

IN THE MATTER OF THE CLAIM	*	BEFORE JOHN T. HENDERSON, JR.
OF LYANNA TEP,	*	ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF	*	
WALTER CORDERO, T/A	*	
WMC CONTRACTORS, LLC	*	OAH No.: LABOR-HIC-02-23-14122
RESPONDENT	*	MHIC No.: 22(75)176

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On September 30, 2022, Lyanna Tep (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) under the jurisdiction of the Maryland Department of Labor (Department), for the reimbursement of \$53,919.13 for actual losses allegedly suffered because of a home improvement contract with Walter Cordero, t/a WMC Contractors, LLC (Respondent). Md. Code Ann., Bus. Reg.

§§ 8-401 through 8-411 (2015 & Supp. 2023).¹ On May 22, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 9, 2023, the OAH mailed a notice of Remote Video Hearing (Notice) to the Respondent by certified and regular mail to his address of record on file with the MHIC. Md. Code Ann., Bus. Reg. § 8-312(d) (2015).² The Notice set forth the website address of the Webex hearing and the meeting number to gain access to the video hearing. The Notice further advised that failure to appear for the hearing might result in a decision against the party failing to appear. On or about June 20, 2023, the Notice was returned to the OAH by the United States Postal Service (USPS) as undeliverable, unable to forward.

On July 27, 2023, the OAH mailed a second Notice to the Respondent by certified and regular mail to the following address: 3604 Randolph Road, Silver Spring, MD 20902. On July 31, 2023, the USPS returned the certified receipt (green card) to the OAH, unsigned as to delivery, but representing that the Notice was delivered to the Respondent. The Notice advised of the Remote Video hearing scheduled for August 3, 2023. No request for postponement was received at the OAH from the Respondent or anyone authorized on behalf of the Respondent. In addition, there was no communication from the Respondent on the day of the hearing (by telephone, email to the OAH, or other) or from anyone on behalf of the Respondent to advise of any difficulty accessing the Webex hearing room. I determined there was adequate notice of the hearing provided to the Respondent.³

On August 3, 2023, I held the remote video hearing. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B. The Claimant appeared and represented

¹ Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

² "The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission." Bus. Reg. § 8-312(d).

³ According to *Bock v. Insurance Commissioner*, 84 Md. App. 724, 733-34 (1990), which addresses the "mailbox rule" in this State, there is a presumption of receipt of a properly mailed letter.

herself. The Respondent did not appear, nor did anyone appear to represent the Respondent as an individual or the limited liability company. Ernie Dominguez, Assistant Attorney General for the Department, represented the Fund. After waiting for twenty minutes for the Respondent to appear, I proceeded in the Respondent's absence, having found he failed to appear after receiving proper notice. COMAR 28.02.01.23A.

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 (2021 & Supp. 2023); COMAR 09.01.03; and 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 into evidence exhibits offered by the Claimant, as follows:

- Cl. Ex. 1: Hearing Order, May 10, 2023
- Cl. Ex. 2: Amendment to Guaranty Claim, January 26, 2023
- Cl. Ex. 3: Claimant's notes regarding Respondent's price based on actual work done, undated
- Cl. Ex. 4: Proposal and invoice from Bertoni Castillon for plumbing work, undated
- Cl. Ex. 5: Check number 374, payable to Bectoni Castillon, in the sum of \$650.00, March 12, 2022
- Cl. Ex. 6: Account Transaction from Bank of America, regarding check number 366, in the sum of \$1,590.00, payable to Bectoni Castillon, November 8, 2021
- Cl. Ex. 7: Price lists, undated, for the following equipment: bathroom vanity, \$759.00; bathroom vanity, \$378.75; shower faucet, \$139.00; bathtub, \$309.00; unknown bath item, \$474.88; flooring, \$699.50
- Cl. Ex. 8: Account Transaction from Bank of America, regarding check number 371, in the sum of \$900.00, payable to Fredy Jimenez, November 29, 2021
- Cl. Ex. 9: Invoice from R.E. Michel Company, November 30, 2021.

- Cl. Ex. 10: Account Transaction from Bank of America, regarding check number 370, in the sum of \$2,650.00, payable to Peak Air, November 28, 2021
- Cl. Ex. 11: Invoice from Peak Air Solution, December 20, 2021
- Cl. Ex. 12: Letter from Peak Air Solution to the Claimant, September 9, 2021
- Cl. Ex. 13: Account Transaction from Bank of America, regarding check number 369, in the sum of \$230.93, payable to Robert Harris, November 21, 2021; check number 345, in the sum of \$1,933.33, payable to Robert Harris, October 16, 2021; check number 373, in the sum of \$2,783.00, payable to Robert Harris, date illegible
- Cl. Ex. 14: Proposal from Electrical Connections, illegible, undated
- Cl. Ex. 15: HIC Complaint Form filed by Claimant, August 9, 2021
- Cl. Ex. 16: HIC Claim Form, September 30, 2022
- Cl. Ex. 17: Contract between Claimant and Respondent, April 24, 2021
- Cl. Ex. 18: Respondent's estimate of job document, July 12, 2021
- Cl. Ex. 19: Account Transaction from Capital One, regarding check number 331, in the sum of \$42,000.00, payable to the Respondent, April 30, 2021; check number 329, in the sum of \$58,000.00 payable to the Respondent, April 26, 2021
- Cl. Ex. 20: Claimant's narrative, undated
- Cl. Ex. 21: Email from the Claimant to the Respondent, July 22, 2021
- Cl. Ex. 22: Text messages between the Claimant and the Respondent, June 2021 through August 4, 2021
- Cl. Ex. 23: 28 photographs of home improvement project, but designated as numbers 1-4A and 5-27, taken July 2021
- Cl. Ex. 24: 20 photographs of home improvement project, taken July through August 2021
- Cl. Ex. 25: Quitclaim deed, October 4, 2021⁴

