

IN THE MATTER OF THE CLAIM OF  
ALEXANDRIA MCKONE  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ACTS OR OMISSIONS OF  
SYDNEY PASKEL AND  
AFFORDABLE HOME  
IMPROVEMENTS, LLC

\* MARYLAND HOME  
\* IMPROVEMENT COMMISSION  
\*  
\* MHIC CASE NO. 21(75)807  
\* OAH CASE NO. LABOR-HIC-  
\* 02-22-06765  
\*

\* \* \* \* \*

**FINAL ORDER**

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on May 20, 2022. Following the evidentiary hearing, the ALJ issued a Proposed Decision on August 12, 2022, concluding that the homeowner, Alexandria McKone (“Claimant”) suffered an actual loss as a result of the acts or omissions of Sydney Paskel and Affordable Home Improvements, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p. 9. In a Proposed Order dated October 7, 2022, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to grant an award of \$30,000.00 from the Home Improvement Guaranty Fund. The Contractor subsequently filed exceptions to the MHIC Proposed Order.

On January 19, 2023, 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 John Hart 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; 3) Contractor’s exceptions; and 4) Claimant’s response to the Contractor’s exceptions. The Contractor produced a copy of the transcript of the hearing before the ALJ. Therefore, the Panel’s review of the record included the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, the exhibits offered as evidence at the OAH

hearing, and the OAH hearing transcript. COMAR 09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for the construction of an addition to the Claimant's home. The ALJ found that the Contractor's performance under the contract was unworkmanlike, incomplete, and inadequate. *ALJ's Proposed Decision* pp. 5, 7.

On exception, the Contractor argued that the ALJ erred in calculating the Claimant's actual loss because the cost to correct and complete the project exceeded the original contract price, because the corrective estimate was not itemized and exceeded the scope of the original contract, because the corrective estimates were unreasonable, and because the Contractor properly installed the roof.

The Commission agrees with the ALJ's calculation. The ALJ relied on an estimate from Chavez Brothers, LLC, for \$65,000.00. (OAH Hearing Claimant's Exhibit 6.) In the Commission's experience, it is common for a corrective estimate to exceed the cost of an original contract, so the mere fact that the corrective estimate in this case exceeded the cost of the original contract in this case does not demonstrate that the corrective estimate is unreasonable or that the ALJ's calculation of actual loss is erroneous. Regarding the lack of itemized costs in the corrective estimate, because the estimate, on its face, does not exceed the scope of the original contract, and because the Claimant testified that the estimate included only the work necessary to correct the Contractor's deficient performance, the Commission finds that the claimant, through her testimony and the Chavez Brothers estimate, proved the cost to correct the Contractor's performance. Regarding the installation of the roof, the Chavez Brothers estimate stated that the Contractor laid the roof incorrectly. Therefore, the Commission finds that the Claimant proved that the Contractor's installation of the roof was unworkmanlike and that the ALJ properly included the cost of repairing the roof in the calculation of the Claimant's actual loss.

The Contractor's written exceptions included several of factual assertions without reference to the record created before the ALJ. The Contractor also asked several questions and demanded copies of documents. On exception the Commission can only consider the record before the ALJ. Parties are not entitled to present new facts, ask factual questions of the other party, or demand additional documentation from the other party, as such new evidence is not part of the record.

The Contractor, who failed to attend the hearing before the ALJ, also requested that the Commission rehear the claim. The Contractor received proper notice of the hearing and failed to request a postponement, and there is no indication in the record that he attempted to notify the ALJ, the Guaranty Fund, or the Claimant that he was unable to attend the hearing. Therefore, the Commission finds no justification for a rehearing.

Finally, the Contractor asserted in his exceptions that the Claimant's claim was not properly brought against him in his individual capacity. COMAR 09.08.01.04 provides that both a business entity holding a home improvement contractor license and the individual home improvement contractor licensee in responsible charge of the business entity's home improvement work is jointly and severally responsible for reimbursing the Guaranty Fund for payments made by the Fund to claimants because of the conduct of the business entity or the individual licensee. Mr. Paskel is the individual licensee in responsible charge of Affordable Home Improvements, LLC's home improvement work (OAH Guaranty Fund's Exhibit 4), and therefore is a proper respondent to the Claimant's claim.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 8<sup>th</sup> day of February 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 is awarded \$30,000.00 from the Maryland Home Improvement Guaranty Fund;
- E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, *Md Code Ann.*, Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a);
- F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- G. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

***J. Jean White***  
**Chairperson –Panel**  
**Maryland Home Improvement**  
**Commission**

IN THE MATTER OF THE CLAIM	* BEFORE M. TERESA GARLAND,
OF ALEXANDRIA MCKONE,	* 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 SYDNEY PASKEL,	*
T/A AFFORDABLE HOME	* OAH No.: LABOR-HIC-02-22-06765
IMPROVEMENTS, LLC,	* MHIC No.: 21 (75) 807
RESPONDENT	*

\* \* \* \* \*

**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 29, 2021, Alexandria McKone (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 \$55,026.60 for actual losses allegedly suffered as a result of a home improvement contract with Sydney Paskel, trading as Affordable Home Improvements, LLC (Respondent). Md. Code Ann., Bus. Reg.

§§ 8-401 to -411 (2015).<sup>1</sup> On March 16, 2022, the MHIC issued a Hearing Order on the Claim. On March 21, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 20, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Hillary Baker, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself.

After waiting more than twenty 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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On April 8, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by certified mail to the Respondent's address on record with the OAH. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for May 20, 2022, at 9:30 a.m., at the OAH, 11101 Gilroy Road, Hunt Valley, MD 21031. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you." The Respondent acknowledged receipt of the Notice by filing a letter with the OAH on April 27, 2022 in response to the Claimant's Claim and Notice.

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.

---

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

## 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 - Contract, July 20, 2020
- Clmt. Ex. 2 - Spreadsheet of payments made, check numbers and dates
- Clmt. Ex. 3 - Siding Contract, August 6, 2021
- Clmt. Ex. 4 - Garage Door Estimate, May 17, 2021
- Clmt. Ex. 5 - Basement Systems USA Contract, December 23, 2020 & Receipt for Payment, April 8, 2021
- Clmt. Ex. 6 - The Chavez Brothers, LLC Estimate, October 23, 2021
- Clmt. Ex. 7 - Finme Flooring Proposal and Contract, April 27, 2022
- Clmt. Ex. 8 - Email Siding Proposal, October 12, 2021
- Clmt. Ex. 9 - Peak Custom Remodeling Contract, September 2, 2021
- Clmt. Ex. 10 - Jerry's Siding Estimate, July 27, 2021
- Clmt. Ex. 11 - Permit Status Inspection History
- Clmt. Ex. 12 - Timeline of Events
- Clmt. Ex. 13 - Email from Anne Eckhoff, July 25, 2020
- Clmt. Ex. 14 - Emails between Claimant and Respondent, December 4, 2020
- Clmt. Ex. 15 - Email from Jack McKone to Respondent, with attached contract, dated January 13, 2021
- Clmt. Ex. 16 - Letter from Claimant to Respondent, August 1, 2021
- Clmt. Ex. 17 - Photo and notes
- Clmt. Ex. 18 - Emails between Claimant and Respondent, September 10, 2021 & September 13, 2021
- Clmt. Ex. 19 - Emails between Claimant and Respondent, September 17, 2021
- Clmt. Ex. 20 - The Chavez Brothers, LLC Report, October 15, 2021
- Clmt. Ex. 21 - Email Report from Peak Custom Remodeling, September 2, 2021
- Clmt. Ex. 22 - Photos

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, April 5, 2022
- Fund Ex. 2 - Hearing Order, March 16, 2022
- Fund Ex. 3 - Letter to Respondent with Claim from HIC, November 19, 2021
- Fund Ex. 4 - Licensee History

Testimony

The Claimant testified and did not present other 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 license number 71858.

2. On July 25, 2020, the Claimant and the Respondent entered into a contract to install a second story addition to the Claimant's home located in Hanover, Maryland. (Contract).

3. The original agreed-upon Contract price was \$39,531.40. There was an addendum to the Contract to upgrade the existing electric box to accommodate the addition which cost \$1,650.00. The total Contract price was \$41,181.40. (Cl. Ex. 1.)

4. The project was to take no longer than three weeks. (Cl. Ex. 13.)

5. The Claimant made the following payments to the Respondent:

- July 25, 2020 - \$13,177.00 (first installment)
- August 24, 2020 - \$12,601.50 (second installment)
- October 7, 2020 - \$2,800.00 (architectural design)
- October 19, 2020 - \$1,650.00 (electrical upgrade)
- March 8, 2021 - \$3,000.00 (partial third installment)

(Cl. Ex. 2.)

6. The Claimant paid an additional \$3,606.95 to purchase windows, paint, trim, carpet and flooring. *Id.*

7. The Claimant paid the Respondent a total of \$36,835.45.



8. On July 29, 2020, demolition began, and the home's roof was removed. A tarp was placed where the roof had been but was not secured.<sup>2</sup>

9. On July 30, 2020 it began to rain. The tarp tore and blew off the house. The Claimant communicated with the Respondent's project manager regarding the tarp.

10. Between July 30 and September 1, 2020 it rained 12 days. The torn tarp was insufficient to repel the rain and water passed into the home causing damage to furniture as well as mold. Each day the Claimant communicated with the Respondent's project manager.

11. The Respondent failed to apply for a building permit. On September 9, 2020, the Claimant applied for a building permit which was issued on September 10, 2020.

12. The Respondent failed to apply for an electrical permit, but one was eventually issued. The project failed electrical inspections on at least twelve occasions. It passed the final electrical inspection on August 19, 2021.

13. The project failed a final building inspection on August 24, 2021.

14. The Claimant made the Respondent aware of the deficiencies in his work throughout the time of the Contract. (Cl. Exs. 14-19.) The Respondent told the Claimant he intended to hire an unlicensed contractor to complete some repairs to his deficient work, but the Claimant rejected that remedy.

15. The Respondent's work had the following deficiencies:

- a. First floor: Sub floor was installed improperly and had points where it caved in and was not level.
- b. Garage door: Installed improperly causing door casing damage; the electrical in ceiling was loose.

---

<sup>2</sup> Findings of Fact 8-12 were derived from Cl. Ex. 12.

- c. Second floor addition: Drywall was not correctly hung in the open space and two bedrooms; caulking was installed incorrectly throughout; outlets were loose with exposed gaps; plaster work was done poorly.
- d. Exterior back of house: Damaged siding; new siding was installed incorrectly; new gutters were installed incorrectly and not correctly attached to fascia; window wrap was installed incorrectly; caulking was applied poorly around key areas.
- e. Exterior side of new addition: Pieces of siding were missing; soffits were missing in areas; no “J” channel in areas; siding was not installed correctly; metal flashing on the side valley of the roof was bent, creating an open gap.
- f. Front exterior: “J” channel was incorrectly installed; front two windows were incorrectly installed and without metal flashing; gutters were installed incorrectly and leaked; soffits in front were installed incorrectly; the roof was laid incorrectly.

(Cl. Exs. 6, 20, 21 & 22.)

16. The cost to repair and correct the Respondent’s unworkmanlike work is \$65,000.00. (Cl. Ex. 6.)

### 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 proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Contract called for the Respondent to build a second story addition to the Claimant’s house. The agreed-upon Contract price was \$39,531.40. However, a Contract addendum providing for electrical upgrade brought the Contract price to \$41,181.40. The project was expected to take three weeks but was not completed after fifteen months. The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. As set forth in Finding of Fact 15, above, the work the Respondent performed was poor and unworkmanlike. The electrical work failed inspection twelve times and numerous other types of inspections failed many times as well. In the end, the project failed the final building inspection. The photographs and estimates the Claimant presented at the hearing demonstrate that the Respondent’s work was poor on all levels and in all areas and would cost \$65,000.00 to remediate.

I thus find that the Claimant is eligible for compensation from the Fund.

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. 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); 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 Respondent performed some work under the Contract, and the Claimant has retained or intends to retain other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's 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.

COMAR 09.08.03.03B(3)(c).

In this case, the following formula applies:

Amount paid to Respondent:	\$36,835.45
Amount to Correct:	+ \$65,000.00
Contract Price:	- \$41,181.40
Actual Loss:	= \$60,654.05

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.<sup>3</sup> In this case, the Claimant's actual loss of \$60,654.05 exceeds \$30,000.00. Therefore, the Claimant's recovery is limited to \$30,000.00.

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$30,000.00 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(2). I further conclude that the Claimant is entitled to recover \$30,000.00 from the Fund. Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2)

### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$30,000.00; 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

---

<sup>3</sup> 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").

under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>4</sup> and

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

August 12, 2022  
Date Decision Issued

*M. Teresa Garland*  
\_\_\_\_\_  
M. Teresa Garland  
Administrative Law Judge

MTG/da  
#198782

---

<sup>4</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 7<sup>th</sup> day of October, 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***