

<p>IN THE MATTER OF THE CLAIM</p> <p>OF OLGA GRANT,</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 BRYAN JONES,</p> <p>T/A BOJ & SONS CONSTRUCTION</p> <p>LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE RACHAEL BARNETT,</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-02-22-01122</p> <p>* MHIC No.: 21.(75) 854</p> <p>*</p>
--	--

* * * * *

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 August 11, 2021, Olga Grant (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 \$15,000 for actual losses allegedly suffered as a result of a home improvement contract with Bryan Jones, trading as BOJ & Sons Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015).¹ On

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

January 12, 2022, the MHIC issued a Hearing Order on the Claim. On January 12, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 14, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. John Hart, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent or the Respondent's representative was not present.

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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On April 7, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States Postal Service certified mail delivery to the Respondent's address on record with the OAH, with the consent of the party. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for June 14, 2022, at 9:30 a.m., at the OAH, 11101 Gilroy Road, Hung Valley, Maryland 21031. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The Notice was returned to the OAH with the notation "returned to sender, unclaimed, unable to forward." The Respondent did not notify the OAH of any change of mailing address, email address, or phone number. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

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 – Respondent's revised contract or construction proposal, September 13, 2020

Clmt. Ex. 2 – Printed text messages between the Claimant and Respondent, September 22, 2020 to December 3, 2020

Clmt. Ex. 3 – Written statement from Claimant's counselor (LCPC), April 5, 2022

Clmt. Ex. 4 – Respondent's original contract or construction proposal, September 11, 2020

Clmt. Ex. 5 – Claimant's letter of complaint, January 13, 2021

Clmt. Ex. 6 – Printed email of confirmation of second or revised contract, September 14, 2020

Clmt. Ex. 7 – Settlement agreement, April 7, 2022

Clmt. Ex. 8 – Printed Facebook conversation between Claimant and Respondent, April 29, 2022

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 – Notice of Hearing, January 31, 2022

Fund Ex. 2 – Hearing Order, January 12, 2022

Fund Ex. 3 – Letter from MHIC to Respondent, November 10, 2021, and attached claim,
August 11, 2021

Fund Ex. 4 – Maryland Department of Labor, I.D. Registration, Home Improvement
Commission and Department of Licensing and Regulation Occupational/Professional License
History, April 6, 2022

Fund Ex. 5 – Notice of Hearing, April 8, 2022

I did not admit any exhibits on the Respondent's behalf.

Testimony

The Claimant testified and did not present other witnesses.

The Respondent was not present and did not testify or present other witnesses.

The Fund 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 5404502.
2. On September 13, 2020, the Claimant and the Respondent entered into a contract to remodel her kitchen, install a French door in the dining room area, repaint the front door and window, and install a Ring doorbell. (Contract).
3. The original agreed-upon Contract price was \$26,000.00.
4. The Contract did not include a start date but indicated the job would be completed within two to three weeks from its start date.
5. The Respondent took measurements in the Claimant's home but did not perform any work.

6. On September 14, 2020, the Claimant paid the Respondent \$3,000.00.
7. On September 22, 2020, the Claimant paid the Respondent \$12,000.00.
8. On September 23, 2020, the Claimant called the Respondent and informed him she would like to cancel the Contract. The Claimant requested a refund and the Respondent agreed.
9. On October 16, 2020, the Respondent paid the Claimant \$2,000.00.
10. The Respondent subsequently repaid the Claimant \$3,000.00 in separate payments of \$2,000.00 and \$1,000.00.
11. The last repayment occurred on December 1, 2020.
12. On December 3, 2020, the Claimant sent the Respondent a text message, inquiring about the \$10,000.00 balance. In response, the Respondent blocked her calls.
13. On April 7, 2022, the Claimant and Respondent entered a written agreement whereby the Respondent would pay the Claimant \$10,000.00 by June 6, 2022.
14. The Respondent did not pay the Claimant any money after entering into the written agreement.

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.

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimant’s recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimant did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1). The Claimant resides in the home that is the subject of the claim or does not own more than three dwellings. *Id.* § 8-405(f)(2). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3). The Claimant is not a relative, employee, officer, or partner of the Respondent, and is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1).

The Respondent did no work and the Claimant asked and the Respondent agreed that she could cancel the Contract. The parties agreed that the Respondent would refund the Claimant’s \$15,000.00 deposit. They initially did not agree to a date by which this would occur. The Claimant communicated with the Respondent in the months following this agreement to facilitate the refund. The Respondent refunded the Claimant a total of \$5,000.00 over three payments but then blocked the Claimant’s calls, which impeded the Claimant’s ability to facilitate any additional reimbursements.

The parties subsequently entered a written agreement whereby the Respondent would refund the Claimant the remaining \$10,000.00 by June 6, 2022. However, the Respondent did

not refund the Claimant (in any amount) since agreeing to do so, and he did not attend the hearing scheduled for June 14, 2022 at the OAH. At the hearing, the Claimant testified that the refund was important to her financially.

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d). Rather, the Claimant was the individual who facilitated efforts to resolve the refund issue. The Respondent ultimately blocked the Claimant's calls, impeding further efforts to resolve the claim. There was a glimmer of hope for the Claimant when the Respondent agreed in writing to refund the remaining \$10,000.00; however, that ultimately did not occur.

Since the Respondent only took measurements and did not perform any home improvements, I find the Respondent performed incomplete home improvements. The Respondent did not do any work, nor did he request to do any work after the Claimant informed him of her desire to cancel the Contract. Rather, he agreed to the cancellation of the Contract and refund of her \$15,000.00 deposit.

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 abandoned the Contract without doing any work. Accordingly, the following formula appropriately measures the Claimant's actual loss: "If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount

which the claimant paid to the contractor under the contract.” COMAR 09.08.03.03B(3)(a). The Claimant paid the Respondent \$15,000.00, of which the Respondent refunded \$5,000.00. Therefore, the remaining outstanding payment is \$10,000.00.

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.² In this case, the Claimant’s actual loss is equal to the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$10,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$10,000.00 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(3)(a). I further conclude that the Claimant is entitled to recover that amount from the Fund. COMAR 09.08.03.03B(3)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$10,000.00; 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

² 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;³ and

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

September 9, 2022
Date Decision Issued

Rachael Barnett

Rachael Barnett
Administrative Law Judge

RAB/ja
#200602

³ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 21st 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.

Joseph Tunney

Joseph Tunney

Chairman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***