

<p>IN THE MATTER OF THE CLAIM</p> <p>OF PAMELA HOLLAND,</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 BRYAN JONES,</p> <p>T/A BOJ AND SON'S</p> <p>CONSTRUCTION, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE MARY R. CRAIG,</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-02-22-29090</p> <p>* MHIC No.: 23 (75) 69</p> <p>*</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On September 21, 2022, Pamela Holland (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$10,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Bryan Jones (Respondent), t/a BOJ & Son's Construction, LLC. Md. Code Ann., Bus. Reg.

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

§§ 8-401 to 8-411 (2015 & Supp. 2022).² On November 21, 2022, the MHIC issued a Hearing Order on the Claim. On November 28, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 8, 2023, 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 was self-represented. The Respondent failed to appear for 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 February 21, 2023, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States first class and certified 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 May 8, 2023, at 9:30 a.m., at the OAH's Hunt Valley, Maryland office. 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 returned the Notice to the OAH with the notation "undeliverable." The Respondent did not sign for the certified mail. 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 after waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. COMAR 28.02.01.05A, C.

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

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. 1 - Emails between Claimant and Respondent, various dates
- Clmt. Ex. 2 - Receipts for Claimant's payments to Respondent, 5/22/21 and 10/9/21
- Clmt Ex. 3 - Email from Respondent to Claimant, 10/9/21 and enclosed Contract, revised 10/9/21
- Clmt. Ex. 4 - Text messages between Claimant and Respondent, various dates

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, 2/21/23 and Hearing Order, 11/21/22
- Fund Ex. 2 - MHIC record of the Licensee's licensure, 4/18/23
- Fund Ex. 3 - Letter from MHIC to Respondent and Claim, 9/22/22

The Respondent offered no exhibits.

Testimony

The Claimant testified and did not present other witnesses. Neither the Respondent nor the Fund presented a witness.

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 5750642.³
2. On May 22, 2021, the Claimant and the Respondent entered into a written contract to demolish and renovate the Claimant's existing kitchen at her home located at 2001 Alto Vista Avenue, Gwynn Oak, Maryland (Contract).
3. The original agreed-upon Contract price was \$15,000.00.
4. On May 22, 2021, the Claimant paid the Respondent a \$5,000.00 deposit on the Contract.
5. The Contract stated that work would begin on a date to be agreed by the parties.
6. The Claimant and the Respondent verbally agreed that work will begin on November 1, 2021.
7. After May 22, 2021, the Claimant broke her ankle and needed a new bathroom constructed on the third floor of her house.
8. The Claimant and Respondent verbally agreed to change the terms of the Contract to delete the kitchen work and instead construct a new third floor bathroom and closet for the total price of \$19,000.00.
9. On October 9, 2021, the Claimant paid the Respondent an additional \$5,000.00, for a total payment of \$10,000.00.

³ His license was suspended in October 2021.

10. The Claimant attempted to get the Respondent to start the work through texts and email, but the Respondent never performed any work for the Claimant or explained why he abandoned the work.

11. The Respondent was charged with a crime in connection with his contacts with the Claimant. On April 4, 2023, the Claimant and the Respondent appeared in the District Court of Maryland for Baltimore County. His attorney gave the Claimant \$500.00 cash toward the restitution ordered by the court.

12. There is no barrier, such as familial or business relationship, that would prevent the Claimant from being reimbursed by the Fund.⁴

13. The Claimant's actual loss is \$9,500.00 (the \$10,000.00 deposits minus the \$500.00 reimbursement).

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,

⁴ See Bus. Reg. § 8-405(f)(1).

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 Respondent accepted \$10,000.00 in total deposits from the Claimant, but he performed absolutely no work. The Claimant’s credible testimony, supported by her emails and texts, clearly prove that she made many attempts to get the Respondent to perform the agreed work. He failed and refused to do so, without just cause, and he never refunded any of her money. 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 Claimant did not request compensation for any damage disallowed by the law. *See* Bus. Reg. § 8-405(e)(3) (Supp. 2022); COMAR 09.08.03.03B(1). MHIC’s regulations provide three potential formulas to measure a claimant’s actual loss, depending on the status of the 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). The Claimant's actual loss is \$9,500.00, the amount paid to the Respondent, less the amount reimbursed by the Respondent. I recommend that the Fund award her that amount.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$9,500.00 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)(a). I further conclude that the Claimant is entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a) (2015 & Supp. 2022).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$9,500.00; 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;⁵ and

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

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

Mary R. Craig

May 11, 2023
Date Decision Issued

Mary R. Craig
Administrative Law Judge

MRC/cj
#205009

PROPOSED ORDER

WHEREFORE, this 26th day of June, 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.

Lauren Lake

***Lauren Lake
Panel B
MARYLAND HOME IMPROVEMENT
COMMISSION***