

IN THE MATTER OF THE CLAIM	* BEFORE ROBERT B. LEVIN,
OF DEBORA WRIGHT,	* 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 BRYAN O. JONES,	*
T/A BOJ & SON'S CONSTRUCTION,	* OAH No.: LABOR-HIC-02-23-27121
LLC	* MHIC No.: 23 (75) 822
RESPONDENT	*

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**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
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RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On March 13, 2023, Debora Wright (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$192,425.00 for actual losses allegedly suffered as a result of a home improvement contract with Bryan O. Jones, trading as BOJ & Son's Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411. (2015 & Supp. 2023).<sup>2</sup> On October 13, 2023, the MHIC issued a Hearing

<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).

<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

Order on the Claim. On October 13, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 10, 2024, 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.

After waiting over fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with 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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On November 15, 2023, the OAH provided a Notice of Hearing (Notice) to the Respondent by certified mail and first-class mail. Bus. Reg §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for January 10, 2024, at 9:30 a.m., at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland. COMAR 09.08.03.03A(2). 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 not return the Notice to the OAH. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05.

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); 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. 1 - Contract between the Claimant and the Respondent, November 29, 2021
- Clmt. Ex. 2 - Claimant's check no. 1197, payable to the Respondent for \$30,000.00, April 26, 2021
- Clmt. Ex. 3 - Claimant's check no. 1202, payable to the Respondent for \$30,000.00; September 22, 2021
- Clmt. Ex. 4 - Claimant's narrative, titled "Wright Project, 5 Williams Court," May 20, 2022
- Clmt. Exs. 5-12 - Eight photographs, undated
- Clmt. Ex. 13 - Claimant's narrative, titled "Conversation with Bryan Jones [telephone number redacted], August 19, 2021-September 30, 2022
- Clmt. Ex. 14 - Emails between the Claimant and the Respondent, May 7, 2021-October 4, 2022
- Clmt. Ex. 15 - Contract between the Claimant and True North Remodeling, LLC, August 2, 2023
- Clmt. Ex. 16 - Building Permit, May 10, 2022

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, November 15, 2023
- Fund Ex. 2 - Hearing Order, October 13, 2023
- Fund Ex. 3 - HIC Licensing information printout for the Respondent, printed December 28, 2023
- Fund Ex. 4 - Correspondence from Joseph Tunney, Chairperson, HIC, to the Respondent, with attached copy of the Claimant's Home Improvement Claim Form, March 13, 2023

The Respondent, who did not appear, did not offer any exhibits.

Testimony

The Claimant testified and did not present other witnesses.

The Respondent, who did not appear, did not present any witnesses.

The Fund did not present any witness testimony.

**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 5750642.
2. On November 29, 2021, the Claimant and the Respondent entered into a home improvement/remodeling contract to create an Addition, remodel the kitchen, living room and hallway area, and perform other work in the Claimant's home at 5 Williams Court, Glen Burnie, Maryland (Contract). The Respondent signed the Contract on March 29, 2021, and the Claimant signed it on November 29, 2021.
3. The Contract provided that the Respondent would start work On November 29, 2021, and complete the work by April 4, 2022.
4. The original agreed-upon Contract price was \$130,000.00.
5. The Contract price was allocated to the different segments of the job as follows: the Addition (\$44,000.00), the kitchen (\$38,500.00), the living room and hallway area (\$17,500.00), and certain Addendum items listed as such in the Contract (\$30,000.00).
6. On April 26, 2021, the Claimant paid the Respondent \$30,000.00 by check, and on September 22, 2021, the Claimant paid the Respondent another \$30,000.00 by check, for a total of \$60,000.00.

7. The Contract required the Respondent to design and build the Addition to the Claimant's home, allocating \$44,000.00 of the total Contract price to the Addition, as follows:

- a) Permits, architectural drawings/demo/prep (\$5,000.00)
- b) Design/build a 17' by 17' extension (\$26,500.00)
- c) Install new HVAC<sup>3</sup> (\$5,000)
- d) Finish/prime/paint the entire kitchen and dining room areas (\$2,500.00)
- e) Build a new 10' by 10' wood deck (\$5,000.00).

8. The Contract required the Respondent to design and build a new custom kitchen, allocating \$38,500.00 of the total Contract price to the kitchen, as follows:

- (a) Demo/prep everything and open the dividing wall (\$2,500.00)
- (b) Design/build a new custom kitchen based on design specifications submitted by the Claimant (\$5,000.00)
- (c) Design/install new plumbing and electrical infrastructure (\$5,000.00)
- (d) Install new soft close, all wood, premium cabinets and hardware (\$10,000.00)
- (e) Install 9" deep under sink a garbage disposal, faucet and hardware (\$1,500.00)
- (f) Install five granite countertops with custom backsplash (\$2,500.00)
- (g) Install new subflooring, luxury vinyl plank tile, baseboard and trim (\$1,500.00)
- (h) Install new light fixtures, recessed, pendants, domes, etc. (\$1,500.00)

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<sup>3</sup> Heating, ventilation, and air conditioning.

- (i) Finish, prime and paint the entire kitchen and dining room areas (\$1,500.00)<sup>4</sup>, and
- (j) Deliver/install new stainless steel appliances, 36" counter depth refrigerator, double wall oven, stainless steel range hood, counter top stove, Bosch 24" dishwasher and 30" microwave range (LG or GE Profile appliances) \$7,500.00.

9. The Contract required the Respondent to remodel the living room and hallway area, allocating \$17,500.00 of the total Contract price for the living room/hallway remodel, as follows:

- (a) Demo/prep the entire area (\$1,000.00)
- (b) Install new custom wood hand railings (\$1,500.00)
- (c) Install two panel room doors and frames (\$2,500.00)
- (d) Install new electrical infrastructure (\$2,000.00)
- (e) Install new recessed room lighting (\$2,500.00)
- (f) Install new subflooring, luxury vinyl plank tile, baseboard, and trim (\$4,000.00)
- (g) Finish, prime, and paint the entire living room and hallway area (\$2,500.00), and
- (h) Install a new front door and storm door (\$1,500.00)

10. The Contract required the Respondent to provide the following miscellaneous work and materials as described in the Addendum, allocating \$30,000.00 to the Addendum, as follows:

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<sup>4</sup> The Contract includes in the Addition portion of the Contract a \$2,500.00 item for finishing, priming and painting the entire kitchen and dining area, and also a \$1,500.00 item for finishing, priming, and painting the entire kitchen and dining area in the kitchen portion of the Contract.

- (a) Install a new vinyl fence (\$10,000.00)
- (b) Install a concrete porch, sidewalk, and parking pad (\$10,000.00)
- (c) Install new drywall for the laundry room area (\$5,000.00)
- (d) Install a new cathedral ceiling in the bump-out area (\$5,000.00)
- (e) Install ten new two-panel room doors and swing handle hardware (\$2,500.00)
- (f) Install recessed, pendant lighting and wine glass rack in basement (\$1,000.00)
- (g) Install new carpet in the two bedrooms and the basement (\$2,500.00)
- (h) Install new cabinet, sink, granite counter top, and wine cooler in the basement (\$1,500.00)
- (i) Install in the laundry room, new luxury vinyl plank tile, 8' by 26', two white metal shelving units and one wall shelf for detergents (\$2,000.00), and
- (j) Install a glass pantry door, 24" (\$0.00).<sup>5</sup>

11. In addition to the work and materials specified in the Contract, the Claimant and the Respondent verbally agreed that the following work and materials would be included in the contractual scope of work, without additional charge: replace all twelve inside doors, install a new electrical panel and shelves in the den, clear bricks next to mailbox, install new front doors (double glass panel/storm doors), install new mailbox and post, install six cameras/lights provided by the Claimant, install new video doorbell, and in living room, hang TV, and ceiling fan in dining room, build pantry closet with glass pantry door and built-in shelves, and provide a pot filler.

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<sup>5</sup> No cost was allocated to this item in the Contract.

12. For two weeks after beginning work in November 2021, the Respondent had a ten-person crew working at her home. Then he asked the Claimant for more money and started coming to her home by himself or with only one other person.

13. The Respondent failed to complete the project as required under the Contract and the parties' verbal agreement.

14. Out of all the items the Respondent was required to complete under the Contract and the verbal agreement, the Respondent only completed the following items: (a) permits/architectural drawings/demo/prep of the entire rear left area of the Claimant's home, for which the Contract allocated \$5,000.00; (b) installation of new drywall for the laundry room area, for which the Contract allocated \$5,000.00; and (c) demo/prep of the entire living room area, for which the Contract allocated \$1,000.00.

15. The total value of the Respondent's completed work is \$11,000.00.

16. Out of all the items the Respondent was required to complete under the Contract and the verbal agreement, the Respondent partially completed the following items:

(a) for the kitchen, demo/prep everything, and open the dividing wall, for which the Contract allocated \$2,500.00; the Respondent only completed one half of this item. The Respondent's partially completed work on this item has a value of \$1,250.00, representing one half of the allocated value.

(b) Finish, prime, and paint the entire living room area, for which the Contract allocated \$2,500.00; the Respondent only completed one half of this item. The Respondent's partially completed work on this item has a value of \$1,250.00, representing one half of the allocated value.



(c) For the basement pursuant to the Contract's Addendum, install recessed, pendant lighting and wine glass rack, for which the Contract allocated \$1,000.00; the Respondent only completed one half of this item. The Respondent's partially completed work on this item has a value of \$500.

(d) For the living room and hallway area, install two new panel room doors and frames, for which the Contract allocated \$2,500.00; the Respondent only completed one half of this item. The Respondent's partially completed work on this item has a value of \$1,250.00, representing one half of the allocated value.

17. The total value of the Respondent's partially completed work is \$4,250.00.

18. The total, combined value of the Respondent's completed and partially completed work is \$15,250.00

19. The Respondent completed thirteen percent of the project.

20. The Respondent left the Claimant's home in a poor condition: he gutted the kitchen and living room and left them in that condition; he removed the carpet and soft underlayment from the living room floor and did no further work; he removed carpet from the stairs without installing new flooring; in the finished side of the basement, he gutted, removed carpet, painted the walls, and installed the recessed light, but did not complete the trim and baseboard; he started hanging lights in the basement which do not work; he removed the basement sink, but failed to install the refrigerator as required.

21. The Respondent made excuses for his failure to complete the project, including that he was sick or in the hospital, that his wife took his phone, or that he was going through things.

22. As a result of the Respondent's failure to complete the project, the Claimant terminated the Contract and asked him to refund the money she had paid him.

23. The Respondent told the Claimant that he had used her money to pay his employees on other jobs.

24. The Respondent verbally offered to give the Claimant a refund, requesting a refund payment plan, but failed to respond to the Claimant's communication regarding a possible payment plan.

25. The Respondent did not refund any money to the Claimant.

26. On or about July 28, 2023, the Respondent entered into a contract with True North Remodeling, LLC (True North), an HIC-licensed contractor, to correct and complete the project for a total price of \$131,644.00.

27. The \$131,644.00 True North contract price includes \$1,184.00 to remove the existing gutters and downspouts on the new addition only, and install new gutters and downspouts. This work was not included in the Contract between the Claimant and the Respondent.

28. The Claimant paid True North \$112,222.00 by two checks, each for \$56,111.00. She is obligated to make a final payment to True North upon completion of their work.

29. Subtracting the \$1,184.00 allocated in the True North contract for gutters and downspouts, the cost to the Claimant to have True North correct and complete the project is \$130,460.00.

### **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. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. 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, as there is no evidence that the Respondent ever made such good faith efforts. *Id.* § 8-405(d) (Supp. 2023).

The Respondent performed unworkmanlike, inadequate, and incomplete home improvements. The Claimant estimated that the Respondent only completed thirteen percent of the work called for under the parties' Contract and verbal agreement. Her testimony was supported by her project summary which identifies the segments of the Contract the Respondent completed, partially completed, and totally failed to perform. (Clmt. Ex. 4).

The Claimant paid the Respondent \$60,000.00. Based on the Contract's cost allocations for the various project segments, she credibly estimated that the value of the segments that the Respondent either completed or partially completed was \$15,250.00. The Claimant's persuasive testimony concerning the Respondent's deficient and incomplete work was buttressed by her photographs depicting the incomplete work and the poor condition in which the Respondent left her home. (Clmt. Exs. 5-12).

The Claimant offered the True North contract, which showed that it will cost her \$130,460.00 (less the \$1,184.00 for the gutters and downspouts, for which the Respondent was not responsible), to correct and complete the Respondent's unworkmanlike, inadequate, and incomplete work.

I thus 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). 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 has retained True North 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).

Application of this formula is straightforward. The Claimant paid the Respondent \$60,000.00 pursuant to their contractual arrangement. The Claimant's cost under the True North contract is \$131,644.00, from which I subtracted the \$1,184.00 allocated to the gutters and downspouts, because they were not the Respondent's responsibility, which leaves \$130,460.00. Adding \$60,000.00 (the amount the Claimant paid the Respondent) to \$130,460.00 (the cost for True North to correct and complete the project) equals \$190,460. Subtracting the original Contract price of \$130,00.00 from this \$190,460 leaves \$60,460.00, which is the amount of the Claimant's actual loss.

Effective July 1, 2022, however, a claimant's recovery is capped at \$30,000.00 for the 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>6</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023);

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<sup>6</sup> 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").

COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$60,460.00 exceeds \$30,000.00. Therefore, the Claimant's recovery is limited to \$30,000.00.

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$30,000.00 as a result of the Respondent's acts or omissions. I further conclude that the Claimant is entitled to recover \$30,000.00 from the Fund. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023) COMAR 09.08.03.03B(3)(c).

**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;<sup>7</sup> and

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

March 13, 2024  
Date Decision Issued

*Robert B. Levin*

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Robert B. Levin  
Administrative Law Judge

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

**PROPOSED ORDER**

***WHEREFORE, this 3<sup>rd</sup> 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.***

***J Jean White***

***I Jean White***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***