

<p>IN THE MATTER OF THE CLAIM OF LEO HOLLINGSWORTH, CLAIMANT AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ALLEGED ACTS OR OMISSIONS OF NATHAN WISE, T/A CAPITAL REMODELING, INC., RESPONDENT</p>	<p>* BEFORE WILLIS GUNTHER BAKER, * AN ADMINISTRATIVE LAW JUDGE * OF THE MARYLAND OFFICE * OF ADMINISTRATIVE HEARINGS * * OAH No.: LABOR-HIC-02-23-21651 * MHIC No.: 23 (75) 1207 * *</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On June 2, 2023, Leo Hollingsworth (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$4,599.00 for actual losses allegedly suffered as a result of a home improvement contract with Nathan Wise, trading as Capital Remodeling, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).² On August 15, 2023, the MHIC issued a Hearing Order on the Claim. On August 16, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

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

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

On November 29, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Mackenzie Read, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. Richard S. Basile, Esquire, represented the Respondent. Mark Vandergrift, President of Capital Remodeling, Inc., was present.³

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); Code of Maryland Regulations (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:⁴

Clmt. Ex. 1 - Initial Visit Discount Opportunity Payment Worksheet, undated

Clmt. Ex. 2 - Letter from Conway Management Company to the Claimant, August 23, 2022

I admitted the following exhibits offered by the Respondent unless otherwise noted. The first four are Joint Exhibits with the Claimant:

Jt. Ex. 1 - Home Improvement Contract between the parties for windows, November 29, 2021

Jt. Ex. 2 - Client Information Sheet, November 29, 2021

Jt. Ex. 3 - Vytex Window Measurement Sheet, December 14, 2021

³ Nathan Wise, who is the Corporation's owner and holds the license, was not present. Counsel indicated that he was present on behalf of Mr. Wise and the Corporation, and that Mr. Vandegrift has the authority to speak for the Respondent.

⁴ The Claimant provided many additional documents but never identified them nor offered them as exhibits. They have been preserved for the record in the file.

Jt. Ex. 4 - Claimant's Deposit Check #4094, November 29, 2021

Resp. Ex. 5 - Marked for identification only, not admitted. Respondent's Telephone Log, November 29, 2021 to June 22, 2023

Resp. Ex. 6 - Not offered

Resp. Ex. 7 - Not offered

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, August 28, 2023 and MHIC Hearing Order, August 15, 2023

Fund Ex. 2 - The Respondent's Licensing information, printed September 9, 2023

Fund Ex. 3 - MHIC Notice of Claim to the Respondent, June 2, 2023

Testimony

The Claimant testified and did not present other witnesses.

The Respondent presented the following witnesses: Louis Fusco, Regional Manager of Sales for the Respondent; and Mark Vandegrift, President.

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 numbers 0142584 (individual) and 0539985 (corporate).

2. On November 29, 2021, the Claimant and the Respondent entered into a contract to remove old windows and install new windows in the Claimant's condominium (Contract).

3. The original agreed-upon Contract price was \$ 13,797.00.

4. The Contract stated that work would begin on approximately February 28, 2022 and would be substantially completed by March 15, 2022.

5. On November 29, 2021, the Claimant paid the Respondent \$4,599.00.

6. The Contract contained language that homeowner's association approval is not required for the agreement to be valid, and the Claimant is responsible for all homeowner association approvals. (Jt. Ex. 1, p. 5).

7. The Claimant's home is subject to the rules of the GreenHaven Condo Association (Association), under the management of Conway Management. The Association requires approval of any window replacement. The Claimant did not seek window replacement approval before he entered into the Contract with the Respondent.

8. On December 14, 2021, Vytex Windows measured the Claimant's windows on behalf of the Respondent to begin fabricating the windows.

9. Over the course of the next few months, the Association communicated with the Claimant that he had not received approval for the window work, and he needed to submit an Architectural Request Form to the Association for approval.

10. The Claimant sent the form to the Respondent but never submitted the form to the Association and never provided the Respondent with the Association requirements.

11. The parties spoke a few times over the next several months and the Respondent reiterated that the Claimant was responsible for getting the Association's approval.

12. On January 6, 2022, the parties entered into a no cost addendum to add grids to the windows to be consistent with the existing windows in the building.

13. The windows were constructed and delivered for installation to the Claimant's home on March 18, 2022. The Association advised the Respondent that the Claimant had not received approval for the windows and that they could not be installed.

14. At some point the parties learned that the Association required the nailing of the flanges as part of the window installation. On March 22, 2022, the parties entered into an addendum to the Contract regarding the nailing of flanges, adding an additional cost of \$319.00. This increased the total Contract price to \$14,116.00.

15. The Claimant put the Respondent in contact with the Association and the Association provided the Respondent with the Association's full architectural requirements for the windows on March 24, 2022.

16. The Association requested that the Respondent submit the application on behalf of the Claimant so that it could be reviewed for approval.

17. The window installation required by the Association was not consistent with the industry standard utilized by the Respondent for replacement windows. The Association required that replacement windows be installed by methodology applied to a new build, which this was not.

18. The Respondent notified the Claimant in April 2022 that it could not comply with the installation process required by the Association and that it was inconsistent with what they had agreed upon in the Contract.

19. The Respondent concluded that it would be unable to complete the installation under the Association requirements since it faced with too much uncertainty related to its ability to install within industry standards and the additional, unknowable costs involved.

20. The Respondent offered to provide the windows that had already been fabricated to the Respondent at a discounted price and advised he would need to find someone else to do the installation.

21. The Claimant refused to pay any more to the Respondent and refused to accept the window delivery.

22. The Claimant never provided the Respondent approval of the Association to install the windows.

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.

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.⁵ Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2023). 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. 2023). 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. 2023). 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. 2023).

⁵ The Respondent sought to have the hearing postponed because it had filed a breach of contract claim against the Claimant in court. Had the Claimant filed a recovery action in court, the matter would have been stayed, but that is not the case with a claim brought by the Respondent. Therefore, the Fund claim proceeded.

The Respondent was a licensed home improvement contractor, experienced with the fabrication and installation of replacement windows, at the time the Respondent entered into the Contract with the Claimant. The Claimant contends that the Respondent abandoned the Contract without doing the work pursuant to the Contract. The Respondent contends that the Claimant failed to get the approval of its Association before it entered into the Contract and that the Association's requirements were outside the industry standards for replacement windows and were impossible for the Respondent to comply.

There is no question that both parties wanted the Contract to succeed. There is also no question that a term of the Contract required the Claimant to acquire the Association's approval for the replacement window work. The Respondent measured for the windows, had the windows fabricated, and was ready to install when it was stopped by the Association. Despite the Claimant's assertion of Respondent's abandonment, the Claimant had never acquired the approval of the Association for his replacement windows. Once the Respondent became aware of the Association's requirements, it worked to satisfy the requirements, as best it could, but was unable to do so without compromising industry standards.

The Respondent offered to provide the windows to the Claimant at a reduced price if he wanted to find someone else to do the installation. The Claimant rejected the offer. I do not find that the Claimant unreasonably rejected the good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023). The Claimant had a reasonable expectation that the Respondent could do the work per the Contract. The Respondent's offer to charge less just for the windows but not complete the installation, justified the Claimant's rejection of the offer.

Ultimately, it was the Claimant's failure to get the necessary Association approval before the Respondent started the work that doomed the project. While the Respondent could have assumed there was a condominium association that had architectural rules, as the homeowner, the Claimant should have known the process for home improvement project approvals. The

Contract terms were not subject to the Association's approval, and the failure of the Claimant to acquire approval did not release the Claimant from the terms of the Contract.

I do not find that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements. The Respondent entered into a Contract and was ready to fulfill its side of the bargain. It measured, fabricated, and attempted to install the windows, pursuant to industry standards. The Respondent was prevented from completing the job by the Claimant's Association. The Respondent contacted the Association and tried to work with them to comply with the Association's requirements but determined that the required installation was not within industry standards, involved far more work than originally anticipated, and was too uncertain to continue. I cannot fault the Respondent for this. I believe the Respondent did all it could under the circumstances. It did not abandon the job; it was prevented from completing it.

The Claimant failed to acquire approval as required under the terms of the Contract. Therefore, I find that the Claimant is not eligible for compensation from the Fund.

PROPOSED CONCLUSIONS 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).

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.

February 23, 2024
Date Decision Issued

Willis Gunther Baker

Willis Gunther Baker
Administrative Law Judge

WGB/ckc
#210172

PROPOSED ORDER

WHEREFORE, this 31st day of May, 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.

J Jean White

I Jean White

Panel B

**MARYLAND HOME IMPROVEMENT
COMMISSION**