IN THE MATTER OF THE CLAIM	*	**BEFORE DEBORAH S. RICHARDSON,**
OF OLIVIA BRADSHAW,	*	**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 DENNIS	*	
WASHINGTON,	*	**OAH No.: LABOR-HIC-02-21-22821**
T/A WASHINGTON BOYZ	*	**MHIC No.: 19 (05) 491**
CONSTRUCTION LLC,	*	
RESPONDENT	*	

* * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE

On December 1, 2020, Olivia Bradshaw (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 $32,500.00 for actual losses allegedly suffered as a result of a home improvement contract with Dennis Washington, trading as Washington Boyz Construction LLC (Respondent). Md. Code Ann., Bus.

Reg. §§ 8-401 to 8-411 (2015).[1] On September 17, 2021, the MHIC issued a Hearing Order on the Claim. On September 23, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 18, 2022, I held a hearing using the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b).[2] The Claimant appeared and represented herself. The Respondent appeared and represented himself. Hilary Baker, Assistant Attorney General, Department, represented the Fund.

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); COMAR 09.01.03; and 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, January 11, 2017; Checks from the Claimant to the Respondent, January 12, 2017, July 14, 2017, September 5, 2017; Bank of America account log, May 8, 2018 to June 6, 2018

Clmt. Ex. 2 - Photographs, undated

Clmt. Ex. 3 - Summary of claim, December 26, 2016 to August 24, 2018

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

[2] I postponed the hearing that was previously scheduled on December 30, 2021 because the Respondent was unable to access the exhibits that had been sent to him electronically.

Clmt. Ex. 4 - Pepco bill, February 26, 2017; Adams Construction proposal, November 2, 2020; Dynamic Contractor proposal, November 3, 2020

Clmt. Ex. 5 - Voicemail transcription, April 4, 2018; invoice from contractor (name, date, and amount not visible)

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

I admitted the following exhibits offered by the Fund:

GF Ex. 1 - Hearing Order, September 17, 2021

GF Ex. 2 - Notice of Hearing, October 7, 2021;
Notice of Remote Hearing, December 22, 2021

GF Ex. 3 - Home Improvement Claim Form, December 1, 2020;
Letter from the MHIC to the Respondent, December 15, 2020

GF Ex. 4 - Licensing information, printed December 1, 2021

Testimony

The Claimant testified in her own behalf.

The Respondent testified in his own behalf.

The Fund did not present any 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 numbers 4946626 and 5280173.

2. The Claimant owns a single-family home in Clinton, Maryland (the Property).

3. In December 2016, the Claimant contacted the Respondent to obtain a quote for constructing a two-car garage on the Property.

4. On December 29, 2016, the Respondent provided a quote of $41,000.00.

5. On January 11, 2017, the Claimant and the Respondent entered into a contract for the Respondent to build a two-car garage with a master bedroom on top. The agreed-upon final price of the contract (the Contract) was $37,000.00.

6. The Contract provided the Respondent would supply architectural drawings; obtain all necessary building permits; move the electrical meter; install temporary service through the construction phase; move the existing A/C unit and relocate it near the rear of the house; remove the existing concrete driveway; dig and pour concrete footings; lay 8"x16" block for the foundation; pour a new concrete slab for garage floor; pour a new concrete driveway; supply lumber and do all framing for a two car garage with master bedroom above; install windows; cut a new doorway from the existing second floor; run all electrical wiring and HVAC lines; insulate; hang drywall, finish and paint; install light fixtures and receptacles; install carpet; install house wrap, vinyl siding, fasci and soffits; and install asphalt shingles. The Contract provided that electrical work would be completed by a licensed electrician and HVAC work would be completed by a licensed HVAC technician.

7. The parties verbally agreed that the Claimant would pay one-third of the Contract amount at the beginning of the work, one-third in the middle of construction, and the remaining one-third upon completion of the Contract.

8. The Claimant signed homeowner improvement authorization forms for the Respondent to be able to get permits on her behalf on the project.

9. The Contract did not include any provisions about the timing of completion.

10. On January 12, 2017, the Claimant paid the Respondent $12,334.00.

11. From January through June 2017, the Claimant expressed frustration with the Respondent's failure to begin the Contract.

12. On June 20, 2017, the Respondent broke ground on the Contract at the Property.

13. On July 13, 2017, the Respondent requested the second payment from the Claimant in order to purchase supplies. The Respondent had not completed half of the work at that time.

14. On July 14, 2017, the Claimant paid the Respondent $12,333.00.

15. From July through September 2017, the Respondent continued to work on the Contract but made very slow progress.

16. The Respondent consistently informed the Claimant the delays on the project were due to Pepco.

17. The Respondent underestimated the amount of work that was required by Pepco to relocate the electricity pursuant to the Contract. The Respondent did not discover until he took down the temporary electrical service that Pepco had to install wire for the main voltage from the street to a new panel, which was a major project.

18. In September 2017, the Respondent received a bill from Pepco for $5,895.00.

19. On September 2, 2017, the Respondent sent the Claimant an email stating in part: "If you don't mind, I need to make an amendment to the contract. The change does not add cost to the project. I need half of the last draw. With the unforeseen expenses from Pepco and additional charges still to come from Pepco, have made the project way over budget. The project will still be finished for the same price." (Clmt. Ex. 3).

20. On September 5, 2017, the Claimant paid the Respondent $6,166.00, which was one-half of the third payment. The Respondent promised all of the work would be completed within forty-five days.

21. In October 2017, the Respondent had some health issues which delayed his work on the Contract.

22. The Respondent continued to inform the Claimant the delay in the Contract performance was due to Pepco.

23. In December 2017, the Claimant contacted Pepco and was informed by Pepco that the delay in the Contract performance was due to the subcontractor electrician and not Pepco.

24. In December 2017, the Respondent informed the Claimant that his health issues and Pepco were causing the delay.

25. From January to February 2018, the Respondent provided the Claimant with basic updates about the Contract status but did not substantially advance the work.

26. On March 19, 2018 the Respondent forwarded the Pepco bill to the Claimant.

27. The Claimant informed the Respondent she did not have money to pay the Pepco bill.

28. On April 4, 2018, the Respondent left the Claimant a voicemail stating in part: "I spoke with . . . you husband . . . earlier . . . I think it was yesterday told him to contact uh Pepco to see what's going on with that. But umm the fees for the um to give them the time out that needs to be paid and umm if my records are correct you still owe me umm what half of the last bill. I mean just take it and pay it towards that. And I will umm and I will just you know we gotta get that paid I mean so they can set it up on their schedule so they can get it done. And I will umm I will figure out something to get the rest done I will get those things for you. But that needs to be done immediately so just take that the last bill and pay them and I guess don't worry the umm you know you know about owing me just pay them so we can get the electric bill paid so I can go get it finished. I mean that's the least I can do." (Clmt. Ex. 5).

29. On April 20, 2018, the Claimant emailed the Respondent "I do not have additional funds available for the Pepco bill that was sent without warning." (Clmt. Ex. 3).

30. On April 20, 2018, the Respondent emailed the Claimant "I'm sorry for the lack of communication but the main thing is to get Pepco paid so they can put you on their schedule, I stated that you could use the final payment owed to me could be used to pay Pepco and you would not owe me. I will make sure the job is completed, its going to be hard on me but as a business I feel obligated to make sure the job is completed." (Clmt. Ex. 3).

31. On May 24, 2018, the Claimant paid the Pepco invoice of $5,895.00.

32. Between May and June 2018, the Respondent completed very limited work at the Property.

33. On June 7, 2018, the Claimant sent the Respondent an email informing him the Pepco bill had been paid and that completed her obligation to the Respondent but demanding that he complete the job at no further cost to her.

34. On June 7, 2018, the Respondent emailed the Claimant informing her that the Pepco bill she had paid was less than the final payment owed to him.

35. Between June 7, 2018 and June 27, 2018, the Respondent sent emails to the Claimant in which he continued to acknowledge he was obligated to complete the Contract.

36. On June 27, 2018, the Respondent informed the Claimant he was involved in a car accident that delayed his work.

37. Between August 9, 2018 and August 22, 2018, Pepco completed its work at the Property.

38. On August 24, 2018, the Respondent emailed the Claimant as follows: "I have spoken with my attorney about the project and he agrees with the fact of you saying that you are not going to pay me releases me from the obligation of completing the job. If you can recall the telephone conversation we had, where I informed you that you were responsible for paying Pepco, because it was not my responsibility nor was it mentioned in the contract. With that being

said, I am willing to come back to install garage doors with the garage door openers, remove existing driveway, install a new two car driveway, and install soffits and fascia. I figure the remaining balance of $6,166.50 still owed to me should be enough for you to have someone else finish the interior. If you are ok with that, please let me know, and I will get it written up, and get started on completion next week." (Clmt. Ex. 3).

39. The Claimant did not pay the Respondent any additional funds.

40. After August 24, 2018, the Respondent did not return to the Property to complete the Contract.

41. When the Respondent stopped working on the project, he had laid the foundation, and built the garage with the addition on top. He had not completed the interior of the addition, nor had he installed garage doors or built the driveway.

42. The Claimant paid Adams Construction, a licensed contractor, $11,500.00 to install garage doors and build the driveway.

43. The Claimant will be able to have the remaining work from the Contract completed for $31,393.00.

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); Md. Code Ann., 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 Cty. 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); *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 he entered into the Contract with the Claimant. I also find the Respondent performed incomplete home improvements.

The Claimant argued that the Respondent never told her about the Pepco costs for relocating the electricity pursuant to the Contract. She acknowledged that the Respondent himself likely did not know about that cost when he entered into the Contract. However, once they did learn of the cost, the Respondent accepted responsibility for it. The Claimant testified the Respondent sent her an email and left a voice mail telling her to use the money from the last payment under the Contract to pay the Pepco bill and that the Respondent would complete the remaining work at no additional cost. The Claimant obtained quotes from licensed contractors to complete the work not done by the Respondent.

