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| IN THE MATTER OF THE CLAIM | * BEFORE ROBERT B. LEVIN, |
| OF JEREMY SALLOW | * AN ADMINISTRATIVE LAW JUDGE |
| AGAINST THE MARYLAND HOME | * OF THE MARYLAND OFFICE |
| IMPROVEMENT GUARANTY FUND | * OF ADMINISTRATIVE HEARINGS |
| FOR THE ALLEGED ACTS OR | * |
| OMISSIONS OF ERIC WARD, | * |
| T/A ELITE REMODELING, LLC | * OAH No.: LABOR-HIC-02-23-25575 |
| RESPONDENT | * MHIC No.: 23 (75) 1369 |

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PROPOSED DECISION

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STATEMENT OF THE CASE

On August 8, 2023, Jeremy Sallow (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$18,803.12 for actual losses allegedly suffered as a result of a home improvement contract with Eric Ward, trading as Elite Remodeling, LLC (Respondent).² Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).³ On September 28, 2023, the MHIC issued a Hearing Order on the Claim. On September 29, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

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

² I will refer to Mr. Ward, individually, as the Respondent.

³ Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

On November 28, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. MacKenzie Read, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented.

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 October 30, 2023, the OAH provided a Notice of Hearing (Notice) to the Respondent by certified mail and first-class mail. Bus. Reg §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for November 28, 2023, at 9:30 a.m. at the OAH, 11101 Gilroy Avenue, 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.⁴ The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05.

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.

⁴ The certified mail receipt (green card) for the certified mailing of the Notice to the Respondent was returned to the OAH on November 6, 2023, showing an illegible signature and the printed name "Ward."

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 exhibit offered by the Claimant:

- Clmt. Ex. 1 - Agreement between the Claimant and Jennifer Sallow, his wife, and the Respondent, September 28, 2021 (Doors Contract)
- Clmt. Ex. 2 - Agreement between the Claimant and his wife and the Respondent, September 28, 2021 (Bathroom Contract)
- Clmt. Ex. 3 - Claimant's Truist Bank Statements, August 29, 2022 and October 28, 2021, with attached copy of the Claimant's check no. 357 in the amount of \$9,00.00, payable to the Respondent, September 29, 2021
- Clmt. Ex. 4 - Claimant's narrative, undated, with attached eight pages of screenshots of text messages between the Claimant and Jake Jacobson, a representative of the Respondent, various dates
- Clmt. Ex. 5 - Two pages containing photocopies of photographs, undated
- Clmt. Ex. 6 - Agreement between the Claimant and S & K Roofing Siding and Windows (S & K) for garage entry door, November 14, 2023
- Clmt. Ex. 7 - Agreement between the Claimant and S & K Roofing Siding and Windows for patio door, November 14, 2023
- Clmt. Ex. 8 - Straight Edge Paining & Finishing LLC (Straight Edge) Estimate for bathroom, July 22, 2023, with attached copy of the Claimant's check no. 518 in the amount of \$2,500.00, payable to Straight Edge Painting & Finishing
- Clmt. Ex. 9 - The Home Depot invoice no. 3213380 for bathroom project, August 13, 2023
- Clmt. Ex. 10(a)-(i) Packet of nine photographs, initially marked on the reverse by the Claimant as Exs. P 1-6; P-8; and S 4-5; re-marked as Clmt. Ex. 10(a)-(i), undated

I admitted the following exhibits offered by the Fund:

- GF Ex. 1 - Notice of Hearing, October 30, 2023
- GF Ex. 2 - Hearing Order, September 28, 2023
- GF Ex. 3 - Licensing information printout for the Respondent, November 6, 2023
- GF Ex. 4 - Correspondence from Joseph Tunney, MHIC Chair, to the Respondent, August 11, 2023, with attached copy of the Claimant's Home Improvement Claim Form, August 8, 2023

The Respondent did not appear and did not offer any exhibits.

Testimony

The Claimant testified and presented the testimony of his wife, Jennifer Sallow.

The Respondent did not appear and did not offer any witness testimony.

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 MHIC license number 01-115111.
2. At all times relevant to the subject of this hearing, the Respondent's business, Elite Remodeling, LLC, held an MHIC business license, number 05-135460.
3. At all relevant times, the Claimant owned and resided in a home in Westminster, Maryland.
4. On September 28, 2021, the Claimant entered into two separate written contracts with the Respondent.
5. One contract, the Doors Contract, provided that the Respondent would install two doors: (a) a glass, full-view Savannah door (a French door), leading from the rear of the home to the back patio, and (b) a garage entry door.

6. The other contract, the Bathroom Contract, provided for the remodeling of the primary bathroom: the Respondent agreed to tear out the walls, ceiling, floor, tub, commode, sink, and shower, reorganize the walls and closet area to close the bathroom to the bedroom linen closet, and install new sheetrock, a floor, plumbing, electric, and insulation.

7. The Claimant and the Respondent agreed that the total price under both contracts was \$27,500.00.⁵

8. The Claimant paid the Respondent a total of \$25,875.00, as follows: \$200.00 cash deposit; \$9,000.00 initial payment on October 4, 2021; \$6,000.00 payment on January 6, 2022 for the bathroom order; \$4,000.00 payment on May 9, 2022 for the start of the bathroom work; and a final \$6,675.00 payment on August 3, 2022.

9. The Respondent's work under the Doors Contract was inadequate and unworkmanlike, as follows:

- The Doors Contract required the Savannah door was to be an "aged bronze" color to match the adjacent windows, but instead it is white.
- The Savannah door was improperly installed, in that the frame is unsightly and not level; the door does not seal properly, allowing cold air and insects to enter the home; the frame has an extra screw hole that could allow water to enter; the Respondent damaged the frame by screwing into it; the casing on the side of the door is not flush to the drywall; when the Respondent attempted to seal the door only painter's tape was used instead of spray foam; and the Savannah door does not lock properly, creating a security concern for the Claimant and his children.
- The garage door was also supposed to be aged bronze in color, but it is white.

⁵ The Claimant testified \$27,500.00 was the total amount due under both contracts. The space in the Doors Contract for the Cash Amount Due was left blank. (Clmt. Ex. 1). In the Bathroom Contract, \$27,500.00 is shown as the Cash Amount Due. The Bathroom Contract's payment schedule for the \$27,500.00 due provides that \$4,000.00 was payable "at door." (Clmt. Ex. 2).

10. The Respondent's work under the Master Bathroom Contract was also inadequate and unworkmanlike, as follows:

- The primary shower was installed improperly, in that it leaks from underneath and had to be completely gutted to remedy the Respondent's poor work.
- Water from the shower was supposed to go down the drain only, but drains out sideways from under the trim.
- The Respondent failed to properly install the bathroom floor; screw holes were not sealed before tiling.
- The Respondent's electrical work was improper, in that it is not compliant with code, the electrical box should have been capped and wires moved to the attic instead of in proximity to water which could have led to electrocution.

11. As a result of the inadequate and unworkmanlike work the Claimant and his wife have had to use the children's bathroom.

12. The Respondent failed to correct the deficiencies in his work despite repeated requests and notifications by the Claimant to the Respondent's representative, Jake Jacobson, that the work was improper and needed correction.

13. After receiving the Claimant's final payment, the Respondent did nothing to correct his improper and unworkmanlike work.

14. The Respondent suggested that the Claimant board up the back door, which would have been a security risk.

15. The Claimant received estimates from and made payments to the following HIC-licensed contractors to repair and complete the Respondent's deficient work:

- Straight Edge agreed to remove and dispose of the shower, frame walls where needed, install a shower pan, tile and grout to the shower walls, and patch, prime, and paint drywall where needed, for a total of \$7,897.50, of which the Claimant paid \$2,500.00 on November 8, 2023
- The Home Depot charged and the Claimant paid \$187.16 for floor tile plus \$529.33 for wavy white wall tile, for a total of \$716.79

- S & K agreed to replace and install the Savannah door for \$10,423.00
- S & K agreed to replace and install the garage door for \$2,597.00

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.

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. 2023). 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. 2023). 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. 2023). 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. 2023).

The Claimant did unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023), as no such good faith efforts were made.

The Respondent performed unworkmanlike and inadequate home improvements. The Claimant's credible testimony that the Savannah door and the garage door came in the wrong color (white instead of aged bronze), and that the Savannah door was improperly installed, was supported by the Claimant's photographs. Clmt. Ex. 10(a) though (d) show a gap where the Savannah door does not seal, allowing cold air and insects to enter the house, and frame damage from an extra screw hole.

The Claimant's testimony concerning the unworkmanlike and inadequate bathroom remodeling project was also supported by his photographs. Clmt. Ex. 10(i) shows water drained sideways from underneath the trim instead of only going down the drain. Clmt. Ex. (h) shows that the bathroom floor was not installed, and that screw holes were not sealed before tiling.

Clmt. Ex. 5 shows current work done by Straight Edge to correct the Respondent's inadequate work related to the bathroom renovation.⁶ This photograph shows the improper installation of the electrical box, leaving wires close to the shower water. This condition was discovered when Straight Edge opened the wall and moved the electrical box to the attic.

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. 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). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

⁶ At the time the photographs in Clmt. Ex. 5 were taken, Straight Edge was in the midst of correcting the Respondent's inadequate work.

The Respondent performed some work under the Contract, and the Claimant has retained and intends to retain 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). The Fund recommended an award under this formula.

The amount the Claimant paid to the Respondent was \$25,875.00, including the \$200.00 cash deposit and the payments made on October 4, 2021; January 6, 2022; May 9, 2022; and August 3, 2022. Added to \$25,875.00 is the \$21,633.99 cost to correct the Respondent's work (Straight Edge for the shower/bathroom, Home Depot for tiles, and S & K's two estimates for the Savannah and garage doors). This results in a total of \$47,508.99 for the amount paid to the Respondent plus the cost to correct. Subtracting the \$27,500.00 contract price from that \$47,508.99 leaves \$20,008.99 as the amount of the Claimant's actual loss. Therefore, I recommend an award in that amount: \$20,008.99.

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.⁷ 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

⁷ 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").

Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$20,008.99.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$20,008.99 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 \$20,008.99 from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,008.99; 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;⁸ and

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

February 12, 2024
Date Decision Issued

Robert B. Levin
Robert B. Levin
Administrative Law Judge

RBL/at
#210106

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

PROPOSED ORDER

WHEREFORE, this 22nd day of April, 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.

Joseph Tunney

Joseph Tunney

Chairman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***