IN THE MATTER OF THE CLAIM	*	BEFORE JOCELYN L. WILLIAMS,
OF BRIAN BISHOP,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	OAH No.: LABOR-HIC-02-22-29139
FOR THE ALLEGED ACTS OR	*	MHIC No.: 22 (75) 1400
OMISSIONS OF GUADENCIO	*	
MEDEROS,	*	
T/A G & J GENERAL	*	
CONTRACTORS, LLC,	*	
RESPONDENT	*	

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

PROPOSED DECISION

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STATEMENT OF THE CASE

On August 24, 2022, Brian Bishop (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)[1] Guaranty Fund (Fund) for reimbursement of $19,250.00 for actual losses allegedly suffered as a result of a home improvement contract with Guadencio Mederos, trading as G & J General Contracting, LLC (Respondent). Md. Code Ann.,

[1] The MHIC is under the jurisdiction of the Department of Labor (Department).

Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).[2] On November 21, 2022, the MHIC issued a Hearing Order on the Claim. On November 28, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 23, 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 was not present or represented.

After waiting 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 December 14, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States 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 February 23, 2023, at 9:30 a.m., at the OAH in Hunt Valley, MD. 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 United States Postal Service did not return the Notice to the OAH. 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.

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

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 - Contract between the Claimant and the Respondent, dated May 28, 2020

Clmt. Ex. 2 - Claimant's SunTrust Bank Statement for June 2020

Clmt. Ex. 3 - Cancelled check from the Claimant made payable to G & J Contractors in the amount of $19,250.00, dated June 11, 2020

Clmt. Ex. 4 - Email exchange between the Claimant and the Respondent, dated June 27, 2022, July 1, 2022, July 21, 2022, August 5, 2022, and August 8, 2022

Clmt. Ex. 5 - MHIC Claim Form, dated August 16, 2022

Clmt. Ex. 6 - MHIC Compliant Form, undated

The Respondent did not offer any exhibits.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - OAH Notice of Hearing, December 14, 2022

Fund Ex. 2 - Hearing Order, November 21, 2022

Fund Ex. 3 - MHIC letter to the Respondent, September 20, 2022; Home Improvement Claim Form, August 24, 2022

Fund Ex. 4 - Licensing information for the Respondent, October 15, 20219

Testimony

The Claimant testified and did not present other witnesses.

The Respondent did not present 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 registered with the MHIC under No. 137767, and was a licensed home improvement contractor under MHIC license number 114753, expiration date October 15, 2025.[3]

2. On May 28, 2020, the Claimant and the Respondent entered into a contract to build a two-story addition to the Claimant's home, to include construction of a mudroom, construction of a master bedroom on the second floor above the mudroom, and the conversion of a first-floor powder room to a full bathroom. (Contract).

3. The original agreed-upon Contract price was $47,000.00.

4. On June 11, 2020, the Claimant paid a deposit of $19,250.00 to the Respondent.

5. The work on the project was to begin after the county approved the building permit and was estimated to take approximately eight weeks to complete.

6. There were delays in obtaining the building permits due to the COVID-19 pandemic. The Claimant obtained the building permits in March or April 2022.

7. No work was ever commenced on the project.

8. The Respondent did not return the Claimant's deposit of $19,250.00.

[3] The Respondent was originally licensed on October 15, 2019, renewed on October 27, 2021, and remains effective through October 15, 2025.

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. 2022); *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. 2022). 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. 2022). 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. 2022). 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. 2022).

The Claimant testified regarding the Contract he entered into with the Respondent to construct a two-story addition to his home, to include a first-floor mudroom, and second-floor

master bedroom, and the conversion of a powder room into a full bathroom on the first floor. He explained that he paid the Respondent a deposit of $19,250.00, and that the work was scheduled to commence as soon as the building permits were obtained from the county. The Claimant stated that as a result of the COVID-19 pandemic, it was very difficult to obtain the permits. He explained that once the permits were eventually obtained, the Respondent was unresponsive, after repeated attempts to contact him; therefore, he contacted the MHIC to file a complaint and the Claim in this case.

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022). On the contrary, the Claimant exchanged numerous emails with the Respondent in an attempt to settle the claim. The Respondent acknowledged in an email to the Claimant on June 27, 2022, that due to the increase in price of materials, he was no longer able to honor the Contract. (Clmt. Ex. 4). The Respondent agreed to return $12,950.00 of the deposit to the Claimant, representing the balance of the deposit paid, minus expenses paid for the blueprints and topography site plan for the project. The Claimant agreed to the settlement; however, the Respondent did not return any portion of the deposit.

I find the Respondent performed an incomplete home improvement, because he received a deposit from the Claimant, never performed any work under the Contract, and kept the Claimant's deposit. I also find that the Claimant reasonably concluded that the Respondent abandoned the Contract, because the Respondent stated in an email to the Claimant "because of the price in the materials, we don't (sic) gonna (sic) be able to help you with the project." (Clmt. Ex. 4). The Respondent did not perform any work under the Contract. 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. 2022); 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 evidence is clear that the Claimant paid the Respondent a deposit of $19,250.00 due at the time the Contract was signed, as specified under the Contract. The deposit is documented through a cancelled check made payable to the Claimant. (Clmt. Exs. 2 and 3).

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.[4] Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). 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 their actual loss of $19,250.00.

[4] 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").

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $19,250.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3)(a). I further conclude that the Claimant is entitled to recover $19,250.00 from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $19,250.00; 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 (10%) as set by the Maryland Home Improvement Commission;[5] and

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

Jocelyn L. Williams

May 12, 2023
Date Decision Issued

Jocelyn L. Williams
Administrative Law Judge

JLW/ja
#204735

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

PROPOSED ORDER

WHEREFORE, this 26th day of June, 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.

Lauren Lake

Lauren Lake
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION