

IN THE MATTER OF THE CLAIM	* BEFORE BRIAN ZLOTNICK,
OF IRIS DAVENPORT,	* 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 BRYAN O'NEAL	*
JONES, T/A BOJ & SON'S	* OAH No.: LABOR-HIC-02-23-28559
CONSTRUCTION, LLC	* MHIC No.: 23 (75) 714
RESPONDENT	*

\* \* \* \* \*

**PROPOSED DECISION**

STATEMENT OF THE CASE  
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PROPOSED FINDINGS OF FACT  
DISCUSSION  
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**STATEMENT OF THE CASE**

On May 23, 2023, Iris Davenport (Claimant)<sup>1</sup> filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>2</sup> Guaranty Fund (Fund) for reimbursement of \$119,780.00 for actual losses allegedly suffered as a result of a home improvement contract with

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<sup>1</sup> On June 24, 2020, the Claimant was granted Durable Power of Attorney for her father, Jerome Wiggs, who resides at 2618 Federal Street, Baltimore, Maryland. The Contract with the Respondent was for work to be performed at the 2618 Federal Street residence.

<sup>2</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).

Bryan O'Neal Jones, trading as BOJ & Son's Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).<sup>3</sup>

On October 30, 2023, the MHIC issued a Hearing Order on the Claim. On October 31, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 12, 2024, 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.

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 November 28, 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 January 12, 2024, 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 mailed by first-class mail to the OAH as undeliverable. 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.

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<sup>3</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 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 & 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 - Durable Power of Attorney, June 24, 2020
- Clmt. Ex. 2 - Contract signed by the Respondent and Claimant, June 26, 2020
- Clmt. Ex. 3 - Copies of certified checks paid to the Respondent, June 26, 2020, January 27, 2021, and March 30, 2021
- Clmt. Ex. 4 - Home Depot receipt for purchase and installation of front and back door, July 1, 2020
- Clmt. Ex. 5 - Home Depot Contract for an HVAC unit and installation, January 27, 2021
- Clmt. Ex. 6 - Email from William Davenport, Jr. to Home Depot, October 26, 2020, with attached window installation contract, October 25, 2020
- Clmt. Ex. 7 - Letter from the MHIC to the Respondent, December 19, 2022, with attached Complaint Form, filed December 2, 2022
- Clmt. Ex. 8 - Photographs of Claimant's property taken in May 2022
- Clmt. Ex. 9 - Quitclaim Deed, October 12, 2021

The Respondent was not present and did not offer any exhibits.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, November 28, 2023

Fund Ex. 2 - Hearing Order, October 30, 2023

Fund Ex. 3 - Maryland Department of Labor, MHIC, I.D. Registration, printed January 9, 2024, with Respondent's licensing information

Fund Ex. 4 - Letter from the MHIC to the Respondent, May 24, 2023, with attached MHIC Claim Form, May 23, 2023

Testimony

The Claimant testified on her own behalf. The Fund did not present any witnesses. The Respondent was not present and 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 01-118128 and business license number 05-137602. (Fund Ex. 3).

2. On June 26, 2020, the Claimant, acting on behalf of her father through a durable power of attorney, and the Respondent entered into a contract to renovate the Claimant's father's home (Contract). The Contract specified the following:

- Demolition/General Maintenance
- Installing new interior and exterior doors
- Installing new windows for the entire house
- Renovating the first floor by installing new electrical and plumbing infrastructure, new drywall, new luxury vinyl flooring, new lighting fixtures, new powder room, new window blinds
- Renovating the second floor by installing new electrical and plumbing infrastructure, new drywall, new luxury vinyl flooring, new lighting fixtures, new bathroom
- Renovating the basement by installing a new kitchen and bathroom with new cabinets, hardware, countertop, sink, electrical and plumbing infrastructure, new light fixtures, new appliances including a double door refrigerator, stove and range hood microwave

- Finish prime and paint the entire three level unit; waterproof the basement; replace the furnace system; upgrade the electrical box; and remove an outside tree

(Clmt. Exs. 1 & 2).

3. The original agreed-upon Contract price was \$70,000.00, which included a payment schedule of: \$20,000.00 deposit upon signing; \$15,000.00 to begin work; \$15,000.00 scheduled inspection draw; \$15,000.00 scheduled inspection draw; \$2,500.00 scheduled inspection draw; \$2,500.00 upon job completion. (Clmt. Ex. 2).
4. There was no specific start date delineated in the Contract. (Clmt. Ex. 2).
5. On June 26, 2020, the Claimant's father made an initial payment under the Contract of \$20,000.00. (Clmt. Ex. 3).
6. The Respondent started work on the Contract in October 2020 by cleaning out the home. (Testimony of the Claimant).
7. In January 2021, the Respondent performed some demolition work in the home in order to clear space for the HVAC unit that was purchased by the Claimant from Home Depot and installed by Home Depot. (Testimony of the Claimant).
8. After performing the demolition work in January 2021, the Respondent asked the Claimant for the second draw payment. On January 27, 2021, the Claimant paid the Respondent \$15,000.00. (Testimony of the Claimant and Clmt. Ex 3).
9. On March 30, 2021, the Claimant paid the Respondent \$15,000.00. (Clmt. Ex. 3).
10. The Claimant had discussions with the Respondent in June, July and October 2021 asking when work on the Contract would begin. The Respondent told the Claimant that he had trouble finding workers for the job and that he had to finish other projects before starting work on the Contract. (Testimony of the Claimant).

11. The Claimant's father passed away in October 2021. On October 12, 2021, a Quitclaim Deed was executed transferring ownership of 2618 Federal Street from Jerome Wiggs to the Claimant. (Testimony of the Claimant and Clmt. Ex. 9).

12. In December 2021, the Claimant contacted the Respondent and inquired why no work had been done. The Respondent promised the Claimant during that December 2021 conversation that he would complete the Contract. (Testimony of the Claimant).

13. The Claimant and the Respondent had a walk-through at the 2618 Federal Street home in April 2022. During the April 2022 walk-through the Claimant expressed her frustration to the Respondent that no work had been performed. The Respondent promised the Claimant that he would complete the Contract. (Testimony of the Claimant).

14. The Claimant attempted to call the Respondent in May 2022, but the Respondent did not answer her calls. (Testimony of the Claimant).

15. The Claimant had no contact with the Respondent since the April 2022 walk-through. (Testimony of the Claimant).

16. After the demolition work, no further work was performed by the Respondent on the Contract. (Testimony of the Claimant).

17. As of May 2022, the 2618 Federal Street home remained a gutted out home in disrepair with damaged floors, walls and ceilings and exposed electrical wiring. (Clmt. Ex. 8).

### 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); Md. Code Ann., 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.

Based upon the uncontroverted testimony of the Claimant, I find that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements. Specifically, the Claimant testified that despite paying the Respondent more than two-thirds of the balance due on the Contract, the Respondent only performed preliminary demolition work. The Claimant made several attempts to get the Respondent to complete the work, including numerous phone calls and face to face meetings. The Respondent collected a deposit of \$20,000.00 at the signing of the Contract on June 26, 2020. No work was performed by the Respondent until he cleaned out the home in October 2020. The Respondent did some demolition work on the property in January 2021 and then demanded the first draw from the Contract, which was satisfied through a \$15,000.00 payment from the Claimant. No further work was performed by the Respondent. The Respondent offered a wide range of excuses from difficulty finding laborers, to needing time to complete other projects before working on the Contract. The Claimant paid a third installment of \$15,000.00 to the Respondent in March 2021, yet the Respondent still failed to perform any work beyond an initial cleaning and demolition of the property. After an April 2022 walk-through of the property, where the Claimant again expressed her frustration with the Respondent’s failure to complete work on the Contract, the Claimant called the Respondent in May 2022, but the Respondent failed to answer. The Respondent has made no contact with the

Claimant since that April 2022 walk-through. The property has been left in shambles with exposed wiring, broken floor tiles, punctured drywall, and missing ceiling tiles.

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 argued that the Claimant is entitled to an award of \$30,000.00 under COMAR 09.08.03.03B(3)(c). The Fund came to this conclusion based upon the Claimant paying the Respondent a total of \$50,000.00. The Respondent did not complete any work beyond cleaning and demolition work, and did not refund any of the money. The Fund argued that the Respondent's demolition/cleaning work should be valued at \$2,000.00 which when deducted from the \$50,000.00 paid to the Respondent, would result in an actual loss of \$48,000.00. The Fund further clarified that this amount would be limited by the \$30,000.00 maximum recovery limit.

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

(a) 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.

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

(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.

COMAR 09.08.03.03B(3)(a)-(c).



The Respondent did some work on the Contract and the Claimant did not solicit another contractor to complete the project; therefore, the Claimant's actual loss is the amount she paid the Respondent (\$50,000.00) less the value of the materials or services provided by the Respondent (\$2,000.00 for cleaning/demolition work). Therefore, I find that the Claimant's actual loss is \$48,000.00.

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.<sup>4</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$48,000.00 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 \$48,000.00 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. I further conclude that the Claimant is entitled to recover \$30,000.00 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 \$30,000.00; and

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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").

**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.

March 26, 2024  
Date Decision Issued

*Brian Zlotnick*  
\_\_\_\_\_  
Brian Zlotnick  
Administrative Law Judge

BMZ/at  
#210830

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

**PROPOSED ORDER**

***WHEREFORE, this 11<sup>th</sup> day of June, 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***