

IN THE MATTER OF THE CLAIM	* BEFORE H. DAVID LEIBENSPERGER,
OF DREW DAVEY,	* 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 ERIC HUNT,	*
T/A HUNT CONSTRUCTION, LLC,	* OAH No.: LABOR-HIC-02-23-27119
RESPONDENT	* MHIC No.: 23 (75) 835
* * * * *	* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On April 3, 2023, Drew Davey (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$50,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Eric Hunt, trading as Hunt Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).² On October 13, 2023, the MHIC issued a Hearing Order on the Claim.

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

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

On that same date, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On December 13, 2023, I held a remote hearing via the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Jonathan P. Phillips, Assistant Attorney General, Department of Labor (Department), represented the Fund. The Claimant was self-represented. The Respondent was self-represented.

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:

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|----------------------------|---|
| Clmt. Ex. A - | Emails, various senders, recipients, and dates |
| Clmt. Ex. A1 - | Email from the Respondent to the Claimant and Darian Chatman, June 15, 2021, with attached Draw Schedule, undated |
| Clmt. Ex. E ³ - | Email from the Respondent to the Claimant and Darian Chatman, February 7, 2022 |

³ The Claimant submitted several documents prior to the hearing that were premarked with various labels. The Claimant's exhibits that were not admitted into evidence have been retained with the file of this matter.

- Clmt. Ex. E1 - Email from Darian Chatman to the Respondent and the Claimant, February 21, 2022
- Clmt. Ex. F - Email from Darian Chatman to the Respondent, March 20, 2022
- Clmt. Ex. N - Emails, various senders, recipients, and dates
- Clmt. Ex. R - Timeline of Project Status, undated
- Clmt. Ex. S - Text Messages between the Claimant and the Respondent, November 3, 2021
- Clmt. Ex. T - Estimate, Omar Pena's Home Services, LLC, July 14, 2022
- Clmt. Ex. U - Estimate, Randel Fitzpatrick, February 4, 2022
- Clmt. Ex. V - Estimate, Garcia Home Improvement, July 19, 2022
- Clmt. Ex. W - Estimate, My Plumber Plus, April 26, 2033
- Clmt. Ex. X - Appraisal, Parker Residential Appraisal, LLC, May 20, 2021

I admitted the following exhibits offered by the Respondent:

- Resp. Ex. 1 - Invoice, Hunt Construction, March 10, 2021
- Resp. Ex. 2 - Emails Regarding Permit Application Status, September 23, 2021
- Resp. Ex. 3 - Emails between the Respondent and Harry Forchick, various dates in September 2021
- Resp. Ex. 4 - Inspection Time Sheet, JILA Inspection Services, LLC, July 26, 2022
- Resp. Ex. 5 - Zillow Listing for 2000 Ritchie Road, District Heights, Maryland, undated
- Resp. Ex. 6 - Consulting Services Agreement, signed January 20, 2021
- Resp. Ex. 7 - Photographs, labeled A through J, undated

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Remote Hearing, November 3, 2023
- Fund Ex. 2 - MHIC Hearing Order, October 13, 2023
- Fund Ex. 3 - Home Improvement Claim Form, received on illegible 2023 date
- Fund Ex. 4 - MHIC Licensing History for the Respondent, December 9, 2023

Testimony

The Claimant testified and presented the following witnesses: Darian Chatman, Project Manager, and Darryl Johnson, Electrical Inspector.

The Respondent testified.

The Fund did not present 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 118256.
2. The Claimant is a principal in the business Anything Mechanical Business Group, a Maryland LLC (Anything Mechanical).
3. On or about January 20, 2021,⁴ the Claimant and an entity known as One Chance Investing entered into a written consulting service agreement to guide the Claimant in the process of buying, renovating, and reselling a property for profit, also known as flipping (Consulting Contract). It is unclear what type of entity One Chance was, but the parties understood the Consulting Contract meant that the Respondent would provide the consulting services.
4. The Claimant had never flipped a house before.
5. On July 30, 2021, Anything Mechanical purchased a property located at 2000 Ritchie Road, in District Heights, Maryland for \$275,000.00.
6. The Claimant took out a home equity line of credit for Anything Mechanical to afford the down payment on the loan for the purchase and renovation of the property – an

⁴ The agreement is dated January 19, 2021. It was signed, only by the Claimant, on January 20, 2021.

interest-only adjustable-rate loan. The loan included the purchase price of the home and \$125,000.00 for renovations – a total of \$400,000.00.

7. The Respondent was co-guarantor of the loan for the purchase and renovation of the property.

8. On a date that is not contained in the record, the Claimant and the Respondent entered into an oral agreement for the Respondent to serve as the general contractor to perform a total home renovation to flip the Ritchie Road property (GC Contract).

9. The parties discussed that the GC Contract would be completed three to six months after the purchase of the property, with the goal to sell the property before winter due to less favorable real estate market conditions in winter.

10. Under the GC Contract, the Respondent was to renovate the home to completion, sufficient for it to be put on the market. The Claimant's Exhibit A1 is a list of items the Respondent was supposed to complete and contains the scope of work for the Respondent under the GC Contract. It includes several more specific items under broad categories such as demolition, foundation, plumbing rough-in, electrical rough-in, interiors, flooring, and finishings – a full home renovation. It also included permits and inspections as the Respondent's responsibilities.

11. The Claimant and the Respondent had additional verbal agreements and discussions regarding the precise scope of the work under the GC Contract that are not contained in the record.

12. The original agreed-upon GC Contract price was the amount of the loan for the renovations – \$125,000.00. None of the additional verbal agreements regarding scope of work changed the GC Contract price.

13. Darian Chatman was an acquaintance of both the Claimant and the Respondent and had introduced them. He assisted the Claimant in communicating with the Respondent throughout the project, and had contracted with the Claimant for a percentage of the profit from the sale of the home for his services. He described himself as a "go-between, or property manager." (Testimony, Chatman.)

14. The Claimant never resided at, or even set foot on the Ritchie Road property.

15. At all times relevant to this matter, the Claimant has resided in, and was located in San Jose, California. The Claimant also owns a rental property in Wagner, Oklahoma.

16. Mr. Chatman also resides in California.

17. Throughout the course of the project, on dates not specified in the record, the Respondent would request draws from the renovation portion of loan, which would then have to be approved by the Claimant and the lender.

18. Sometimes, the lender would perform a perfunctory level of inspection before approving a draw payment. The dates and subject matter of the lender's inspections are not contained in the record.

19. On dates not specified in the record, the Claimant and the lender approved and made payments to the Respondent totaling \$115,000.00. Some unidentified draws were made for work that had not yet been completed.

20. When the Respondent inspected the home prior to the purchase of the home and the GC Contract, he did not notice that the home did not have a power service line or a water meter.

21. Throughout the course of the project, there were many problems. On a date or dates not contained in the record, the Respondent attempted to get permits to begin work, but the

Respondent was told by permitting officials that a problem with the recording of the deed prevented permits from being issued.

22. Even in the absence of permits, the Respondent began work on the property, performing demolition and framing work.

23. In September of 2021, the Respondent was told by permitting officials that the requested permits would be issued in two to six weeks. The permits were issued on or about October 26, 2021.

24. The Respondent hired subcontractors to perform, among other things, electrical, plumbing, and HVAC installation.

25. In November 2021, the Respondent provided the Claimant with a timeline for completion of various pieces of work in the GC Contract and predicted completion of everything on that list by late December 2021.

26. Before the required plumbing and electrical inspections were performed, on dates not contained in the record, the Respondent put up drywall in the property, and filled in a trench for a water line, making inspections impossible without tearing down drywall and re-digging the trench.

27. When inspectors were brought in, on a date or dates not identified in the record, they recognized these issues and drywall had to be torn down, and the trench had to be re-dug.

28. On a date not contained in the record, the Respondent hired a third-party electrical inspector, Darryl Johnson, to inspect the electrical work and guide the successful completion of that work so that it would pass inspection. Mr. Johnson ultimately performed four inspections for the Respondent, but the home was sold as-is before he did a final inspection.

29. The electrical work initially performed by the Respondent included many errors that Mr. Johnson identified and that had to be corrected. For example, the Respondent had used the wrong size wires in the dining room and kitchen.

30. The incoming water line that the Respondent had connected and covered over, on a date not contained in the record before inspection, was too small for the sprinkler system that had to be installed in the home.

31. On a date not contained in the record, the Respondent purchased and “installed” a gas-powered HVAC unit for the home. The home had no gas connection. The Respondent had to replace it with an electric powered one.

32. As the project dragged on, the Claimant was responsible for making mortgage payments and, growing increasingly frustrated, the Claimant withheld \$10,000.00 of loan draws from the Respondent in order to make payments on the loan.

33. On February 4, 2022, the Claimant received a quote from Randel Fitzpatrick to perform electrical work on the project including installing sixty outlets, twenty-four recessed lights, and a dryer outlet for a total of \$5,000.00. The Claimant did not hire him to perform any work on the project.

34. On February 7, 2022, the Respondent emailed the Claimant another timeline for completion of various pieces of work in the project. This timeline contained some items that were on the November 2021 timeline, including the kitchen cabinets, bathroom floor tile, and installation of appliances. The Respondent predicted the completion of everything on the February 7, 2022 list by early March 2022.

35. Because the Claimant is located in California, he had to rely on the Respondent for progress reports on the home. However, the Claimant found it difficult to obtain, for example, photographs of completed work from the Respondent.

36. During the course of the project, on a date not contained in the record, the Claimant hired a realtor, Michael Goodlow, to assist him in the sale of the home. Upon Mr. Goodlow visiting the property, on a date not contained in the record, he informed the Claimant that the home was not ready to be put on the market and that many items the Respondent claimed were finished, were not finished.

37. Mr. Goodlow sent the Claimant photographs of the condition of the property on March 17, 2022. On March 20, 2022, the Claimant sent a list of incomplete items to the Respondent, asking the Respondent to provide completion dates for each item.

38. By the time of Mr. Goodlow's inspection, the Respondent had told the Claimant that the property was ready to be on the market. However, at the time of Mr. Goodlow's inspection, a plethora of items remained incomplete, for example: rooms with no flooring, exposed electrical wire, missing light switches, doors missing hardware, doors not installed, holes in drywall, unpainted walls, HVAC ceiling and floor vents not installed, no hardware for the sinks or shower, no toilet in the master bath, and no water meter.

39. On April 8, 2022, the Claimant sent the Respondent an email with a list of incomplete items, including: no breakers on the electrical panel, lack of sprinkler heads, incomplete painting, holes in the ceiling, missing HVAC vents, missing light switches, missing kitchen sink hardware, missing doors, missing bathroom toilet and vanities, and no shower hardware.

40. In the April 8, 2022 email, the Claimant also fired the Respondent from the job: "You need to vacate the property along with all of your crackerjack contractors...Please exit the property along with all of your subs. You are now trespassing on my property." (Claimant Ex. N.)

41. However, in April 2022 the Respondent told the Claimant that he would finish all of the scope of work he had contracted for, and the Respondent remained on the project until it was substantially finished.

42. On April 26, 2022, the Claimant received a quote from My Plumber Plus to install a water service replacement pipe for a total of \$7,994.00. The Claimant did not hire them to perform any work on the property.

43. On July 14, 2022, the Claimant received a quote from Omar Pena's Home Services, LLC to do interior and exterior painting, building back door stairs, installing windows and doors, and installing a patio, among other things, for a total of \$22,750.00. The Claimant did not hire them to perform any work on the property.

44. On July 19, 2022, the Claimant received a quote from Garcia Home Improvement to do interior painting, demolish the first-floor bathroom tile and install new tile, for a total of \$10,050.00. The Claimant did not hire them to perform any work on the property.

45. In September 2022, the property went under contract with a buyer identified by the Respondent, who was considering it for an assisted living facility.

46. Before the lender for the new buyer would allow the purchase of the property, its inspector created a list of several items that needed to be completed.

47. The Respondent ultimately completed, "everything that needed to be completed for the sale of the house." (Testimony, Chatman.)

48. On January 3, 2023, Anything Mechanical sold the property as-is for \$470,000.00 to the buyer identified by the Respondent.

49. At the time of the sale, the home still did not have a water meter.

50. During the life of the loan, before the property was sold, the Claimant was making monthly payments of approximately \$5,000.00 in interest-only mortgage and insurance

payments. The loan existed for approximately seventeen months, and the total monthly payments made were approximately \$85,000.00.

51. The Respondent also made approximately one and a half months of these interest payments on the loan out of his own pocket.

52. The Claimant and/or Anything Mechanical did not make any profit from the sale of the home and, in fact, lost money.

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 not proven eligibility for compensation.

Although the Claimant was not the owner of the property at issue, he nonetheless is an “owner” for purposes of a claim against the Fund. An owner under the statute, “includes a homeowner, tenant, or other person who buys, contracts for, orders, or is entitled to a home improvement.” Bus. Reg. § 8-101(k); *see* COMAR 09.08.01.01. By all accounts, the Claimant, and not Anything Mechanical which owned the property, contracted with the Respondent for the

subject home improvements. The invoice the Respondent prepared on March 10, 2021, is billed to the Claimant. (Resp. Ex. 1.)

The Fund suggested that because the Claimant's only intent was to flip the property, it might be considered a commercial property, and not subject to recovery from the Fund. However, "home improvement" is defined as, "the . . . improvement . . . remodeling, repair . . . of a building or part of a building that is used or designed to be used as a residence or dwelling place. . . ." Bus. Reg. § 8-101(g)(1); see COMAR 09.08.01.01. This property meets that definition – it was designed and renovated to be a residence. In addition, the Claimant does not own more than three dwellings. Bus. Reg. § 8-405(f)(2).

Next, there is no question that much of the work performed by the Respondent was unworkmanlike and inadequate. The Respondent admitted that in his opening. He also testified, "we did something wrong by closing in," the electrical and plumbing work with drywall before inspections. (Testimony, Respondent.) He testified he had ordered the incorrect gas HVAC system. However, the problem for the Claimant is that the Respondent remained on the project throughout, appears to have substantially corrected the defects identified by the Claimant, and completed the project.

The parties' testimony differed as to what, if any items remained incomplete by the time the property was sold. The Claimant testified that the items identified as incomplete in his April 8, 2022 email to the Respondent remained incomplete, while the Respondent testified that he completed those items by the time the property was sold. The Claimant failed to introduce corroborating evidence sufficient for me to determine what, if anything, under the GC Contract was left incomplete. The only photographs of the property entered into evidence came from the Respondent, which appear to show substantially completed work.

The Respondent admitted that he failed to install a water meter by the time the home was sold, but testified he did eventually install one at some point. Again, the Claimant failed to introduce sufficient evidence to establish no water meter was installed.

Whatever items may have remained incomplete, if any, I find that the Respondent substantially completed the project. Mr. Chatman testified that the Respondent ultimately, “did everything to get it on the market and get it sold.” (Testimony, Chatman.) He further testified that the Respondent did not abandon the project and “completed everything that needed to be completed for the sale of the house.” (Testimony, Chatman.) The Claimant himself testified that the Respondent had, “completed everything that was required to be done to the best of his ability.” (Testimony, Claimant.) The Claimant also testified that it was completed to the point of being sold, but not the point of being habitable. However, other than Claimant’s testimony regarding the April 8, 2022 email, he did not specify to what extent “habitability” was required by the GC Contract or related to an inadequate home improvement.

While the testimony from Mr. Chatman and the Claimant does not specifically address whether the Respondent completed the entire scope of work under the GC Contract, it certainly permits that inference. The Claimant also never hired anyone else to complete any of the work under the GC Contract. Moreover, on the record presented, I am unable to identify, by a preponderance of the evidence, any part of the scope of work in the GC Contract that the Respondent did not complete by the time the home was sold.

Although it is clear that the Respondent made many critical unworkmanlike mistakes throughout the process, and misrepresented the status of completion to the Claimant, there was insufficient evidence presented that the work remained unworkmanlike or inadequate upon his completion of the work. Thus, despite the many errors along the way, it does not appear that by the end of the project there was, “an unworkmanlike, inadequate, or incomplete home

improvement.” Bus. Reg. § 8-401. I thus find that the Claimant is not eligible for compensation from the Fund.

Even if the Claimant were eligible for compensation, the Claimant did not suffer an “actual loss” as defined by the statute and regulations. I have no doubt that the Claimant lost money on this deal. The home sold for \$470,000.00. Minus the sale price of the home of \$275,000.00, and the \$115,000.00 for the renovations, as well as the approximately \$77,500.00 in interest-only mortgage and insurance payments the Claimant made, would leave only \$2,500 in profit, which would be easily eaten up by realtor fees and closing costs.

However, an “actual loss” under the statute is the “costs of restoration, repair, replacement, or completion” of the project. Bus. Reg. § 8-401. As discussed above, the Respondent ultimately completed the project for less than the GC Contract price, and the Claimant did not hire any other contractors to complete or repair the work. In addition, 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). The money the Claimant lost in a bad investment, for example the tens of thousands of dollars in interest-only mortgage and insurance payments, is a consequential damage, and not an actual loss compensable by the Fund.

The Claimant testified to losing approximately \$90,000.00 on the deal, but he was unable to substantiate that calculation. The Claimant testified that he had to repurchase materials and pay permitting costs totaling approximately \$40,000.00, but never identified what those materials or permits were, or their cost. He did not demonstrate that those costs were paid by him out-of-pocket, as opposed to out of the renovation loan. He also testified he did not know the materials’ exact cost and had no receipts. When pressed, the Claimant testified to purchasing electrical materials, steps and railways, and replaced a broken window, at a total cost of

\$9,500.00, but the Claimant presented no evidence to corroborate that testimony, and my view of the Claimant's testimony is that he was guessing.

The MHIC's regulations provide formulas to measure a claimant's actual loss, depending on the status of the contract work. When a contractor performs some work under the contract, and the Claimant is not seeking other contractors to complete or remedy that work, "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." COMAR 09.08.03.03B(3)(b). Thus, in order for the Claimant to have an "actual loss," the value of the Respondent's work would have to be less than the amount he paid to the Respondent. Based on my conclusion that the Respondent completed the work, the Claimant only paid the Respondent \$115,000.00 for \$125,000.00 worth of materials and services. The Fund also suggested that the value of the Respondent's work could be measured by the \$195,000.00 difference between the purchase price and the sale price of the home after the Respondent's improvements. I do not think I need to reach that issue given my conclusion that the Respondent completed the project for less than the amount he contracted for.

If a contractor performs some work under the Contract, and the Claimant retained or intends in the future to retain other contractors to complete or remedy the work, the Claimant's actual loss would be the amount the Claimant paid the original contractor, plus the amount the Claimant paid to the new contractors, minus the original contract price. COMAR 09.08.03.03B(3)(c). However, the Claimant never hired any new contractors. Moreover, all of the estimates he received from other contractors were before the Respondent's completion of the project and, therefore, do not accurately reflect an amount the Claimant would have had to pay at the end of the Respondent's work.

This project was a mess. From an inexperienced property investor leveraging his own home for an LLC to purchase and renovate a property on the other side of the country that he never personally saw, to a “project manager” who was no closer to the project than the Claimant, to a general contractor who failed to understand the scope of the renovations needed and who botched the permits, the work, the inspections and, perhaps most importantly, the timeline – this project was destined to fail. Although the Claimant’s alleged losses are not compensable by the Fund, that does not mean the Respondent is blameless, nor that the Claimant may not have other legal avenues of redress.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss 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).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant’s claim; and

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

January 23, 2024
Date Decision Issued

David Leibensperger

H. David Leibensperger
Administrative Law Judge

HDL/dlm
#209534

PROPOSED ORDER

WHEREFORE, this 16th 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*