

IN THE MATTER OF THE CLAIM	* BEFORE MARY PEZZULLA,
OF DAN HILL,	* 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 ANYA MESTANZA,	*
T/A LS HOME IMPROVEMENT LLC,	* OAH No.: LABOR-HIC-02-23-13708
RESPONDENT	* MHIC No.: 22 (75) 1215

\* \* \* \* \*

**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 10, 2022, Dan Hill (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$3,188.30 for actual losses allegedly suffered as a result of a home improvement contract with Anya Mestanza, trading as LS Home Improvement LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).<sup>2</sup> On May 10, 2023, the MHIC issued a Hearing Order on the Claim.

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<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).  
<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

On May 22, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On August 2, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. 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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On June 8, 2023, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States Postal Service (USPS) Certified Mail, as well as by USPS regular mail to the Respondent's address on record with the OAH. COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for August 3, 2023, at 9:30 a.m., at the OAH in Hunt Valley, Maryland. COMAR 09.08.03.03A(2). The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The USPS did not return the Domestic Return Receipt, commonly referred to as the green card to the OAH indicating that the Certified Mail had been delivered, nor did it return the Certified Mail as undeliverable, unclaimed, or for any other reason. Additionally, the USPS did not return the Notice sent by regular mail to the OAH as undeliverable or for any other reason. The Respondent did not notify the OAH of any change of mailing address. 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; 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 - Narrative of events, undated
- Clmt. Ex. 2 - Letter from the Respondent to whom it may concern, June 7, 2022
- Clmt. Ex. 3 - Contract between Dan and Tonya Hill and the Respondent, signed November 8, 2021; Email exchange between the Claimant and the Respondent, November 2, 2021
- Clmt. Ex. 4 - Copy of check no. 5840 made payable to the Respondent in the amount of \$5,500.00, November 20, 2021; Copy of check no. 5834 made payable to the Respondent in the amount of \$5,500.00, November 9, 2021
- Clmt. Ex. 5 - Truist account statement, February 17, 2022; Receipt for payment of \$177.87 to Joel H., January 14, 2022
- Clmt. Ex. 6 - Sundeck Supply Inc invoice, February 8, 2022
- Clmt. Ex. 7 - Text message exchange between the Claimant and the Respondent, March 14-29, 2022
- Clmt. Ex. 8 - Seven photographs of the Claimant's deck, taken by Mrs. Hill in January 2022

The Respondent did not appear and did not offer any exhibits.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, June 8, 2023; MHIC Hearing Order, May 10, 2023

Fund Ex. 2 - Respondent's licensing history with the MHIC, July 17, 2023

Fund Ex. 3 - Letter from the MHIC to the Respondent, August 26, 2022, with attached Home Improvement Claim Form, August 5, 2022

Testimony

The Claimant presented the testimony of his wife, Tonya Hill.

The Respondent did not appear and did not offer any testimony.

The Fund did not present any 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 under MHIC license numbers 01-119785 and 05-137993.
2. On November 8, 2021, the Claimant and the Respondent entered into a contract to build and install a 225-square-foot stone patio with polymeric sand between the pavers, to build a deck around two sides of the Claimant's pool, and to relocate existing steps on the existing deck (Contract).
3. The Contract was broken into two parts, the deck proposal, and the patio proposal.
4. The deck proposal had an agreed-upon contract price of \$13,500.00, which included the labor and materials to:

- Obtain a permit for the deck
- Build a new deck around two sides of the pool with the deck dimensions of 30' x 10' and 42' x 8'
- Install 20 6' x 6' posts
- Install 2' x 10' beams
- Install hanger and hurricanes
- Install Trex decking board
- Install two sets of steps, one on each deck
- Relocate steps on the existing deck

- Install fascia board around deck
- Install weed barrier under deck

5. The patio proposal had an agreed-upon contract price of \$7,500.00, which included the labor and materials to:

- Prepare the area for the patio, including leveling the area and putting down gravel and sand before installing the stone
- Install a 225 square-foot-stone patio with the same stone to match the patio near the pool
- Install polymeric sand between the pavers

6. On November 9, 2021, the Claimant paid the Respondent an initial deposit of \$5,500.00. The Claimant made a second payment to the Respondent on November 20, 2021 in the amount of \$5,500.00.

7. The Respondent began working on the patio in November 2021 and completed the patio portion of the Contract on or about December 20, 2021.

8. In late November 2021, Anne Arundel County informed the Respondent that it would not issue the permit for the new decks. The Claimant attempted to appeal the denial of the permit but was also not successful in obtaining the required permit.

9. When it became clear that the deck portion of the Contract could not be performed because the permit could not be obtained, the Claimant and Respondent agreed to cancel the portion of the Contract regarding the two new decks, but agreed that the Respondent would still move the existing deck steps. By this time, the Claimant had already paid the Respondent \$11,000.00 – \$7,500.00 of which was for the patio work, leaving a balance of \$3,500.00.

10. The parties orally agreed that the Claimant would pay the Respondent \$500.00 for his efforts to obtain the permit since he had expended time to do so, although ultimately the

county denied the permit, and \$500.00 to move the existing deck steps, for a total of \$1,000.00.

The Respondent was to refund the Claimant \$2,500.00.

11. On or about December 24, 2021, the Respondent began moving the steps from the existing deck. The Respondent informed the Claimant that he was waiting on brackets that he ordered in order to complete the step relocation.

12. The Respondent did not complete the step relocation, nor did he refund the Claimants the agreed upon \$2,500.00.

13. In January 2022, the Claimant used Task Rabbit to hire an MHIC licensed handyman, Joel Higdon, to complete the step relocation.

14. The work the Respondent had performed on the step relocation had to be redone. The Respondent left holes in the existing posts, meaning they had to be replaced so water did not enter and rot the wood underneath, the steps were not flush or level with the deck, at least one bracket was left open, and another was cracked, and the fascia was not properly installed and had gaps and spacing.

15. The Claimant paid Mr. Higdon a total of \$659.12, plus a tip of \$18.75 to complete the step relocation and to correct the Respondent's work.

16. The Claimant also purchased materials for Mr. Higdon to use. The Claimant purchased a cap and brackets for the steps from Sundeck Supply Inc. for a total of \$88.30.

17. In a letter dated June 7, 2022, in response to the Claimant's MHIC Claim, the Respondent stated that he was willing to refund the Claimant \$3,188.00, as requested in the Claim.

## 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); State Gov't § 10-217; 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 Cnty. 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) (Supp. 2023); *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) (2015 & Supp. 2023). 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) (Supp. 2023). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2023). 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) (Supp. 2023).

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023). It is clear from the undisputed testimony that the Claimant attempted to work with the Respondent to have the step relocation portion of the Contract completed. The Respondent agreed to return \$2,500.00 to the Claimant, but never did so, nor did he return to complete the step relocation.

The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. Through no fault of the Respondent, Anne Arundel County would not issue the permit for the completion of the deck proposal portion of the contract. By the time this was known to the parties, the Claimant had already paid the Respondent \$11,000.00. \$7,500.00 of the monies paid was for the installation of the stone patio, which the Respondent completed. When it became apparent that the deck portion of the project could not be completed, the parties agreed that the Claimant would pay the Respondent \$500.00 for his attempts to obtain the denied permit and \$500.00 to relocate the existing deck stairs. The Respondent was to refund the Claimant \$2,500.00.

It is uncontested that the Respondent began the deck step relocation but did not complete the work. The Respondent told the Claimant that he was waiting on brackets that he had ordered for the project to be delivered. However, the work that had been performed by the Respondent was unworkmanlike. The Claimant submitted photographs taken in January 2023 of the deck steps. (Clmt. Ex. 8). The photographs show holes randomly drilled into the post, the steps not flush with the deck, and the fascia boards with gaps and holes. Mrs. Hill testified that she and her husband tried to get the Respondent to return and complete the step relocation and to refund the agreed upon \$2,500.00, but that the Respondent never returned to the property and did not refund the money.



Mrs. Hill explained that in January 2022, she used Task Rabbit, an online service, to find a licensed handyman, Mr. Higdon, to complete the step relocation. She made an initial payment through Task Rabbit in the amount of \$177.87, which included a tip to Mr. Higdon of \$18.75.<sup>3</sup> She explained that Mr. Higdon returned to the property two additional times in February 2022 to complete the step relocation and that the Claimant paid Mr. Higdon directly, rather than through Task Rabbit. The Claimant paid Mr. Higdon \$310.00 on February 2, 2022 and \$190.00 on February 10, 2022. On February 8, 2022, Mrs. Hill purchased materials at Sundeck Supply Inc. for Mr. Higdon to use, including a new cap and rail brackets, for a total of \$88.30.

It is clear from Mrs. Hill's testimony, as well as the photographs submitted as Claimant Exhibit 8, that the Respondent left the step relocation project incomplete and that the work he did perform was unworkmanlike. Although no expert testimony was provided, it is obvious from the photographs that there were random holes drilled into the step posts, the steps were not even or flush with the deck, and the fascia was gaping and uneven. This, on its face, is unworkmanlike. 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) (Supp. 2023); 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.

In this case, the Respondent performed some work under the Contract, and the Claimant retained another contractor to complete or remedy that work. However, there is also the issue of

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<sup>3</sup> Mrs. Hill testified that she and the Claimant were not seeking reimbursement for the tip amount of \$18.75, as that was their choice to tip Mr. Higdon for his good service.

the cancellation of the deck portion of the Contract, the new agreement for \$1,000.00 for the effort to obtain the deck permit and to relocate the steps, and the agreement for the Respondent to refund the Claimants \$2,500.00. Because of this, none of the following three regulatory formulas is appropriate in this case:

(a) 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.

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

(c) 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)(a)-(c). Accordingly, I shall apply a unique formula to measure the Claimant's actual loss.

The Claimant paid the Respondent a total of \$11,000.00. The Respondent completed the patio portion of the Contract, which the Contract valued as \$7,500.00. This leaves a remainder of \$3,500.00<sup>4</sup> that the Claimant had paid to the Respondent by the time it was learned that the deck portion of the Contract could not be completed. The parties then agreed that since the Respondent had spent time and effort in his attempt to obtain the deck permit, the Claimant would pay the Respondent \$500.00 for this effort. The parties also agreed that the Claimant would pay the Respondent \$500.00 for him to still move the steps of the existing deck. This is

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<sup>4</sup> \$11,000.00 - \$7,500.00 = \$3,500.00.

evidenced by Mrs. Hill's testimony, as well as a letter written by the Respondent noting that "We were agreed to refund \$2,500 of the \$3,500 paid already for [the] deck job as [the Claimant] mentioned...Also we agreed to move the stairs from [the] existing deck." (Clmt. Ex. 2). The letter ends with the Respondent stating, "We are willing to pay what [the Claimant] is asking \$3,188...." (Clmt. Ex. 2).

Mrs. Hill also testified that the Claimant is seeking to recover the \$2,500.00 that the Respondent agreed to refund to the Claimant, and also the cost of finishing and correcting the deck step relocation. The Claimant purchased a cap and brackets from Sundeck Supply Inc, for \$88.30. (Clmt Ex. 6). The Claimant made a payment to Task Rabbit for Mr. Higdon's work in the amount of \$159.12.<sup>5</sup> (Clmt. Ex. 5). The Claimant then made two Zelle payments directly to Mr. Higdon for \$310.00 and \$190.00. (Clmt. Ex. 5). For supplies and labor, the Claimant paid a total of \$747.42.<sup>6</sup>  $\$747.42 + \$2,500.00 = \$3,247.42$ .

The Claimant explained that he is now seeking an award of \$3,247.42. Mrs. Hill further explained that when the Claimant completed the MHIC claim seeking an award of \$3,188.30, he did not have the exact amounts that he had paid to Mr. Higdon in front of him and used an estimate. The Fund argued that the Claimant's actual loss is \$3,247.42, that he should be permitted to orally amend his Claim, and that he is entitled to an award of that full amount.

I find that the Claimant's reimbursement is limited to \$3,188.30, the amount he requested in the Claim, because it is the only amount of which the Respondent was notified, and the Claimant never amended the Claim in a way in which the Respondent could respond.<sup>7</sup> The APA

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<sup>5</sup> The Claimant paid a total of \$177.87, which included a tip of \$18.75.  $\$177.87 - \$18.75 = \$159.12$ .

<sup>6</sup>  $\$88.30 + \$159.12 + \$310.00 + 190.00 = \$747.42$ .

<sup>7</sup> See COMAR 09.08.03.02C noting that once a claim has been filed with the MHIC, the claimant may not amend the claim unless the claimant can show that he did not know or reasonably could not have known the facts on which the amendment is based on at the time the claim was filed, or that the amendment of the claim would not prejudice the respondent.

provides that “[a]n agency shall give reasonable notice of the agency’s action.” Md. Code Ann., State Gov’t § 10-207 (2021). The Supreme Court of Maryland has often reiterated that “[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”” *Barrie-Peter Pan Sch., Inc. v. Cudmore*, 261 Md. 408, 420-21 (1971) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950)). Accordingly, pursuant to principles of due process and basic fairness to the Respondent, the Claimant should not be awarded more than he requested in the original Claim. Without an opportunity to respond to the Claimant’s request to amend his claim, I find the Respondent would be prejudiced if the Claimant were allowed to recover more than he requested in his original Claim.

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>8</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant’s actual loss is less than the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover their actual loss of \$3,188.30.

#### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$3,188.30 as a result of the Respondent’s acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405

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<sup>8</sup> On or after July 1, 2022, the increased cap is applicable to any claim 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”).

(2015 & Supp. 2023); COMAR 09.08.03.03B(3). I further conclude that the Claimant is entitled to recover \$3,188.30 from the Fund.

**RECOMMENDED ORDER**

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


**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$3,188.30; 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 (10%) as set by the Maryland Home Improvement Commission;<sup>9</sup> and

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

October 11, 2023  
Date Decision Issued

MP/ds  
#206652

  
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Mary Pezzulla  
Administrative Law Judge

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<sup>9</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 9<sup>th</sup> day of November, 2023, 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***