

IN THE MATTER OF THE CLAIM	* BEFORE TRACEY N. HACKETT
OF MORRIS DANIELS AND	* AN ADMINISTRATIVE LAW JUDGE
COMPREHENSIVE HOUSING	* OF THE MARYLAND OFFICE
ASSISTANCE, INC.,	* OF ADMINISTRATIVE HEARINGS
CLAIMANTS	*
AGAINST THE MARYLAND HOME	*
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF FRANK DAVIS,	*
TRADING AS A & F	*
CONSTRUCTION SERVICES,	* OAH No.: LABOR-HIC-02-23-25556
RESPONDENT	* MHIC No.: 23 (75) 975
* * * * *	* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On May 1, 2023, Morris Daniels (Claimant) and Comprehensive Housing Assistance, Inc. (CHAI) (collectively, the Claimants) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$2,830.00 for actual losses allegedly suffered as a result of a home improvement contract with Frank Davis,

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).

trading as A&J Construction Services (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).² On September 28, 2023, the MHIC issued a Hearing Order on the Claim. On September 29, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On November 17, 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 Claimants were 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 Claimants:

- Clmt. Ex. 1 - Proposal from the Respondent for \$3,240.00, dated June 6, 2022
- Clmt. Ex. 2 - CHAI Check Request Form, dated September 13, 2022
- Clmt. Ex. 3 - Narrative drafted by Rona Gross, CHAI, undated
- Clmt. Ex. 4 - Check #10335 from CHAI to the Respondent, dated October 6, 2022

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

Clmt. Ex. 5 - Proposal from the Respondent, dated October 24, 2022

Clmt. Ex. 6 - Invoice from Candew Construction Co., Inc., dated March 29, 2023; LifeBridge Health Check Request, dated March 29, 2023; Proposal from the Respondent for \$20,000.00, dated June 6, 2022

Clmt. Ex. 7 - Email communication between the Respondent and Shae Brown, LBSW, MSW, Social Work Associate, LifeBridge Health, dated September 13, 2022

Clmt. Ex. 8 - Email communication between the Respondent and Ms. Brown, dated October 11, 2022

Clmt. Ex. 9 - Email communications between the Respondent and Ms. Brown, various dates

The Respondent did not offer any exhibits.³

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, dated October 12, 2023

Fund Ex. 2 - Hearing Order, dated September 28, 2023

Fund Ex. 3 - MHIC I.D. Registration, printed October 23, 2023

Fund Ex. 4 - Letter from the MHIC to the Respondent, dated May 8, 2023; MHIC Claim Form, signed April 26, 2023

Testimony

The Claimants testified and presented the testimony of Ms. Brown.

The Respondent testified and did not present other witnesses.

The Fund did not present any witnesses.

³ I kept the hearing record open until 4:30 p.m. on Monday, November 20, 2023, to allow the Respondent to submit additional exhibits. I directed the Respondent to copy all the other parties on his email communication to the OAH. On November 20, 2023, at 8:22 a.m., I received an email the Respondent sent to the OAH on November 17, 2023, at 6:48 p.m. The email stated, "please close case." No other party was included on the email, and there were no attachments. On November 22, 2023, I wrote a letter to all parties asking the Respondent to clarify if he inadvertently failed to include attachments or if he intended not to submit any additional exhibits. As of the date of this Decision, the Respondent never replied to the email sent by my Administrative Aide.

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 01-98740 (individual and sole proprietorship).
2. CHAI is a non-profit community organization which partners with Sinai Hospital, Life Bridge Health Systems (Sinai) to provide critical home repair services to low-income senior homeowners through grant funding as part of the Baltimore citywide Housing Upgrades to Benefit Seniors (HUBS) program.
3. The Weinberg Foundation (Weinberg) is one of the grant providers for the HUBS program, and as part of the agreement with CHAI, provides \$2,830 in grant funding per senior homeowner.
4. As a grant requirement, CHAI has the obligation to solely use grant monies provided by Weinberg for home improvement services under the HUBS program and must properly account for and document the use of such funds to Weinberg. Failure to use the grant funds for its intended purpose or to provide proper accounting could result in the loss of granting funding.
5. The Claimant was eligible for participation in the HUBS program⁴ due to flood damage, plumbing issues, and roofing issues at his home.
6. Senior homeowners eligible for participation in the HUBS program are assigned a case manager.

⁴ The record is unclear when and how the Claimant became eligible for the HUBS program.

Ms. Brown was the HUBS case manager for the Claimant and was responsible for identifying a contractor to complete the housing upgrades to the Claimant's home and serving as the point of contact for any HUBS construction work on the Claimant's home.

8. Sometime between May and June 2022, the Respondent was selected to perform the necessary repairs on the Claimant's home.

9. On June 6, 2022, the Claimant sent a proposal to the Claimant to replace and repair the front steps, the drainpipe in the bathroom, the concrete the basement floor, sheetrock in the living and dining rooms, and to replace the entire roof at the Claimant's home (Contract).⁵

10. The original agreed-upon Contract price was \$20,000.00. The payment schedule included one third down as a deposit; a second payment when the work was half completed; and the final payment on the last day of the job to be paid through the Baltimore City Department of Housing and Community Development, Affordable Housing Trust Fund (AHTF).

11. Due to the Claimant's eligibility and participation in the HUBS program, the Respondent also sent a partial proposal to the Claimant on June 6, 2022 for \$3,420.00. The partial proposal included the same scope of work but modified the total cost to \$3,420.00 with an initial deposit of \$2,380.00 to be funded through HUBS.

12. HUBS grants through CHAI are limited to \$2,830.00.

13. At the Respondent's insistence, CHAI and Sinai made an exception to their normal course of business and agreed to pay an upfront initial deposit. Generally, CHAI and Sinai make payments when the home improvement work is complete.

14. At Sinai's request, CHAI requested the issuance of a \$2,830.00 check to the Respondent on September 13, 2022.

⁵ The proposal was not signed by either the Respondent or the Claimants; however, the parties did not dispute that this was the Contract in dispute for this hearing.

15. Sometime in September 2022, the Respondent had another unrelated contract to complete roofing and sheetrock construction at a hotel in Springfield, Virginia (hotel project).

16. The hotel project took longer than expected and required the Respondent to travel from Springfield, Virginia to Baltimore City, Maryland to work on the hotel project and to take roofs measurements for the Contract.

17. On an unidentified date, the Respondent took measurements of the Claimant's roof.

18. On October 6, 2022, CHAI issued a check to the Respondent for \$2,830.00 in the HUBS grant funds.

19. The Respondent cashed the \$2,830.00 check on October 12, 2022.

20. The remaining balance of \$17,680.00 was to be paid by the AHTF.

21. In order for AHTF to process payments contractors must be registered with the Workday accounting system (Workday) which facilitates and tracks the payment process. Workday has no affiliation with Sinai, CHAI, or the Claimant.

22. The Respondent encountered significant challenges and delays with attempting to set up the Workday account for payments.

23. On October 19, 2022, the Respondent sent an email to Ms. Brown declining to complete the Contract. Specifically, the Respondent wrote the following in his email:

I thought about this today and decided to Pass [sic] on both jobs. Everything took and is taking too much time, the [C]ity of Baltimore. As of today[,] the ppwork [sic] I sent to the city isn't in the system. I got an email saying go in using my full name and Id number and it didn't work. I got other earlier emails with different Id number[s] to use and diff[.] name, never worked. So that tells me I'm going to have to have a hard time getting paid . . .⁶ (by city).
I will send the deposit money back to the park heights address. Less expenses-my time, a hover report on both roofs[,] etc. [Whose] attention does check go to?

⁶ Ellipsis in original.

Your company makes it hard on us contractors. (NOTHING personal). I'm always super busy. I really wanted to do both jobs in [A]ugust. Mid may the 12th, is when I looked at both a few times and sent in estimates the same day.

Way to[o] long; EVERYTHING.

Sorry I'm backing out of working with the [C]ity and Chai hubs.

I'm not working tomorrow nor Friday morning but will be in later to do payroll.

Thank you.⁷

24. On October 20, 2022, Ms. Brown informed the Respondent that she was sorry that he would not be completing the two jobs. In her email, she clarified that the October 12, 2022 check from CHAI would need to be returned because, in relevant part,

Generally, the HUBS Program [does] not provide Contractor[s] with a down payment towards the home repairs, but made an exception for [the Respondent]. In addition, the HUB Program [does] not pay Contractor[s] for their time and providing proposals; this information was discussed with you in our initial conversation. Therefore, I ask that you return the check amount of \$2,830.00 in FULL since you have decided not to start the job. Address the check to – [CHAI], Attention Rona Gross. Thank you in advance for your cooperation.⁸

25. On October 24, 2022, the Respondent sent a new proposal which included administrative and "G&A" costs for both HUBS projects for a total cost of \$2,974.25. Specifically, the charges included \$1,562.25 for twenty-five hours of travel on five occasions between the hotel project and the Claimant's home, two hover roof reports⁹ in the amount of \$300.00 each; eight hours to email, text and call Ms. Brown in the amount of \$500.00; five hours on the phone to set up the Workday account in the amount of \$312.25. The Respondent subtracted the \$2,830.00 paid and indicated that there was a zero balance due.

26. The Respondent performed no work under the Contract.

⁷ Clmt. Ex. 9.

⁸ *Id.*

⁹ The Respondent agreed to complete another HUBS project for a different senior homeowner; therefore, only one hover roof report was completed for the Claimant's home.

27. On an unidentified date, the Respondent offered to split the \$2,800.00 with CHAI. Again, the Respondent was informed that the grant funds could only be used for home repairs for low income seniors and must be returned. CHAI offered to pay \$300.00 each for the two hover roof reports and requested copies of the report.

28. The Respondent never provided copies of the two hover roof reports and did not return any funds to CHAI, Sinai, or the Claimant.

29. On or around March 29, 2023, Candew Construction completed interior work on the Claimant's home in the amount of \$2,880.00, paid by CHAI through other grant funds.

30. On an unidentified date, Four Twelve Roofing completed the roofing work on the Claimant's home in the amount of \$17,193.18 paid by AHTF.

DISCUSSION

LEGAL FRAMEWORK

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."). Under the MHIC's statutory definition, an "owner" includes "a homeowner, tenant, or other person who buys, contracts for, orders, or is entitled to a home improvement." Bus. Reg. § 8-101(k). "[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.

POSITIONS OF THE PARTIES

The Claimants argued that the Respondent failed to complete any work on the Contract and therefore, CHAI is entitled to an award from the Fund. The Claimants further argued that the Claimant qualified for HUBS grant funding for critical repairs of his home as a senior residing in Baltimore and as part of the Contract, the Respondent was paid with grant funds of \$2,830.00 for an initial deposit. A week later, after cashing the deposit, the Respondent declined the Contract, sent a revised invoice which changed the costs from home repairs to administrative charges, and refused to return the funds. As a result, CHAI could not provide grant assistance to another senior through the HUBS program. Additionally, the Respondent's actions jeopardized the grant because funds were not used for the proper purpose, i.e., senior housing home improvement work. The Claimant requested an award of the \$2,830.00, minus \$600.00 in the event that the Respondent produced the two hover reports.

The Respondent argued that as a small business owner, he should be paid for the costs that he incurred. The Respondent argued that there were too many agencies involved in this project, that the scope of work changed several times, and there were significant delays in setting up the payment process through Workday. According to the Respondent, it took five months before he could get a letter from the City of Baltimore to proceed with the work. This delay impacted a hotel project that he had in Springfield, Virginia where he had to be on-site every day. It was the Respondent's position that he has always been paid for general and administrative costs by CHAI in the past. The Respondent had been in the construction business since 1985 and ending his business in December 2022, but has never encountered this problem before.

The Respondent argued that he felt bad that he could not complete the job and is not trying to take advantage of anyone; but, asked that he be paid for the time spent on travel, phone calls, text messages, and emails associated with the Claimant's project. The Respondent requested that I dismiss the Claim.

The Fund argued that the Claimants met their burden for an award. The Fund argued that there was a legally sufficient claim, and that under section 8-101(k), CHAI qualifies as a homeowner. The Fund argued that the Respondent abandoned the Contract without performing any work, and therefore, under COMAR 09.08.03.03B(3)(a), the full \$2,830.00 should be awarded to the Claimants.

ANALYSIS

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. *See* Bus. Reg §§ 8-405(c), (f), (g), 8-408(b) (2015 & Supp. 2023). Additionally, the Claimants did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023). The Respondent had offered to split the initial deposit with CHAI by essentially returning half of the funds. Despite the fact that administrative costs and travel expenses are not paid by the HUBS grant funds and explanation from Ms. Brown to the Respondent to that effect, CHAI attempted to resolve the matter by paying \$600.00 to the Respondent for the two hover roof reports if he provided copies. The Respondent insisted that he be reimbursed for administrative and travel expenses even though he performed no work on the Contract. The Respondent also never provided copies of the reports. There was no other evidence that the Respondent ever attempted to resolve the claim. I do not find the response from CHAI to be unreasonable in light of the Respondent's failure to complete any work, rejection of the Contract after he cashed the deposit, and failure to provide copies of the reports.

The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. There is no dispute that the Respondent did not perform any work at the Claimant's home. He performed measurements prior to starting the project, cashed the \$2,830.00 deposit check on October 12, 2022, but then declined the project on October 19, 2022. The Respondent refused to return the deposit and issued a proposal to CHAI on October 24, 2022 reflecting that the \$2,830.00 deposit check would be retained for administrative and travel expenses associated with traveling to the job site, sending text messages and emails, making phone calls, and attempting to set up the Workday account with the City of Baltimore. Additionally, the October 24, 2022 proposal reflected that two hover roof reports were completed. The Respondent never supplied copies of these reports to the Claimants or to Sinai, and did not submit them as evidence in this hearing.¹⁰ These types of overhead charges, i.e., the two hover reports, roof measurements, administrative tasks and travel expenses, were not listed in any proposal or contract entered into by the Claimants and the Respondent, nor were there any discussions or written or verbal agreements between Sinai and the Respondent regarding payments of such fees. Thus, the Respondent did not show that he performed work under the terms and conditions of the Contract.

I thus find that the Claimants are 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);

¹⁰ The Respondent testified that after shutting down his business, it was difficult to locate documents. However, he requested that the record be left open so that he could supply this information and then failed to do so.

COMAR 09.08.03.03B(3) provides three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The three regulatory formulas are as follows:

(a) 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.

(b) 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.

(c) 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)(a)-(c).

Candew Construction replaced the tub, patched walls in the bathroom, closed up a hole and painted in the dining room and living room, as well as provided the materials associated with the work for a total of \$2,880.00. Sinai paid Candew Construction in full on March 29, 2023, and the Claimant testified that all work was completed by Candew Construction within thirty days of its invoice, and that the roofing work was completed by a different contractor, Four Twelve Roofing for an unidentified amount. Although the Claimants solicited other contractors to complete the work, the scope of the Respondent's proposal is different than the Candew Construction invoice.

Additionally, utilizing a different calculation would result in a windfall for the Respondent, which is not appropriate.¹¹ As such, I agree with the Fund that the calculation under COMAR 09.08.03.03B(3)(a) is the appropriate calculation to determine the Claimants actual loss.

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." COMAR 09.08.03.03B(3)(a). CHAI paid a total of \$2,830.00 to the Respondent utilizing HUBS Weinberg grant funds. The Respondent has not proven that the two hover roof reports were completed. Additionally, the Respondent has not proven that he was entitled to the overhead charges associated with administrative tasks and travel expenses. There was no evidence that the parties agreed that the Claimants would incur such costs. There is no reference to any such costs in the Contract. The October 20, 2022 email from Ms. Brown to the Respondent explained that the Respondent needed to return the deposit in full to CHAI because such grant funds could not be used to cover such fees and expenses, which were not a part of the Contract. Additionally, Ms. Gross testified that in her thirteen years of experience working with CHAI in the HUBS program, administrative costs and travel expenses have never been paid. Further, Ms. Brown testified that she has worked as a HUBS case manager since November 2019 and in her experience, such administrative costs and travel expenses have never been paid to a contractor through this program.

¹¹ Under COMAR 09.08.03.03B(3)(c), the actual loss would have been \$2,470.00 (\$2,830.00 amount paid to Respondent plus \$2,880.00 amount paid to another contractor less the partial contract price with CHAI of \$3,240.00 equals \$2,470.00). This calculation would not be reasonable in light of the Respondent's failure to complete any work under the Contract terms, and the Department's regulations permit adjustments accordingly.

In the October 24, 2022 proposal, the Respondent included travel from a Virginia work site rather than his place of business in Owings Mills, Maryland to the Claimant's home in Baltimore City, Maryland. The Respondent testified that he made Ms. Brown aware that he had another project in Virginia. Even if the parties had contracted for travel expenses, such an extreme commute would not have been anticipated by the Claimants and was never directly communicated to them.

The Respondent also included time spent making phone calls, sending text message and emails to Ms. Brown and to the City of Baltimore regarding the Workday account. Ms. Brown testified that the work could have been started despite the delays associated with the City of Baltimore setting up the Respondent's Workday account. Again, there is no evidence that the Claimants and the Respondent contracted for this time. The Respondent also did not provide any evidence to justify the time allocated to these expenses, such as copies of the text messages, emails, or proof of the length of the phone calls.

For all of these reasons, I concluded that the Respondent has not refuted the Claimant's evidence that the Contract was abandoned because he has not shown that he completed any home improvement work on the Claimant's home. Therefore, the Claimants are entitled to an award of the full amount paid of \$2,830.00.

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.¹² Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4).

¹² 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").

In this case, the Claimant's actual loss is equal to the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover their actual loss of \$2,830.00

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$2,830.00 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). I further conclude that the Claimant is entitled to recover that amount from the Fund. Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$2,830.00; 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;¹³ and

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

January 29, 2024
Date Decision Issued

Tracee N. Hackett

Tracee N. Hackett
Administrative Law Judge

TNH/sh
#209680

¹³ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 20th day of May, 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***