The Respondent argued that he stopped work under the Contract because the Claimant breached the Contract when she informed him she did not have enough money to complete the work. The Respondent testified the Claimant told him she did not have the money to pay Pepco. The Respondent felt if the Claimant did not pay Pepco at that time it could have been years before the Contract was completed. Moreover, the Respondent argued that he never told the Claimant that he would pay Pepco. The Respondent explained that the voicemail he left the Claimant meant that he was not excusing the Claimant's last payment to him, but rather that she should use the money she had to pay Pepco, and they would work together to get her last

payment to him. The Respondent acknowledged that when he left the job, he had not completed the garage doors, the driveway, or the carpeting.

The Claimant argues she paid the Respondent almost everything owed to him and that he abandoned the job. The Respondent argues that the Claimant breached the Contract by informing the Respondent she would pay nothing further under the Contract. Resolution of this issue depends on who was responsible for the unanticipated Pepco cost.

Maryland courts take an "objective" approach to the interpretation of contracts:

> Under that approach, the court's inquiry is initially bounded by the "four corners" of the agreement. As with the interpretation of a statute, the court does not construe particular language in isolation, but considers that language in relation to the entire contract. The court is to give effect to the plain meaning of the contract, read objectively, regardless of the parties' subjective intent at the time of contract formation. In other words, when the contract language is plain and unambiguous, "the true test of what is meant is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant."

Impac Mortgage Holdings, Inc. v. Timm, 474 Md. 495, 506-507 (2021).

The Contract (Clmt. Ex. 1), is plain and unambiguous. The Respondent was required to move the electrical meter, install temporary electrical service throughout the construction phase, and all electrical work was to be completed by a licensed electrician. The plain reading of this Contract is that the Respondent was responsible for the costs associated with moving the electrical meter.

Even if I were to assume the Contract was ambiguous with respect to this unanticipated cost - that the contract as viewed from the perspective of a reasonable person is susceptible of more than one meaning about who bore responsibility for the Pepco bill - I am instructed to turn to extrinsic evidence to illuminate the intentions of the parties at the time the contract was formed. *Id.* at 507. To that extent, "communications between the parties about a contract

subsequent to the execution of that contract may be admissible as evidence of an interpretation by both parties." *Id.* at 508 (quotation omitted). The Respondent communicated many times with the Claimant after receiving the Pepco bill acknowledging his responsibility for the bill. Only on August 24, 2018 did the Respondent abruptly change course and deny responsibility. Again, the evidence leads to a conclusion that the Respondent was responsible for the Pepco bill.

Finally, if construction of the contract becomes a question of law for the court,

> [c]ourts have developed rules of interpretation, often called canons of construction, as aids to interpret contracts as a matter of law. . . among those rules of interpretation is that ambiguous language in a contract that is not clarified by extrinsic evidence or interpretive aids is construed against a party to the contract when that party drafted the language in question – a canon of construction sometimes referred to by the Latin phrase contra proferentem ("against the offeror"). That canon of construction is based on elementary notions of fairness – that the drafting party was responsible for including the particular language in the contract and presumably had the greater opportunity to clarify the language in its favor, if that was the parties' intent, or at least to protect its own interests from a lack of clarity. It is also meant to discourage the drafter from including ambiguous language in order to induce another to contract with him on the supposition that the words mean one thing while he hopes the court will adopt a construction by which they will mean another thing more to his advantage.

Id. at 508-509 (quotations and citations omitted). The Respondent drafted this Contract. This canon of construction demands that any ambiguity not clarified by extrinsic evidence be construed against the Respondent. Once again, I am left with the conclusion the Respondent was responsible for the Pepco bill.

Although the parties did not agree to a timeline in the Contract, the delay in the performance of this Contract was extraordinary. It is understandable the Claimant had lost patience with the Respondent over time. Moreover, she believed much of the delay was due to Pepco, but later discovered after her own independent investigation the delay was due to the Respondent. This explains why the Claimant kept meticulous notes about the timeline of events

between the parties. The Claimant's detailed notes were accompanied by her credible, articulate recitation of events. The Respondent's proffered explanation of events was simply unbelievable.

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); COMAR 09.08.03.03B(1). 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 and intends to retain other contractors 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).

This formula is applied as follows:

$36,728.00 ($30,833.00 paid to Respondent plus $5,895.00 paid to Pepco)

Plus $11,500.00 paid to Adams Construction for driveway and garage doors

Plus $31,393.00 to complete remaining work in Contract

Equals $79,621.00

Minus $37,000.00 (original contract amount)

Equals $42,621.00

The Business Regulation Article caps a claimant's recovery at $20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss of $42,621.00 exceeds $20,000.00. Therefore, the Claimant's recovery is limited to $20,000.00. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of $42,621.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover $20,000.00 from the Fund. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $20,000.00; 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;[3] and

[3] *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.

Deborah S. Richardson

April 18, 2022
Date Decision Issued

Deborah S. Richardson
Administrative Law Judge

DSR/at
#197352

PROPOSED ORDER

WHEREFORE, this 13th day of June, 2022, 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.

Lauren Lake

Lauren Lake
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION