IN THE MATTER OF THE CLAIM	*	**BEFORE DENISE O. SHAFFER,**
OF JEWEL BAKER,	*	**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 ASHLEY JENNINGS,	*	
T/A THE JENNINGS GROUP,	*	**OAH No.: LABOR-HIC-02-21-24210**
RESPONDENT	*	**MHIC No.: 20 (05) 48**

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PROPOSED DECISION

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STATEMENT OF THE CASE

On March 2, 2021, Jewel Baker (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 $33,050.00 for actual losses allegedly suffered as a result of a home improvement contract (Contract) with Ashley Jennings, trading as The Jennings Group (Respondent).[1] Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015).[2] On

[1] The Claim was signed and dated on January 11, 2021.
[2] All future references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

September 29, 2021, the MHIC issued a Hearing Order on the Claim. On October 15, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 4, 2022, I held a hearing on the Webex video conferencing platform. *Id.* §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b).[3] Hilary A. Baker, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent did not appear for 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 January 11, 2022, the OAH sent a Notice of Remote Hearing (Notice) through the United States mail to two different addresses on record for the Respondent. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for February 4, 2022, at 9:30 a.m., via Webex, with instructions on how to access the hearing on the Webex platform. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you." The Notice sent to the Respondent at Ryon Court in Waldorf was accepted by someone at that address. Neither Notice was returned as undeliverable. The Respondent did not request postponement before the date of the hearing. COMAR 28.02.01.16. After waiting fifteen minutes for the Respondent or the Respondent's representative to appear and determining that the Respondent received proper notice, I proceeded with the hearing. COMAR 28.02.01.05A, C.

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.

[3] The hearing was initially scheduled to be conducted in person on January 7, 2022. That hearing was postponed at the Claimant's request and the case was rescheduled for a remote hearing.

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 – Summary of Events, undated

Clmt. Ex. 2 – MHIC Complaint Form, July 15, 2015;[4] MHIC Claim Form, January 11, 2021

Clmt. Ex. 3 – Contract, August 14, 2018

Clmt. Ex. 4 – Bid for Services, The Jennings Group, undated

Clmt. Ex. 5 – M&T Bank Statements, November 8 - December 7, 2018; handwritten notes

Clmt. Ex. 6 – Proposal, Sanchez Remodeling, LLC, November 14, 2019

Clmt. Ex. 7 – Proposal, Hunny Do, September 10, 2019

Clmt. Ex. 8 – Proposal, JFC Grounds Maintenance, undated

Clmt. Ex. 9 – Project Quote, Window Nation, December 13, 2021

Clmt. Ex. 10 – Estimate, Sheldon & Sons, Inc., undated

Clmt. Ex. 11 – Receipt, 84 Lumber, September 26, 2019; Receipt, Wood Floors Plus, Inc., July 23, 2019; Receipt, W3 Electric, March 1, 2019

Clmt. Ex. 12 – Email exchange between Claimant and Respondent, March 11, 2019 - April 26, 2019, with attached photograph

Clmt. Ex. 13 – Fourteen photographs, undated

[4] Although the Complaint form appears to list 2015 on the signature line, all of the dates in the complaint reference a 2018-2019 contract period.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 – OAH Notice of Hearing, January 11, 2022

Fund Ex. 2 – MHIC Hearing Order, September 29, 2022

Fund Ex. 3 – Respondent's Licensing History, printed December 13, 2021

Fund Ex. 4 – Letter from the MHIC to the Respondent, March 3, 2021, with attached Claim Form

No documents were submitted on behalf of the Respondent.

Testimony

The Claimant testified and presented the testimony of Stephen Baker.[5]

The Respondent was not present to testify or offer any witnesses.

The Fund did not offer any witness 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 01-109911.

2. The Claimant sought to build an addition to her home so that her mother, Ms. Rosalie Johnson, could come to live with her family.

3. On August 14, 2018, the Claimant and her husband, Stephen Baker, entered into a contract with the Respondent under which the Respondent agreed to construct a 28-foot by 16-foot upper-level home addition in exchange for $64,500.00. The agreement stated that the work would be completed within six to eight weeks and set out the following scope of work (Clmt. Ex. 3):

[5] Ms. Rosalie Johnson, the Claimant's mother, was present throughout the hearing. She did not testify but asked to speak after closing argument. She explained that she turned 90 while waiting for this project to be complete and that she regretted the considerable stress it put on her family. She urged me and the MHIC to act quickly on the case.

The contractor will construct structure according to architectural plans, which includes foundation, framing, roof exterior, drywall finishing, paint, flooring (flooring material chosen by owner), electrical (light fixtures chosen by owner), plumbing (shower, tub and vanity chosen provided by owner). All doors and windows will be installed as well.

4. The Claimant made payments totaling $62,895.00 in accordance with the draw schedule in the Contract:

- September 10, 2018: $4,845.00 and $19,350.00
- November 9, 2018: $19,350.00
- December 14, 2018: $19,350.00

5. The Respondent began construction on the addition in August of 2018.[6] By April of 2019, the Respondent had partly completed the following work:

- Constructed second story addition, framed in bedroom, bathroom, and closet
- Installed windows
- Finished drywall and painting in addition space
- Framed and drywalled the master bedroom

6. Before April 2019, the Respondent agreed to repair the Claimant's lawn which the equipment had torn up. He also agreed to fix her patio when the backhoe broke it into pieces.

7. From August 2018 through September 2018, the Respondent came to the Claimant's home to perform work under the Contract. After September 2018, the Respondent's work on the house became sporadic. Often, the Respondent said that he was coming, the Claimant left her alarm unarmed, and he did not come.

8. The Respondent stopped all performance under the Contract in April of 2019, and the following work remained incomplete or faulty:

a. The installed windows were not double-hung and were not installed to code. The bathroom and master bedroom windows were not installed at all.

[6] Ashley Jennings, who holds the MHIC license, was not involved in this project. All of the Claimant's contact was with Darnell and Lamar Jennings. Ashely is the wife of Lamar and the daughter-in-law of Darnell. Therefore, when referring to the Respondent, I have used the pronouns "'it" to refer to the Jennings Group, LLC or "he" to refer to Darnell or Lamar Jennings.

b. All drywall was installed without joint compound tape causing cracking and separation. The walls were also not plumb, causing bellying and waving.

c. The paint was sprayed without rolling or trimming, leaving sagging paint on the walls.

d. There was no electrical work completed.

e. All plumbing work, except the work behind the walls, was not completed.

f. The bathroom was framed and drywalled, but no other work was completed.

g. All pocket doors were installed incorrectly, resulting in the doors not closing.

h. The bolts used for the supporting beam (to hold up the second story addition) were not long enough to secure the beam.[7]

i. The drainpipes were not installed properly and were not wrapped to prevent freezing.

j. The floors were not completely installed.

k. The siding was incorrectly and incompletely installed.

l. The roof eaves were not correctly installed, causing water damage.

m. The lawn and the patio were not repaired.

9. The Claimant sought estimates from two MHIC licensed contractors for correcting and completing the work:

- Sanchez Remodeling, LLC: $39,500.00
- Hunny Do: $41,332.00

10. The Claimant also sought an estimate for the lawn repair from JFC Grounds Maintenance, LLC, which projected a cost of $2,935.00.

11. The Claimant sought an estimate to repair the windows from Window Nation, which projected a cost of $6,894.00.

[7] This issue caused the addition to fail inspection.

12. The Claimant sought an estimate to redo the painting from Sheldon & Sons, Inc., which projected a cost of $3,515.00.

13. The Claimant paid W3 Electric $4,935.00 to complete the electrical work.

14. To complete the floors, the Claimant purchased flooring materials from 84 Lumber ($315.00) and Wood Floors Plus ($212.69).

15. The Claimant's husband, Stephen Baker, worked with other people to get the space ready for his mother-in-law to move in and address the urgent fixes that would damage his home. Specifically, he completed the installation and finishing work in her bathroom, insulated the drainpipes so that they would not freeze, repaired the flashing on the siding and roof so that it would not leak, and installed floors in the bedroom and closets. The value of Mr. Baker's work totaled approximately $10,000.00.

16. Even after Mr. Baker's work, the following items remain unfinished:

- Window replacement and repair
- Installation of gutter and downspouts
- Repairing the pocket doors
- Repairing the main entrance door
- Repairing the drywall and paint
- Repairing the lawn and patio.

DISCUSSION

Applicable Law

The Claimant has the burden of proving the Claim's validity 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. I find that the Claimant has proven eligibility for compensation for the following reasons.

Analysis

The Claimant argued that she suffered an actual loss incurred as a result of the Respondent's acts or omissions, entitling her to compensation from the Fund. Specifically, the Respondent stopped performance on the Contract in April of 2019, and the Claimant sought estimates from other contractors to complete the work necessary to finish construction on the addition for her mother. The Fund agreed that the Claimant suffered an actual loss and is entitled to compensation. For the reasons that follow, I agree with the Claimant and the Fund.

The evidence establishes no legal impediments barring the Claimant from filing a claim under section 8-405 of the Business Occupations Article. The Respondent was a licensed home improvement contractor when it entered into the Contract. The home improvement work was performed on the Claimant's residence in Maryland. The Claimant is not a relative, employee, officer, or partner of the Respondent, and 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 Claimant timely filed the Claim with the MHIC on March 3, 2021. Finally, the Claimant has not taken any other legal action to recover monies from the Respondent.

The Claimant demonstrated that the Respondent performed an unworkmanlike, inadequate, and incomplete home improvement. Under the Contract, the Respondent agreed to construct a finished addition to the Claimant's home (Clmt. Ex. 3). The Claimant convincingly testified that the Respondent built the frame of the addition and then stopped regularly showing up to perform work. The Claimant's discontent with the Respondent's work habits is well documented in the email messages sent between them. (Clmt. Ex. 12).

Around April of 2019, the Claimant completely stopped all performance on the Contract. Before this abandonment of the project, the Claimant paid the Respondent $62,895.00. (Clmt. Ex. 5). Additionally, despite the Respondent agreeing to repair the patio and lawn damaged by itsequipment and workers, the Respondent never did so.

The Claimant convincingly testified, presented photographic evidence, and presented the testimony of Mr. Baker, which all supported the finding that the Respondent's work product was unworkmanlike, inadequate, and incomplete. The Claimant produced a list of unworkmanlike, inadequate, and incomplete items when the Respondent stopped work. (Clmt. Ex. 1). The Claimant's photographs depict the state of the construction project at the time the Respondent stopped working. (Clmt. Ex. 13). These photographs show an unfinished project, and the Claimant and Mr. Baker convincingly detailed how the work shown was unworkmanlike or inadequate. For example, the beams supporting the second story addition were fastened with bolts too short to secure the beam, causing it to fail inspection. Further corroboration of the Respondent's unworkmanlike, inadequate, and incomplete work is found through the Sanchez Remolding, LLC and Hunny Do estimates which set out the amount of work to be performed to repair and complete the project after the Respondent stopped working. (Clmt. Exs. 6 & 7).

After considering Mr. Baker's and the Claimant's uncontested and credible testimony and reviewing the Claimant's corroborating exhibits, I agree with both the Claimant and the Fund that the Respondent performed an unworkmanlike, inadequate, and incomplete home improvement. *See* Bus. Reg. § 8-401. Thus, the Claimant is eligible for compensation from the Fund. *See Id.* § 8-405(a); *see also* COMAR 09.08.03.03B(2). 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). The 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, the Claimant has solicited estimates from other contractors to complete that work, and the Claimant has both paid other contractors to complete some work as well as completed (with Mr. Baker's assistance) some of the work herself.

Accordingly, the Fund argued, and I agree, 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).

The Claimant and the Respondent entered into a Contract where the Claimant agreed to pay the Respondent $64,500.00 for the work outlined in that Contract. (Clmt. Ex. 1). The Respondent agreed to repair her lawn and patio at no additional cost to the Claimant.

In total, the Claimant paid the Respondent $62,895.00 (Clmt. Ex. 5). Ultimately, the Claimant sought estimates from two different construction companies to repair and complete the work outlined in the Contract. She also sought estimates to repair the patioand the lawn. Mr. Baker completed some of the work, but other work remains incomplete, including the window replacement and repair, installation of gutter and downspouts, repair of the doors, repair of the drywall and paint, and repair of the lawn and patio. Mr. Baker was a detailed and persuasive witness. He is a long-time member of Sheet Metal Local #100 and well-versed in home construction and repair. He meticulously detailed the problems with the work, the many steps he undertook to repair them, and the specific items that remain undone. He was sincere and precise. His efforts to make the addition ready for his now 90-year old mother-in-law, as well as to secure his home against further damage, were considerable. I credited his testimony concerning each item that remains undone, and I credited his estimate concerning the cost of the repairs he completed.

The Claimant purchased flooring material totaling $528.27, which the Respondent should have incurred. (Clmt. Ex. 11). The Claimant paid an electrician $4,935.00 to complete the electrical work. Completion of the painting and drywall work will cost $3,515.00. Installation of the windows will cost $6.894.00. Completion of the lawn and patio repair will cost $2,885.00. A reasonable estimate for the cost to complete the remaining repairs is to average the two estimates

received ($39,500 + $41,332 / 2 = $40,416.00),[8] subtracting Mr. Baker's repairs ($10,000.00) for a total of $30,416.00. The total amount the Claimant has paid or will be required to pay to complete the Contract is $48,645.00.

Using the formula set out in COMAR 09.08.03.03B(3)(c), the Claimant's actual loss is calculated as follows: the total amount the Claimant paid to or on behalf of the Respondent under the Contract ($62,895.00), plus any reasonable amounts the Claimant has paid or will have to pay to complete the Contract ($48,645.00), subtracted from the original contract price ($64,500.00), which comes out to $47,040.00.

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 $47,040.00 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 $47,040.00 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(a), (e)(1); COMAR 09.08.03.03D(2)(a).

[8] The Claimant accurately pointed out that the estimates were received before the pandemic and that all prices have gone up. While I do not doubt that this is true, these are the only estimates the Claimant provided for my consideration.

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;[9] and

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

Denise O. Shaffer

March 11, 2022
Date Decision Issued

Denise O. Shaffer
Administrative Law Judge

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

PROPOSED ORDER

WHEREFORE, this 23rd day of May, 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.

Heather Connellee

Heather Connellee
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION