IN THE MATTER OF THE CLAIM	*	**BEFORE ALECIA FRISBY TROUT,**
OF WALTER ASK,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	**OAH No.: LABOR-HIC-02-21-25225**
FOR THE ALLEGED ACTS OR	*	**MHIC No.: 21 (75) 887**
OMISSIONS OF KYLE HARRIS,	*	
T/A MARYLAND PROPERTY	*	
RENOVATIONS, LLC.	*	
RESPONDENT	*	

* * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE

On July 1, 2021, Walter Ask (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 $13,500.00 for actual losses allegedly suffered as a result of a home improvement contract with Kyle Harris, trading as Maryland Property Renovations, LLC. (Respondent).[1] On October 22, 2021, the MHIC issued a

[1] Md. Code Ann., Bus. Reg. §§ 8-401 to 411 (2015). Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

Hearing Order on the Claim. On November 2, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On November 4, 2021, the OAH provided a Notice of Hearing (Notice) to the Respondent by certified United States mail delivery to the Respondent's address on record with the OAH. The Notice stated that a hearing was scheduled for February 9, 2022, at 10:00 a.m., at the OAH office in Rockville, Maryland.

On February 9, 2022, I held the hearing as scheduled. The Claimant was present and represented by Elizabeth Morris, Esq. The Respondent was present *pro se*. Nicholas Sokolow, Assistant Attorney General, Department, represented the Fund.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure.[2]

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:

CL Ex. 1 Service Contract, December 1, 2020

CL Ex. 2 Photograph, bathroom floor, January 27, 2021

CL Ex. 3 Letter from the Respondent to the Claimant, received January 29, 2021

CL Ex. 4 Invoice, December 2, 2020

CL Ex. 5 Email from the Respondent to the Claimant, February 5, 2021

[2] Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; and COMAR 28.02.01.

CL Ex. 6 Email from the Claimant to the Respondent, February 5, 2021

CL Ex. 7 Email from the Respondent to the Claimant, February 5, 2021

CL Ex. 8 Letter from the Respondent to the Claimant, received February 15, 2021

CL Ex. 9 Letter from the Claimant's counsel to the Respondent, February 23, 2021

CL Ex. 10 Specifications and Estimates, David's Remodeling Services, LLC, March 8, 2021

I admitted the following exhibits offered by the MHIC Fund:

RESP Ex. 1 *not admitted*

RESP Ex. 2 Email chain between the Claimant, the Respondent and Elizabeth Chan, November 24 30, 2020

I admitted the following exhibits offered by the Fund:

MHIC Ex. 1 Hearing Order, October 22, 2021

MHIC Ex. 2 Notice of Hearing, November 4, 2021

MHIC Ex. 3 Letter from the MHIC to the Respondent, July 9, 2021; Home Improvement Claim Form, June 21, 2021

MHIC Ex. 4 Department I.D. Registration and Licensing History, January 24, 2022

Testimony

The Claimant testified on his own behalf.

The Respondent did not testify or offer any witnesses.

The Fund did not present any 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 numbers 01-116114 and 05-135991.

2. At all relevant times, the Claimant was the owner of a home located on Jacobs Garden Road in Frederick, Maryland (Property), which is his personal residence.

3. The Claimant does not own any other residences or dwelling places.

4. On December 1, 2020, the Claimant and the Respondent entered into a contract to construct a basement mother-in-law suite in the Property (Contract).

5. The original agreed-upon Contract price was $33,000.00, to be paid as follows:

- $13,500.00 due at contract signing;
- $19,500.00 due on completion of the work.

6. On December 1, 2020, the Claimant paid the Respondent $13,500.00.

7. The project was to start on January 11, 2021 and be completed by February 12, 2021.

8. On or about January 27, 2021, the Respondent provided two employees who did minimal work at the Property. The Respondent's employees worked for four hours and performed preliminary work in the bathroom in preparation for plumbing work. The requisite plumbing permit was not in place at the time this work was completed.

9. The Respondent did not perform any additional work at the Property.

10. On January 29, 2021, the Claimant received a letter from the Respondent. In the letter, the Respondent stated that he was "formally cancelling our current contract." The Respondent provided an invoice for $9,290.00 with the letter.

11. The Claimant hired David's Remodeling Services, LLC (David's) to do the work described in the Contract. The Claimant paid David's $38,500.00 and David's completed the work, including completing the unpermitted plumbing preparation work that the Respondent's employees started.

12. The Claimant is not an officer or employee of the Respondent, related to the Respondent, or related to an officer or employee of the Respondent.

13. The Claimant has no other pending claims related to this matter and has not otherwise recovered for any losses connected to the Claim.

DISCUSSION

LEGAL FRAMEWORK

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence.[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.[4]

A claimant may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor . . . ."[5] "'[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement."[6] The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest.[7]

Certain claimants are excluded from recovering from the Fund altogether. In this regard, a claimant must prove that: (a) the claimant resides in the home as to which the claim is made, or owns no more than three residences or dwelling places; (b) 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; (c) the work at issue did not involve new home construction; (d) the claimant did not unreasonably reject the contractor's good faith effort to resolve the claim; (e) the claimant complied with any contractual arbitration clause before seeking compensation from the Fund; (f) 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;

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[3] Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3).
[4] *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).
[5] 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.").
[6] Bus. Reg. § 8-401.
[7] Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

and (g) 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.[8]

The undisputed evidence in this case establishes that the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant and, there are no *prima facie* impediments barring the Claimant from recovering from the Fund. *Id.* For the following reasons, I find that the Claimant has proven eligibility for compensation.

THE MERITS OF THIS CASE

The facts of this case are undisputed. The Respondent was a licensed contractor at the time he entered into the Contract with the Claimant to construct a mother-in-law suite in their basement. The Contract price was $33,000.00 and was supposed to be completed in one month between January 11, 2021 and February 12, 2021. The Respondent did not start work on January 11, 2021. On January 27, 2021, two employees of the Respondent arrived at the Property unannounced. The employees worked two hours in the morning and two hours in the afternoon and dug a small hole in the basement, exposing a portion of a pipe. The Respondent did not acquire the requisite plumbing permit prior to doing that work. Neither the Respondent nor any employees of the Respondent returned to the Property to perform work. On January 29, 2021, the Respondent cancelled the Contract by letter. The Claimant hired David's to construct the mother-in-law suite in the basement. The Claimant paid David's $38,500.00 and David's completed the work. The Respondent did not offer any evidence or testimony to dispute these facts.

Based on the foregoing, I find that the Respondent performed incomplete, inadequate, and unworkmanlike home improvements. I thus find that the Claimant is eligible for compensation from the Fund. The Fund agrees.

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[8] Bus. Reg. §§ 8-405(c), (d), (f), and (g), 8-408(b)(1); Md. Code Ann., Bus. Reg. § 8-101(g)(3)(i) (Supp. 2020).

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.

MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. The first formula is applicable when a contractor abandons the contract without performing any work.[9] In this case, the Respondent performed some work, but because that work has not been given value, this formula is the most applicable.

The Respondent performed some work under the Contract, and the Claimant hired another Contractor to complete or remedy that work. The Fund argued that it would apply the third formula. Given the minimal nature of work performed by the Respondent, and the fact that even that task was unpermitted and incomplete, $13,500.00 is the amount owed by the Respondent to the Claimant.

The Respondent did not make an argument about the value of the work completed at the Property on January 27, 2021. The Claimant provided evidence showing that David's had to do all of the work included in the original Contract and therefore, the Fund argued, and I agree, that there be no value ascribed to the unpermitted work completed on January 27, 2021.

Therefore, I recommend that the Claimant's actual loss be calculated as follows:

	$13,500.00 paid to and on behalf of the Respondent under the Contract
- $	$0.00 the value of materials and services provided by the Respondent
	$13,500.00 recommended actual loss

The Business Regulation Article caps a claimant's recovery at $20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.[10] In this case, the Claimant's actual loss is

[9] COMAR 09.08.02.03(a).
[10] Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

both less than $20,000.00 and not more than the amount paid to the Respondent. Therefore, the Claimant is entitled to recover his actual loss of $13,500.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $13,500.00 as a result of the Respondent's acts or omissions.[11] I further conclude that the Claimant is entitled to recover that amount from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $13,500.00; 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 under this Order, plus annual interest of ten percent as set by the Maryland Home Improvement Commission;[12] and

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

Alecia Frisby Trout

May 3, 2022
Date Decision Issued

Alecia Frisby Trout
Administrative Law Judge

AFT/at
#197964

[11] Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3).
[12] *See* Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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.

I Jean White

I Jean White
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION