IN THE MATTER OF THE CLAIM	*	**BEFORE BRIAN ZLOTNICK,**
OF RUSSELL GLENN,	*	**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 HOWARD A. MILOR,	*	**OAH No.: LABOR-HIC-02-21-06595**
III, T/A MILOR'S HOME	*	**MHIC No.: 20 (75) 117**
IMPROVEMENT COMPANY,	*	
RESPONDENT	*	

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

PROPOSED DECISION

STATEMENT OF THE CASE

On January 13, 2020, Russell Glenn (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 $5,087.94 in actual losses allegedly suffered as a result of a home improvement contract with Howard A. Milor, III, trading as Milor's Home Improvement Company (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401

[1] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

through 8-411 (2015).[2] On March 23, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 25, 2021, the OAH issued a notice to the parties (Notice) that a hearing was scheduled for April 30, 2021, beginning at 9:30 a.m. The notice further advised that the hearing would be held remotely using the Webex videoconferencing platform.

On April 2, 2021, I held a hearing as scheduled using the Webex videoconferencing platform. Md. Code Ann., Bus. Reg. §§ 8-407(a), 8-312 and Code of Maryland Regulations (COMAR) 09.01.03.05A. and 28.02.01.20B. Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. The Respondent failed to appear for the hearing.

After waiting more than 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. COMAR 28.02.01.23A. On March 25, 2021, the Notice was mailed to the Respondent at the address of record by regular and certified mail. COMAR 09.08.03.03A(2). The Notice sent by regular mail was not returned by the United States Postal Service (USPS). The USPS did return the certified mail receipt as delivered for the Respondent. The Respondent did not notify the OAH of any change of address. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. Accordingly, I determined that the Respondent had received proper notice, and I proceeded to hear the captioned matter.

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.

---

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

Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); 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 Claimant's behalf:

Clmt. Ex. 1 MHIC Claim Form, November 19, 2019, with attached Complaint Form, July 22, 2019

Clmt. Ex. 2 E-mails between the Claimant and the Respondent, May 5, 2019, to July 8, 2019

Clmt. Ex. 3 Photographs of the construction of the enclosed deck from November 2018 to January 2019

Clmt. Ex. 4 Contract and Change Orders, signed on or about July 2, 2019

Clmt. Ex. 5 A collection of cancelled checks from the Claimant to the Respondent from June 26, 2018, to January 23, 2019

Clmt. Ex. 6 Contract between the Claimant and Wise Construction, November 19, 2019, with attached invoices and photographs

Clmt. Ex. 7 Letter from the Department to the Claimant and the Respondent, September 11, 2019

Clmt. Ex. 8 Response from the Respondent to the MHIC, September 4, 2019, with attached Contract, license information and MHIC Order

Clmt. Ex. 9 Payment schedule, January 24, 2019, with attached invoices and description of work

Clmt. Ex. 10 Documentation of e-mail correspondence between the Claimant and the Respondent from September 3, 2018, to July 8, 2019

Clmt. Ex. 11 E-mails between the Claimant and the Respondent from May 5, 2019, to July 8, 2019

Clmt. Ex. 12 E-mail from Josh Varner to the Claimant with attached photographs, August 15, 2019

Clmt. Ex. 13 Claimant's Allstate Insurance claim, October 18, 2019, with attached photographs

Clmt. Ex. 14 Wise Construction Invoice for damaged interior of the Claimant's home, March 13, 2020

Clmt. Ex. 15 Letter from Allstate Insurance to the Claimant, March 24, 2020

The Respondent did not offer any exhibits into evidence.

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

MHIC Ex. 1 OAH Notice of Remote Hearing, March 25, 2021

MHIC Ex. 2 Hearing Order, March 11, 2021

MHIC Ex. 3 Respondent's MHIC Licensure Information, March 29, 2021

MHIC Ex. 4 Letter to the Respondent from Joseph Tunney, January 24, 2020, with attached Claim, received on January 17, 2020

MHIC Ex. 5 OAH Notice of Hearing, March 25, 2021, with attached certified mail receipts

Testimony

The Claimant testified and did not present other witnesses. The Fund presented no witness testimony. The Respondent did not appear and thus, presented no 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 89691. (MHIC Ex. 3).

2. At all relevant times, the Claimant owned residential property located in Hagerstown, Maryland (Property).

3. On or about July 2, 2019, the Claimant and the Respondent entered into a contract (Contract) for installation of a new wood screened-in deck and open deck at the Property. (Claim Ex. 4).

4. The original agreed-upon Contract price with change orders was $20,454.00. (Claim Ex. 4).

5. The Claimant made the following payments to the Respondent:

June 26, 2018 -	$1,583.00
November 19, 2018 -	$3,000.00
November 20, 2018 -	$3,000.00
November 29, 2018 -	$3,000.00
December 7, 2018 -	$2,000.00
December 21, 2018 -	$2,000.00
January 7, 2019 -	$2,000.00
January 23, 2019 -	$3,876.00
Total Payment -	**20,459.00**[3]

(Claim Ex. 5).

6. Work began in November 2018 and was completed on January 25, 2019. (Testimony of Claimant).

7. On May 5, 2019, the Claimant discovered water leaking onto the deck portion of the screened-in deck from the section of the deck's roof connected to the home. (Testimony of Claimant and Claim Ex. 3).

8. On May 5, 2019, the Claimant e-mailed the Respondent to inform him about the roof leakage. The Claimant sent another e-mail to the Respondent on May 7, 2019, with a link containing photographs of the leak, and requested the Respondent to call and set up an appointment to address this issue. (Claim Ex. 11).

[3] The additional $5.00 paid over the contract price was not explained.

9. On May 16, 2019, the Respondent replied by e-mail that he could meet the Claimant or take a look at the leaking roof early next week. (Claim Ex. 3).

10. On May 22, 2019, the Claimant e-mailed the Respondent asking if he was available on May 23, 2019 or later that week. The Claimant continued to try to reach the Respondent with subsequent e-mails sent on May 23, June 12, July 2, and July 8, 2019, but the Respondent never replied to those e-mails. The Respondent's last contact with the Claimant was his May 16, 2019 reply e-mail. (Testimony of Claimant and Claim Ex. 11).

11. The Respondent never returned to complete any repairs to remediate the water seepage issue at the Property.

12. In November 2019, the Claimant retained the services of Wise Construction to repair the roofing of the screened-in deck. Wise Construction took photographs of the roof which showed that the Respondent connected the enclosed deck's roof to the existing home's roof by caulking those sections together. The Claimant paid Wise Construction $5,087.94 for this work. (Clmt. Ex. 6.)

13. At all times relevant, Wise Construction was a licensed contractor under MHIC license number 51915.

14. On January 13, 2020, the Claimant filed a claim against the Respondent with the MHIC.

DISCUSSION

Legal Framework

The Maryland General Assembly created the Fund to provide an available pool of money from which homeowners could seek relief for losses sustained at the hands of incompetent or unscrupulous home improvement contractors. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411.

A homeowner is authorized to "recover compensation from the Fund for an actual loss that results from an act or omission by a licensed contractor . . . ." Md. Code Ann., Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2). The statutes governing the Fund define "actual loss" as "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401.

At a hearing on the claim, the claimant has the burden of proving the validity of the claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true." *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

For the reasons explained below, I find that the Claimant has proven eligibility for compensation from the Fund.

<u>*Statutory Eligibility*</u>

The evidence in this case establishes there are no impediments barring the Claimant from recovering from the Fund. The home improvement work was performed on a residential property owned by Claimant in Maryland. The Claimant does not own more than three residences or dwelling places. The Claimant is not a relative, employee, officer, or partner of the Respondent; the Claimant is not related to any of the Respondent's employees, officers, or partners. The Claimant did not reject any efforts by the Respondent to resolve the claim. The Contract between the Claimant and the Respondent does not contain an arbitration provision. The Claimant timely filed his Claim with the MHIC on January 13, 2020. Finally, the Claimant

has not taken any other legal action to recover monies.[4] Md. Code Ann., Bus. Reg. §§ 8-101(g)(3)(i), 8-405(c), (d), (f), and (g), 8-408(b)(1) (2015 & Supp. 2020).

The Respondent Performed Unworkmanlike or Inadequate Home Improvement

The Respondent performed unworkmanlike or inadequate home improvement work. Five months after the installation of the enclosed deck, evidence of roof water seepage was found on the deck boards. Notably, the Claimant offered a series of photographs showing areas of wetness on the enclosed deck's deck boards. The photographs also depict water stains and damage to the home's walls that abut the enclosed deck. Lastly, Wise Construction provided photographs of the enclosed deck's roof and adjoining existing home's roof which showed that the addition's roof was simply caulked onto the existing roof. Based on the photographs, I find that the Respondent performed inadequate or unworkmanlike home improvement and, as a result, there was water intrusion into the enclosed deck and the interior of the existing home causing obvious, visible damage. Under these circumstances, there is no need for expert testimony about the Respondent's performance of the Contract or his failure to meet industry standards.

I note that the Claimant contacted the Respondent repeatedly via e-mail informing him of the water leak and requesting someone return to the Property to resolve it. Although the Respondent initially replied that he would take a look at the roof, he failed to do so and stopped communicating with the Claimant after his May 16, 2019 reply e-mail, even though the Claimant made numerous attempts through e-mails sent from May 2019 through July 2019 seeking assistance from the Respondent. Therefore, I find that the Claimant provided ample opportunities to the Respondent to repair his work, but he never made any effort to make those

[4] The Claimant filed a claim with Allstate Insurance to recover damages to the interior of his home caused by the Respondent's work. The Claimant stated at the hearing that he is not seeking any relief from the Fund for those consequential damages.

corrections. As a result, the Claimant was forced to hire another contractor, Wise Construction to make the enclosed deck roof repairs. Thus, I 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.

In this case, the Respondent performed some work under the Contract, and the Claimant has retained 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).

Using the above formula, I calculate the Claimant's actual monetary loss as follows:

Amount paid to the Respondent	$ 20,459.00
+ Amount paid to correct or complete the work	$ 5,087.94
	$ 25,546.94
- Amount of original contract	$ 20,454.00
Amount of actual loss	$ 5,092.94

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 is less than $20,000.00. Therefore, the Claimant is entitled to recover his actual loss of $5,092.94.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $5,092.94 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).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $5,092.94; 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;[5] and

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

July 21, 2021
Date Proposed Decision Issued

Brian Zlotnick
Brian Zlotnick
Administrative Law Judge

BMZ/da
#193341

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

PROPOSED ORDER

WHEREFORE, this 13th day of October, 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.

Joseph Tunney

Joseph Tunney
Chairman
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION