

IN THE MATTER OF THE CLAIM OF * MARYLAND HOME
SORAYA NAMAZI * IMPROVEMENT COMMISSION
AGAINST THE MARYLAND HOME *
IMPROVEMENT GUARANTY FUND * MHIC CASE NO. 21(75)15
FOR THE ACTS OR OMISSIONS OF * OAH CASE NO. LABOR-HIC-
ALEXANDER WHITEHURST AND * 02-21-17030
LEND A HAND, LLC *
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FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on October 19, 2021. Following the evidentiary hearing, the ALJ issued a Proposed Decision on January 11, 2022, concluding that the homeowner, Soraya Namazi (“Claimant”) failed to prove that she suffered an actual loss as a result of the acts or omissions of Alexander Whitehurst and Lend A Hand, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p. 9. In a Proposed Order dated April 27, 2022, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to deny an award from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On November 3, 2022, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant and Contractor participated without counsel. Assistant Attorney General Eric London appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Claimant’s exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. Therefore, the Panel’s review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, and the exhibits offered as evidence at the OAH hearing. COMAR

09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for the renovation of the basement at a home owned by the Claimant. The ALJ found that the Contractor's performance under the contract was incomplete, not as a result of the Contractor's acts or omissions, but because the Contractor was reasonable to stop work on the project because he discovered mold in the property, and the Claimant failed to provide the Contractor with proof that she had the mold remediated. *ALJ's Proposed Decision* pp. 7-8. The ALJ also found that the Claimant failed to prove the cost of completing the contracted work. *ALJ's Proposed Decision* pp. 8-9.

On exception, the Claimant argued that the ALJ erred in finding that the Contractor was reasonable to stop work on her project. She argued that there was no mold in the property and, therefore, it was not possible or necessary for her to provide proof of mold remediation to the Contractor for the Contractor to be obligated to complete the project.

The Commission agrees with the ALJ. Photographs presented by the Contractor corroborate the Contractor's allegation that mold was present in the property, and the Commission does not find it credible that the Claimant hired a mold remediation contractor, and the mold remediation contractor found no mold in the property and would not provide documentation of its findings to the Claimant. The Commission notes that the Triad Basement Waterproofing, Inc., invoice presented by the Claimant did not indicate that Triad offers mold remediation services or that it performed mold remediation services for Claimant, rather, it shows only that it performed "waterproofing" services.

The Claimant also argued on exception that the ALJ erred in finding that she failed to prove that the Contractor's work was unworkmanlike or inadequate because she presented a letter from Mosaic Home Enhancements, LLC, stating that it would have to redo the electrical and framing

work. However, the Commission, like the ALJ, does not find the letter from Mosaic, which lacks detail and is not corroborated by a subsequent contract for the correction of the Contractor's work or supporting testimony, to be persuasive as to the alleged deficiencies of the Contractor's performance.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 14th day of March 2023, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AFFIRMED**;
- D. That the Claimant's claim is **DENIED**;
- E. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- F. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Michael Newton
Chairperson –Panel
Maryland Home Improvement
Commission

<p>IN THE MATTER OF THE CLAIM</p> <p>OF SORAYA NAMAZI,</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 ALEXANDER</p> <p>WHITEHURST, T/A LEND A HAND,</p> <p>LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE BRIAN ZLOTNICK,</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-02-21-17030</p> <p>* MHIC No.: 21 (75) 15</p> <p>*</p>
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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 19, 2020, Soraya Namazi (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 \$12,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Alexander Whitehurst, trading as Lend a Hand, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹

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

- Clmt. Ex. 6 Text messages between Claimant and Respondent, May 12, 2020
- Clmt. Ex. 7 Letter from Mosaic Home Enhancements, LLC, October 13, 2020
- Clmt. Ex. 8 Text messages between Claimant and Respondent, June 2, 2020
- Clmt. Ex. 9 Text messages between Claimant and Respondent, January 9, 2020, March 6, 2020, April 21, 23, 2020
- Clmt. Ex. 10 Text messages between Claimant and Respondent, June 12, 24, 2020
- Clmt. Ex. 11 Text messages between Claimant and Respondent, March 30, 2020 and April 16, 2020
- Clmt. Ex. 12 Claimant's MHIC Complaint Form, July 7, 2020
- Clmt. Ex. 13 Cancelled check from Claimant to Respondent for \$4,000.00, March 9, 2020
- Clmt. Ex. 14 Cancelled check from Claimant to Respondent for \$4,000.00, May 13, 2020

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

- Resp Ex. 1 Text messages between Respondent and Claimant, June 16, 2020
- Resp Ex. 2 Text messages between Respondent and Claimant, May 28, 2020
- Resp. Ex. 3 Five photographs of interior of Claimant's basement, taken in June 2020
- Resp. Ex. 4 Plumbing and Electrical Permits, July 7, 2020 and September 2, 2020

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

- Fund Ex. 1 Hearing Order, July 9, 2021
- Fund Ex. 2 Notice of Hearing, October 5, 2021
- Fund Ex. 3 Home Improvement Claim Form, October 19, 2020, with attached letter from MHIC to Respondent, October 28, 2020
- Fund Ex. 4 Respondent's licensing history, September 21, 2021
- Fund Ex. 5 Letter from MHIC to the Claimant, October 28, 2020

Testimony

The Claimant and the Respondent testified. The Fund did not present a witness.

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 with a valid MHIC number, 5282581. (Fund Ex. 4).
2. The Claimant is the owner of a property (Property) at 489 East Church Street in Frederick, Maryland and owns one other property. (Testimony of Claimant).
3. On or about January 9, 2020, the Claimant contacted the Respondent to perform work on the Property. (Testimony of Claimant).
4. The Claimant and the Respondent entered into a verbal agreement (Contract) for the Respondent to renovate the basement of the Property. The renovation work included: demolition, installation of a bedroom, kitchen, full bathroom and a window at cost of \$15,000.00 for labor. The Claimant was responsible for providing the materials for the project.² (Testimony of Claimant).
5. Work on the project began sometime in March 2020. On March 30, 2020, the Claimant texted the Respondent to pause work on the Property due to the COVID-19 shutdown instituted by the State of Maryland. The Respondent resumed working on the Property in May 2020. (Testimony of Claimant and Clmt. Ex. 11).
6. The Claimant made the following payments to the Respondent:
 - \$4,000.00 – March 9, 2020
 - \$4,000.00 – May 13, 2020(Clmt. Ex. 13).

² The Claimant indicated that she never received a written contract while the Respondent insisted that he mailed her a contract. The Claimant stated at the hearing that she never saw the contract that was submitted to the MHIC until this proceeding. Neither party submitted a written contract into evidence. Therefore, I will consider this to be a verbal agreement between the Claimant and the Respondent to renovate the Property.

7. The Respondent completed framing work for the basement in May 2020. (Testimony of Respondent).
8. The Respondent discovered what he believed to be mold at the project sometime between mid and late May 2020. (Testimony of Respondent).
9. Photographs taken by the Respondent in June 2020 of the Property's basement indicated the presence of dark fungal growth on the walls and on removed pieces of drywall. (Resp. Ex. 3).
10. The Respondent needed to remove concrete to make space for required plumbing work. (Testimony of Respondent)
11. In June 2020 the Respondent informed the Claimant of possible mold issues at the Property and asked for documentation from a mold remediation company that the Property was safe to work in. (Testimony of Claimant and Respondent).
12. On June 17, 2020, the Respondent informed the Claimant that a building inspector threw him off the job at the Property for performing electrical wiring work without a license. The building inspector also told the Respondent that there were hazardous working conditions at the Property. (Clmt. Ex. 4).
13. On June 18, 2020, the Respondent texted the Claimant that he had made her aware of the mold issue and that he felt it was unsafe to continue working without knowing what type of mold was at the Property. The Claimant informed the Respondent that she had a mold remediation company report to the Property the previous weekend. (Clmt. Ex. 4).
14. On or about June 20, 2020, the Claimant asked the Respondent by telephone when he would return to the Property to finish the Contract. The Respondent told the Claimant that he would return when she provided documentation that mold remediation had been completed. The Claimant responded, "I will see you in court." After this conversation the

Respondent went back to the Property and retrieved his tools. The last time the Respondent entered the Property was June 18, 2020. (Testimony of Respondent).

15. The Claimant never provided the Respondent with documentation that mold remediation work had been completed at the Property. (Testimony of Respondent).

16. On June 24, 2020, the Claimant texted the Respondent that she had spoken to her lawyer and that she was ready to file a complaint. (Clmt. Ex. 10).

17. On July 2, 2020, Triad Basement Waterproofing (Triad) sent an invoice to the Claimant for \$3,000.00 listing the activity as waterproofing sale. (Clmt. Ex. 5).

18. The Claimant hired Mosaic Home Enhancements (Mosaic) to remove all of the Respondent's work and finish the basement renovation project. (Testimony of Claimant and Clmt. Ex. 7).

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 (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.

The Claimant testified that she entered into a contract with the Respondent to perform renovation on her Property and that despite being paid slightly more than half of the contract price, the Respondent did not complete the project.

Although no written contract was entered into evidence, there is no dispute that the parties entered into an agreement to renovate the Property by building a bedroom, kitchen, full bathroom, and a window for \$15,000.00.

The key issue in this matter is whether the Respondent abandoned the project leaving the Claimant with no choice but to hire a new contractor to finish the job. I found credible the Respondent's assertions that he informed the Claimant of his refusal to complete the Contract until receipt of mold remediation documentation from her. The text messages between the Claimant and Respondent clearly indicated that the Claimant was aware of the Respondent's safety concerns regarding mold. I further found that the June 2020 photographs submitted by the Respondent illustrated the presence of some type of fungal growth in the Property. The Respondent requested documentation from the Claimant that mold remediation had been performed to allay his fears of continuing to work in a possibly hazardous environment due to mold. However, the Claimant never provided documentation of mold remediation to the Respondent and the Respondent ceased working on the Contract due to the Claimant's failure to provide that documentation. I further found the Claimant's June 20, 2020 response, "I will see you in court," to the Respondent's statement that he would not return to the project until he received the mold remediation documentation as evidence that she had no intention of providing the Respondent with that documentation.

The Claimant argued that she told the Respondent that she had a company perform mold remediation to the Property, yet the Respondent still failed to return to the Property to finish the Contract. However, the Claimant's submission of an invoice from Triad only indicates a balance

of \$3,000.00 for waterproofing. The Triad invoice makes no mention of mold remediation. I agree with the Respondent that he was never provided written documentation that mold had been removed from the Property. Again, I find that the Claimant's failure to provide such documentation justified the Respondent's decision to stop working at the Property before completing the Contract.

The Fund argued that the Respondent's actions in continuing to work at the project after discovering the mold in May 2020 was evidence that his decision to stop working in late June 2020 was an abandonment unrelated to the mold issue. I disagree. The Respondent indicated that it had to cut into the foundation to prepare for plumbing installation and therefore I find that his reluctance to continue working without certification of the removal of the Property's mold was warranted as breaking apart those materials would certainly release any mold toxins if present. Simply because the Respondent continued working for a few weeks after discovering the mold does not diminish his right to stop working in a potentially unsafe environment until he receives written assurances to assuage those concerns.

Additionally, the Claimant did not present an expert or other witness to explain any items of alleged inadequate work performed by the Respondent. The Claimant presented a letter from Mosaic which indicated that it had to remove all of the Respondent's work and start the project over from scratch in order to bring the renovation up to code. However, nobody from Mosaic testified as to how it determined the Respondent's work did not meet code or was unworkmanlike or inadequate. While there is no dispute that the Respondent walked away from the project, I found that his fears of continuing to work in a hazardous environment due to possible mold justified his actions of abandoning the project. I also find the Respondent's actions justified because when he made attempts to obtain certification of mold abatement from the Claimant, those requests went unheeded. Finally, the evidence in this case failed to establish

the specifics or the value of the incomplete work. As stated, it was the Claimant's burden to establish her actual loss; however, after extensive review of the Claimant's testimony and evidence, I cannot conclude that she met that burden.

PROPOSED CONCLUSION 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).

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.

January 11, 2022
Date Proposed Decision Issued

Brian Zlotnick

Brian Zlotnick
Administrative Law Judge

BMZ/emh
#196177

PROPOSED ORDER

WHEREFORE, this 27th day of April, 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.

Lauren Lake

Lauren Lake

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***