

IN THE MATTER OF THE CLAIM	* BEFORE DENISE O. SHAFFER,
OF CARMEN BELL,	* 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 GHASSAN HAMDAN	*
T/A EMPROVE REMODELING, INC.,	* OAH No.: LABOR-HIC-02-23-27105
RESPONDENT	* MHIC No.: 23 (75) 873
	*

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PROPOSED DECISION

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STATEMENT OF THE CASE

On March 28, 2023, Carmen Bell (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$8,660.00 for actual losses allegedly suffered as a result of a home improvement contract with Ghassan Hamden, trading as Emprove Remodeling, Inc. Md. Code Ann., Bus. Reg. §§ 8-401 to -

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

411 (2015 & Supp. 2023)).² On October 13, 2023, the MHIC issued a Hearing Order on the Claim. On the same day, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On December 12, 2023, I held a hearing on the Webex video conferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1). Nicolas Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant was present and represented herself. The Respondent was present and represented himself.

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 - Customer Proposal/Contract between the Claimant and the Respondent, September 15, 2022
- Clmt. Ex. 2 - Copy of QuickBooks printout showing payment of the deposit in the amount of \$8,660.00 on September 16, 2022
- Clmt. Ex. 3 - Series of text messages between Claimant and Darlene Elder, a sales consultant for Respondent, September 2 through December 9, 2022

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

- Clmt. Ex. 4 - Series of text messages between Claimant and Darlene Elder, a sales consultant for Respondent, December 9 through 28, 2022
- Clmt. Ex. 5 - Proof of payment of \$8,660.00, September 16, 2022
- Clmt. Ex. 6 - Notice of Chapter 7 bankruptcy, undated

The Respondent did not offer any exhibits for admission.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Remote Hearing, November 21, 2023
- Fund Ex. 2 - Hearing Order, October 13, 2023
- Fund Ex. 3 - Notice of Claim sent to Respondent from MHIC, April 11, 2023
- Fund Ex. 4 - Licensing History, printed December 5, 2023

Testimony

The Claimant testified and presented the testimony of Darlene Elder.

The Respondent did not testify or present any witnesses.

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 license number 01-120631.
2. In September of 2022, the Respondent and the Claimant entered into a Contract for a kitchen renovation.
3. The original agreed-upon Contract price was \$26,000.00.
4. On September 16, 2022, the Claimant paid the Respondent a deposit of \$8,660.00.
5. The Claimant and Ms. Elder exchanged ideas and messages in October, November and early December, refining the details of the renovations.

6. On December 13, 2022, Ms. Elder sent the Claimant a text message stating: “Unfortunately I got laid off and the company is closed. We didn’t get any notice in advance. I’m shocked.” (CL. Ex. 4)

7. The Respondent never did any work at the Claimant’s residence.

8. Ms. Elder later informed the Claimant that the Respondent filed for bankruptcy. Ms. Elder gave the Claimant the Respondent’s attorney’s contact information. The Claimant was not able to reach the Respondent despite repeated calls and messages.

DISCUSSION

LEGAL FRAMEWORK

“The Fund was established to provide an additional remedy for homeowners who suffered actual loss due to unsatisfactory work performed by a home improvement contractor.” *Brzowski v. Maryland Home Imp. Comm’n*, 114 Md. App. 615, 628 (1997); 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.”). By statute, certain claimants are excluded from recovering from the Fund altogether. Specifically, an award from the Fund may occur only if the evidence shows: (a) the claimant resides in the home as to which the claim is made, or owns no more than three dwelling places; (b) the claimant is not an employee, officer, or partner of the contractor; or the spouse or other immediate relative of the contractor or the contractor’s employees, officers or partners; (c) the work at issue did not involve new home construction; (d) the claimant did not unreasonably reject the contractor’s good faith effort to resolve the claim; (e) the claimant complied with any contractual arbitration clause before seeking compensation from the Fund; (f) there is no pending claim for the same loss in any court of competent jurisdiction and the claimant did not recover for the actual loss

from any source; and (g) the claimant filed the claim with the MHIC within three years of the date the claimant knew, or with reasonable diligence should have known, of the loss or damage. Bus. Reg. §§ 8-405(c), (d), (f), and (g), 8-408(b)(1) (Supp. 2023); Bus. Reg. § 8-101(g)(3)(i) (Supp. 2023).

If not excluded on these grounds, a claimant 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.

ANALYSIS

The Fund’s counsel did not assert that any statutory exclusions applied to this case, and I find that the Claimant was not subject to any of the statutory exclusions for recovery from the Fund. Additionally, the evidence demonstrates that the Respondent abandoned the project without doing any work and, therefore, performed an incomplete home improvement.

The Claimant testified thoroughly and credibly about the Contract and her relationship with the Respondent. This testimony was corroborated by the testimony of Ms. Elder and the Claimant’s exhibits, which documented her conversations with Ms. Elder on the details of the renovation as well as her deposit of \$8,660.00. The Claimant fulfilled her contractual obligation by paying the Respondent a deposit in the amount of \$8,660.00. The Respondent abruptly closed his business with no notice to his employees or customers. He did not fulfill his obligation under the Contract.

The Respondent attended the hearing but did not dispute any of the allegations. Based on the evidence presented, both the Claimant and the Fund's counsel argued that the Claimant proved eligibility for compensation from the Fund. I find that the Claimant is eligible for compensation from the Fund because the evidence demonstrates conclusively that the Respondent did not fulfill his obligation to perform a complete home improvement. Indeed, he completely abandoned the Contract after taking the Claimant's \$8,660.00.

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.

As stated, the Respondent abandoned the Contract without doing any work. Accordingly, as the Fund's counsel proposed at the hearing, 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). Applying this formula, the Claimant's actual loss is the amount she paid to the Respondent, which is \$8,660.00.

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.³ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR

³ 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

09.08.03.03B(4). In this case, the Claimant's actual loss of \$8,660.00 is the amount she paid to the Respondent. Therefore, the Claimant's recovery is limited to \$8,660.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$8,660.00 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(3)(a). I further conclude that the Claimant is entitled to recover \$8,660.00 from the Fund.

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$8,660.00; 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;⁴ and

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

January 25, 2024
Date Decision Issued

Denise O. Shaffer

Denise O. Shaffer
Administrative Law Judge

DOS/emh
#209683

change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

⁴ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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***