

<b>IN THE MATTER OF THE CLAIM</b>	<b>* BEFORE MARC NACHMAN,</b>
<b>OF LOUIE SUN AND KRISTA</b>	<b>* AN ADMINISTRATIVE LAW JUDGE</b>
<b>BACUNGAN SUN,<sup>1</sup></b>	<b>* OF THE MARYLAND OFFICE</b>
<b>CLAIMANTS</b>	<b>* OF ADMINISTRATIVE HEARINGS</b>
<b>AGAINST THE MARYLAND HOME</b>	<b>*</b>
<b>IMPROVEMENT GUARANTY FUND</b>	<b>*</b>
<b>FOR THE ALLEGED ACTS OR</b>	<b>*</b>
<b>OMISSIONS OF PAUL CHRETIEN,</b>	<b>* OAH No.: LABOR-HIC-02-21-09954</b>
<b>T/A CALIFORNIA BUILDERS, INC.,</b>	<b>* MHIC No.: 20 (75) 809</b>
<b>RESPONDENT</b>	<b>*</b>

\* \* \* \* \*

**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 January 22, 2019, Louie Sun (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 \$13,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Paul Chretien, T/A California

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<sup>1</sup> The claim was initially filed by Mr. Sun, but was amended at the hearing to include both Claimants. There was no prejudice to any other party by adding the additional Claimant, who was a co-property owner and was involved in the entire transaction leading to this claim.



Builders, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).<sup>2</sup> On April 13, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on June 15, 2021, remotely over the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312. Hope M. Sachs, Assistant Attorney General, Department, represented the Fund. The Claimants represented themselves. Neither the Respondent nor Robin Ficker, Esquire, the attorney who entered an appearance on the Respondent's behalf, appeared at the hearing.

After waiting at least twenty 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 May 5, 2021, the OAH provided a Notice of Hearing (Notice) to the Respondent and his attorney by United States mail to their respective addresses on record with the OAH. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for June 15, 2021, at 9:30 a.m., remotely over the Webex videoconferencing platform (Meeting No. 129 913 6772). 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 to the OAH. Neither the Respondent nor his attorney notified the OAH of any change of their mailing addresses. COMAR 28.02.01.03E. The Respondent nor his representative made any request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the

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<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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Respondent and his counsel 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 in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 09.01.03; and COMAR 28.02.01.

### ISSUES

1. Did the Claimants 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 on the Claimants' behalf:

- CL. Ex. A Personal Statement from Claimants, undated
- CL. Ex. B Communication Timeline with Respondent. undated
- CL. Ex. C Construction Contract (Contract) between Claimants and the Respondent, dated October 25, 2019
- CL. Ex. D Check for deposit (\$13,000.00) paid to the Respondent, dated October 25, 2019
- CL. Ex. E Email chain between the Claimants and the Respondent from December 10, 2019 to February 12, 2020 (four emails from Claimants to Respondent; one from the Respondent)
- CL. Ex. F Email of February 12, 2020 from Respondent to Claimants forwarding an email concerning the December 5, 2019 print services, with handwritten notes and comments
- CL. Ex. G Email of February 12, 2020 from Respondent containing draft architectural drawings
- CL. Ex. H Respondent's counsel's handwritten note, dated December 31, 2019, placed in Claimants' mailbox alleging permit delay

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- CL. Ex. I Respondent's handwritten note dated February 8, 2020, placed in Claimants' mailbox, discovered on February 13, 2020, regarding Respondent's absences and drawings that were not yet ready
- CL. Ex. J Email of February 25, 2020 from the Claimants requesting that the Respondent no longer come to their property and to stop all work
- CL. Ex. K Email on March 5, 2020 from the respondent resending draft architecture already sent on February 12, 2020 (CL. Ex. G)
- CL. Ex. L Email of March 6, 2020 from Respondent offering discount (\$18,000.00) and refund (\$5,000.00) in exchange for Claimants' dismissing their MHIC claim
- CL. Ex. M Email of March 29, 2020 from Respondent reiterating offer (CL. Ex. L)
- CL. Ex. N Email of July 27, 2020 from Claimants offering to resolve claim for return of 75% of deposit
- CL. Ex. O Text messages July 30, 2020 from Respondent countering settlement offer
- CL. Ex. P Email of August 2, 2020 from Claimants reiterating settlement offer (CL. Ex. N)

The Respondent and his counsel failed to appear, so no documents were submitted into evidence on his behalf.

I admitted the following exhibits on the Fund's behalf:

- GF. Ex. 1 OAH Notice of Remote Hearing, dated May 5, 2021, 2021, with MHIC Hearing Order, dated April 2, 2021
- GF. Ex. 2 Respondent's licensing information
- GF. Ex. 3 Letter from MHIC to Respondent dated January 31, 2020, transmitting claim and attachments

#### Testimony

The Claimants testified and did not present other witnesses.

The Respondent neither appeared to testify or presented the testimony of any other witnesses.

The Fund did not present the testimony any witnesses.

