

IN THE MATTER OF THE CLAIM	* BEFORE LORRAINE E. FRASER,
OF VERNETTA FIELDS,	* 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 ROBERT JACKSON,	*
T/A PRECISION WORKS, LLC,	* OAH No.: LABOR-HIC-02-23-23296
RESPONDENT	* MHIC No.: 22 (75) 561

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On January 24, 2023, Vernetta Fields (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$20,259.73 for actual losses allegedly suffered as a result of a home improvement contract with Robert Jackson, trading as Precision Works, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 – 411 (2015 & Supp. 2023).² On August 31, 2023, the MHIC issued a Hearing Order on

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

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

the Claim. On September 1, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On October 17, 2023, I held a hearing at the OAH office in Salisbury, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Nicholas Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself.

After waiting more than 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 September 14, 2023, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail and certified mail to the Respondent's address on record with the OAH: 7813 Locris Court, Upper Marlboro, Maryland 20772. COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for October 17, 2023, at 10:00 a.m., at the OAH office in the District Court Multi-Service Center, 201 Baptist Street, Room 3381, Salisbury, 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 that was sent by regular U.S. mail to the OAH. The Notice that was sent by certified mail was returned to the OAH with the notation "unclaimed." A September 29, 2023, check of the Respondent's driving record with the Maryland Motor Vehicle Administration showed the Respondent's current address to be the same as the address to which OAH sent the notice of hearing. The Respondent did not notify the OAH or MHIC 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 & Supp. 2023); 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, 3/30/21
- Clmt. Ex. 2 Bank of America Regular Checking Account Activity Transaction Details, 3/25/21, 4/5/21
- Clmt. Ex. 3 Letter from the Claimant to the Respondent, 7/31/21
- Clmt. Ex. 4 Estimate from John Krause Construction, Inc., MHIC #130184, 3/14/22
- Clmt. Ex. 5A-O Photographs of the Respondent's completed work in the basement, taken 10/23/21

The Respondent did not offer any exhibits.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 Notice of Hearing, 9/14/23
- Fund Ex. 2 Hearing Order, 8/31/23
- Fund Ex. 3 Letter from the MHIC to the Respondent, 1/31/23; Home Improvement Claim Form, 1/24/23
- Fund Ex. 4 The Respondent's licensing history, 9/29/23
- Fund Ex. 5 Affidavit of David Finneran, Executive Director, MHIC 9/29/23

Testimony

The Claimant testified and presented the testimony of her husband Carl Fields.

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 a licensed home improvement contractor under MHIC license number 01-109972 and 05-132767.

Subsequently, the Respondent's MHIC license expired on September 10, 2021.

2. On March 30, 2021, the Claimant and the Respondent entered into a contract to replace water damaged walls and flooring in the Claimant's finished basement (Contract).³

3. The original agreed-upon Contract price was \$12,209.73, of which \$10,208.70 was for the work in the basement.⁴

4. The Respondent began work on the project March 24, 2021, and finished working on April 2, 2021.

5. On March 24, 2021, the Claimant paid the Respondent \$6,104.86. The Respondent cashed the Claimant's check on March 25, 2021.

6. On April 2, 2021, the Claimant paid the Respondent \$6,104.86. The Respondent cashed the Claimant's check on April 5, 2021.

7. The Claimant paid the Respondent a total of \$12,209.72.

³ The Contract also included work in the living room and master bedroom that is not at issue in this case.

⁴ The price for the work in the living room and master bedroom totaled \$2,001.03.

8. The Respondent cut and removed the water damaged drywall on the lower portions of the walls in the basement. He installed new drywall and joined the seams together, installed new baseboards, and painted the walls. He also installed flooring.

9. The Respondent's drywall work was lumpy and uneven. His painting was sloppy with visible drips running down the wall and thick globs of paint.

10. Between April 5, 2021, and July 13, 2021, the Claimant and her husband tried to contact the Respondent by telephone and letter. The Respondent never responded to the Claimant or her husband.

11. On April 9 or 10, 2021, the Respondent's wife told the Claimant on the phone that the Respondent was not coming back.

12. On March 14, 2022, the Claimant hired John Krause Construction to repair the work performed by the Respondent.

13. The Claimant paid \$8,050.00 to repair the work originally performed by the Respondent.

14. The Claimant's actual loss is \$8,050.00.

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 (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 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. 2023); *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 Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. Under the Contract, the Respondent was to repair water damage to the walls and floor in the Claimant’s finished basement. The Respondent performed the work, but his work was unworkmanlike and incomplete. Specifically, the Respondent’s work on the drywall was lumpy and uneven. His painting work was sloppy, with visible drips running down the wall and thick globs of paint.

The Claimant attempted to contact the Respondent to ask him to repair his work; however, he did not return her calls or otherwise respond to her calls and letter. The Respondent’s wife told the Claimant that the Respondent would not return. Thus, I find the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023).

The Claimant does not have any statutory impediments barring her from recovering from the Fund. *See* Bus. Reg §§ 8-405(c), (f), (g), and 8-408(b) (2015 & Supp. 2023).

Therefore, I 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. 2023); 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.

The Respondent performed work under the Contract, and the Claimant has retained another contractor to 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's actual loss is calculated according to the formula as follows:

Original contract price for basement	\$10,208.07
Cost to repair poor work	<u>+8,050.00</u>
	.\$18,258.07
Minus original contract price	<u>-10,208.07</u>
Actual loss	\$8,050.00

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.⁵ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$8,050.00.

⁵ 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 \$8,050.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$8,050.00 from the Fund. Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); 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 \$8,050.00; 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;⁶ and

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

December 14, 2023
Date Decision Issued

Lorraine E. Fraser

Lorraine E. Fraser
Administrative Law Judge

LEF/ja
#208766

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

PROPOSED ORDER

WHEREFORE, this 9th day of January, 2024, 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.

Heather Connellee

Heather Connellee

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***