IN THE MATTER OF THE CLAIM	*	**BEFORE BRIAN PATRICK WEEKS,**
OF OLUSEUN ODEYALE,	*	**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 JEFFERSON	*	
BARIOTO,	*	**OAH No.: LABOR-HIC-02-22-06120**
T/A JLB REMODELING LLC,	*	**MHIC No.: 22 (75) 25**
RESPONDENT	*	

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PROPOSED DECISION

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STATEMENT OF THE CASE

On September 3, 2021, Oluseun Odeyale (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 $16,687.50 for actual losses allegedly suffered as a result of a home improvement contract with Jefferson Barioto, trading as JLB Remodeling LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to

-411 (2015).[1] On March 2, 2022, the MHIC issued a Hearing Order on the Claim. On March 17, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 16, 2022, 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 represented himself. The Respondent failed to appear.

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 March 29, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail, return receipt requested. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for May 16, 2022, at 9:30 a.m., at the OAH in Hunt Valley. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The OAH received a signed copy of the return receipt acknowledging receipt of the Notice on April 6, 2022. 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; and COMAR 28.02.01.

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

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 - Estimate, March 18, 2021

Clmt. Ex. 2 - Check image, printed July 6, 2021

Clmt. Ex. 3 - Emails between the Claimant, Natasha Adams (the Claimant's wife), and the Respondent, various dates

Clmt. Ex. 4 - Emails between the Claimant's wife and Howard County Department of Inspections, various dates

Clmt. Ex. 5 - Texts between the Claimant's wife and the Respondent, various dates

Clmt. Ex. 6 - Invoice, April 1, 2021

Clmt. Ex. 7 - Email from the Respondent to the Claimant's wife with attached executed Invoice, May 6, 2021

Clmt. Ex. 8 - Email from the Respondent to the Department, November 18, 2021

Clmt. Ex. 9 - Email from Jisoo Kim, Esquire, to the Claimant, February 9, 2022

Clmt. Ex. 10 - Letter from Samuel D. Williamowsky, Esquire, to the Claimant with attached court filings from the Circuit Courts for Howard and Carroll Counties, April 6, 2022

The Respondent failed to appear and did not offer any documents.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing with attached Hearing Order, March 29, 2022

Fund Ex. 2 - Respondent's licensing history, accessed May 11, 2022

Fund Ex. 3 - Letter from the Fund to the Respondent with attached Claim, September 10, 2021

Testimony

The Claimant testified and did not present other witnesses.

The Respondent failed to appear and thus did not testify.

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.

2. On or around April 1, 2021, the Claimant and the Respondent entered into a contract to demolish an existing deck, and build a sunroom and a concrete patio (Contract).

3. The original agreed-upon Contract price was $33,375.00.

4. The Contract did not specify when the work would begin.

5. On April 2, 2021, the Claimant paid the Respondent $16,687.50.

6. The Respondent never began the work required by the Contract.

7. On June 17, 2021, the Claimant emailed the Respondent and informed him that, due to delays in the start of work, he had decided to withdraw from the Contract and requested a refund of the deposit.

8. On July 19, 2021, the Respondent emailed the Claimant that "[a]ll transactions are pending from the distributors." The Respondent did not communicate with the Claimant after this date and never returned the deposit.

9. The Claimant obtained a judgment against the Respondent, but has not been able to collect the judgment amount to date.

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.

The evidence shows that the Respondent abandoned the Contract. The Claimant and Respondent executed the Contract on April 1, 2021. The following day, the Claimant paid a deposit of $16,687.50 to the Respondent. The Respondent never commenced the work required by the Contract. Frustrated by the delay, the Claimant terminated the Contract on July 19, 2021, and requested that the Respondent refund the deposit. The Respondent never returned the deposit. 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.[2] MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the

[2] 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); COMAR 09.08.03.03B(1).

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). Here, the Claimant paid $16,687.50 to the Respondent as a deposit. Therefore, the actual loss is $16,687.50.

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.[3] 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 his actual loss of $16,687.50.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $16,687.50 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)(a). 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 $16,687.50; and

[3] 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").

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;[4] and

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

Brian Patrick Weeks

July 7, 2022
Date Decision Issued

Brian Patrick Weeks
Administrative Law Judge

BPW/dlm
#199376

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

PROPOSED ORDER

WHEREFORE, this 19th day of August, 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