IN THE MATTER OF THE CLAIM	*	BEFORE ABENA Y. WILLIAMS,
OF MICHELE WILSON,	*	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 JAMAH WILSON,	*	
T/A HANDYMAN MALL 410 LLC,	*	OAH No.: LABOR-HIC-02-22-20570
RESPONDENT	*	MHIC No.: 22 (75) 812

## **PROPOSED DECISION**

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

## STATEMENT OF THE CASE

On May 3, 2022, Michele Wilson (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$17,544.30 for actual losses allegedly suffered as a result of a home improvement contract with Jamah Wilson, trading as Handyman Mall 410 LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022). On August 5, 2022, the MHIC issued a Hearing Order on the Claim. On August 16,

<sup>&</sup>lt;sup>1</sup> The parties are not related.

<sup>&</sup>lt;sup>2</sup> Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

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2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On December 14, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. John Hart, Assistant Attorney General, Department, represented the Fund. The Claimant was present and self-represented. The Respondent did not appear.

After waiting over 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 August 26, 2022, the OAH provided a Notice of Hearing to the Respondent by first-class and certified mail to the Respondent's address on record with the OAH. COMAR 28.02.01.05C(1). The notices stated that a hearing was scheduled for December 14, 2022, at 9:30 a.m., at the OAH in Hunt Valley, Maryland. COMAR 09.08.03.03A(2). The notices 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 sent by first-class mail to the OAH. The receipt for the notice sent certified mail was signed as received.

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 I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

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.

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# **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**

The Complainant offered the following exhibits which were admitted into evidence:

**					
CL Ex. 1	Claimant Written Statement, undated				
CL Ex. 2	Home Improvement Claim Form, signed April 27, 2022				
CL Ex. 3	Copy of Check to the Respondent for \$18,342.80, dated August 9, 2021 with the following attachments: Check to the Respondent for \$9,171.40, dated August 17, 2021; Check to the Respondent for \$4,585.70, dated August 31, 2021; Check to the Respondent for \$1,230.00, dated November 6, 2021				
CL Ex. 4	Contract/Estimate, undated				
CL Ex. 5	Amended Contract/Estimate, undated				
CL Ex. 6	TNT Home Remodeling, LLC Contract, dated December 30, 2021				
CL Ex. 7	Lowes Online Order Details Receipt, undated				
CL Ex. 8	RH Pest Management Receipt, dated October 23, 2022				
CL Ex. 9 TownePlace Suites Hotel Confirmation Screenshots for five nights (August 9, 2021 to August 14, 2021) and seven nights (August 14, 2021 to August 21, 2021), undated					
CL Photo Gro	up 1	Photographs of banister and railings, undated			
CL Photo Gro	up 2	Photographs of kitchen cabinets, drawers, undated			
CL Photo Gro	oup 3	Photographs of kitchen back splash, space between granite counter tops and adjacent wall, electrical outlet plates, undated			
CL Photo Group 4		Photographs of kitchen ceiling and floor, open vent duct in floor, undated			

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Ct. Pl.or : George - Plantagraphy of Qualitarization plantage in the lines.

CL Photo Group 5 Photographs of doors and windows, undated	
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- CL Photo Group 6 Photographs of hallway bathroom and walk-in shower, undated
- CL Photo Group 7 Photographs of master bathroom, undated
- CL Photo Group 8 Photographs of paint job, undated
- CL Photo Group 9 Screenshots of text messages between Claimant and Respondent regarding damage to the Claimant's personal property and condition of home, undated
- CL Photo Group 10 Screenshots of text messages between Claimant and Respondent regarding Claimant's concerns, undated

The Guaranty Fund offered the following exhibits which were admitted into evidence:

GF Ex. 1	Notice of Hearing,	dated A	August 26, 2022	2
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- GF Ex. 2 Hearing Order, dated August 5, 2022
- GF Ex. 3 HIC Letter to the Respondent, dated May 23, 2022
- GF Ex. 4 Respondent's HIC License, issued October 4, 2021

## **Testimony**

The Claimant testified on her own behalf.

The Fund did not present any witnesses.

The Respondent did not appear at the hearing.

### 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 57-60201.
- 2. On March 31, 2021, the Claimant and the Respondent entered into a contract to renovate the Claimant's residence (Contract). The project involved updating the home throughout with some structural renovations, installing new flooring, carpeting, and doors, painting the entire house, installing kitchen countertops, cabinets, and quarter round, upgrading

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the half and master bathrooms, installing recessed lighting on the first floor, installing a barn door and glass doors, installing a backsplash in the kitchen, new cabinets, plumbing, new appliances, and replacing the kitchen subfloor.

- 3. The parties agreed that the work would begin on August 9, 2021.
- 4. The original agreed-upon Contract price was \$43,370.00, however the Contract was later upgraded to include new granite countertops (\$2,250.00) and a lazy Susan (\$237.00) for a total Contract price of \$45,857.00.
- 5. The Claimant paid the Respondent in accordance with the following payment schedule:
  - \$18,342.00 on August 9, 2021
  - \$9,171.40 on August 17, 2021
  - \$9, 171.40 on August 25, 2021
  - \$4,585.70 on August 31, 2021
  - \$1,230.00 on November 6, 2021
  - 6. The Claimant paid the Respondent total of \$42,500.50.
  - 7. The Respondent began work on the project on August 9, 2021.
- 8. The Respondent worked on the project sporadically for one month, and only returned to receive payments from the Claimant.
- 9. The Claimant stayed in a hotel for three weeks but expected to return to a completed project within three weeks. The Claimant returned to her home to find:
  - Wet and sticky residue on banister (picture taken end of August 2021):
  - No crown molding on edge of shelf (the Respondent changed cabinets without her permission);
  - Installation of kitchen cabinets without shelves:
  - Blocking of cable/internet wires with cabinets;
  - Kitchen drawers unable to open;

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- Improper installation of kitchen backsplash; cracked backsplash near electrical outlet;
- Improper installation of countertop, huge gap in countertop, edges left exposed, not flush to the edge backsplash;
- Nails protruding through the kitchen ceiling and floor, defects in ceiling;
- Open duct with no vent covering in kitchen floor;
- Improper measuring of back storm door open edge margin causing water intrusion when it rains:
- Removal of weather stripping and insulation around front door;
- No draft cover on door causing rodent intrusion;
- Faulty installation of doorknob and window screens;
- Severely damaged shower tiles and poor grouting of tiles;
- No shower safety bars or soap dish holder;
- Loose flimsy shower doors;
- Faucet stripped and loose;
- Drill holes left in wall;
- Loose shower faucet and missing screws;
- Installation of a regular jetted tub instead of agreed upon walk-in tub;
- No sealing of tiles and poor grouting;
- Cracks inside tub;
- No hot water available in the shower;
- Walls not sanded before painting;
- Bleeding and peeling paint;
- Drywall not installed by refrigerator
- Hole in the wall in the walk-in closet; and
- Cracks in the baseboard.
- 10. The Respondent agreed to meet the Claimant at her home to discuss her concerns and was made aware of the damage throughout the home.
- 11. The Respondent made no attempts to complete or correct the work in the home and failed to return to the Claimant's home.
  - 12. On December 30, 2021, the Claimant hired TNT Home Remodeling, LLC, a licensed contractor, to correct and complete the Respondent's work for \$20,900.00.

## **DISCUSSION**

#### LEGAL FRAMEWORK AND BURDEN OF PROOF

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

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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).

Certain claimants are excluded from recovering from the Fund altogether. Therefore, a claimant must prove that: (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); Bus. Reg. § 8-101(g)(3)(i) (Supp. 2021).

If none of these exclusions apply, 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.

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#### **ANALYSIS**

Based on the evidence presented at the hearing, I find that the Claimant was not subject to any of the statutory exclusions for recovery from the Fund. Additionally, the undisputed evidence demonstrated that the Respondent performed an incomplete and unworkmanlike home improvement by failing to timely and competently complete the project as required by the Contract. The Claimant testified credibly about the project, and her unrefuted testimony was fortified by exhibits, which included pictures demonstrating the status of the Respondent's incomplete work months after it was supposed to be completed. (CL Photo Groups 1-10). The Claimant fulfilled the majority of her contractual obligation by paying the Respondent \$42,500.50 out of the \$45,857.00 Contract amount. (CL Ex. 3). She stopped paying the Respondent when he failed to return to complete and repair his work.

The Claimant was more than patient as the project was delayed well beyond a reasonable completion date. The Claimant even stayed at a hotel for five days from August 9, 2021 to August 14, 2021 because the Respondent told her that the work would take five days to complete. (CL Ex. 9). She extended her stay another seven days when the Respondent told her it would take a little longer. (*Id.*).

The Respondent did not fulfill his obligation to perform an adequate and complete home improvement; indeed, the Respondent clearly took advantage of the Claimant's patience and goodwill and never delivered on his part of the Contract despite accepting \$42,500.50 in payments. (CL Ex. 3). I thus find that the Claimant is eligible for compensation from the Fund. The Fund agreed that the Respondent failed to meet the standards of a licensed home improvement contractor and recommended an award.

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

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compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Respondent performed some work under the Contract, and the Claimant hired another contractor to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

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)(c).

Here, the Claimant proved she paid the Respondent \$42,500.50. The Claimant then paid \$20,900.00 to complete the project to the Contract's same specifications. When these figures are added together, they total \$63,400.50. Based on the above-referenced formula, the Claimant's actual loss is \$63,400.50 minus the original Contract price, \$45,867.00, which comes to \$17,533.50.

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>3</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR

<sup>&</sup>lt;sup>3</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").

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09.08.03.03B(4). In this case, the Claimant's actual loss, \$17,533.50, is less than the amount paid to the Respondent, \$42,500.50, and less than \$30,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$17,533.50.

## PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$17,533.50 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). I further conclude that the Claimant is entitled to recover \$17,543.50 from the Fund.

## RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$17,533.50; 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;<sup>4</sup> and

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

March 2, 2023
Date Decision Issued

Abena G. Williams

Abena Y. Williams

Administrative Law Judge

AYW/ja #203767

<sup>&</sup>lt;sup>4</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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# PROPOSED ORDER

WHEREFORE, this 24th day of April, 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.

Robert Altieri

Robert Altieri
Panel B
MARYLAND HOME IMPROVEMENT
COMMISSION

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