

<p>IN THE MATTER OF THE CLAIM</p> <p>OF SEBASTIAN TRON,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF JOSHUA PERSKY,</p> <p>T/A PERSKY CUSTOM BUILDERS,</p> <p>LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE JOCELYN L. WILLIAMS,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* </p> <p>* </p> <p>* </p> <p>* OAH No.: LABOR-HIC-02-23-01539</p> <p>* MHIC No.: 22 (75) 985</p> <p>* </p>
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**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 July 22, 2022, Sebastian Tron (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$207,504.94 for actual losses allegedly suffered as a result of a home improvement contract with Joshua Persky, trading as Persky Custom Builders, LLC (Respondent). Md. Code Ann., Bus.

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

Reg. §§ 8-401 to -411 (2015 & Supp. 2022).<sup>2</sup> On January 6, 2023, the MHIC issued a Hearing Order on the Claim. On January 17, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 15, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Catherine Villareale, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent was not present or represented.

After waiting more than 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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On January 31, 2023, 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 March 15, 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.<sup>3</sup> 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.

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

<sup>3</sup> After the hearing, on March 28, 2023, the OAH received returned mail from the USPS, marked "return to sender, not delivered as addressed, unable to forward." The OAH Docket Specialist forwarded the returned mail to MHIC and asked how it wishes to proceed. To date no response has been received from the MHIC. The Respondent has an obligation to update his address with the MHIC.

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 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. A - Architectural Drawings by Donny Ankri Architects, undated
- Clmt. Ex. B - Contract between the Claimant and the Respondent, dated November 3, 2020; Change Order Agreement between the Claimant and the Respondent, dated February 19, 2021; Change Order Agreement between the Claimant and the Respondent, dated December 28, 2020
- Clmt. Ex. C - Respondent's MHIC Licensing Information on first page of Contract, undated
- Clmt. Ex. D - Report form Walus Engineering, LLC, authored by Kelly Walus, dated January 22, 2021
- Clmt. Ex. E - Baltimore County Department of Permits, Approvals, and Inspections- Building Permit, dated February 25, 2021
- Clmt. Ex. F - Receipt of Payment to the Respondents for \$5,200.00, dated June 10, 2021
- Clmt. Ex. G - Email from the Respondent to the Claimant, dated June 29, 2021; summary of payments for cost of Project, undated
- Clmt. Ex. H - Photographs of the abandoned Project, undated; notarized affidavit from Gerson Feit, dated March 12, 2023, with attached photograph of truck loaded with trash bags; notarized affidavit from Rodeny Hakimi, dated March 12, 2023; notarized affidavit from Jack Goenberg, dated March 13, 2023; notarized affidavit from Ira Goodman, dated March 12, 2023

- Clmt. Ex. I - Email exchange between the Claimant and Gold Star Construction with estimate, dated June 30, 2021 and July 7, 2021; Estimate from M & A Contractors, Inc., dated July 13, 2021
- Clmt. Ex. J - Engineering Report from Walus Engineering, LLC, dated July 29, 2021
- Clmt. Ex. K - Invoice for Walus Engineering Report, dated July 29, 2021
- Clmt. Ex. L - Estimate from Robert Butler and Ira Goodman, dated July 21, 2021; Estimate from Prime Renovations, LLC, dated July 29, 2021; Estimate from DR Contracting, LLC, dated July 29, 2021
- Clmt. Ex. M - Email exchange between the Claimant and Engineering by Trencos, dated July 21, 2021 and August 4, 2021; Professional Certification by Engineering by Trencos and Truss Drawings prepared by Truss Engineering Co., dated June 29, 2021
- Clmt. Ex. N - Notice of Intent to Claim a Lien by Cardoso Carpentry, LLC, dated September 29, 2021
- Clmt. Ex. O - Subcontractor Release from Cardoso Carpentry, LLC, dated November 24, 2021
- Clmt. Ex. P - Invoices from Schaefer Siding and Exteriors, dated June 25, 2021 and November 30, 2021
- Clmt. Ex. Q - Contract between the Claimant and Robert Butler and Ira Goodman (Butler-Goodman), dated July 30, 2021; payment accounting from Butler-Goodman, dated July 13, 2022
- Clmt. Ex. R - Goldman Sachs Bank USA Loan Agreement, dated July 20, 2021; SoFi Lending Corp. Loan Agreement, dated October 1, 2021
- Clmt. Ex. S - Complaint to Maryland Insurance Administration Appealing the Denial of Coverage, undated; Letter from Golden State Claims Adjusters to the Claimant, dated October 5, 2021; Salman Insurance Services, Inc. Certificate of Liability Insurance, dated August 17, 2020
- Clmt. Ex. T - Letter from the MHIC to the Claimant, dated May 2, 2022; Letter from the Claimant to the MHIC, dated July 12, 2022, with attached Contract between the Claimant and Robert Butler and Ira Goodman (Butler-Goodman), dated July 30, 2021 and Claim Form, dated July 1, 2022; duplicate copy of Contract between the Claimant and Robert Butler and Ira Goodman (Butler-Goodman), dated July 30, 2021; payment accounting from Butler-Goodman, dated July 13, 2022
- Clmt. Ex. U - Photographs of completed project, undated; notarized affidavit from Roden Hakimi, dated March 12, 2023

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

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Letter to the Respondent from the MHIC, dated August 19, 2022; Claim, dated July 1, 2022
- Fund Ex. 2 - Hearing Order, dated January 6, 2023
- Fund Ex. 3 - OAH Notice of Hearing, issued January 31, 2023
- Fund Ex. 4 - MHIC Licensing History for the Respondent, dated March 14, 2023

Testimony

The Claimant testified and did not present other witnesses.

The Respondent did not testify or present any witnesses.

The Fund did not testify or 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 0119246. The Respondent was licensed from October 3, 2019 through October 3, 2021. His license is currently expired.
2. The Claimant's property subject to this matter is located in Baltimore, Maryland and is the Claimant's residence (the Property).
3. On November 3, 2020, the Claimant and the Respondent entered into a contract to construct an addition and remodel several sections of the Property, including the kitchen and several bathrooms (Contract).
4. The original agreed-upon Contract price was \$178,475.00.
5. On November 3, 2020, the Claimant paid the Respondent an initial payment of \$1,333.00.

6. On November 10 2020, the Claimant paid the Respondent \$30,000.00, representing a portion of the project deposit due under the Contract.
7. On November 19, 2020, the Claimant paid the Respondent \$1,500.00 towards the remodeling of the bathrooms.
8. On November 24, 2020, the Claimant paid the Respondent \$4,500.00, representing an additional portion of the project deposit, due under the Contract.
9. On November 29, 2020, the Claimant paid the Respondent \$1,000.00.
10. On December 3, 2020, the Claimant paid the Respondent \$4,500.00, the remaining portion of the project deposit due under the Contract.
11. On December 28, 2020, the Claimant and the Respondent entered into a Change Order Agreement for \$7,020.06 to cover the increased cost of lumber needed for framing.
12. On January 7, 2021, the Claimant paid the Respondent \$544.54 for materials and \$1,167.00 as an additional payment towards the project.
13. To obtain the building permits, the Respondent hired and received a structural engineering report from Walus Engineering, dated January 22, 2021. The report provided instructions on how to construct the foundation and other structural supports for the project.
14. On February 25, 2021, the Baltimore County Department of Permits, Approvals, and Inspections approved the Building Permit for the Property.
15. On February 18, 2021, the Claimant and the Respondent entered into a Change Order Agreement for \$7,000.00 to add to the scope of the project, to include demolishing the existing laundry in the basement and expanding the bedroom into that space, fully refinishing the basement bedroom and raising the ceiling, building a new laundry room on the second floor, install sound retardant insulation in all 3<sup>rd</sup> floor ceilings, and relocate an office to the third floor.

16. On February 24, 2021, the Claimant paid the Respondent \$5,420.06 as an additional payment towards the project.
17. On March 10, 2021, the Claimant paid the Respondent \$12,588.63, representing the second draw payments under the terms of the Contract.
18. On or around March 17, 2021, the Respondent began work on the Property.
19. On April 7, 2021, the Claimant paid the Respondent \$8,000.00 as a deposit for the bathroom and laundry room.
20. On April 23, 2021, the Claimant paid the Respondent \$4,000.00 as an advance to fund joists.
21. On May 13, 2021, the Claimant paid the Respondent \$8,588.63 as an advancement under the Contract.
22. On June 10, 2021, the Claimant paid the Respondent \$5,200.00 as an additional payment under the Contract.
23. At some point after June 10, 2021, the subcontractors stopped coming to the Property to perform work.
24. On June 28, 2021, the Claimant contacted the Respondent to discuss the status of the project. The Respondent expressed that he was having some financial difficulties, but that he would complete the project.
25. On June 29, 2021, the Claimant received an email from the Respondent, in which he stated that he was going out of business and could not continue to work on the project.
26. The Respondent did not perform any additional work on the project after June 29, 2021.

27. The Respondent abandoned the project leaving the Claimant without a kitchen and without several bathrooms which had been demolished, with cables hanging from the ceiling, and with construction material and trash littering the property.

28. The Claimant paid the Respondent a total of \$88,341.86 under the Contract.

29. Sometime after June 29, 2021, the Claimant hired Walus Engineering to obtain an assess the structural work performed by the Respondent.

30. On July 29, 2021, Walus Engineering produced a structural engineering report which noted several structural deficiencies with the Respondent's construction of the roof trusses.

31. The Claimant received estimates from Butler-Goodman, Prime Renovations, LLC, and DR Contracting, LLC to repair and complete the project.

32. On July 30, 2021, the Claimant entered into a contract with Butler-Goodman to repair the damages left by the Respondent and to complete the work on the project (Remediation Contract). The agreed upon price of the Remediation Contract was \$300,000.00.

33. As of July 11, 2022, the Respondent paid Butler-Goodman \$292,042.00 under the Remediation Contract to repair and complete the scope of work at the Property.

### 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; 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. 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.” 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) (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 testified that he entered into a Contract and hired the Respondent to construct an addition and remodel several sections of the Property, including the kitchen, several bathrooms, and relocating a laundry room from the basement to the second floor. He explained that the Respondent damaged other structures to the Property and demolished the kitchen and bathrooms and other internal structures of the home, after which sub-contractors stopped working, claiming they had not been paid. The Claimant testified that he spoke with the Respondent, who informed him he was having some financial issues but assured him that he

would be able to complete the project. However, the Claimant explained that the following day on June 29, 2021 he received an email from the Respondent stating that he was going out of business and could not continue to work on the project, because he did not have the “ability to pay for any material or labor.” (Clmt. Ex. G).

The Claimant testified that he obtained a second engineering report to assess the status of the work performed by the Respondent and the work that would need to be repaired and completed. The Claimant explained that the repairs included an incorrectly installed roof truss. He testified that he then obtained estimates from several other licensed contractors to repair and complete the work abandoned by the Respondent. He stated that he entered into a Contract with Butler-Goodman to repair and complete the project. The Claimant testified that the repairs of the Respondent’s work totaled \$45,000.00 separate and apart from the cost of completing the project.

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022). The Respondent abandoned the project without justification, other than citing he was going out of business, in an email to the Claimant, and the Respondent performed no work after June 29, 2021.

The Claimant provided overwhelming and uncontroverted evidence that the Respondent’s work was unworkmanlike, inadequate and incomplete. The Respondent abandoned the project leaving the Claimant without a kitchen and without several bathrooms which had been demolished, with cables hanging from the ceiling, and with construction material and trash littering the property. The Respondent provided photographs of the incomplete project and affidavits from several neighbors who observed the condition of the project and assisted with hauling away the trash and construction debris left behind by the Respondent.

The Claimant established, by a preponderance of the evidence, the Contract price, the money paid to the Respondent, and provided evidence of the amount paid to inspect, remediate and complete the home improvement project. The Fund agreed that the Respondent performed in an inadequate and unworkmanlike manner. The Fund argued that the Claimant's credible evidence shows that he sustained a loss from the acts or omissions of the Respondent, and it therefore recommended an award to the Claimant from the Fund. 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 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. 2022); 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).

Applying the formula in this case results in the following calculation:

Amount Claimant paid to Respondent:	\$88,341.86
Amount Claimant paid to Butler-Goodman	\$292,042.00
Total Claimant paid to all contractors:	<u>\$380,383.86</u>
<u>Less the Contract price:</u>	<u>\$197,695.06</u>
Equals	\$182,688.80

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>4</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). The amount paid by the Claimant to repair and complete the work exceeds the amount paid to the Respondent, therefore the Claimant's actual loss is limited to the \$88,341.86 paid to the Respondent. In this case, the Claimant's actual loss of \$88,341.86 exceeds \$30,000.00. Therefore, the Claimant's recovery is limited to \$30,000.00.

#### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$88,341.86 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)(c). I further conclude that the Claimant is entitled to recover \$30,000.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

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<sup>4</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").

**RECOMMENDED ORDER**

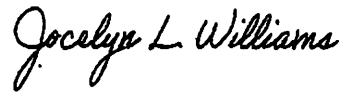
I **RECOMMEND** that the Maryland Home Improvement Commission:

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$30,000.00; 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>5</sup> and

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

June 9, 2023  
Date Decision Issued

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Jocelyn L. Williams  
Administrative Law Judge

JLW/ja  
#205481

<sup>5</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 28<sup>th</sup> day of July, 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.***

***Robert Altieri***

***Robert Altieri  
Panel B  
MARYLAND HOME IMPROVEMENT  
COMMISSION***