

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF ROBIN GROSS,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF BRYAN JONES, T/A</b></p> <p><b>BOJ &amp; SONS CONSTRUCTION, LLC,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE MICHELLE W. COLE,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>* </b></p> <p><b>* </b></p> <p><b>* OAH No.: LABOR-HIC-02-22-24893</b></p> <p><b>* MHIC No.: 22 (75) 244</b></p> <p><b>* </b></p>
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**PROPOSED DECISION**

STATEMENT OF THE CASE  
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SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On December 10, 2021, Robin Gross (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$11,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Bryan Jones, trading as BOJ & Sons Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).<sup>2</sup> On September 16, 2022, the MHIC issued a

<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor.

<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

Hearing Order on the Claim. On September 23, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 30, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407(a). John Hart, Assistant Attorney General, Department of Labor (Department), represented the Fund. The Claimant represented herself. The Respondent failed to appear at 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 October 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 28.02.01.05C(1). The Notice stated that a hearing was scheduled for January 30, 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 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 and did not contact the OAH to explain his failure to appear. COMAR 28.02.01.16. I determined that the Respondent failed to appear after he received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05C; COMAR 28.02.01.23A.

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 an unworkmanlike, inadequate or incomplete home improvement by the Respondent?
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 Claimant Statement, undated
- Cl. Ex. 2 Contract, March 9, 2019; Invoice, April 30, 2019; Receipts, various dates
- Cl. Ex. 3 Photographs, undated
- Cl. Ex. 4 Text messages between the Claimant and the Respondent, various dates
- Cl. Ex. 5 Email from the Claimant to the Respondent, June 28, 2021
- Cl. Ex. 6 Not Admitted<sup>3</sup>
- Cl. Ex. 7 Invoice, RC Home Renovation, January 23, 2023; Photographs, undated
- Cl. Ex. 8 District Court of Maryland for Anne Arundel County Judgment, May 25, 2022; Case Summary, May 26, 2022

The Respondent did not offer any exhibits for admission into evidence.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 Notice of Hearing, October 25, 2022
- Fund Ex. 2 Letter from the Department to the Claimant, July 21, 2022
- Fund Ex. 3 Hearing Order, September 16, 2022
- Fund Ex. 4 Letter from the Department to the Respondent, December 23, 2021; Home Improvement Claim Form, November 5, 2021
- Fund Ex. 5 MHIC Inquiry, January 29, 2023

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<sup>3</sup> A copy of this exhibit was retained by me with the record in this matter.

Testimony

The Claimant testified and did not present other witnesses.

The Respondent did not testify nor offer any other witnesses.

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 the MHIC.

2. On March 9, 2019, the Claimant and the Respondent entered into a contract (Contract) to renovate the Claimant's bathroom.

3. The original agreed-upon Contract price was \$4,500.00.

4. The Respondent agreed to perform the following work under the Contract:

- Demo everything
- Frame and build a new custom shower (new stud wall infrastructure to support ceramic tiles, "mold-tough" drywall, plumbing and shower diverter fixtures)
- Deliver and install a new 48"x36"x74" level-1 "sand" ceramic tile shower surround and flooring
- Install a new 48" glass shower door with contemporary frame
- Install a new vanity, plumbing, hardware and exhaust fan
- Install a new medicine cabinet
- Install a new light bar
- Install a new toilet
- Finish/prime and paint the bathroom area with "Behr" semi-gloss paint. Accent colors designated by the client

(Cl. Ex. 2).

5. The Respondent agreed to complete the work under the Contract within two weeks from the start.

6. The Respondent started work in May 2019 and completed the work in July 2019.

7. The Claimant paid the Respondent \$4,500.00 according to a payment schedule, with the final payment issued to the Respondent in July 2019.

8. The Respondent failed to install waterproofing materials under the shower tile on the walls and floor of the shower. He installed the tile directly onto the drywall and flooring. As a result, the shower was not usable. Over time, the drywall backing deteriorated and leaked through the tile, leaving an orange residue in the shower basin.

9. When the Respondent stopped working at the Claimant's property, there were visible deficiencies in the work, including:

- The glass shower door did not remain closed
- Orange residue leaked from the shower walls
- Excess sealant and grout remained on the shower door frame, the base of the toilet, the floor tiles, and the door entrance
- The floor tiles were uneven
- Cuts remained in the door frame
- The towel rack was not securely attached to the wall
- The drywall was not finished
- The shower drain was not centered
- The back of the vanity cabinet was damaged during installation

The Claimant reported these deficiencies to the Respondent.

10. The Respondent returned to the Claimant's property to correct these deficiencies in July 2019. He replaced two cracked floor tiles and adjusted the shower doors, but failed to resolve all deficiencies.

11. The Respondent sent an employee in May 2021 to make repairs, which did not occur.

12. The Claimant informed the Respondent that she was hiring another contractor to repair the Respondent's work.

13. The Respondent agreed to make payments to the Claimant according to a payment plan in order to reimburse the Claimant for the repairs to the bathroom. No payments were made.

14. On May 25, 2022, the District Court of Maryland for Anne Arundel County entered a judgment in the Claimant's favor against the Respondent for \$5,000.00. As of the hearing date, the Respondent had not made any payments to satisfy the judgment.

15. The Claimant hired RC Home Renovation to correct deficiencies and complete the following work on the Claimant's bathroom:

- Demolish entire bathroom
- Remove existing door and install 24" door with casing
- Make new shower with concrete and shower liner
- Install new shower faucet
- Make new niche
- Install hardie backer board on shower walls and bathroom floor
- Repair all imperfections on all walls. Apply two coats of finish paint on all walls and ceiling.
- Add new recessed light above shower
- Reinstall vanity with new top and toilet
- Install new medicine cabinet, light above vanity, shower door, and all bathroom accessories

(Cl. Ex. 7). The cost to complete the above work was \$8,863.74.

### DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., 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." Md. Code Ann., 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.” Md. Code Ann., Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

*Actual Loss – Prima Facie Impediments*

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.<sup>4</sup> Md. Code Ann., 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 did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022).

*Actual Loss - Unworkmanlike, Inadequate, or Incomplete Home Improvement by the Respondent*

The Claimant presented evidence showing that she entered into the Contract with the Respondent to renovate the Claimant’s bathroom. The Claimant presented photographs and testified in some detail regarding her concerns about the Respondent’s workmanship. She

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<sup>4</sup> As of the date of the hearing, the Claimant had not recovered any money from the Respondent based on the District Court Judgment.

submitted an invoice with photographs prepared by RC Home Renovation depicting errors in the Respondent's work and the work required to repair and complete the bathroom renovation. Even though there was no expert testimony on this issue, I found the photographs and descriptions to establish the poor quality of the Respondent's work. The photographs, accompanied by explanations from the Claimant, clearly show substantial deficiencies in the home improvement work. The Claimant identified the problems she observed with the Respondent's work and presented an invoice setting forth the work that was required to correct the Respondent's deficient work. The Respondent failed to appear after being sent proper notice of the hearing, and the evidence in this case is undisputed.

Based on this evidence, I find that the Respondent's home improvement work was unworkmanlike and inadequate. The Respondent failed to properly install the shower and bathroom amenities and did not waterproof the walls or floor in the shower area. The drain was not correctly placed above the drainage pipe to support proper water flow. The tile was uneven and broken. Accordingly, the Claimant has established that the Respondent performed home improvement work in the Claimants' bathroom in an unworkmanlike and inadequate manner. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405. I find that the Claimant is eligible for compensation from the Fund.

#### *Compensation*

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. Md. Code Ann., Bus. Reg. § 8-405(e)(3) (Supp. 2022); COMAR



09.08.03.03B(1). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work:

(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). However, none of these formulas appropriately measure the Claimant's actual loss.

The Respondent did not abandon the contract without doing any work, so that formula is inapplicable. COMAR 09.08.03.03B(3)(a). The Claimant paid the total amount due under the Contract and paid another contractor to repair the Respondent's work and complete the renovation of the bathroom. However, it appears that the work performed by the new contractor included additional work that was not included in the Contract. Further, the Fund raised the question of whether the new contractor was licensed under the MHIC. It argued that, in calculating an award to the Claimant, if the contractor was not licensed by the MHIC, it would be inappropriate to include funds paid to RC Home Renovation. Legislative policy is designed to encourage contractors to be licensed and to discourage homeowners from using unlicensed contractors. Indeed, a homeowner may recover compensation from the Fund only for an actual

loss resulting from an act or omission by a *licensed* contractor. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(a). If the Respondent had not been licensed by the MHIC, the Claimant would have been barred from asserting its claim against the Fund. Moreover, if the Respondent had been unlicensed when he performed the work, he would have committed a misdemeanor crime and been subject to a fine of \$1,000.00 or imprisonment not exceeding six months, or both, for a first offense. *Id.* § 8-601. Under these circumstances, I do not find the formulas under subsections (b) and (c) to be applicable to this circumstance. COMAR 09.08.03.03B(3)(b); COMAR 09.08.03.03B(3)(c). I conclude that this “particular claim requires a unique measurement” of actual loss. COMAR 09.08.03.03B(3).

I find the appropriate measure of the Claimant’s compensable actual loss to be the amount paid to the Respondent under the Contract. The condition of the Respondent’s work required complete demolition and reconstruction. As such, the Claimant received no value for the amount paid to the Respondent. Accordingly, I find that the amount of the Claimant’s actual loss is \$4,500.00, the amount paid to the Respondent under the Contract.

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>5</sup> Md. Code Ann., 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 her actual loss of \$4,500.00.

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<sup>5</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”).

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$4,500.00 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). I further conclude that the Claimant is entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015 & Supp. 2022); COMAR 09.08.03.03B(3); COMAR 09.08.03.03D(2)(a).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$4,500.00; 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 (10%) as set by the Maryland Home Improvement Commission;<sup>6</sup> and

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

April 24, 2023  
Date Decision Issued

*Michelle W. Cole*  
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Michelle W. Cole  
Administrative Law Judge

MWC/dlm  
#204628

<sup>6</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 24<sup>th</sup> day of May, 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**