IN THE MATTER OF THE CLAIM	*	**BEFORE SUSAN A. SINROD,**
OF ARYVETTA DUNSTON,	*	**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 OMER TURKOGLU,	*	
T/A ATLANTIC TILE KITCHEN AND	*	**OAH No.: LABOR-HIC-02-22-08945**
BATH DESIGN CENTER-	*	**MHIC No.: 22 (75) 144**
ANNAPOLIS, LLC.	*	
RESPONDENT	*	

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PROPOSED DECISION

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STATEMENT OF THE CASE

On November 16, 2021, Aryvetta Dunston (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 $12,608.69 for actual losses allegedly suffered as a result of a home improvement contract with Omer Turkoglu, t/a Atlantic Tile Kitchen and Bath Design Center-Annapolis LLC (Respondent). Md. Code

Ann., Bus. Reg. §§ 8-401 to -411 (2015).[1] On April 15, 2022, the MHIC issued a Hearing Order on the Claim. On April 18, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 27, 2022, I conducted a hearing via Webex. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Eric London, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself.

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. COMAR 28.02.01.23A. On April 22, 2022, the OAH sent a Notice of Hearing (Notice) to the Respondent by certified and regular mail to the Respondent's address on record with the Department. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for June 27, 2022, at 9:30 a.m., via Webex. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you." The Notice also provided information regarding how to access the Webex hearing.

The United States Postal Service returned the Notice that was sent by certified mail to the OAH with the notation "Vacant." The United States Postal Service also returned the Notice sent by regular mail, with the notation "Return to Sender, Vacant, Unable to Forward." The Respondent did not notify the Department or the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent did not request a postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the OAH provided proper notice of the

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

hearing to the Respondent, 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

The Claimant submitted the following exhibits, which were admitted into evidence:

Cl. Ex. #1- Contract, dated April 13, 2021

Cl. Ex. #2- Complaint Form, signed July 23, 2021

Cl. Ex. #3- Description of Pictures, and ten photographs, undated

Cl. Ex. #4- Text messages between the Claimant and the Respondent, varying dates

Cl. Ex. #5- Proposal Contract, Tony's Home Improvement Systems, LLC, signed on September 10, 2021

Cl. Ex. #6- Copies of checks from the Claimant to Tony's Home Improvement Systems, LLC, dated September 13, and September 23, 2021

Cl. Ex. #7- Proposal Contract, Tony's Home Improvement Systems, LLC, signed on September 27, 2021

Cl. Ex. #8- Check from the Claimant to Tony's Home Improvement Systems, LLC, dated October 27, 2021

Cl. Ex. #9- Additional Adjustments for Bathroom Remodel, undated; receipt from Choice Floor Center, dated September 10, 2021;[2] receipt from Lowe's Home Centers, LLC, dated September 13, 2021

Cl. Ex.10- Detailed Description of what has transpired and what remains to be done, undated; Overview for Guarantee Fund, dated December 6, 2021

The Respondent did not appear or offer any exhibits.

The Fund submitted the following exhibits, which were admitted into evidence:

Fund Ex. #1- Notice of Remote Hearing, dated April 22, 2022

Fund Ex. #2- Hearing Order, dated April 15, 2022

Fund Ex. #3- Licensing history of the Respondent, dated May 17, 2022

Fund Ex. #4- Home Improvement Claim Form, received December 7, 2021

Fund Ex. #5- Letter from the MHIC to the Respondent, dated December 13, 2021

Fund Ex. #6- Checks from the Claimant to the Respondent, dated April 15, 2021 and June 1, 2021

Testimony

The Claimant testified and presented testimony from Anthony Long from Tony's Home Improvement Systems, LLC.

The Respondent did not appear to testify.

The Fund did not present any witness 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 number 01-140145.

[2] The date of this invoice, which is typewritten, has a line through it as if to strike it out.

2. On April 13, 2021, the Claimant and the Respondent entered into a contract, wherein the Respondent agreed to demolish and remodel the Claimant's master bathroom. (Contract).

3. The original agreed-upon Contract price was $21,000.00.

4. Pursuant to the Contract, the Respondent was to demolish the vanity, vanity top, shower wall tile, shower floor tile, general floor tile, tub, toilet and shower door. The Respondent then agreed to install a vanity, vanity top, vanity faucet, tub with jacuzzi, shower door, shower floor tile, shower wall tile, general floor tile, accent tile on shower wall and around the tub, grout, trim, install a recessed light in the shower, install customer supplied fixtures and an electric line for the jacuzzi.

5. The Contract stated that the work would begin on April 20, 2021, with an estimated completion date of June 15, 2021.[3]

6. On April 15, 2021, the Claimant paid the Respondent $12,000.00. On June 1, 2022, the Claimant paid the Respondent $6,000.00.

7. The work began on May 26, 2021.

8. The Respondent completed the demolition.

9. The Respondent installed the shower tile in a manner that the tiles were offset and crooked. The Respondent agreed that it was done improperly. The Respondent demolished the shower and reinstalled the tile.

10. One of the Respondent's workers broke a tile on the newly installed bathroom floor, which needed to be replaced. The Respondent could not find the identical tile. He told the

[3] The Contract actually stated that the estimate completion date was June 15, 2020, which was clearly a typographical error.

Claimant that he would bring a sample tile from his office to replace the broken tile, but he never did.

11. The Respondent never installed the toilet or the shower doors. The toilet was never delivered.

12. The Respondent ordered a vanity that was the same size as the vanity the Claimant already had; however, it should have been smaller to allow for access to the new jacuzzi tub for servicing.

13. The Contract called for the Claimant to provide the water faucets and fixtures for the shower. The Claimant requested that the Respondent preserve the water fixtures removed in the demolition to be reinstalled. The Respondent kept the shower head but not the control fixtures.

14. The Respondent never installed the jacuzzi tub.

15. The Contract called for the Claimant to provide the replacement tub faucet. With the assistance of the Respondent's workers, the Claimant purchased a faucet that was not appropriate for her jacuzzi tub. The Respondent then advised the Claimant regarding which faucet to purchase from a special vendor, which she did. However, that faucet did not allow water to clear the tub because there was not enough overhang.

16. By the week of July 16, 2021, the Respondent had not completed any item under the Contract. An entire week went by during which the Respondent did not appear at the Claimant's home at all, despite attempts by the Claimant to contact him. The Respondent returned to the Claimant's home on or about July 23, 2021, but the Claimant told him that at that point, she no longer wanted him to finish the work under the Contract.

17. On September 10, 2021, the Claimant entered into a contract with Tony's Home Improvement Systems, LLC (Tony's) to complete the work the Respondent never finished. Tony's is a licensed home improvement contractor.

18. In order for Tony's to complete the work, the Claimant had to buy additional materials. She could only use two out of the three sections of the vanity. She paid for a new vanity top that the Respondent never provided. She had to purchase new water fixtures for the shower.

19. The Claimant paid Tony's $4,100.00 on September 13, 2021, and $5,700.00 on September 23, 2021.

20. On September 27, 2021, the Claimant entered into another contract with Tony's, for some additional items attributable to the Respondent's incomplete work, including replacement of the tub faucet, unclogging the shower which became clogged due to debris, adjusting the water temperature for the shower, and installing customer provided accessories. The Claimant paid Tony's $550.00 on October 27, 2021 to complete the additional work.

21. Mr. Long had to replace the tile floor because there was no identical replacement for the broken tile. The Claimant paid Choice Floor Center $1,409.69 for new tile.

22. The Claimant paid $210.94 to Lowes for the new shower fixtures.

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 Claimant testified that the Respondent completed the demolition with no problems. She explained all of the subsequent issues with the Respondent's work, including the uneven tiles in the shower, the broken tile on the bathroom floor, the Respondent's failure to install the vanity, tub, shower doors and the toilet. The vanity was too big. He never provided the replacement for the broken tile as promised, which resulted in the floor having to be completely replaced. The toilet never arrived. The Respondent did not preserve the shower fixtures as

requested, and the Claimant had to buy new fixtures to finish the project. As of July 16, 2021, the Respondent had abandoned the project.

The Claimant presented multiple photographs. One depicted that the Respondent never installed the tub, tub fixtures and surrounding wall. Cl. Ex. 3, photograph 4. The Respondent left debris all over the Claimant's bedroom. Cl. Ex. #3, photograph 11. The Respondent left holes in the walls and plaster unrepaired. Cl. Ex. #3, photographs 6, 7 and 10.

After the Respondent's crew failed to show up to work on the project for one week in July 2021, the Claimant tried to contact the Respondent, who never returned her texts and phone calls. She ultimately reached him, and he told her that he was short on workers which was why no one had been there the previous week. The project had been going on for eight weeks, and the Claimant still did not have a bathroom. She had been sleeping in her basement. At that point, the Claimant told the Respondent not to come back to the job, and she requested a refund. The Respondent did not refund any money to the Claimant.

The Claimant hired Tony's to complete the project. Anthony Long from Tony's testified on the Claimant's behalf. When he first inspected the property, he found trash everywhere. He saw the broken tiles, and the tub was not framed. There was no grout in the tiles. The Respondent installed the floor inadequately; it was not properly glued or screwed. The floor moved when Mr. Long walked on it. Mr. Long had to replace the floor. He framed and reset the tub. He built the access to the jacuzzi tub. He had to fix the electrical access to the jacuzzi because it was at the wrong end of the tub. The plumbing was incorrect. In the shower, when Mr. Long first ran water, the drains were clogged from trash and debris and Mr. Long had to unclog the drain. He had to regrout and seal the shower, as well as install the shower door.

According to Mr. Long, the Respondent did not complete anything he was supposed to do under the Contract. Mr. Long also cleaned up the mess the Respondent left in the Claimant's bedroom.

The Claimant's evidence established that the Respondent performed unworkmanlike, inadequate, and incomplete home improvement. I found her testimony and that of Mr. Long to be very credible. Her photographs corroborated her testimony and depicted the incomplete and inadequate work she described. Cl. Ex. #3. Mr. Long testified in detail regarding what he discovered regarding the work the Respondent completed inadequately as well as the work the Respondent failed to complete. I conclude 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's 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 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).

The Claimant paid a total of $18,000.00 to the Respondent. She paid $10,350.00 to Tony's, $1,409.69 to Choice Floor Center for new flooring, and $210.94 ($199.00 + 6% tax $11.94). Added together, the Claimant has paid a total of $29,970.63 for the work that the Respondent was supposed to complete. I did not include the $450.00 she claimed for the section of the vanity that she could not use, because she did not present evidence of the cost of the vanity or the value of the unused portion. Additionally, I did not include $200.00 for the tub faucet because the Claimant did not provide a receipt for the cost of that item. Therefore, the total amount the Claimant paid ($29,970.63) minus the Contract price ($21,000.00) leaves $8,970.63 as the Claimant's actual loss.

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] In this case, the Claimant's actual loss is less than the amount she paid to the Respondent and less $30,000.00. Therefore, the Claimant is entitled to recover her actual loss of $8,970.63.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $8,970.63 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405

[4] 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").

(2015); COMAR 09.08.03.03B(3)(c). 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 $8,970.63; 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.

Susan Sinrod

September 14, 2022
Date Decision Issued

Susan A. Sinrod
Administrative Law Judge

SAS/cj
#199978

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

PROPOSED ORDER

WHEREFORE, this 7th day of November, 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.

Lauren Lake

Lauren Lake
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION