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| <p>IN THE MATTER OF THE CLAIM OF LOUIS GARCIA, CLAIMANT AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ALLEGED ACTS OR OMISSIONS OF MARK WOLINSKI, T/A MARKED IMPROVEMENTS, LLC., RESPONDENT</p> | <p>* BEFORE M. TERESA GARLAND, * AN ADMINISTRATIVE LAW JUDGE * OF THE MARYLAND OFFICE * OF ADMINISTRATIVE HEARINGS * * * * OAH No.: LABOR-HIC-02-22-08015 * MHIC No.: 19 (75) 1114 *</p> |
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PROPOSED DECISION

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STATEMENT OF THE CASE

On December 22, 2021, Louis Garcia (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$18,695.27 for actual losses allegedly suffered as a result of a home improvement contract with Mark Wolinski, trading as Marked Improvements, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp.

2022).¹ On March 29, 2022, the MHIC issued a Hearing Order on the Claim. On April 4, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On August 25, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Eric London, Assistant Attorney General, Department, represented the Fund. The Claimant was 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); 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:²

Clmt. Ex. 1 - Proposal and Acceptance (Contract), November 20, 2018

Clmt. Ex. 2 - Claimant's timeline, March 5, 2018 - February 8, 2019

Clmt. Ex. 3 - Photograph of "Water damage", undated

Clmt. Ex. 4 - Itemization of material purchases and payments made to the Respondent, undated

Clmt. Ex. 5 - Photograph of "Basement Bathroom Damage", undated, and estimate of Layton Goodman Works, October 2, 2019

Clmt. Ex. 6 - Ten Photographs of "kid's" bathroom, undated

¹ Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

² Prior to the admission of the Claimant's exhibits, I required him to redact from his exhibits any reference to or the substance of settlement negotiations or mediation sessions. This process took approximately eighty minutes.

Clmt. Ex. 7 - Layton Goodman Works Proposal for "hall bath" renovation, signed by the Claimant October 8, 2019, with attached material invoices/receipts

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

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, June 10, 2022

Fund Ex. 2 - Hearing Order, March 29, 2022

Fund Ex. 3 - Respondent's Licensing History, May 3, 2022

Fund Ex. 4 - Home Improvement Claim Form, received December 22, 2021

Fund Ex. 5 - Letter from Joseph Tunney to the Respondent, December 23, 2021

Fund Ex. 6 - Claimant's \$9,357.35 check to the Respondent, November 20, 2018

Fund Ex. 7 - Claimant's \$1,699.22 check to the Respondent, January 11, 2019

Testimony

The Claimant testified and presented the testimony of Marnie Garcia, his wife.

The Respondent testified and did not present other witnesses.

The Fund presented the testimony of the Respondent.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence.³

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 89855.

2. On November 20, 2018, the Claimant and the Respondent entered into a contract to renovate an upstairs bathroom and repair a basement shower in the Claimant's home.

(Contract).

3. The original agreed-upon Contract price was \$12,357.35.

³ Findings of Fact 2-11 were derived substantially from Cl. Ex. 3, the Claimant's timeline.

4. On November 20, 2018, the Claimant paid the Respondent \$5,357.35 as a deposit and \$4,000.00 as a first draw, for a total of \$9,357.35.

5. Work began on the Claimant's project on November 19, 2018.⁴

6. In early December 2018, the Claimant became dissatisfied with the work product of the Respondent's subcontractor, "Tyler." He expressed his dissatisfaction to the Respondent.

7. The Respondent priced the Contract based on work performed by a subcontractor to save the Claimant on the cost of the Contract.

8. The work that the Claimant complained of was, in substantial part, cosmetic in nature, some was due to manufacturer defects in materials, and some had yet to be finished by the Respondent. The items included the basement bathroom shower door, the window in the "kid's" bathroom, the grout lines and tiling in the "kid's" bathroom shower, the flooring, and floor grout color in the "kid's" bathroom.

9. On December 21, 2018, the Claimant told the Respondent that "Tyler" was no longer welcome to work on the project.

10. From December 14, 2018 through February 5, 2019, the Respondent was cooperative and expressed many times that he would rectify any deficiencies in the work performed and complete any unfinished work when the materials became available. During this period, there were cabinets and floor tile that had not yet been delivered.

11. On or about February 5, 2019, the Claimant terminated his contractual relationship with the Respondent.

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

⁴ There was no explanation why work began prior to the execution of the Contract.

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. 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.”). “[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 not 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. 2022). 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. 2022). 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. 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. *Id.* § 8-405(f)(1) (Supp. 2022).

The Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022). The Claimant prepared a detailed timeline of every interaction he or his wife had with the Respondent from March 5, 2018, which predates the

Contract, through February 5, 2019, when he terminated his relationship with the Respondent. (Clmt. Ex. 3). The timeline included 128 individually numbered entries, including the details of every conversation and interaction the parties had, the Claimant's disgruntlement with the Respondent's work quality, the efforts of the Respondent to rectify any work the Claimant perceived as deficient, and the Claimant's obstinance in trying to resolve the issues between the parties. The timeline spans eleven, single-spaced pages. An example of the interaction between the Claimant and the Respondent is as follows: "Dec 4 - Mrs. Garcia texted [the Respondent] as to where Tyler was (this was at 8:02), she had previously communicated that she needed to leave at 8:00 that morning for an appointment." (Clmt. Ex. 3, item 42). To characterize the Claimant and his wife as demanding would be charitable. From the Claimant's timeline, it appears that he was texting the Respondent numerous times a day. Each time, the Respondent responded to him. When the Claimant expressed dissatisfaction with any part of the project performed by Tyler, the Respondent was responsive and said it would all be corrected and finished. (Clmt. Ex. 2, item 61). In fact, the Respondent was working at the Claimant's home on numerous days throughout the month of January 2019 and, on January 21 and February 5, 2019, and told the Claimant, "I will fix it." (T. Clmt.). According to the Claimant's own testimony, after the Respondent said that he would rectify any misgivings the Claimant had with his work, the Claimant responded that, "We aren't on the same page" and terminated the Respondent.

The Respondent testified sincerely and credibly that he tried to work with the Claimant "as best I could." Many of the issues raised by the Claimant were not even finished and the issues remaining were cosmetic in nature and could have been fixed. Based upon the evidence before me, I find the Claimant unreasonably rejected the Respondent's good faith efforts to resolve their differences.

Further, and for the sake of completeness, the Claimant failed to prove by a preponderance of the evidence that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements. In support of his position, the Claimant submitted a series of photographs allegedly depicting the Respondent's poor workmanship. The photos were of poor quality and did not assist me in determining the validity of the Claimant's complaints. The Claimant did not present an expert witness to verify his complaints regarding the workmanship of the Respondent's work. He and his spouse offered their own opinions as to whether the work was workmanlike and whether it could be rectified. Hence, I reject the Claimant's assertion that the Respondent's work product was unworkmanlike.

I thus find that the Claimant is not eligible for compensation from the Fund.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss of \$18,695.27 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

November 18, 2022
Date Decision Issued

M. Teresa Garland

M. Teresa Garland
Administrative Law Judge

MTG/ds
#201581

PROPOSED ORDER

WHEREFORE, this 9th day of January, 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**