

IN THE MATTER OF THE CLAIM	* BEFORE LEIGH WALDER,
OF MICHAEL GUERRIERE,	* 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 JOHN ATTILIIS,	*
T/A HANDYMAN PLUS, LLC,	* OAH No.: LABOR-HIC-02-23-25559
RESPONDENT	* MHIC No.: 21 (75) 1147

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On October 27, 2021, Michael Guerriere (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$20,110.80 for actual losses allegedly suffered as a result of a home improvement contract with John Attiliis, trading as Handyman Plus, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).² On September 28, 2023, the MHIC issued a Hearing Order

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).
² Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

on the Claim. On September 29, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On November 28, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Catherine Villareale, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. As set out below, the Respondent failed to appear to the hearing.

On October 27, 2023, the OAH mailed a Notice of Hearing (Notice) to the Respondent by United States mail. The Notice stated that a hearing was scheduled for November 28, 2023, at 9:30 a.m., at the OAH in Hunt Valley, Maryland. Code of Maryland Regulations (COMAR) 09.08.03.03A(2). The Notice advised the Respondent that failure to attend the hearing might result in “a decision against you.” The Notice, which was sent to the Respondent’s address of record, was returned to the OAH as undeliverable.³ I waited until 9:45 a.m. to see if the Respondent would appear. He did not. Applicable law permits me to proceed with a hearing in a party’s absence if a party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Respondent received proper notice and proceeded in the Respondent’s absence. COMAR 28.02.01.05A; *see also* Bus. Reg. § 8-309.

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 & Supp. 2023); COMAR 09.01.03; COMAR 28.02.01.

³ Ms. Villareale indicated that the Fund had no other address on record for the Respondent. *See* Md. Code Ann., Bus. Reg. § 8-309 (“Within 10 days, a licensee shall notify the [MHIC] of a change of control in ownership, management, address, or trade name.”).

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 exhibit offered by the Claimant:

Clmt. Ex. 1 – Packet of documents, including:

- Form letter from the MHIC, undated (pp. 1-2)
- Complaint Form, undated (pp. 3-5)
- Letter from Award Construction to the Claimant, dated June 8, 2021 (pp. 6-7)
- Photographs, undated (pp. 8-15)
- Proposal, dated January 17, 2021 (pp. 16-19)
- Proposal, dated January 15, 2021 (pp. 20-21)
- Proposal, dated January 17, 2021 (pp. 22-23)
- Proposal, dated February 18, 2021 (pp. 24-25)
- Email correspondence between the Claimant and the Respondent, multiple dates (pp. 26-27)
- Checks, multiple dates (pp. 28-35)

No documents were submitted on behalf of the Respondent.

I admitted the following exhibits offered by the Fund:

GF Ex. 1 – Letter from the MHIC to the Respondent, dated July 1, 2021; Claim, received October 27, 2021

GF Ex. 2 – Hearing Order, dated September 28, 2023

GF Ex. 3 – Notice, dated November 27, 2023

GF Ex. 4 – Licensing History, printed November 27, 2023

Testimony

The Claimant testified on his own behalf, and presented the testimony of Alvan Smith, President, Award Construction.

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 numbers 01-118303 (individual) and 05-137373 (corporate).

2. On January 17, 2021, the Claimant and the Respondent entered into a contract where the Respondent agreed to perform the following work in the Claimant's bathroom in exchange for \$13,150.00:

- remove and haul existing wall and shower;
- remove and haul existing floor tile;
- remove shower walls;
- after opening up walls, review area with [the Claimant] to finalize the new bathroom;
- layout with a closet if possible;
- frame for new shower installation;
- install cement board on shower walls;
- run new plumbing lines for the revised floor plan;
- install shower, shower pan, ceramic tile on shower wall;
- install new shower lines and diverter;
- install shower door; and
- paint.

(Clmt. Ex. 1, p. 16).

3. On or about February 17, 2021, the Respondent began work under the contract.

4. Once work commenced, and the Claimant's bathroom was demolished, the Respondent requested that the Claimant pay an additional \$700.00 because the demolition was more work than the Respondent expected. The Respondent also requested an additional \$400.00 for tiling work, and an additional \$600.00 to install a bench.

5. By April 4, 2021, the Respondent had stopped working on the Claimant's bathroom and had failed to complete many tasks he was required to perform, such as tiling, working on the closet, and finishing work on the shower.
6. On April 7, 2021, the Respondent removed all of his equipment from the Claimant's home.
7. The Claimant made multiple attempts to contact the Respondent to complete the work under the contract.
8. On April 9, 2021, the Respondent stopped communicating with the Claimant.
9. In total, the Claimant paid the Respondent \$13,020.00 for the work the Respondent performed.
10. On May 13, 2021, Alvin Smith, President of Award Construction, came to the Claimant's home to inspect the Respondent's work.
11. The inspection revealed the following deficiencies with the Respondent's work:
 - The wall framing was not correctly installed;
 - The rubber waterproofing was not correctly sealed to the drain;
 - There was missing rubber membrane under the shower seat area;
 - The mud flooring was not level to the drain;
 - The floor drain piping was not caulked to a rubber membrane;
 - The cement boards were not correctly installed to the framing and were not correctly sealed from piece to piece;
 - The tile was improperly installed;
 - The supply lines and diverter were not installed correctly or to code; and
 - The subfloor was leveled with shims and not secured properly to the floor, causing the tiles to crack.
12. As a result of these deficiencies, the Respondent's work could not be repaired and instead needed to be redone.

13. In May 2021, the Claimant hired Award Construction to perform the same work the Respondent was hired to perform, with the same scope of work as set out in Finding of Fact 2.

14. The Claimant paid Award Construction a total of \$19,686.88 for its services.

DISCUSSION

Applicable Law

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 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. 2023); *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.

Eligibility for Compensation

The evidence in this case establishes there are 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 at the time of the contract. The home improvement work was to be 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. Indeed, despite the Claimant's efforts to get the Respondent to complete work on the Claimant's bathroom, it was the Respondent who stopped communicating with the Claimant. Finally, the Claimant timely filed the Claim with the MHIC on October 27, 2021, which is within three years after the Claimant discovered that he incurred an actual loss.

The Claimant argued, and the Fund agreed, that he suffered an actual loss incurred as a result of the Respondent's acts or omissions, entitling him to compensation from the Fund. Specifically, the Claimant argued that he entered into a contract with the Respondent to renovate his bathroom. The Respondent abandoned the renovation project before completing many tasks he was required to perform, such as tiling, working on the closet, and finishing work on the shower. Further, the Claimant argued that the work that the Respondent performed was unworkmanlike and inadequate because the work contained multiple deficiencies that were so serious that the Respondent's work could not be repaired and instead needed to be redone by another contractor.

The Claimant's assertion that the Respondent abandoned the renovation project before completing multiple tasks – such as tiling, working on the closet, and finishing work on the shower – is uncontroverted and, based on the Claimant's testimony, credible. Furthermore, the Claimant's assertion that the Respondent's work was unworkmanlike and inadequate was corroborated by the testimony of Mr. Smith. Mr. Smith inspected the work the Respondent performed and found multiple serious deficiencies. (See Finding of Fact #11). Mr. Smith documented these deficiencies in a report, photographed these deficiencies, and testified in detail as to the extent of these deficiencies. (See Clmt. Ex. 1, pp. 6-15). Mr. Smith testified that these

deficiencies were so substantial (“to the point of no return”) that the Respondent’s work could not be salvaged and instead required the construction project to be redone by another contractor.

After considering the Claimant’s and Mr. Smith’s testimony, and after reviewing Mr. Smith’s report and photographs, I agree with the Claimant and the Fund that the Respondent’s work was unworkmanlike and inadequate as there were major deficiencies with his construction work. (*See id.*; *see also* Finding of Fact #11). I also place great weight on Mr. Smith’s testimony that the Respondent’s work was of zero value, requiring the construction project to be redone by another contractor. The Claimant chose Awards Construction to redo his bathroom renovation, at a cost of \$19,686.88 for its services.

Therefore, the Claimant established that he suffered an actual loss due to an incomplete, unworkmanlike, and inadequate home improvement. Bus. Reg. §§ 8-401, 8-405(a) (2015 & Supp. 2023). 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.

Award

The Claimant argued that he is entitled to recover \$13,020.00 from the Fund, due to an actual loss that resulted from an act or omission by the Respondent. The Fund agreed and, for the reasons set out below, I also agree.

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) (Supp. 2023); 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 Fund recommended that the Claimant be reimbursed according to the formula set forth in COMAR 09.08.03.03B(3)(c), which provides:

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 [MHIC] determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the [MHIC] may adjust its measurement accordingly.

Applying this formula, the Claimant paid the Respondent \$13,020.00 under the contract. As discussed above, the Respondent performed an unworkmanlike, inadequate, and incomplete home improvement, requiring the job to be completely redone by Awards Construction. The Claimant hired Awards Construction to perform the same work the Respondent was hired to perform, and paid Awards Construction \$19,686.88 for its services. Adding \$13,020.00 to \$19,686.88 equals \$32,706.88. Subtracting the Respondent's contract price (\$14,850.00)⁴ from \$32,706.88 equals \$17,856.88. Per this formula, the Claimant's actual loss is \$17,856.88. However, the Claimant is unable to recover "an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed." Bus. Reg. § 8-405(e)(5) (Supp. 2023). Therefore, the Claimant's recovery is limited to \$13,020.00, which is the amount he paid the Respondent.

⁴ This figure includes the initial contract price (\$13,150.00), plus the additional money the Respondent requested for demolition (\$700.00), tiling work (\$400.00), and to install a bench (\$600.00). The Fund rounded this number up to \$14,900.00 when calculating the Claimant's actual loss. I use the actual numbers in the Proposed Decision.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$17,856.88 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$13,020.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a), (e)(5) (Supp. 2023).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$13,020.00; 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;⁵ and

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

February 16, 2024
Date Decision Issued

Leigh Walder

Leigh Walder
Administrative Law Judge

LW/jd
#210210

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

PROPOSED ORDER

WHEREFORE, this 19th day of April, 2024, 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***