

IN THE MATTER OF THE CLAIM	* BEFORE SUSAN H. ANDERSON,
OF MELISSA SHARLAT,	* 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 ALEXANDER	*
BARABASH, T/A MASTER	* OAH No.: LABOR-HIC-02-23-23334
KARPENTRY, LLC,	* MHIC No.: 23 (75) 667
RESPONDENT	*

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**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 February 22, 2023,<sup>1</sup> Melissa Sharlat (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>2</sup> Guaranty Fund (Fund) for reimbursement of \$16,518.95 for actual losses allegedly suffered as a result of a home improvement contract with Alexander Barabash, t/a Master Karpentry LLC<sup>3</sup> (Respondent).<sup>4</sup>

<sup>1</sup> The Claim was signed on February 16, 2023:  
<sup>2</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).  
<sup>3</sup> At the hearing, the Claimant's attorney indicated that the Respondent also does business as iDesignBuild LLC and that is the name that is reflected on the exhibits.  
<sup>4</sup> Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023). Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

On August 31, 2023, the MHIC issued a Hearing Order on the Claim. On September 1, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On October 12, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Nicholas Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant was represented by Derek Hills, Esquire. 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.<sup>5</sup> The Notice of Hearing (Notice) that the OAH sent to the Respondent on September 11, 2023 advised the Respondent not only of the date, time, and location of the hearing but also that failure to attend the hearing might result in "a decision against you." On October 2, 2023, the OAH received correspondence from the Respondent stating that he was not going to attend the hearing; he included his copy of the Notice with the correspondence. Based on this, I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter.<sup>6</sup>

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure.<sup>7</sup>

### **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?

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<sup>5</sup> Code of Maryland Regulations (COMAR) 28.02.01.23A.

<sup>6</sup> COMAR 28.02.01.05A, C.

<sup>7</sup> Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); COMAR 09.01.03; COMAR 28.02.01.

## SUMMARY OF THE EVIDENCE

### Exhibits

The Claimant offered the following exhibits into evidence:

- CL<sup>8</sup> Ex. 1A - Summary of Bathroom Corrective Work, prepared by Atlas Barks Construction & Design (Atlas Barks), November 29, 2022, including:
- photographs of building permits, inspections, final approval, pp. 2-6<sup>9</sup>
  - photographs of Respondent's work while in progress, pp. 7-10
  - photographs of Respondent's completed work, pp. 11-17
  - photographs of progress of remedial work during Phase 2 by Atlas Barks, pp. 18-22
  - additional photographs of progress of remedial work during Phase 2 by Atlas Barks and communications between the Claimant and Atlas Barks, pp. 23-26
  - Contract between the Claimant and Atlas Barks, pp. 27-29<sup>10</sup>
  - Contract between the Claimant and the Respondent, as well as email from the Claimant to the Respondent, pp. 30-34
  - Atlas Barks Statement, January 2, 2023, unpaginated
- CL Ex. 1B - Contract between Atlas Barks and the Claimant, May 10, 2022
- CL Ex. 2 - Contract between the Claimant and the Respondent, September 28, 2020
- CL Ex. 3 - Initial Proposal between the Claimant and the Respondent, undated
- CL Ex. 4 - Emails between the Claimant and Pandora Gaumond, Project Expediter for the Respondent, August 3, 16, 17, 2021
- CL Ex. 5 - Permits obtained by Atlas Barks for the work performed, with accompanying photographs, various dates
- CL Ex. 6 - Copies of cancelled checks from the Claimant to Atlas Barks, May 26, 2022, June 8, 2022, and June 13, 2023
- CL Ex. 7 - Claimant's Account Statements from PayPal, September 1-30, 2020 and November 1-30, 2020

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<sup>8</sup> The Exhibits were premarked as Plaintiff's Exhibits. I changed them to reflect that they are the Claimant's exhibits.

<sup>9</sup> Page 1 is the cover sheet for the exhibit.

<sup>10</sup> The Claimant shrunk the individual pages of the Contract and submitted them on two pages. It was not possible to read the individual pages in this format. An enlarged version of each page was admitted as CL Ex. 1B.

I admitted the following exhibits offered by the Fund:

- GF Ex. 1 - Notice of Hearing, September 11, 2023
- GF Ex. 2 - Hearing Order, August 31, 2023
- GF Ex. 3 - Home Improvement Claim Form, received February 22, 2023
- GF Ex. 4 - Certification of Custodian of Records, Respondent's Licensing History with the MHIC, September 18, 2023
- GF Ex. 5 - Correspondence from the Respondent to the OAH, received October 2, 2023

The Respondent did not appear and offered no exhibits.

#### Testimony

The Claimant testified and presented the testimony of Richard Livingston, whom I accepted as an expert in remodeling and home improvement work and the pricing of such work.

The Respondent did not appear and did not present any 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 numbers 01-96580 and 05-130697.<sup>11</sup>
2. On a date unclear from the record, but prior to September 28, 2020, the Respondent submitted a proposal to the Claimant for a full gut renovation of her second-floor full bathroom (Proposal) in the amount of \$24,070.00.<sup>12</sup>
3. The Claimant did not accept the Proposal as she felt it was too expensive.

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<sup>11</sup> GF Ex. 4.

<sup>12</sup> CL Ex. 3.

4. The Respondent changed the Proposal and on or about September 28, 2020, and the Claimant and the Respondent entered into a contract to do a full gut renovation on the Claimant's second floor full bathroom (Contract).<sup>13</sup>

5. The original agreed-upon Contract price was \$15,500.00.<sup>14</sup>

6. The Claimant and the Respondent later verbally agreed to change the Contract to add a more expensive tile and for work needed for the bathtub wall in the amount of \$1,018.950.

7. The total cost for the Contract was \$16,518.95.

8. The Claimant paid the Respondent \$16,518.95 via PayPal as follows: \$5,500.00 on September 28, 2020; \$870.00 on September 29, 2020; \$7,898.95 on November 2, 2020; and \$2,250.00 on November 11, 2020.<sup>15</sup>

9. The Respondent began the work in approximately October 2020 and completed it less than two weeks later.

10. The Respondent did not obtain permits for any of the work he performed.

11. Shortly after the work was completed, the Claimant began dating a licensed contractor. When she showed him pictures she had taken while the work was progressing, he expressed concern that the work had not been done according to the building code and advised her that the work that was done required permits.

12. On a date unclear in the record, but before August 16, 2021, the Claimant mailed the Respondent a letter enumerating her concerns about the work and the fact that the Respondent had not obtained any permits prior to doing the work.

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<sup>13</sup> CL Ex. 2.

<sup>14</sup> *Id.*

<sup>15</sup> CL Ex. 7.  $\$5,500.00 + \$870.00 + \$7,898.95 + \$2,250.00 = \$16,518.95$ .

13. The Claimant's concerns centered around four areas:
- a. Structural: in order to do the plumbing work, the Respondent had to rework the pipes; he ran the pipes through the original notching in the joists but did not properly shore up the notched joists.
  - b. Plumbing: the Respondent did not drop the plumbing below the existing joists and place it in a bulkhead in the room below. The pipes the Respondent installed were not angled properly so that the water could drain.
  - c. Electric: the new outlets the Respondent installed were not grounded, nor did he put them on separate circuits, as required by the building code.
  - d. Mechanical: the Respondent did not vent the exhaust fan through the roof to the outside as required by the building code.

14. On August 16, 2021, after getting no response from the Respondent, the Claimant forwarded the letter outlining her concerns to the Respondent via email. She asked the Respondent to correct the issues.<sup>16</sup>

15. On August 17, 2021, the Respondent's Project Expediter responded and denied that there were any workmanship issues with the work done on the Claimant's bathroom. The Project Expediter conceded that the Respondent had not vented the exhaust fan to the outside because the weather was too rainy to do so and indicated that the Respondent would correct that issue.<sup>17</sup>

16. The Respondent never contacted the Claimant again and did not vent the exhaust fan to the outside of the house.

17. The Claimant hired Atlas Barks to do the remediation work in the bathroom.

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<sup>16</sup> CL Ex. 4.

<sup>17</sup> *Id.*

18. Atlas Barks separated the work into two phases. Phase 1 involved installing temporary support for the floor joists until they could be permanently corrected and approved by a Baltimore City inspector. It also involved removing several sections of drywall so an inspector could inspect the plumbing, electrical, and HVAC work to determine if the work met the applicable building code requirements. Phase 2 involved repairing the structural lumber below the floor.

19. The Respondent's work failed inspection because the work performed did not meet building code requirements. The electrical supply to the bathroom was not placed on a separate circuit and did not have sufficient amperage for the ceiling fan/heater/light unit the Respondent installed; the joists needed to be "sistered" to reinforce the notched joists; the existing waste line draining from the shower needed to be relocated and new plumbing installed beneath the floor joists; and the exhaust did not vent to the outside of the house.

20. The Claimant obtained the proper permits to have the work done. Atlas Barks had the work inspected by Baltimore City building inspectors at each phase of the work as well as a final inspection once the work was completed. All work passed each inspection.<sup>18</sup>

21. The Claimant paid Atlas Barks \$20,033.60<sup>19</sup> to perform the work needed to ensure that the completed bathroom met all building code requirements and passed the requisite inspections.

## **DISCUSSION**

### **STATUTORY PRE-REQUISITES**

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, the Claim was timely filed,<sup>20</sup> the Claimant did not recover the alleged losses from any

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<sup>18</sup> CL Ex. 5.

<sup>19</sup> The Claimant made payments to Atlas Barks totaling \$21,110.00. However, that amount included payment for other work that was not related to the work on the bathroom.

<sup>20</sup> *Id.* § 8-405(g) (Supp. 2023).

other source,<sup>21</sup> the Claimant resides in the home that is the subject of the claim,<sup>22</sup> the parties did not enter into a valid agreement to submit their disputes to arbitration,<sup>23</sup> and 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.<sup>24</sup>

#### **THE BURDEN OF PROOF AND THE LEGAL STANDARD**

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence.<sup>25</sup> 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.<sup>26</sup>

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.”<sup>27</sup> “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”<sup>28</sup> For the following reasons, I find that the Claimant has proven eligibility for compensation.

#### **ANALYSIS**

##### ***The Respondent Performed an Unworkmanlike, Inadequate, and Incomplete Home Improvement***

The Claimant presented expert, unrebutted testimony attesting to the fact that the Respondent needed a permit to perform the work he completed, and that each segment of the work (plumbing, electrical, HVAC, and structural) required inspection by a Baltimore City building inspector at various stages of work.

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<sup>21</sup> *Id.* § 8-408(b)(1).

<sup>22</sup> *Id.* § 8-405(f)(2) (Supp. 2023).

<sup>23</sup> *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2023).

<sup>24</sup> *Id.* § 8-405(f)(1) (Supp. 2023).

<sup>25</sup> Bus. Reg. § 8-407(e)(1); State Gov’t § 10-217; COMAR 09.08.03.03A(3).

<sup>26</sup> *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

<sup>27</sup> 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.”).

<sup>28</sup> Bus. Reg. § 8-401.



There is no question that the Respondent did not obtain any permits, nor did he have the work appropriately inspected to ensure it met the standards under the applicable building code sections. The Fund argued, and I agree, that work requiring a permit that is done without obtaining that permit is by definition unworkmanlike and inadequate.

The Claimant's expert, who has many years of experience with renovating homes, offered compelling testimony that the pictures he reviewed of the work during the various stages showed work that was not performed according to the applicable building code standards. He concurred that the notched joists needed to be reinforced; that the plumbing needed to be relocated below the joists, which required the construction of a bulkhead in the living room below; that the electrical outlets were not properly grounded or on separate circuits; and that the exhaust needed to be vented to the outside.

In addition, the Claimant presented evidence showing that the work Atlas Barks did was properly inspected and approved by Baltimore City building inspectors, underscoring the expert's testimony that permits were necessary for the work done. The Respondent did not appear for the hearing or offer any testimony in contradiction. Thus, the evidence shows the Respondent performed not only unworkmanlike and inadequate home improvements, but he also performed an incomplete home improvement when he failed to vent the exhaust to the outside of the house.

I thus find that the Claimant is eligible for compensation from the Fund.

***The Actual Loss***

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.<sup>29</sup> The 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 another contractor 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.<sup>30</sup>

Thus, the Claimant's actual loss is calculated as follows:

	\$ 16,518.95	– Amount paid to the Respondent under the Contract
+	<u>\$ 20,033.60</u>	– Amount Claimant has paid to remedy the work
	\$ 36,522.55	
-	<u>\$ 16,518.95</u>	– Amount of the original Contract
	\$ 20,033.60	

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>31</sup> In this case, the Claimant's actual loss of \$20,033.60 exceeds the amount paid to the Respondent. Therefore, the Claimant's recovery is limited to \$16,518.95, the amount she paid to the Respondent.

<sup>29</sup> Bus. Reg. § 8-405(e)(3) (Supp. 2023); COMAR 09.08.03.03B(1).

<sup>30</sup> COMAR 09.08.03.03B(3)(c).

<sup>31</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); 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").

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$16,518.95 as a result of the Respondent's acts or omissions.<sup>32</sup>

RECOMMENDED ORDER

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$16,518.95; 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;<sup>33</sup> and

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

December 19, 2023  
Date Decision Issued

*Susan H. Anderson*

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Susan H. Anderson  
Administrative Law Judge

SHA/sh  
#207839

<sup>32</sup> Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03B(3)(c).  
<sup>33</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 24<sup>th</sup> 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.***

***W Bruce***

***Quackenbush***

***W Bruce Quackenbush***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***