

IN THE MATTER OF THE CLAIM
OF ALI AL GHARABAWI,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF MIGUEL SALAZAR,
T/A PRIME RENOVATIONS & HOME
IMPROVEMENT,
RESPONDENT

* BEFORE MICHELLE W. COLE,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-22-00472
* MHIC No.: 21 (75) 415
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PROPOSED DECISION

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

On June 9, 2021, Ali Al Gharabawi (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 \$10,059.00 for actual losses allegedly suffered as a result of a home improvement contract with Miguel Salazar, trading as Prime Renovations & Home Improvement (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411

(2015).¹ On December 6, 2021, the MHIC issued a Hearing Order on the Claim and forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 4, 2022,² I held a remote hearing via the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B. Hope Sachs, 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; COMAR 28.02.01.

ISSUES

Did the Claimant sustain an actual loss compensable by the Fund as a result of an unworkmanlike, incomplete or inadequate home improvement by the Respondent?

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:

- Cl. Ex. 1 Email correspondence between the Claimant and the Respondent, various dates
- Cl. Ex. 2 Copies of checks made payable to the Respondent, December 12, 2019, February 7, 2020, March 30, 2020, and April 7, 2020
- Cl. Ex. 3 List of outstanding items that were not completed, undated; Working Days Calculator, undated; New contractor list, undated
- Cl. Ex. 4 MHIC Licensing Information for the Respondent, August 30, 2018

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

² On February 15, 2022, I postponed the hearing to allow for exchange of discovery and to schedule an Arabic interpreter for the hearing.

Cl. Ex. 5 Annotated work list, undated; Complaint Form, October 25, 2020; Contract, December 6, 2019

I admitted the following exhibits on behalf of the Respondent:

Resp. Ex. 1 Letter from the Respondent to the MHIC, December 15, 2020, with attachments

Resp. Ex. 2 Contract, December 6, 2019

Resp. Ex. 3 Copies of deposited checks, posted December 16, 2019, February 7, 2020, March 31, 2020, and April 8, 2020

Resp. Ex. 4 Listing Information for 5804 Huntland Road, March 24, 2021 (Record Date)

Resp. Ex. 5 MHIC License for Respondent, August 30, 2022 (Expiration Date); Certificate of Liability Insurance, December 14, 2021

Resp. Ex. 6 Letter from the MHIC to the Respondent, July 8, 2021, with attachments

I admitted the following exhibits on behalf of the Fund:

GF Ex. 1 Notice of Remote Hearing, January 11, 2022; Hearing Order, December 6, 2021

GF Ex. 2 MHIC Registration Inquiry Screens, January 26, 2022

Testimony

The Claimant testified on his own behalf.

The Respondent testified on his own behalf.

The Fund did not present 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.

2. On December 6, 2019, the Claimant and the Respondent entered into a contract (Contract) to renovate the Claimant's home prior to its sale.

3. Under the Contract, the Respondent agreed to perform the following work on the exterior of the home:

- Replace roof with 30 year Architectural Shingle (Asphalt color)
- Repair all soffit and fascia board as needed and paint it white
- Replace gutters
- Power wash/clean brick exterior of home
- Demo existing addition at rear of home
- Remove fence to right of home
- Fix crown and flashing on both chimney tops

(Resp. Ex. 2 at 3).

4. Under the Contract, the Respondent agreed to perform the following landscaping work:

- Remove (1) large tree at the rear of the home
- Remove (1) medium size tree in front of the home
- Remove (2) large bushes to the side of the home
- Remove all weeds
- Trim branches over home
- Reseed for grass
- Plant annuals in front of home
- Insert garden edging around bushes in front of home
- Insert mulch in garden beds
- Replace/rebuild brick retaining wall adjacent to driveway

(Resp. Ex. 2 at 3).

5. Under the Contract, the Respondent agreed to perform the following work on the doors and windows:

- Install new garage door
- Install new garage door opener
- Install (3) new exterior doors
- Install (2) storm doors
- Replace all interior doors
- Install new hardware [client-supplied] on all doors (satin finish)

(Resp. Ex. 2 at 3).

6. Under the Contract, the Respondent agreed to perform the following work on the flooring:

- Install wood flooring in kitchen
- Refinish all existing wood floors on main level
- Replace carpet inside addition
- Install new baseboard and trim throughout main level and basement
- Install laminate flooring in basement
- Install ceramic tiles in utility room

(Resp. Ex. 2 at 4).

7. Under the Contract, the Respondent agreed to perform the following work on the attic:

- Install two new gable vents
- Install insulation as needed

(Resp. Ex. 2 at 4).

8. Under the Contract, the Respondent agreed to perform the following painting work:

- Paint all doors and trim
- Paint all new baseboards
- Paint all bathrooms (1) color choice of owner
- Paint all ceilings flat white
- Paint all walls (1) color choice of owner
- Paint all existing window frames after owner repairs
- Paint garage door
- Paint garage floor

(Resp. Ex. 2 at 4).

9. Under the Contract, the Respondent agreed to perform the following work on the kitchen:

- Demo current cabinets, counters, and appliances
- Demo two walls
- Install proper LVL supports
- Prepare plumbing as needed
- Prepare electrical as needed

- Install new cabinets
- Install new granite counter tops
- Install new backsplash
- Install new sink and faucet [client-supplied]
- Install new appliances [client-supplied]
- Install new fixtures [client-supplied]

(Resp. Ex. 2 at 4).

10. Under the Contract, the Respondent agreed to perform the following work on the master bathroom:

- Demo current Master Bath
- Prepare plumbing for new shower
- Tile shower to ceiling [client-supplied]
- Install accent to shower tile [client-supplied]
- Install tile shower flooring [client-supplied]
- Install niche in shower
- Install new sliding glass shower door
- Install new toilet [client-supplied]
- Install vanity [client-supplied]
- Install new light fixture [client-supplied]
- Install the flooring per choice of homeowner [client-supplied]

(Resp. Ex. 2 at 4-5).

11. Under the Contract, the Respondent agreed to perform the following work on the main level full bathroom:

- Demo current bathroom
- Prepare plumbing for new bathtub/shower
- Tile shower wall to ceiling [client-supplied]
- Install new tub
- Install niche in shower
- Install new toilet [client-supplied]
- Install vanity [client-supplied]
- Install new light fixture [client-supplied]
- Install tile flooring [client-supplied]

(Resp. Ex. 2 at 5).

12. Under the Contract, the Respondent agreed to perform the following work on the basement half-bathroom:

- Demo current bathroom
- Install new toilet [client-supplied]
- Install vanity [client-supplied]
- Install new light fixture [client-supplied]
- Install tile flooring [client-supplied]

(Resp. Ex. 2 at 5).

13. Under the Contract, the Respondent agreed to perform the following electrical work:

- Install new light fixtures [client-supplied]
- Install (20) recess lights
- Replace all outlets, switches, and plates throughout the entire home
- Replace service cable

(Resp. Ex. 2 at 5).

14. Under the Contract, the Respondent agreed to perform the following work on the walls and ceiling:

- Install new ¼ in. drywall on ceiling of basement
- Remove all wood paneling on main level and basement
- Repair/replace all drywall as needed
- Prepare all drywall for painting

(Resp. Ex. 2 at 5).

15. Under the Contract, the Respondent agreed to perform the following miscellaneous work at the home:

- Install new handrail and banister (wood handrail with iron baluster)
- Install new fireplace insert
- Repair damper
- Clean chimney flu
- Apply Kilz as needed
- Waterproof with drylock as needed throughout basement

- Install new utility sink

(Resp. Ex. 2 at 5).

16. The original agreed-upon Contract price was \$63,120.00. The Claimant agreed to pay a deposit of \$18,936.00,³ followed by a second payment of \$18,936.00 when the demolition work was completed, another payment of \$18,936.00 when the drywall installation was completed, and a final payment of \$6,312.00⁴ when the remaining work under the Contract was completed.

17. The Contract provided for an “Approximate Start Date” of December 16, 2019 and “Approximate Completion Date” of February 29, 2020. (Resp. Ex. 2 at 6).

18. On December 12, 2019, the Claimant paid \$18,936.00 to the Respondent.

19. On December 18, 2019, the Contract was amended to include framing and insulation, increasing the total amount of the Contract price to \$64,120.00. This additional work contributed to the delay in completing the home improvement before the approximate completion date.

20. In December 2019, work was delayed so that the Respondent could obtain permits, which could not be issued while the Claimant’s company, the entity through which the permits were obtained, was not in good standing with the State. Once the Claimant corrected the standing issue, the permits were issued on January 28 and 31, 2020. The delay in receiving permits contributed to the delay in completing the home improvement before the approximate completion date.

21. On February 5, 2020, the Respondent completed the demolition work under the Contract.

³ This amount represents 30% of the Contract price.

⁴ This amount represents 10% of the Contract price.

22. On February 7, 2020, the Claimant made the second payment of \$18,936.00 to the Respondent.

23. On March 4, the Respondent informed the Claimant that work would be delayed so that an engineer could review the work and provide a certified letter to the inspector before the inspector would approve the structural work.

24. On March 11, 2020, Architectural Engineering Consultants submitted a letter indicating that “[a]ll structural renovation is structurally safe and sound.” (Resp. Ex. 1 at 18). Subsequently, the structural work was approved.

25. On March 12, 2020, the Claimant arranged for delivery of the tile to the home, but failed to order the amount needed to complete the work in the master bathroom. When the additional tile arrived on March 19, it was broken and needed to be replaced. This circumstance contributed to the delay in completing the home improvement.

26. On March 23, 2020, the Respondent completed the drywall installation. He informed the Claimant that he was ready to start painting and asked for the third payment to be issued.

27. On March 30, 2020, the Claimant requested to break the third payment into two installments based on concerns regarding COVID-19 shut-downs. The Respondent agreed to the request, but noted: “We have done the work to receive payment per the contract.” (Resp. Ex. 1 at 25).

28. On March 30, 2020, the Claimant paid \$10,000.00 to the Respondent.

29. On April 2, 2020, the Respondent informed the Claimant that he needed the remainder of the third payment in order to order materials and pay employees.

30. On April 7, 2020, the Claimant paid \$9,936.00 to the Respondent.⁵

31. In April 2020, the Respondent painted the home interior and finished walls, refinshed floors, completed the bathroom tile, installed basement flooring, and installed stair rails.

32. On May 14, 2020, the Claimant sent a text message to the Respondent complaining about the condition of the gutters, soffit, and fascia and attached a photograph. On May 15, 2020, the Respondent replied: "We are going to fix everything in the pictures." (Cl. Ex. 1).

33. Between May and August 2020, the Respondent experienced delays due to COVID-19. According to COVID-19 protocols, work was stopped and delayed when workers exhibited symptoms.

34. On May 14, 15, and 26, 2020, the Claimant sent text messages to the Respondent asking for an update on work completion and complaining about slow progress.

35. On June 2 and June 8, 2020, the Respondent informed the Claimant that work would be delayed because of positive COVID-19 cases in the warehouse, which resulted in a delay of the delivery of the kitchen cabinets.

36. Due to manufacturing delays, the kitchen cabinets were not delivered until July 30, 2020, more than two months beyond their scheduled delivery date.

37. On July 30 and 31, and August 5, 10, and 11, the Claimant sent text messages to the Respondent inquiring when work would resume on the kitchen. On August 6, 2020, the Respondent stated that workers would return on the following Monday. On August 11, 2020, he stated that they would be at the home on August 12.

⁵ This amount included the cost of the framing and insulation that was added to the Contract by the December 18, 2019 amendment.

38. On August 17, 2020, the Claimant informed the Respondent that the windows were fixed and ready to be painted.

39. On August 18, 2020, the Claimant requested an updated project plan.

40. After discussion via text message regarding availability of materials, on August 24, 2020, the Contract was amended to remove the following work from the Contract:

- Remove install new garage door from contract
- Remove install granite counter tops from contract

(Resp. Ex. 2 at 7). The total amount of the Contract price was reduced by \$3,217.00 as a result of the Contract amendment.

41. On September 4, 2020, the Claimant asked for an updated completion date. When the Respondent indicated that the work would be completed by mid-September, the Claimant agreed to the proposed time frame, but insisted that a liquidated damages clause be added to the Contract as follows: "Liquidated damages will be assessed at a rate of \$150 per day after September 16th, 2020 completion date." (Resp. Ex. 2 at 34).

42. When the Respondent refused to sign the amended Contract containing the liquidated damages clause, the Claimant responded as follows:

I'm not sure exactly what part you do not agree to, the date is what you noted which is mid September. The delay clause should be fine, unless you are planning on more delays than the 6 months delay. In anyhow, we tried our best to work with you, but unfortunately, you were not willing to do the work per the contract you signed, therefore all liquidated damages will be assessed on [the Respondent].

All the remaining items that you did not finish will be outsourced to another contractor and you will be responsible for all the payments, as you defaulted the contract.

(Cl. Ex. 1).

43. The Claimant hired other contractors to complete work under the Contract and additional work not included in the Contract.

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). The Respondent argued that he was not responsible for the delay in completing the home improvement and the Claimant should not recover from the Fund because the Claimant prevented him from completing the work under the Contract. He bears the burden to support this claim by a preponderance of the evidence. COMAR 28.02.01.21K(1),(2)(b).

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.

Actual Loss – Prima Facie Impediments

Certain claimants are excluded from recovering from the Fund altogether. In this regard, a claimant must prove that: (1) the claimant resides in the home as to which the claim is made, or

owns no more than three dwelling places; (2) the claimant is not an employee, officer or partner of the contractor; or the spouse or other immediate relative of the contractor or the contractor's employees, officers or partners; (3) the work at issue did not involve new home construction; (4) the claimant did not unreasonably reject the contractor's good faith effort to resolve the claim; (5) the claimant complied with any contractual arbitration clause before seeking compensation from the Fund; (6) there is no pending claim for the same loss in any court of competent jurisdiction and the claimant did not recover for the actual loss from any source; and (7) the claimant filed the claim with the MHIC within three years of the date the claimant knew, or with reasonable diligence should have known, of the loss or damage. Md. Code Ann., Bus. Reg. § 8-405(c), (d), (f), (g); Md. Code Ann., Bus. Reg. § 8-408(b)(1); Md. Code Ann., Bus. Reg. § 8-101(g)(3)(i) (Supp. 2021).

There is no argument to the contrary, and the evidence establishes that the Claimant owns no more than three dwelling places; that he has never been an employee, officer or partner of the Respondent and is not related to any of the Respondent's employees, officers or partners; that the home improvement was not new home construction; that the Claimant did not fail to participate in arbitration; that the Claimant has not taken any other legal action to recover monies for any actual loss in connection with the Respondent's work; and the Claimant timely filed his claim within three years of the date he became aware of the problems with the home improvement work. Finally, at all times relevant to this matter, the Respondent was a licensed home improvement contractor under the MHIC.

I am persuaded, however, that the Claimant rejected the Respondent's good faith offer to complete the home improvement and, as a result, is barred from recovering from the Fund. While it is clear that the home improvement took much longer to complete than anticipated, I do

not find the delay to be wholly attributable to the Respondent. This home improvement was delayed largely due to the COVID-19 pandemic, which erupted shortly after this project began. At all times, the Respondent made efforts to complete the home improvement and conveyed to the Claimant his intention to complete the remaining work under the Contract.

On September 4, 2020, while discussing a proposed amendment to the Contract regarding the completion date, the Claimant insisted that a liquidated damages clause be added and gave the Respondent until the end of the day to sign the amended Contract. At that time, the Respondent assured the Claimant that he would complete the work by mid-September, but would not agree to the liquidated damages clause. Because the Respondent would not agree to the clause, the Claimant terminated the Contract and solicited other contractors to complete the remaining work.

Ms. Sachs argued on behalf of the Fund that requiring the Respondent to amend the Contract to include a liquidated damages clause as a condition to allowing the Respondent to continue working under the Contract was unreasonable. I agree. Notwithstanding the extraordinary circumstances presented by the pandemic, the Respondent continued working to complete the home improvement. Moreover, some of the delay resulted from the Claimant's failure to provide the "client-supplied" materials needed for the home improvement. In that regard, the Respondent clearly communicated what he needed in order to continue work under the Contract. Further, when the Claimant requested that the third payment be broken down into two payments, even though the entire amount of the third payment was due under the terms of the Contract, the Respondent agreed. He informed the Claimant that the delayed payment impacted the timeline for finishing the home improvement. The evidence supports the Respondent's claim that he made every attempt to complete the home improvement in a timely

manner through the date when the Claimant informed him that the Claimant was no longer willing to work with the Respondent and terminated the Contract.

Actual Loss - Unworkmanlike, Inadequate, or Incomplete Home Improvement by the Respondent

The Claimant presented evidence showing that he entered into the Contract with the Respondent to renovate the Claimant's home prior to its sale. He argued that he suffered an actual loss as the result of an incomplete home improvement by the Respondent. He explained that all initial communications were between his project manager and the Respondent. He reported that the Respondent and his workers failed to show up and that the project took much longer than promised to complete. He stated that his project manager was trying to get a completion date, but was unable to reach the Respondent, and, ultimately, hired another contractor to complete the work. He presented text messages, emails, and a list of work completed by other contractors, which he maintained was work that the Respondent was supposed to complete.

The Respondent reviewed the timeline and explained the reasons for the delays in completing the home improvement. He noted that there were a few unexpected delays, such as framing work that was added to the Contract, and that the work on the project occurred during the peak of the pandemic. He stated that he intended to complete the home improvement, but did not want to add the liquidated damages clause when the Claimant terminated the Contract. He reviewed the list of items that the Claimant reported were incomplete when he stopped working on the home improvement, and reported that some of this work was not included in the Contract, could not be completed before other work was finished, or had already been completed by him. For instance, he stated that the granite countertop and garage door work was removed from the Contract; the panel upgrade for lighting was not part of the Contract; and the backsplash, sink,

new faucets, and appliances, client-supplied items, had not been provided by the Claimant and could not be completed before the countertops were installed by the Claimant.

For the reasons that follow, I conclude that the Claimant is not eligible for compensation from the Fund. First, there is no claim and no evidence to support a contention that the Respondent's work was unworkmanlike or inadequate. The Claimant's argument is that the Respondent failed to complete the home improvement in a timely manner. Second, as already stated, I am not persuaded that the Claimant suffered an actual loss as the result of an incomplete home improvement by the Respondent. Much of the delay resulted from the extraordinary circumstances presented by the COVID-19 pandemic, which affected material availability and labor shortages. In light of this circumstance, I do not construe the Respondent's failure to complete the home improvement before the "approximate" completion date of February 29, 2019, to be an abandonment of the Contract. Indeed, some of the delay is attributable to the Claimant. Moreover, I found the Respondent's explanations regarding the delay and his management of the timeline to be reasonable.

The Respondent was actively working on the home improvement when the Claimant terminated the Contract. The evidence establishes that the Respondent continued to work on the home improvement despite many delays caused by COVID-19 interruptions, quarantine issues, employee infection, material and manufacturing delays, and material availability, until he was informed of the Claimant's decision to terminate the Contract. At all times, the Respondent informed the Claimant of his intention to complete the work under the Contract. There is nothing in the record to suggest that the Respondent was unable or unwilling to perform the remaining work. As such, the record fails to support the Claimant's contention that he suffered

an actual loss as the result of acts or omissions by the Respondent. He is not eligible for the relief that he seeks.

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 09.08.03.03B(3). I further conclude that the Claimant is not entitled to recover from the Fund. COMAR 09.08.03.03B(3).

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.

May 24, 2022
Date Decision Issued

Michelle W. Cole

Michelle W. Cole
Administrative Law Judge

MWC/ej
#198353

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***