IN THE MATTER OF THE CLAIM	*	**BEFORE JENNIFER M. CARTER JONES,**
OF SHANNA BAILEY,	*	**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	*	
EFRAIN CONTRERAS,	*	**OAH No.: LABOR-HIC-02-22-06436**
T/A G.E.A. CONTRUCTION, LLC,	*	**MHIC No.: 21 (75) 417**
RESPONDENT	*	

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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 or about October 21, 2021, Shanna Bailey (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) under the jurisdiction of the Department of Labor (DOL) for reimbursement of $20,000.00 in alleged actual losses suffered as a result of a home improvement contract with Efrain Contreras, T/A

G.E.A. Construction, LLC (Respondent).[1] On March 7, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 2, 2022, I held a hearing at the OAH in Hunt Valley, Maryland.[2] Andrew Brouwer, DOL Assistant Attorney General, represented the Fund. The Claimant represented herself. The Respondent failed to appear for the hearing.

After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with 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.[3] On March 25, 2022, the OAH mailed, by first-class and certified mail, a Notice of Hearing (Notice) to the Respondent at his address of record with the MHIC on Sudbrook Lane, in Pikesville, MD and to an alternative address for the Respondent on Gwynnwest Road in Reisterstown, Maryland.[4] The Notice stated that a hearing was scheduled for 9:30 a.m. at the OAH in Hunt Valley, Maryland. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service (USPS) returned as unclaimed both Notices mailed by certified mail to the OAH. The USPS also returned the Notice it mailed by first-class mail to the Sudbrook Lane address as undeliverable. The USPS the did not return the Notice mailed by first-class mail to the Gwynnwest Road address. The Respondent did not notify the OAH of any change of mailing address.[5] The Respondent made no request for postponement prior to the date

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[1] Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.
[2] Bus. Reg. §§ 8-407(a), 8-312.
[3] COMAR 28.02.01.23A.
[4] COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1).
[5] COMAR 28.02.01.03E.

of the hearing.[6] I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter.

The contested case provisions of the Administrative Procedure Act, the DOL's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case.[7]

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 that loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

CL #1 Contract between the Claimant, Renard Bailey, and the Respondent dated August 3, 2020 (Contract)

CL #2 Copy of the Claimant's Bank of America statement for the period of July 25 through August 24, 2020, and copy of the Claimant's Bank of America statement for the period of August 22 through September 22, 2020

CL #3 Photographs, taken in late October 2020:

A. Upper portion of the front of the Claimant's home;
B. Lower portion of the Claimant's home, including the porch;
C. Debris outside of the Claimant's home;
D. Tree stump and debris outside of the Claimant's home;
E. Debris and rebar outside of the Claimant's home; and
F. Gravel and air conditioning unit outside of the Claimant's home;

CL #4 Estimate from Hammer Home Improvement, dated September 7, 2021[8]

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[6] COMAR 28.02.01.16.
[7] Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; and COMAR 28.02.01.
[8] During the hearing, I erroneously marked this document as CL #3.

I admitted the following exhibits on behalf of the Fund:

Fund #1	DOL Hearing Order, dated March 2, 2022
Fund #2	Copy of the OAH Notice, dated March 25. 2022
Fund #3	Letter from the MHIC to the Respondent, dated November 10, 2021 and copy of the Claim, received by the MHIC on December 21, 2021
Fund #4	The Respondent's licensing history with the MHIC, printed on April 26, 2022

The Respondent did not appear for the hearing and therefore, he did not submit any exhibits for admission into the record.

Testimony

The Claimant testified and presented the testimony of her husband, Renard Bailey (Mr. Bailey).

No one appeared to testify on behalf of the Respondent.

The Fund presented no witnesses.

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 personal license number 117294 and corporate license number 05-136510.

2. On August 3, 2020, the Claimant entered the Contract with the Respondent for the Respondent to construct a rear deck with the following attributes:

- 6 x 6 columns;
- Handrails;
- Deck boards;
- Concrete footers;
- Column steel base;
- Solid stain;
- Dark screws;

3. The scope of work under the Contract also included removing and replacing steps that led from the Claimant's home to the backyard/deck, removing bushes and ivy, removing a tree, adding a privacy fence, installing a cement parking pad in the back yard, and removing and replacing stairs from the parking pad to the backyard.

4. On August 26, 2020, the Claimant and the Respondent entered into an agreement to expand the scope of work under the Contract to include repairing the Claimant's front roof.

5. The Respondent advised the Claimant that the work outlined in the Contract would be completed within two weeks.

6. The agreed-upon price for the work specified in the Contract was $8,480.00 ($6,800.00 for the rear vegetation removal, parking pad, deck and stairs; 1,680.00 for the front roof work).

7. On August 17, 2020, the Claimant paid the Respondent a deposit of $2,968.00 and paid the Respondent an additional $3,976.00 on August 28, 2020, for a total of $6,944.00.

8. The Respondent promptly began work on the home improvements specified in the Contract. Specifically, in the rear of the house, he removed the existing stairs from the parking pad to the deck and he removed bushes, ivy, and a large tree, without removing the tree stump.

9. In the front of the house, the Respondent removed terra cotta shingles from the front roof and replaced them with slate shingles, he replaced the columns on the front porch which supported the porch roof.

10. After approximately one week, the Respondent worked on the Claimant's home sporadically; approximately once or twice per week.

11. Mr. Bailey consistently called the Respondent to learn when the Respondent would complete the work under the Contract.

12. Eventually, Mr. Bailey spoke with someone named "Junior,"[9] who worked with the Respondent.

13. Approximately two months after the Claimant and the Respondent entered into the Contract, Efrain Contreras' son Frank Contreras "Junior," advised Mr. Bailey that the Respondent had underbid the project and the Respondent did not have enough money to complete the work.

14. The Respondent returned to the property in October 2020 and prepared the rear parking pad area for the pouring of concrete and installed fence posts. The Respondent never poured the concrete for the parking pad.

15. The Claimant never returned to finish the installation of the parking pad, the deck, the stairs between the deck and the back door to the home, the fence, or the stairs from the deck to the parking pad.

16. The Claimant left significant debris at the Claimant's home, including rebar, trash and large pieces of construction material.

17. The Claimant had to pay someone to remove the debris and construction materials.

18. The Respondent did not return to the Claimant's property after October 2020.

19. On or about September 7, 2021, the Claimant obtained an estimate from Hammer Home Improvement (Hammer) to complete the work under the Contract related only to the back of the home. Hammer estimated that it would cost $24,200.00 to install a new cement parking pad, build a deck, install a landing and stairs from the deck to the parking pad, install steps to the back door, and install a privacy fence.

[9] According to Mr. Bailey, Frank Contreras referred to himself as "Junior."

20. The Claimants have not been able to pay another contractor to finish the deck, parking pad, and stairway work specified in the Contract.

21. Currently, the Claimants do not have stairs leading from the back of their home to the backyard. They also do not have stairs leading from the back yard to the parking pad.

22. The Respondent did not refund any money to the Claimant.

DISCUSSION

The Claimant has the burden of proving the validity of her claim by a preponderance of the evidence.[10] "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true."[11]

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor."[12] Actual loss "means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement."[13] For the following reasons, I find that the Claimant has proven eligibility for compensation.

Based on the unrefuted evidence, the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Claimant paid the Respondent $6,944.00 of the $8.480.00 contract price to remove vegetation, install a parking pad, deck and stairs in the back of the Claimant's house, and to repair the roof on the front of the Claimant's house.

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[10] Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2021); COMAR 09.08.03.03A(3); COMAR 28.02.01.21K(1).
[11] *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).
[12] Md. Code Ann., 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.").
[13] Md. Code Ann., Bus. Reg. § 8-401.

According to the Claimant, the Respondent initially started working diligently on completing the projects enumerated in the Contract, but after about one week, the work slowed to the extent that the Respondent's workers only came to the property once or twice per week. Mr. Bailey testified that he consistently called the Respondent, and those calls often went to the Respondent's voicemail. According to Mr. Bailey, eventually the Respondent's son, Junior, advised Mr. Bailey that the Respondent had underbid the project and it was going to cost more money than specified in the Contract to complete the work. Mr. Bailey testified that he did not offer any more money to the Respondent and except for preparing the parking pad areas for concrete and installing a few fence posts in October 2020, the Respondent stopped working on the contracted-for home improvements.

The Claimant testified that she was very concerned once the Respondent stopped working because he had removed the stairs from her back door to the backyard; therefore, they did not have any point of egress other than the front door. The Claimant testified that she is afraid that if there is an emergency, she and Mr. Bailey might be exposed to harm. Furthermore, the Claimant testified that her central air conditioning needs repair; however, a repairperson cannot address the problem because without stairs from the back door to the back yard or stairs from the parking pad area to the backyard, a repairperson cannot access the air conditioning condenser located in the backyard.

Ultimately, the Claimant and Mr. Bailey testified that they tried to obtain estimates from other contractors, but most refused to give them a written estimate because as they could not guarantee the quality of the Respondent's work, they did not want to get involved in completing it. The Claimant and Mr. Bailey testified that two contractors gave them verbal estimates of $23,000.00 and $27,000.00 to complete the work in the back of the house. Hammer was the only

contractor to give them a written estimate and Hammer estimated it would cost $24,000.00 to complete the deck, stairs, parking pad, and fence installation in the back of the Claimant's home.

I conclude that although the Respondent began work under the Contract, he failed to complete that work. I further conclude that the Claimant has provided evidence, in the form of the Estimate from Hammer, that it will cost them an additional $24,200.00 to complete the deck, parking pad, stairs, and fence installation. Accordingly, the Claimant has experienced an actual loss in the difference between the amount she will required to pay a contractor to finish the work and the amount she paid the Respondent under the Contract.

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 work under the Contract, and the Claimant has retained or will retain another contractor to complete or remedy that work. Accordingly, the following regulatory formula measures the Claimants' 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.[14]

The calculation is as follows:

$6,944.00	paid to the Respondent under the Contract
+$24,200.00	payable to repair or complete the home improvements
$31,144.00	
- $8,480.00	(original Contract price)
$22,664.00	

[14] COMAR 09.08.03.03B(3)(c).

Effective July 1, 2022, a claimant's recovery is capped at $30,000.00 for acts or omissions of one contractor.[15] However, pursuant to COMAR 09.08.03.0B(4), "[t]he Commission may not award from the Fund an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed." In this case, the Claimant paid the Respondent $6,944.00 under the Contract; accordingly, her actual loss compensable by the MHIC Fund is limited to that amount. Therefore, the Claimant is entitled to recover her actual loss of $6,944.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of $6,944.00. as a result of the Respondent's acts or omissions.[16] I further conclude that the Claimants are entitled to recover that amount from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Commission Guaranty Fund award the Claimants $6,944.00; and

I **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;[17] and

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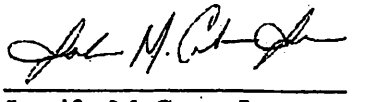
[15] H.D. 917, 2022 Leg., 444th Sess. (Md. 2022) (to be codified in section 8-405(e)(1) of the Business Regulation Article). *See also* Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4), D(2)(a). The increased cap is applicable to any claim on or after July 1, 2022, regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. *See Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

[16] Md. Code Ann., Bus. Reg. §§ 8-401, 8-405; COMAR 09.08.03.03B(3)(c).

[17] *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii); COMAR 09.08.01.20.

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



July 21, 2022
Date Decision Issued

Jennifer M. Carter Jones
Administrative Law Judge

JCJ/emh
#199749

PROPOSED ORDER

WHEREFORE, this 16th day of September, 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.

Chandler Louden

Chandler Louden
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION