⁶ 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 their actual loss of \$9,129.76.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$9,129.76 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 \$9,129.76 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

⁶ 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").

RECOMMENDED ORDER

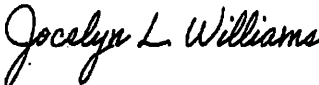
I **RECOMMEND** that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$9,129.76; 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;⁷ and

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

December 12, 2023
Date Decision Issued



Jocelyn L. Williams
Administrative Law Judge

JLW/at
#208534

⁷ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 9th day of January, 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.

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Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***