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## 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 01-43547.
2. The Claimants and the Respondent first met to discuss the home improvement project on October 9, 2019.
3. On October 25, 2019, the Claimants and the Respondent entered into a contract to improve a family home, adding a second story to their existing house, building out a kitchen and renovating the basement.
4. The Claimants advised the Respondent about the need to complete the renovation by March 2020. The Respondent promised completion of the work by March 2020.
5. The original agreed-upon Contract price was \$261,500.00. Under the terms of the Contract, the Claimants paid an initial deposit of \$13,000.00 by check.
6. The Respondent did not commence work as promised.
7. On December 4, 2019, the Respondent again promised that he would provide the Claimants the necessary architectural design drawings.
8. The Respondent did not communicate with the Claimants for seventy days, between December 10, 2019, and February 12, 2020.
9. When the Respondent eventually provided drawings to the Claimants, he provided them drawings concerning a property that was not the Claimants'.
10. The Respondent asked the Claimants for an opportunity to complete the work, offering discounts and refunds. But he did so through notes left in the Claimants' mailbox and in unannounced visits that caused the Claimants concern for their physical safety.

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11. The Claimants lost confidence in the Respondent to perform the work.
12. The Respondent performed no work under the Contract.

### **DISCUSSION**

In this case, the Claimants have 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 (2014); 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 Cty. 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); *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 Claimants have proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimants. The Claimants are not related to the Respondent, nor are they employed by the Respondent or own the Respondent's business. The Claimants own the subject property where the work was performed. The Claimants have not filed suit in any court seeking damages from the Respondent, and have not filed any insurance claims regarding the construction. They are therefore proper claimants under the Fund.

The Respondent failed to perform any work under the Contract.



The Claimants' testimony was consistent with their pre-hearing summary (CL Ex. A), as well as all of the other exhibits which were well organized and consistent with the narrative they provided.

In late 2019, the Claimants sought to improve a family home, adding a second story to the existing house on Clue Drive in Bethesda, Maryland. The plans also included building out a kitchen and renovating the basement.

A neighbor who had already received a quote for a home renovation project from the Respondent recommended his services.. They met with the Respondent on October 9, 2019; they chose the Respondent after interviewing three other contractors, whose prices and schedules were not in line with their expectations. They found the Respondent's price acceptable, and relied on his promise to complete the work by March 2020, when the Claimants' baby was due and their current lease was up.

The Respondent told the Claimants that he had performed other home improvement work on neighboring houses, and that he was familiar with their construction, the land and the local permitting process. The parties entered into the Contract on October 25, 2019, and the Claimants paid the Respondent a check for \$13,000 as a deposit. CL. Exs. C & D. The Respondent told the Claimants that he would move forward obtaining the necessary architecture plans, structural plans, and applying for permits. Other payments were to follow, but the Respondent never started work under the Contract.

On November 16, 2019, after the Respondent measured for the Contract, the Respondent told the Claimants that the architectural designs would be completed "shortly." However, ten days after that the Respondent requested measurements that he had already obtained. On December 4, 2019, the Respondent again promised that the plans would be ready within the next week, but the Respondent had no further contact with the Claimants for seventy days, or until

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February 12, 2020. In the meantime, the Claimants filed the Claim, which was accepted on January 31, 2020. When the Claimants realized that the project could not be completed before the birth of their child as they anticipated, and because they lost confidence in the Respondent, they attempted to get 75% of their deposit returned. CL Exs. N & P. The Respondent still wanted to do the work, despite having failed to meet any deadline and absented himself for a critical seventy days.

The Respondent stalked the Claimants to the extent that they had to report his presence to the Montgomery County Police. Even if the Respondent had the right to continue the work, and had not lost the Claimants' confidence by his actions, the Claimants certainly made it clear to the Respondent that they did not want to deal with him any further, as a matter of their personal safety.

I thus find that the Claimants are eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimants' actual loss and the amount, if any, that the Claimants are 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); 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.

In this case, the Respondent, through his conduct, abandoned the Contract without doing any work. His belated efforts to convince the Claimants to let him proceed with the work do not alter my conclusion. Accordingly, the following formula appropriately measures the Claimants' 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."

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COMAR 09.08.03.03B(3)(a). The entire initial deposit has been lost and subject to an award by the Fund.

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimants' actual loss is less than \$20,000.00. Therefore, the Claimants are entitled to recover their actual loss of \$13,000.00.

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimants have sustained an actual and compensable loss of \$13,000.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(a). I further conclude that the Claimants are entitled to recover that amount from the Fund.

### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimants \$13,000.00; 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;<sup>3</sup> and

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<sup>3</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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**ORDER** that the records and publications of the Maryland Home Improvement

Commission reflect this decision.

September 3, 2021  
Date Decision Issued

*Marc Nachman*  

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Marc Nachman  
Administrative Law Judge

MN/emh  
#194065



**PROPOSED ORDER**

***WHEREFORE, this 8<sup>th</sup> day of December, 2021, 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***

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

In the second section, the author details the various methods used to collect and analyze the data. This includes both manual and automated processes. The goal is to ensure that the information is both reliable and up-to-date.

The third part of the report focuses on the results of the analysis. It shows a clear trend of growth over the period studied. This is supported by the data points and the statistical models used.

Finally, the document concludes with a series of recommendations for future work. It suggests that further research should be conducted to explore the underlying causes of the observed trends. This will help in making more informed decisions in the future.