

**IN THE MATTER OF THE CLAIM
OF JONATHAN BONDZIE,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF ERICK RODAS,
T/A PREMIER BUILDERS GROUP,
INC.,
RESPONDENT**

*** BEFORE SYEETAH HAMPTON-EL,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-20-28407
* MHIC No.: 19 (75) 924

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PROPOSED DECISION

**STATEMENT OF THE CASE
ISSUES
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PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSION OF LAW
RECOMMENDED ORDER**

STATEMENT OF THE CASE

On March 4, 2020, Jonathan Bondzie (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),¹ for reimbursement of \$2,996.23 in actual losses allegedly suffered as a result of a home improvement contract with Erick Rodas, trading as Premier Builders Group, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).²

¹ On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.
² Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

On December 29, 2020, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 9, 2021, the Respondent requested a postponement due to the COVID-19 pandemic. The OAH granted the postponement and rescheduled the hearing for April 6, 2021 at 9:30 a.m. via the Webex videoconferencing platform (Webex). On February 26, 2021, the OAH mailed the Notice of Hearing via United States mail. I held a hearing on April 6, 2021 via Webex. Bus. Reg. §§ 8-407(a), 8-312. Justin Dunbar, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. The Respondent, as owner, represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); Code of Maryland Regulations (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 on the Fund's behalf:

- Fund Ex. 1 - OAH Notice of Hearing, dated February 26, 2021
- Fund Ex. 2 - The Department Hearing Order, dated December 21, 2020
- Fund Ex. 3 - MHIC Claim Form, dated March 4, 2020

Fund Ex. 4 - Letter from the Department to the Respondent, dated March 10, 2020

Fund Ex. 5 - Respondent Licensing History, dated March 30, 2021

I admitted the following exhibits on the Claimant's behalf:

Clmt. Ex. 1 - Home Remodel Contract between the Claimant and the Respondent, dated April 26, 2018 and the following attachments:

- Schedule of Values from J and J Constructions, Inc. (subcontractor)
- Letter from the Claimant to the Respondent regarding the final draw, dated May 7, 2019
- Email from the Claimant to the Respondent, dated July 17, 2019
- Email from the Claimant to the Respondent, dated June 24, 2019
- Email from the Claimant to the Respondent, dated July 21, 2019
- District Court of Maryland for Montgomery County Default Judgment in the amount of \$2,315.03³ against the Respondent, dated January 27, 2020
- Receipt from The Junk Removal Pros in the amount of \$415.00, dated May 30, 2019
- CASE Preliminary Proposal, dated April 3, 2019

Clmt. Ex. 2 - Black and White Photograph entitled Bathroom, dated February 10, 2021

Clmt. Ex. 3 - Black and White Photograph entitled Bathroom Screw, dated February 10, 2021

Clmt. Ex. 4 - Black and White Photograph entitled Closet, dated February 10, 2021

Clmt. Ex. 5 - Black and White Photograph, dated February 10, 2021

Clmt. Ex. 6 - Black and White Photograph, dated February 10, 2021

Clmt. Ex. 7 - Black and White Photograph, dated February 10, 2021

Clmt. Ex. 8 - Black and White Photograph, dated February 10, 2021

Clmt. Ex. 9 - Black and White Photograph entitled Garbage [one], dated February 10, 2021

Clmt. Ex. 10 - Black and White Photograph entitled Garbage [two], dated February 10, 2021

The Respondent did not offer any exhibits.

³ \$2,256.03 for the judgement principal and \$59.00 court costs.

Testimony

The Fund did not present any witnesses.

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other 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 number 5653034. (Fund Ex. 5).
2. On April 26, 2018, the Claimant and the Respondent entered into a contract to remodel the home owned by the Claimant (Contract). The Contract stated that work would begin in May 2018 “pending receipt of building permit and final construction documents and plans” and would be completed on August 30, 2018. (Clmt. Ex. 1).
3. The Contract terms include renovation of the entire residence located in Takoma Park, Montgomery County, Maryland all based on the drawings by Paola One Design and JZ Structural Consulting (Plan):
 - Demolition of the main floor, attic, basement,
 - Installation of new plumbing, electrical, new flooring, appliances,
 - Installation of new HVAC, ducting systems, and insulation,
 - Installation of new fixtures in the bathroom and kitchen,
 - Finishing all walls and ceilings,
 - Patching roof and chimney demolition and insulation, and
 - Clean up after end of project.
4. The Contract did not include installation of a hose bib in the basement.

5. The Respondent obtained a building permit from Montgomery County and Washington Suburban Sanitary Commission (WSSC), and the permit did not include the installation of a hose bib. Montgomery County inspected the rough-ins and final inspection.
6. WSSC tested all plumbing and approved the plumbing installation.
7. The original agreed-upon Contract price was \$163,100.00.
8. The Contract outlined a payment schedule:
 - Down payment \$24,465.00
 - Payment two: \$48,930.00
 - Payment three: \$32,620.00
 - Payment four: \$32,620.00
 - Final payment: \$24,465.00
9. On April 3, 2019, the Claimant obtained an estimate from CASE Design to fix the wall cracks, install the hose bib connection, replace basement door, and install a wall hung rail for \$6,474.70.
10. On May 7, 2019, the Respondent subtracted \$536.00, due to a purchase of a water header by the Claimant, from the final draw amount of \$2,405.00⁴ leaving a total due of \$1,869.00. (Clmt. Ex. 1).
11. On May 30, 2019, the Claimant hired The Junk Removal Pros to remove construction junk from his residence and paid \$415.00.
12. On June 24, 2019, the Claimant notified the Respondent of a leak causing wet walls downstairs. (Clmt. Ex. 1).

⁴ The Claimant and the Respondent agreed that the Claimant paid the Contract in full. The Claimant did explain the remain \$2,405.00.

13. On July 17, 2019, the Claimant notified the Respondent of a roof leak, roof movement, construction clean-up costs, and wall cracks in the guest bedroom.

14. On January 27, 2020, the Respondent failed to appear in the District Court for Montgomery County and the Court awarded the Claimant a default judgment.

15. The Claimant owns a second property.

DISCUSSION

In this case, 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 (2014); 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 not proven eligibility for compensation.

The Claimant argued that the Respondent performed unworkmanlike home improvement repairs because he failed to clean-up the garbage, install and connect the hose bib, and repair cracks in the wall. The Respondent argued that he performed workmanlike home improvements and complied with the Contract terms. The Respondent stated that the installation and connection of the hose bib exceeded the Contract terms. Regarding the roof, the Respondent denied performing work to cause leaks and denied performing work to cause cracks in the walls.

The Claimant testified that he contracted with the Respondent to complete an entire home renovation of his residence located in Montgomery County. The Claimant owns two residences. He described the Contract terms to include all plumbing, electrical, flooring, new walls, insulation, installation of bathrooms, kitchen, HVAC, and new appliances. Per the Contract, the Claimant believed the renovation would take four months, beginning in May 2018 and ending in August 2018.

He testified that he paid the Respondent a total of \$163,100.00 to complete the renovation; however, the Respondent failed to complete the Contract. The Claimant testified that the City of Takoma Park issued a warning due to garbage remaining on the property. After getting the verbal warning, the Claimant said he called the Respondent, who promised to have the garbage cleaned up. Because the Respondent failed to hire a company, the Claimant testified he hired the Junk Removal Pros in May 2019 and paid \$415.00 for garbage removal.

The Claimant also noticed cracks in the bedroom, unfinished duct work, leaks, and the missing hose bib. The Claimant emailed the Respondent about the problems, but the Respondent did not return to the residence to make repairs. As a result, the Claimant obtained an estimate from CASE Design to fix the identified issues and to provide additional work. The estimate totaled \$6,474.700 but the Claimant acknowledged that only \$1,841.03, allocated for the wall crack repair, covered the original Contract repairs.

The Claimant testified that he filed a lawsuit in the District Court of Maryland for Montgomery County, but the Respondent failed to appear. As a result of the failure to appear, the Claimant explained that the Court issued a default judgment. As of the date of the hearing, the Claimant had no other lawsuits pending against the Respondent.

The Respondent testified that he contracted with the Claimant to renovate parts of a "really old" house, including a bedroom, kitchen, bathroom, basement demolition, and plumbing.

He described the house as approximately between 1,600 to 1,800 square feet, "really old," and approximately eighty to 100 years old. The Respondent explained he operated as the general contractor and hired subcontractors for the electrical, plumbing, and mechanical portions of the Contract. However, the Contract did not include installation of the hose bib or roof repairs. He explained that the renovations were based on a plan submitted and approved by Montgomery County and WSSC. As a result of the approved plan, the Respondent explained that Montgomery County issued a building permit. He recalled both WSSC and Montgomery County inspecting the rough-ins and performing a final inspection. He explained after WSSC tested the pipes for pressure and issued the approval, he closed the walls and did not observe any leaks.

After the approved plan, the Respondent testified that the Claimant added items such as removing the chimney on the roof. He recalled completing the request, installing new shingles, and not noticing any leaks in the area. The Respondent described the roof as old.

The Respondent explained he performed all work as required by the Contract and the Claimant paid in full. The Respondent testified he installed the HVAC system including the furnace, insulation, and duct work. In addition, he remodeled the second bathroom on the second floor. On the first floor, the Respondent painted the bedroom and bathroom, and created an open concept living room, kitchen, and dining area.

Regarding the problems noted by the Claimant, the Respondent testified the home had old plaster causing cracking in the walls. In addition, he believed the age of the home and the old roof contributed to any leaks found by the Claimant. The Respondent even remembered speaking to the Claimant about the old roof and related issues. Besides completing the basement demolition, the Respondent explained he did not perform additional work in the basement because it did not comply with Montgomery County code. The Respondent testified he paid \$685.00 for a twenty-yard container for debris and trash. He believed any additional debris came

from work performed in the basement that exceeded the scope of the Contract. The Respondent also denied any sewage leaks since WSSC tested the plumbing and approved the plumbing installation.

Based on the evidence presented, I find that the Claimant has not met his burden to show that the Respondent performed unworkmanlike home improvements. The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant.

The Respondent did not perform unworkmanlike, inadequate, or incomplete home improvements.

The Claimant and the Respondent do not dispute the Contract, terms, or that the Claimant paid the Respondent in full. However, the Claimant disputes that the Respondent completed the renovation as outlined in the Contract. The Claimant identified three problem areas: failure to clean-up, cracks in the bedroom wall, and a failure to install the hose bib. As a result of the failures, the Claimant obtained an estimate from CASE Design to correct the problems and to perform additional work beyond the Contract.

The Contract between the Claimant and the Respondent states, "all work shall be as per plan date [April 10, 2018]. Design by Paola One Design." (Clmt. Ex. 1). The Respondent testified that he performed the renovation pursuant to the Plan and the Contract. I find the testimony of the Claimant and the Respondent to both be credible. However, as the party with the burden, I find it interesting that the Claimant never mentioned the Plan nor offered it as an exhibit to accompany the Contract. The Claimant did not dispute or challenge the existence of the Plan.

The Contract specifically refers to the subcontractor and the Plan. Even in reading the Contract, I do not see any mention of the installation or connection of the hose bib. Therefore, I

do not find that the Respondent performed an unworkmanlike home improvement relating to the installation or connection of the hose bib.

The Contract has a section entitled 1.11 Cleaning Up, that states, “the Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations.” (Clmt. Ex. 1). In this case, the Claimant provided both pictures and a receipt to demonstrate garbage and the cost of its removal. However, the two pictures provided by the Claimant are in conflict with the Contract and other presented evidence. The Contract includes payment in the first draw for a dumpster. This notation is consistent with the Respondent’s testimony that he paid for a twenty-foot dumpster to be at the property during the renovation. In addition, the Claimant and the Respondent communicated on May 7, 2019 and the Claimant does not mention the remaining garbage or an effort to subtract any third party payments from the final draw. Further, the Claimant paid \$415.00 in May 2019 and presented no evidence to show that the Respondent is more likely than not the cause of the garbage. The two pictures provided show garbage but nothing to indicate it accumulated due to inaction by the Respondent. Therefore, I do not find that the Respondent provided an unworkmanlike home improvement as it relates to the clean-up costs.

The Claimant also alleged that the Respondent performed an unworkmanlike home improvement because the guest bedroom walls cracked. The Claimant argued that the Respondent’s demolition of the existing chimney caused the wall cracks to occur. The Claimant submitted two photographs of walls and only one photograph shows a crack in a wall. (Clmt. Ex. 6). I do not find it more likely than not that the Respondent performed an unworkmanlike home improvement causing the bedroom walls to crack. I find that the Respondent provided credible testimony regarding the age of the home and condition of the roof and not disputed by

the Claimant. In addition, the Respondent told the Claimant about the roof and issues that may arise as a result of an old roof. The Claimant confirmed the roof issues in two emails dated June 24, 2019 and July 17, 2019. On June 24, 2019, the Claimant stated, "I intend to get the roof/siding fixed soon..." and on July 17, 2019, the Claimant stated, "The roof has moved laterally so it [is] starting to affect other structures like the closet door for the HVAC." (Clmt. Ex. 1).

I find that the Contract is silent about the installation of a new roof, instead, the Contract states, "provide material and labor to patch roof (chimney demolition)" and "roof material asphalt shingles matching existing (repair only)." (Clmt. Ex. 1). There is no dispute that the home is old and required significant renovation but the Claimant excluded a new roof. I find that the Respondent provided credible testimony about the chimney demolition and lack of leaks afterward. The Claimant has made a bald allegation about leaking but failed to show that any leaks were more likely than not caused by the Respondent. Therefore, I do not find that the Respondent performed unworkmanlike home improvements during the chimney demolition to cause leaks in the home.

The Claimant also argued that the Respondent provided unworkmanlike home improvements because of sewage leaks. However, the Claimant never mentioned the permits and inspections performed by WSSC and Montgomery County. Therefore, I find it more likely than not that the Respondent did not provide unworkmanlike home improvements but instead properly installed the plumbing that WSSC inspected and approved.

The Claimant obtained an estimate for \$6,474.70 from CASE Design to fix the identified problems and to complete new items. The repairs consistent with the Contract total \$1,840.00; specifically cracks in walls. As previously noted, I do not find that the Claimant met his burden

to show that it is more likely than not that the Respondent performed unworkmanlike home improvements relating to the cracks in the walls.

I thus find that the Claimant is not eligible for compensation from the Fund. 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). In this case, the Claimant paid court costs to the District Court of Maryland for Montgomery County when he filed a lawsuit against the Respondent. The costs are specifically excluded and not eligible for compensation. In addition, the costs paid for the additional clean-up are within the definition of actual loss. Actual loss is defined as “the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. §8-401. While the Claimant paid for additional clean-up, I do not find that counts as an actual loss as defined in the Business Regulation Article because the Claimant failed to prove that the garbage arose from any unworkmanlike, inadequate, or incomplete home improvement.

Therefore, I do not find that the Claimant met his burden to show that the Respondent provided unworkmanlike home improvements. The Contract did not include installation of the hose bib. The Claimant failed to provide the Plan referenced in the Contract. The Claimant failed to show that the chimney demolition more likely than not caused the wall cracks in the guest bedroom. The Claimant did not show that the additional clean-up costs were caused by unworkmanlike home improvements or misconduct by the Respondent. Finally, the Claimant is prohibited from recovering court costs as an actual loss. COMAR 09.08.03.03(B)(1)(d).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss of 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(2).

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.

June 28, 2021
Date Decision Issued



Syeetah Hampton-EL
Administrative Law Judge

SAH/at
#192781

PROPOSED ORDER

WHEREFORE, this 6th day of September, 2021, 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.

Wm Bruce

Quackenbush

Wm Bruce Quackenbush

Panel B

*MARYLAND HOME IMPROVEMENT
COMMISSION*