

<p>IN THE MATTER OF THE CLAIM</p> <p>OF JOSEPH CANDELLA, SR.,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF PAUL E. CAIN, JR.,</p> <p>T/A CAIN HOME IMPROVEMENT,</p> <p>RESPONDENT</p>	<p>* BEFORE ROBERT B. LEVIN,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-22-01227</p> <p>* MHIC No.: 21 (75) 1170</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On September 17, 2021, Joseph P. Candella (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 \$1,580.00 for actual losses allegedly suffered as a result of a home improvement contract with Paul E. Cain, Jr., trading as Cain Home Improvement (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015).¹ On December 28, 2021, the MHIC issued a Hearing Order on the Claim. On January 4,

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

2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 22, 2022, I held a hearing by video. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). John Hart, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. The Respondent 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. 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 - Letter from the Claimant addressed to: the Respondent; the MHIC; the Better Business Bureau Baltimore; Action News Reporter Baltimore, Matt Tangwell; Social Media and Facebook, June 15, 2021

Clmt. Ex. 2(a)- Photograph, undated

Clmt. Ex. 2(b)- Photograph, undated

Clmt. Ex. 2(c)- Photograph, undated

Clmt. Ex. 3(a)- Photograph, undated

Clmt. Ex. 3(b)- Photograph, undated

I admitted the following exhibits offered by the Respondent:

- Resp. Ex. 1 - Respondent's Invoice to the Claimant for \$357.99, May 14, 2021, to which were attached to the following documents: Payment details from John Betzel for \$100.00, April 29, 2021; and Invoice from Friel Lumber Company for \$44.51 to the Respondent, August 4, 2021
- Resp. Ex. 2 - Check drawn on the Respondent's bank account with his wife for \$1,028.15, made payable to the Respondent, April 8, 2021, to which were attached to the following documents: Receipt to the Respondent for \$211.99 from unidentified store, April 7, 2021; Receipt to the Respondent for \$180.00 from unidentified store, June 7, 2021; and Receipt to the Respondent for \$180.19 from unidentified store, June 7, 2021
- Resp. Ex. 3 - Respondent's letter to the MHIC's Executive Director, August 13, 2021, to which was attached the following document: Certificate of Liability Insurance, July 20, 2021

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Hearing Order, December 28, 2021
- Fund Ex. 2 - Notice of Remote Hearing, January 27, 2022
- Fund Ex. 3 - Letter from Joseph Tunney, MHIC Chairman, to the Respondent, to which was attached the following document: Home Improvement Claim Form, September 10, 2021
- Fund Ex. 4 - MHIC Licensing Printout, February 23, 2021

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

The Fund did not present 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 01-120185.
2. In or about April 2021, the Claimant and the Respondent entered into an oral (unwritten) contract (Contract) for the Respondent to (a) install four Ring-brand security cameras with spotlights and motion sensors on the corners of his residence and (b) install a Ring doorbell at the home's main entrance door.
3. The Claimant told the Respondent that he desired a security system that would show the Claimant and his wife on each of their two cell phones who was at the door and who was at or near the corners of the home.
4. The Claimant's neighbor recommended the Respondent to the Claimant.
5. The Claimant bought a Ring doorbell but was unable to install it himself.
6. The Respondent had experience installing Ring doorbell systems.
7. The scope of work under the Contract was that the Respondent would install the Claimant-purchased doorbell and the Respondent would buy (for which the Claimant would reimburse him) and install four spotlight/camera units for the corners of the house.
8. When the Contract was formed, the exact price was unknown because at that time the parties did not know the price of the spotlight/camera units, which the Claimant agreed to buy.
9. The parties agreed that the Claimant would be obligated to pay about one to two thousand dollars for the hardware (spotlights/cameras) plus approximately six hours of labor at \$50.00 an hour.
10. The parties did not agree on specific start and completion dates.

11. The Claimant's house had seven preexisting spotlights/sensors with 300 watt bulbs, including four motion sensor lights, on a single electrical circuit that was handling 2700 watts of electricity.

12. The Respondent advised the Claimant to hire an electrician he recommended, for the purpose of performing electrical work needed to permit the disconnection of the existing spotlights and their replacement by the four new Ring spotlights/cameras, because the preexisting spotlights were incompatible with the new Ring components.

13. The Respondent paid the electrician \$100.00 for the electrician's first visit.

14. The Claimant paid the electrician \$255.00 for his subsequent visits.

15. The Respondent purchased a new Ring doorbell for the Claimant because the Ring doorbell the Claimant purchased was incompatible with the Claimant's doorbell chimes and four new Ring spotlights/cameras for a total of \$1028.15.

16. The electrician installed new chimes.

17. At some point the Respondent bumped into and damaged an eagle decoration in the Claimant's home.

18. The Claimant reimbursed the Respondent \$1,028.15 for the Respondent's purchase of the new Ring doorbell and the four Ring spotlights/cameras, by check dated April 8, 2021.

19. The Respondent also purchased an electrical device known as a Ground Fault Circuit Interrupter (commonly known as a GFCI) from Friel Lumber Company for \$17.99, for installation in the Claimant's home.

20. The seven old spotlights were removed because they did not work with the Ring system unless they were left on 24/7.

21. The Respondent installed the four new Ring spotlights at the house's corners. The electrician replaced three of the old spotlights.

22. All four spotlights and the doorbell installed by the Respondent worked.

23. The Respondent set up the Ring system so it would work with the Claimant's iPhone and the Amazon Alexa device that the Claimant had.

24. At some point, the Claimant experienced problems with the new doorbell not working with the chimes and not displaying video images from the doorbell or the new spotlights on the Claimant's iPhone. In addition, the spotlights would not turn on when approached and the cameras worked only intermittently.

25. On or about May 14, 2021, the Respondent visited the Claimant's home to address the Claimant's problems. The Respondent called Ring customer service, which said that the Claimant's Alexa device which was connected to the Ring system was overriding Ring on the Claimant's iPhone and causing the phone to disconnect. Ring customer service said they needed to get into the Alexa "app" on the Claimant's iPhone to resolve the issue.

26. The Claimant is not "up-to-date" on computers.

27. The Respondent attempted to resolve the Alexa issue but the Claimant could not remember his Amazon password and after three attempts, the Amazon Alexa account was locked. At this point, the Claimant fired the Respondent and told him to leave and not return.

28. The system worked intermittently. At one time, the Claimant could see animals and cars in the area of the spotlights/cameras. The lights would turn on when the corners were approached. Before the Claimant fired him, the Respondent tried covering the photocell during daylight hours and the motion sensor would turn on the spotlights. The system also worked on the Claimant's wife's cell phone.

29. The Respondent prepared an invoice, dated May 14, 2021, which he was going to give the Claimant that day, but never presented it to the Claimant when he was fired. This invoice was for \$357.99, consisting of the \$17.99 for the GFCL, \$100.00 the Respondent had paid the electrician, \$240.00 for three hours of work on April 8, 2021, and one hour on April 27, 2021, at \$60.00 per hour.

30. When the Claimant told the Respondent to leave and not return, the Claimant said he would not pay the Respondent the \$357.99 reflected on the Respondent's invoice, which amount the Respondent had previously told the Claimant was due.

31. The Claimant has made no effort to engage anyone to repair or replace the system the Respondent installed.

32. The Claimant intends to hire someone to fix the system after this claim is adjudicated.

33. The Claimant has no estimate for repair or replacement of the system.

34. The Claimant does not know the value of the Respondent's work and does not know what would be needed to make the system work.

35. The system could be fixed by a small amount of work on the Ring, iPhone and Alexa apps.

36. The Claimant did not permit the Respondent to continue his efforts to resolve the Claimant's issues by trying to reconcile the iPhone, Ring and Alexa apps.

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 not proven eligibility for compensation.

While I acknowledge the Claimant’s frustration that the Ring system the Respondent installed does not work to his satisfaction, the Claimant did not sustain his burden of proving that the problems he is experiencing are the Respondent’s fault. The Respondent did not perform unworkmanlike, inadequate, or incomplete home improvements.

It appears that the Claimant’s chief concern is the Ring cameras are not currently projecting to his and wife’s iPhones. The Claimant agreed that Ring customer service told the Respondent (according to what the Respondent told him) that the Ring people needed to get into his Alexa app. Though he unplugged the Alexa device, the Claimant kept the Alexa app on his phone.

The Claimant testified that he did not believe the equipment was defective but that the Respondent failed to install it correctly. But the Claimant also testified that everything worked at one time. At that time, he said he could see on his phone animals and cars in the vicinity of the Ring devices. The Claimant conceded that he is not “up-to-date” on computers.

The Respondent responded to the Claimant’s arguments with credible testimony that he correctly installed all spotlights and the doorbell properly and they worked. He offered

photographs showing the spotlights/cameras at the corners of the house. He further testified credibly that when he installed the system he saw it working with the Claimant's wife's iPhone. He noted that Ring customer service diagnosed the problem as the Claimant's Alexa overriding Ring on the Claimant's iPhone. He testified that a minimal amount of work on the Ring, iPhone and Alexa apps would likely resolve the issues of the video images not appearing on the Claimant's and his wife's phones and the Ring not activating the chimes.

The evidence strongly suggests, as Ring customer service claimed, that the Alexa app is causing the Ring system to disconnect the Claimant's iPhone. The Respondent did not create this technology or software conflict. He attempted to resolve it but the Claimant fired him and told him not to return.

The Claimant did not offer an alternative theory for the problems he experienced. He simply argued without evidentiary support that the equipment must have been improperly installed because the Respondent was "over his head." But the Respondent credibly testified that he has installed many Ring doorbells. In sum, I find that the Claimant did not establish that the Respondent performed unworkmanlike, inadequate or incomplete home improvement work.

Additionally, rather than permit the Respondent to continue his efforts to resolve the apparent software problem, the Claimant fired the Respondent on or about May 14, 2021, telling him not to return. Accordingly, I further find that the Respondent has credibly shown that the Claimant unreasonably rejected the Respondent's good faith efforts to resolve the issues raised in

the Claimant's claim. Accordingly, the Claimant is also precluded from compensation from the fund by Section 8-405(d) of the Business Regulation Article.

I thus find that the Claimant is not eligible for compensation from the Fund.²

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03A(3).

I further conclude that the Claimants are not entitled to recover any amount from the Fund. Md. Code Ann., Bus. Reg. §§ 8-405 (d) (2015).

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 2, 2022
Date Decision Issued

Robert B. Levin

Robert B. Levin
Administrative Law Judge

RBL/emh
#198557

² Even if I were to find (and I do not) that the Respondent's work was unworkmanlike, inadequate or incomplete, I agree with Fund counsel's analysis showing that the Claimant did not establish the amount of his alleged actual loss under the MHIC's compensation formulas (*see* COMAR 09.08.03.03B1(3)), because he presented no evidence of repair costs, estimates or invoices and did not show that either the hardware the Respondent installed or the Respondent's work were valueless.

PROPOSED ORDER

WHEREFORE, this 20th day of July, 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.

J Jean White

I Jean White

Panel B

**MARYLAND HOME IMPROVEMENT
COMMISSION**