

IN THE MATTER OF THE CLAIM	*	BEFORE JOHN T. HENDERSON, JR.
OF WILLIAM CRONIN,	*	ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF	*	
CHRISTOPHER CAHILL, T/A	*	
BOTANICAL DECORATORS, INC.,	*	OAH No.: LABOR-HIC-02-23-06661
RESPONDENT	*	MHIC No.: 23(75)428

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On January 9, 2023, William Cronin (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) under the jurisdiction of the Maryland Department of Labor (Department), for the reimbursement of \$69,002.00 for actual losses allegedly suffered because of a home improvement contract with Christopher Cahill, t/a Botanical Decorators, Inc. (Respondent). Md. Code Ann., Bus. Reg.

§§ 8-401 through 8-411 (2015 & Supp. 2022).¹ On September 23, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 27, 2023, the OAH mailed a notice of Remote Video Hearing (Notice) to the Respondent by certified and regular mail to his address of record on file with the MHIC. Md. Code Ann., Bus. Reg. § 8-312(d) (2015).² The Notice advised the Respondent of the time, place, and date of the hearing (May 31, 2023). On April 12, 2023, the Notice was returned to the OAH by the United States Postal Service (USPS) as undeliverable. I convened the hearing on May 31, 2023, and after discussion with the parties, determined there was inadequate notice of the hearing provided to the Respondent.³

On June 2, 2023, the OAH mailed a second Notice to the Respondent by certified and regular mail to his address of record on file with the MHIC, to include the new address of 4343 Garfield Street, N.W., Washington, D.C. 20007. The notice advised the Respondent of the time, place, and date of the hearing using the Webex video conferencing platform (Webex) and provided instructions on how to attend the hearing. COMAR 28.02.01.20B. The Notice set forth the website address of the Webex hearing and the meeting number to gain access to the video hearing. The Notice further advised that failure to appear for the hearing might result in a decision against the party failing to appear. The United States Postal Service did not return the Notice to the OAH, and no request for postponement was received at the OAH from the Respondent or anyone authorized on behalf of the Respondent. In addition, there was no communication from the Respondent on the day of the hearing (by telephone, email to the OAH,

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

² "The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission." Bus. Reg. § 8-312(d).

³ The first Notice was mailed to the Respondent at the following addresses: 3205 Woodbine Street, Chevy Chase, MD 20815 and T/A Botanical Decorators, Inc., 5011 B Olney-Laytonsville Road, Olney, MD 20832. The Respondent had a different address of record that the OAH did not have namely, 4343 Garfield Street, N.W., Washington, DC 20007.

or other) or from anyone on behalf of the Respondent to advise of any difficulty accessing the Webex hearing room. I determined there was adequate notice of the hearing provided to the Respondent.⁴

On July 7, 2023, I held the remote video hearing. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B. The Claimant appeared and represented himself. The Respondent did not appear, nor did anyone appear to represent the Respondent as an individual or the corporation. Eric London, Assistant Attorney General for the Department, represented the Fund. After waiting for twenty minutes for the Respondent to appear, I proceeded in the Respondent's absence, having found he failed to appear after receiving proper notice. 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 in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; and 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?

⁴ According to *Bock v. Insurance Commissioner*, 84 Md. App. 724, 733-34 (1990), which addresses the "mailbox rule" in this State, there is a presumption of receipt of a properly mailed letter.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted into evidence exhibits offered by the Claimant, as follows:

- Cl. Ex. 1: Claimant's narrative and summary of total costs
- Cl. Ex. 2: Design Agreement between the Claimant and the Respondent, November 9, 2021, signed by the Claimant on November 14, 2021 and ratified by the Respondent on November 17, 2021; agreement between the Claimant and the Respondent, March 30, 2022; Proposal from the Cahill Companies to the Claimant, April 22, 2022 and signed by the Claimant on April 26, 2022; change order from the Cahill Companies, August 19, 2022, signed by the Claimant on August 21, 2022; change order number two from the Cahill Companies, August 19, 2022, signed by the Claimant on August 21, 2022; change order number three from the Cahill Companies, September 26, 2022, not signed by the Claimant; change order number 4 from the Cahill Companies, September 26, 2022, not signed by the Claimant; check number 902, payable to the Respondent, in the sum of \$2,500.00, November 17, 2021; check number 1010, payable to the Respondent, in the sum of \$30,500.00, April 27, 2022; check number 1018, payable to the Respondent, in the sum of \$30,500.00, August 19, 2022; check number 1019, payable to the Respondent, in the sum of \$10,502.00, August 21, 2022⁵
- Cl. Ex. 3: Nine photographs of the home improvement project
- Cl. Ex. 4: Emails between the Claimant and the Respondent, April 28, 2022, September 26, 2022, September 29, 2022, September 30, 2022 and October 3, 2022; list of materials and costs associated with the home improvement project
- Cl. Ex. 5: Notice of Chapter 7 Bankruptcy Case, regarding the Respondent, November 7, 2022
- Cl. Ex. 6: Proposal from Bethesda Contracting (Bethesda), November 9, 2022; quote from TW Perry, December 16, 2022; invoice from Andersen Windows & Doors, December 9, 2022; invoice from Pineapple Landscaping, LLC, undated; proposal from Hydro-Tech Irrigation, Co., January 18, 2023
- Cl. Ex. 7: Department license information for the Respondent

⁵ On July 7, 2023, the Claimant provided legible copies of check numbers 902, 1010, 1018 and 1019 admitted as documents included within Claimant's exhibit number 2.

I admitted into evidence exhibits offered by the Fund as follows:

- GF Ex. 1: Notice of Remote Hearing, May 25, 2023
- GF Ex. 2: Hearing Order, March 1, 2023
- GF Ex. 3: Department licensing history for the Respondent, April 20, 2023
- GF Ex. 4: HIC Claim Form, January 9, 2023
- GF Ex. 5: Letter to the Claimant from the HIC, March 1, 2023

Testimony

The Claimant testified on his behalf. Jason Robert Henry from Bethesda, testified on behalf of the Claimant. 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 contractor's salesperson license number 01-85309 and company license number 05-129799, trading as Botanical Decorators, Inc.
2. 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.
3. The Claimant's property subject to this matter is located in Chevy Chase, Maryland on Woodbine Street (the Property). It is his primary residence which he shares with his wife, Jessica Ann Cronin.
4. The Claimant has not filed other claims against the Respondent outside of these proceedings.
5. The agreement between the Claimant and the Respondent did not provide for an arbitration proceeding.

6. On November 14, 2021, the Claimant, Mrs. Cronin and the Respondent entered into a Design Contract for the development of a landscape master plan for the Property. The scope of the design work, in summary, was the following:

The front yard will be treated as a blank slate to create a better approach to the home to guide [the] family and guests safely to [the] front entry.

The back and side yard will be treated as a blank slate with the creation of a connected outdoor living space that will allow for use of as much of the area as possible.

Specific detail for the construction of the front and back yards were provided within the Contract. (Cl. Ex. 2.)

7. The design fee agreed upon was \$5,000.00, requiring a 50% deposit of \$2,500.00. The balance of \$2,500.00 was due upon final presentation of the design.

8. On April 26, 2022, the Claimant, Mrs. Cronin and the Respondent entered into a detailed Landscape Construction Contract (Contract) to develop the front yard of the Property.

9. The scope of the Contract work, in summary, was the following:

- Demolition of old walkway
- Build new front walkway
- Demolition of old driveway
- Build new driveway
- Landscaping
- Exterior lighting
- Irrigation
- Purchase and install new front door
- Prep for new shed at side of house (including creation of level platform, concrete slab, landscaping)

10. The total agreed upon cost of the Contract was \$116,670.00.

11. The Claimant paid the Respondent for the Home Improvement, as follows:

November 17, 2021	Check number 902	\$ 2,500.00
April 27, 2022	Check number 1010	\$30,500.00
August 19, 2022	Check number 1018	\$30,500.00
August 21, 2022	Check number 1019	\$10,502.00

Total Paid: \$74,002.00⁶

12. On or about August 22, 2022, the Respondent began work on the home improvement.

13. On September 22, 2022, the Respondent abandoned the home improvement and did not return to complete it.

14. On September 30, 2022, the Respondent emailed the Claimant to inform him that his company was closing its doors and declaring bankruptcy. The email further provided the Claimant with a plan to continue the work and finish the Claimant's front walkway and porch, clean the yard, finish the grading and put everything back to working order. The Respondent further advised that he would not be able to complete the driveway and front door.

15. The Respondent did not return to execute the plan identified within the September 30, 2022 email.

16. The Respondent left the Claimant with an unfinished construction site where demolition had occurred but very little construction toward improving the Property as agreed upon was begun by the Respondent. (Cl. Ex. 3, photographs.)

17. On November 9, 2022, the Claimant contracted with Bethesda to make repairs and complete the home improvement abandoned by the Respondent.

18. The Claimant paid Bethesda \$61,685.00 to complete the home improvement.

⁶ Despite the checks admitted into evidence, the Claimant testified that he withheld a \$5,000.00 payment to the Respondent pending the installation of the new front door.

19. Bethesda estimates that it will cost an additional \$20,000.00 to complete the construction, including construction of the concrete slab to be used as the base for a new shed, as agreed upon by the Respondent.

DISCUSSION

The Claimant had 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 and does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2022). There was no arbitration provision within the agreement between the Claimant and the Respondent. *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). According to the Claimant, there were no sincere efforts made by the Respondent to resolve the claim. The Respondent never returned to the Property after September 22, 2022. The Respondent performed an unworkmanlike, inadequate, or incomplete home improvement. I thus find that the Claimant is eligible for compensation from the Fund.

According to the Claimant's testimony and admitted exhibits, the Contract totaled \$116,670.00. The Claimant paid the Respondent a total of \$74,002.00 for deposits toward the final contract price.

On or about August 22, 2023, the Respondent began demolition of the front walkway and driveway. There was some construction toward implementing the agreed upon improvement. However, the Respondent abandoned the project on September 22, 2023, apparently because the Respondent's company filed for bankruptcy. The Respondent informed the Claimant of the bankruptcy filing by email dated September 30, 2022. The Respondent wrote the Claimant about a plan to finish the front walkway and porch, clean the yard and finish grading. The Respondent never returned to implement such a plan.

The Claimant contracted with Bethesda to make repairs and complete the home improvement it had contracted with the Respondent to do. The Claimant paid Bethesda \$61,685.00 to substantially repair and complete the home improvement. Bethesda estimates that it will cost the Claimant at least an additional \$20,000.00 to complete the project the Claimant contracted with the Respondent to complete.

The Fund argues that the Claimant has met his burden of proof that he is entitled to an award from the Fund. According to the Fund, the Claimant has proved that he suffered an actual monetary loss as a result of unworkmanlike, inadequate, or incomplete home improvement work performed by the Respondent. The Fund is convinced that due to the Respondent failing to complete the agreed upon work, the evidence admitted tends to show by a preponderance that the Respondent's work was unworkmanlike, incomplete or inadequate.

I agree with the Fund. The evidence, by a preponderance, shows that the Respondent abandoned the project after September 22, 2022, resulting in an unworkmanlike, incomplete and inadequate construction. No further work was done by the Respondent. The Respondent did not make efforts to correct the unworkmanlike, incomplete and inadequate construction.

The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). The MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3) sets forth the various formulas for determining an "actual loss." The appropriate formula is the following:

(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.

Using the formula in COMAR 09.08.03.03B(3)(c), the following calculations apply:

\$ 74,002.00	Payment made to the Respondent by the Claimant as deposits and toward the contract price for the home improvement pursuant to the contract of April 26, 2022
\$ 61,685.00	The amount paid to Bethesda to replace, repair, correct and complete the home improvement

<u>\$ 20,000.00</u>	The final amount to be paid to Bethesda to complete the home improvement
Total \$155,687.00	
Less <u>\$116,670.00</u>	The Original April 26, 2022 Contract Price with the Respondent
\$39,017.00	Actual Loss ⁷

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.⁸ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); 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 the additional amount paid or required to be paid to Bethesda to complete the original contract. The actual loss is more than the statutory cap of \$30,000.00. Therefore, the Claimant is entitled to recover as his actual loss the sum of \$30,000.00.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained, and is entitled to recover from the Fund, an actual and compensable loss of \$30,000.00 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)(c).

⁷ The Fund recommended the statutory cap of \$30,000.00 as an actual loss. To determine the actual loss, the Fund added the sum of \$5,215.00 representing the purchase of materials for the construction. I did not find by a preponderance of the evidence, that the Claimant was required to purchase certain materials totaling \$5,215.00 to complete the home improvement. The Fund also used the sum of \$69,002.00 as money paid to the Respondent pursuant to the Contract. The Claimant's four checks identified within finding of fact 11 herein, total \$74,002.00. Although the Claimant testified that he withheld \$5,000.00 from the Respondent until the front door was attached, the four checks determine a different math conclusion.

⁸ 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;⁹ and

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

October 2, 2023
Date Decision Issued



John T. Henderson, Jr.
Administrative Law Judge

JTH/at
#207632

⁹ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 9th day of November, 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***