IN THE MATTER OF THE CLAIM	*	**BEFORE SUN E. CHOI,**
OF INGRID GUZMAN,	*	**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 AMILCAR BENITEZ,	*	
T/A SHALOM HOME SOLUTIONS,	*	
LLC,	*	**OAH No.: LABOR-HIC-02-22-08925**
RESPONDENT	*	**MHIC No.: 22 (75) 199**

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

PROPOSED DECISION

STATEMENT OF THE CASE

On January 19, 2022, Ingrid Guzman (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 $18,370.00 for actual losses allegedly suffered due to a home improvement contract with Amilcar Benitez, trading as Shalom Home Solutions, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015).[1] On April 15,

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

2022, the MHIC issued a Hearing Order on the Claim. On April 15, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 30, 2022, I held a hearing at the OAH in Rockville, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Eric London, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself.

After waiting fifty-five[2] minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Applicable law permits a hearing to proceed 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 25, 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 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for June 30, 2022, at 10:00 a.m., at the OAH, in Rockville, Maryland. 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, email address, and/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.

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[2] Mr. London mistakenly appeared at the OAH in Hunt Valley, Maryland, rather than at the OAH in Rockville, Maryland. The hearing began as soon as Mr. London arrived at the OAH in Rockville, Maryland at 10:50 a.m.

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:[3]

Clmt. Ex. 1 - Home Depot Receipt for Whirlpool Heater, April 13, 2021

Clmt. Ex. 2 - Home Depot Receipt for Whirlpool Bathtub, April 14, 2021

Clmt. Ex. 3 - Photographs of bathtub, sink, door, toilet, and trash, undated

Clmt. Ex. 4 - Michael & Son Services Estimate, December 28, 2021

Clmt. Ex. 5 - Shalom Home Solutions, LLC, Contract with Claimant, March 31, 2021

Clmt. Ex. 6 - Claimant's Bank Transfer and Request Activity, March 31, 2021, through April 15, 2021

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, April 25, 2022

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

Fund Ex. 3 - Letter from David Finneran, Executive Director, MHIC, regarding the Respondent's licensing history, May 17, 2022

Fund Ex. 4 - Claim Form, January 19, 2022

Fund Ex. 5 - Department's Notice to Respondent regarding Claim, February 15, 2022

[3] I left the record open until 4:30 p.m. on June 30, 2022, to allow the Claimant to offer evidence of payments made to Mr. Camille Lebonzo, a subsequent contractor who performed the bathroom renovations. The Claimant did not submit any additional evidence other than what was offered and admitted at the hearing.

Testimony

The Claimant testified and did not present other witnesses.

The Fund did not present any witnesses.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Claimant's home is located at 11001 Easecreast Drive, Silver Spring, Maryland 20902 (home); this is the Claimant's primary residence.

2. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license numbers 01-118499 and 05-137256.

3. On March 31, 2021, the Claimant and the Respondent entered into a contract for home improvements that consisted of the demolition of one existing bathroom and the creation of two new bathrooms, the installation of a small Trex deck, and the installation of a new gutter (Contract).

4. The original agreed-upon Contract price was $7,452.00.

5. On March 31, 2021, the Claimant paid the Respondent $2,484.00. (Clmt. Ex. 6).

6. The Contract stated that work would be completed between April 5, through April 15, 2021.

7. The Respondent performed the work on the gutter.

8. The Respondent did not perform any work on the Trex deck.

9. After the demolition of the existing bathroom, the Respondent abandoned the home improvement project in mid-April 2021.

10. The Claimant is not related to the Respondent and/or his business, Shalom Home Solutions, LLC.

11. The Claimant has no other pending cases against the Respondent.

DISCUSSION

Burden of Proof and Legal Framework

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. 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 seeks an actual loss in the amount of $18,370.00,[5] which is less than the recovery cap.

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[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").

[5] This amount was listed in the Claimant's Claim filed with the Fund. (Fund Ex. 4).

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 and/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). For the following reasons, I find that the Claimant has proven eligibility for compensation from the Fund.

Analysis

The Claimant and the Respondent entered into a home improvement Contract on March 31, 2021. The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. (Fund Ex. 3). The home improvement Contract involved the demolition of the existing bathroom and the creation of two new bathrooms, the installation of a small Trex[6] deck, and the installation of a new gutter.

On March 31, 2021, the Claimant paid to the Respondent $2,484.00 to begin work. (Clmt. Ex. 6). The Respondent completed the work on the gutter, which was $252.00 and is not a part of this Claim. (Clmt. Ex. 5). The Claimant testified that she did not recall paying cash for the Respondent's work on the gutter. Therefore, other than $2,484.00, the Claimant did not pay an additional $252.00 for the gutter work portion of the Contract. The Respondent did not perform any work on the Trex deck.

[6] Trex is type of flooring. (Clmt. Ex. 5).

The Claimant testified that during the demolition of the existing bathroom, the Respondent damaged the whirlpool bathtub heater. The Respondent informed the Claimant of the damage, offered to pay for a new bathtub heater or credit her the amount she would have to pay to replace it. The Claimant purchased a new whirlpool bathtub heater that cost $210.94. (Clmt. Ex. 1). In addition, the Claimant explained that the old bathtub was to be removed, and a new one installed. The Claimant informed the Respondent of the bathtub that she wanted, but the Respondent was not able to find the same bathtub. The Claimant testified that the cost of the bathtub was included in the Contract price, despite that the Contract states clearly that materials are not included. (Clmt. Ex. 5). Although the Claimant paid $465.34 for a new bathtub, (Clmt. Ex. 2), I find it more likely than not that the cost of a new bathtub is not an expense borne by the Respondent pursuant to the Contract.

The Claimant presented evidence of the Respondent's unworkmanlike work after he abandoned the home improvement project after the demolition. The Respondent damaged a door, fan, and lighting. (Clmt. Ex. 3). She testified that she did not try to find another contractor to repair the damages.

In addition, during the demolition, the Respondent left significant debris and trash all over the Claimant's home and bathroom, which appeared to be dangerous as well as unsightly. (Clmt. Ex. 3). She presented photographs of the trash that the Respondent left at the Claimant's home. *Id.* The Claimant hired and paid for trash removal. However, the Claimant did not provide any name or the amounts she paid to have the trash removed. The Claimant testified that she spent money to clean out the air conditioner and the trash left by the Respondent, but she did not realize she needed to provide proof of payment at this hearing. I left the record open to allow the

Claimant to submit receipts or proof of payments. The Claimant did not provide any additional evidence on this issue by the close of the record.

The Claimant's repeated requests by telephone and emails to the Respondent to finish the Contract were unsuccessful. The Respondent indicated that he would come back tomorrow or state, "I'm coming" and never show up. As a result of the Respondent's unworkmanlike work, the Claimant was not able to use her bathroom for a long time until it was finally repaired by a subsequent contractor.

Approximately four days after the Respondent abandoned the home improvement project in mid-April 2021, a plumber appeared unannounced at the Claimant's home, to pick up his tools and equipment. The Claimant testified that she did not expect him, was on her way out, but allowed him to pick up his tools and equipment. When she asked about the trash that the Respondent left at her home, the plumber responded that he was only picking up his tools and equipment and left.

Based on the testimony presented, I find that the Respondent abandoned the home improvement project. I also find that the Respondent did not make any good faith efforts to resolve the claim. *Id.* § 8-405(d).

The Claimant testified that another contractor named Camille Lebonzo worked to finish the home improvement project left by the Respondent. She received a referral from a neighbor and believed that the Contractor was licensed. The Claimant testified that she entered into an oral contract with Camille Lebonzo. The Claimant explained that the cost was more than the original Contract price and that she had to pay for the materials. The new contractor installed a new bathtub, a new shower, a new sink, a new toilet, and put tiles on the walls. Although the Claimant made Zelle payments to the new contractor, she was not able to produce any exhibits in

support thereof at the hearing or after the hearing when the record was left open to provide her time to submit those payments.

Based on the evidence before me, the Respondent performed unworkmanlike, inadequate, or incomplete home improvements. I found the Claimant's testimony credible. Although the Claimant was distraught about the entire experience, she presented her case calmly and did the best she could to explain her experience with the Respondent. I find that the Claimant is eligible for compensation from the Fund.

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. COMAR 09.08.03.03B(3). The Respondent did some of the work pursuant to the Contract but based on the evidence it had no value because it was demolition. In addition, the Respondent agreed to pay or reimburse the Claimant for a bathtub heater that was damaged during demolition.

I calculate the unique measurement as follows:

Claimant's Payment to Respondent	$2,484.00
Whirlpool Bathtub Heater Replacement	+ $210.94
Gutter Work Completed by Respondent	- ($252.00)
Total Actual Loss	= $2,442.94

The Claimant did not provide any additional evidence or proof of payment to a subsequent contractor to perform the work that the Respondent was contracted to do but failed to do. As such, there are no other payments that the Claimant is entitled to.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $2,442.94 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). I further conclude that the Claimant is entitled to recover $2,442.94 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2015); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $2,442.94; 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;[7] and

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

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

September 9, 2022
Date Decision Issued

Sun E. Choi
Sun E. Choi
Administrative Law Judge

SEC/cj
199343

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