

IN THE MATTER OF THE CLAIM	* BEFORE ALECIA FRISBY TROUT
OF PETER STAUB,	* 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 BRIAN MATTHEWS	* OAH No.: LABOR-HIC-02-23-11400
T/A MATTHEWS CONSTRUCTION &	* MHIC No.: 23 (75) 580
DESIGN, LLC,	*
RESPONDENT	*

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On February 7, 2023, Peter Staub (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$40,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Brian Matthews, trading as Matthews Construction & Design, LLC (Respondent).²

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).
² Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022). Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

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

On August 28, 2023,³ I held a remote hearing via the Webex videoconferencing platform (Webex).⁴ MacKenzie Read, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. Neither the Respondent nor his representative⁵ appeared 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.⁶ On June 27, 2023, the OAH mailed both the Respondent and Sari Kurland Notices of Remote Hearing (Notice) by certified and first-class mail to the their addresses of record with the Department and the OAH.⁷ The Notice stated that a remote hearing was scheduled for August 28, 2023, at 9:30 a.m., via Webex.⁸ 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 return the Notice mailed to the Respondent, but not the Notice mailed to Sari Kurland. The Respondent did not notify the OAH or the MHIC of any change of mailing address either before or after the hearing.⁹ The Respondent made no request for postponement of the hearing.¹⁰ I determined that the Respondent received proper notice of the hearing,¹¹ and after waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing.

³ The case was first scheduled for an in-person hearing at the OAH in Rockville, Maryland on June 21, 2023. At that time, the Rockville office was closed due to a flood, and the case had to be rescheduled.

⁴ Bus. Reg. §§ 8-407(a), 8-312.

⁵ Sari K. Kurland, Esquire, entered their appearance on behalf of the Respondent, but did not appear for the hearing.

⁶ Code of Maryland Regulations (COMAR) 28.02.01.23A.

⁷ COMAR 28.02.01.05C(1).

⁸ COMAR 09.08.03.03A(2).

⁹ COMAR 28.02.01.03E.

¹⁰ COMAR 28.02.01.16.

¹¹ 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.¹²

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. 1 - Contract between the Claimant and the Respondent, July 21, 2022
- Clmt. Ex. 2 - Bank of America Funds Transfer Request Authorization, July 27, 2022
- Clmt. Ex. 3 - Copies of text messages between the Claimant and the Respondent, September 26 – September 29, 2022
- Clmt. Ex. 4 - Email titled, "Re: Permit Application," October 19, 2022
- Clmt. Ex. 5 - Maryland Judiciary case search, screen shot for District Court of Maryland for Montgomery County case number D-06-CV-23-017023, printed August 28, 2023

The Respondent did not appear and therefore, did not offer any exhibits for admission into evidence.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - OAH Notice, June 27, 2023; OAH Notice, May 5, 2023; MHIC Hearing Order, April 10, 2023
- Fund Ex. 2 - MHIC licensing information for the Respondent, printed August 9, 2023
- Fund Ex. 3 - Home Improvement Claim Form, received by the MHIC on February 7, 2023, and letter from MHIC Chairman Joseph Tunney, February 16, 2023

¹² Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; COMAR 28.02.01.

Testimony

The Claimant testified and did not present other witnesses.

Neither the Respondent nor the Fund offered the testimony of any witness.

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 1-108332.
2. On July 21, 2022, the Claimant and the Respondent entered into a contract to build an underground addition to his home. The addition would act as a suite for the Claimant's mother. (CL. Ex. 1).
3. The total contract price was \$156,375.00. (CL. Ex. 1)
4. On July 27, 2022, the Claimant paid \$40,000.00 to the Respondent as required by the Contract.
5. The Contract did not provide an estimated start or end date.
6. In a text communication between the Claimant and Respondent on September 26, 2022, the Respondent stated that plans had been submitted to Montgomery County for a permit, and "[i]mmediate next steps are permits, shopping." (CL. Ex. 3).
7. The Respondent stopped communicating with the Claimant and did not start work on the Claimant's home.
8. On October 19, 2022, the Claimant learned from Montgomery County Department of Permitting Services that the Respondent had never submitted plans to Montgomery County or applied for a permit for work on the Claimant's home.

9. After October 19, 2022, the Claimant contacted the Respondent in an effort to terminate the Contract and get a refund of his \$40,000.00 deposit. The Respondent replied that he would not let the Claimant out of the Contract or refund his money.

10. The Respondent never performed work at the Claimant's home.

DISCUSSION

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor”¹³ “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”¹⁴ The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest.¹⁵

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence.¹⁶ 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.¹⁷

By statute, certain claimants are excluded from recovering from the Fund altogether. 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.¹⁸ The Claimant resides in the home that is the subject of the claim and does not own more than three residences or dwelling places.¹⁹ The parties did not enter into a valid agreement to submit their disputes to arbitration.²⁰

¹³ 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.”).

¹⁴ Bus. Reg. § 8-401.

¹⁵ Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

¹⁶ Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217; COMAR 09.08.03.03A(3).

¹⁷ *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

¹⁸ Bus. Reg. §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022).

¹⁹ *Id.* § 8-405(f)(2) (Supp. 2022).

²⁰ *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022).

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.²¹ Additionally, the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim.²²

For the following reasons, I find that the Claimant has proven eligibility for compensation. There is no dispute that the Claimant paid the Respondent \$40,000.00 as an initial payment for the construction of a suite addition to his home. There is also no dispute that the Respondent did not perform any work under the Contract, and stopped communicating with the Claimant in approximately November 2022. The Claimant testified that the Respondent never returned the \$40,000.00 he paid on July 27, 2022.

I conclude that the Respondent abandoned the Contract without performing any work on the construction of the suite addition. Accordingly, the Claimant has sustained an actual loss in the form of the amount he paid for the Respondent's incomplete home improvement. He is, therefore, 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.²³

The Respondent abandoned the Contract without doing any work. Accordingly, the following formula appropriately measures the Claimant's actual loss: "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."²⁴ As the Claimant paid the Respondent \$40,000.00, he is eligible for compensation in that amount.

²¹ *Id.* § 8-405(f)(1) (Supp. 2022).

²² *Id.* § 8-405(d) (Supp. 2022).

²³ Bus. Reg. § 8-405(e)(3) (Supp. 2022); COMAR 09.08.03.03B(1).

²⁴ COMAR 09.08.03.03B(3)(a).

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.²⁵ In this case, the Claimant's actual loss is equal to the amount paid to the Respondent which is greater than \$30,000.00. Therefore, the Claimant is entitled to recover the maximum allowable amount of \$30,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$40,000.00 as a result of the Respondent's acts or omissions.²⁶ I further conclude that the Claimant is entitled to recover \$30,000.00 from the Fund.²⁷

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

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;²⁸ and

²⁵ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). 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").

²⁶ Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022).

²⁷ COMAR 09.08.03.03B(3)(a).

²⁸ *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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

August 29, 2023
Date Decision Issued

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#207058

Alecia Frisby Trout

Alecia Frisby Trout
Administrative Law Judge

PROPOSED ORDER

WHEREFORE, this 25th day of October, 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***