I admitted into evidence exhibits offered by the Fund as follows:

- GF Ex. 1: Notice of Remote Hearing, June 26, 2023
- GF Ex. 2: Hearing Order, May 10, 2023
- GF Ex. 3: HIC Claim Form, September 30, 2022
- GF Ex. 4: Department licensing history for the Respondent, July 27, 2023

Testimony

The Claimant testified on her behalf. No one appeared to testify on behalf of the Respondent. The Fund did not present any witnesses.

⁴ Claimant's exhibit 25 was submitted on August 3, 2023, after the hearing was completed. As I stated on the record, I accepted and admitted it into the record since it was filed by the due date, five days after August 3, 2023. The Fund did not object to the admission of the quitclaim deed into evidence.

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 contractor's salesperson license number 01-109224 and company license number 05-132449, trading as WMC Contractors, LLC.
2. 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.
3. At all times relevant to the subject of this hearing, the Claimant was the personal representative for the Estate of Sary Tep, the owner of the Property and the Claimant's deceased father.
4. The Property subject to this matter is located in Silver Spring, Maryland on Miles Street (the Property). It is now the Claimant's primary residence.
5. The Claimant has not filed other claims against the Respondent outside of these proceedings.
6. The agreement between the Claimant and the Respondent did not provide for an arbitration proceeding.
7. The Claimant intended to renovate the Property in her capacity as personal representative for her father's estate, sell the Property and distribute the proceeds to the heirs of her father's estate.
8. On April 24, 2021, the Claimant and the Respondent entered into a Contract for a complete renovation of the Property. The scope of the work, in summary, was the following:
 - Removal and replacement of an existing slab of concrete
 - Remove the existing interior walls and bathrooms
 - Install a new condenser for the A/C unit and duct work
 - Install new kitchen cabinets
 - Install new kitchen appliances
 - Install new laminate or vinyl floors

- Trim and paint the interior of the Property
- Build new bathrooms
- Run new electrical lines

(Cl. Ex.17.)

9. The fee agreed upon was \$140,000.00, requiring a payment of \$58,000.00 payable at the time the Contract was signed and a payment of \$40,000.00 payable when the Property is sold. There was no provision within the Contract for payment of the balance of \$42,000.00.

10. The parties agreed that the home improvement project would start on April 26, 2021 and would take approximately three months to complete.

11. On April 26, 2021, the Claimant paid the Respondent \$58,000.00 (check no. 329) and on April 30, 2021, she paid the Respondent \$42,000.00 (check no. 331) both checks paid to begin the home improvement. The total payment made as a deposit was \$100,000.00.⁵ The deposit paid in April 2021 by the Claimant to the Respondent represented seventy-one percent of the Contract price.

12. The work began on April 26, 2021.

13. On July 12, 2021, the Respondent provided an estimate of rate to the Claimant, identifying the rate of the home improvement task. He subtotaled the rated to be \$117,667.00 and added twenty percent to reach the Contract total of \$140,000.00. (Cl. Ex. 18.)

14. The Claimant did not reside in the Property when the Respondent began the renovation and during the work period up through July 22, 2021. The Claimant resided within her own home during the renovation.

15. On July 22, 2021, the Claimant terminated the services of the Respondent by notifying him within a letter because she was not satisfied with his work. (Cl Ex. 21.)

⁵ There was no explanation as to why the Claimant paid an additional \$2,000.00 to the Respondent as a deposit to be applied toward the total contract price.

16. The Respondent did not offer to make repairs, or complete the renovation. He did not return to the property after July 22, 2021.

17. The Respondent did not, in summary, complete the following work:

Complete the kitchen
Install the agreed upon flooring
Correctly install the air conditioning unit
Purchase or install appliances
Add trim or paint the complete home
Complete the construction of new bathrooms
Run new electrical lines correctly according to code

18. The Respondent completed \$60,000.00 in value of the home improvement work.

19. The value of the Respondent's incomplete work is \$40,000.000.

20. On September 7, 2021, the Property was transferred from the Estate of Sary Tep, the Claimant as personal representative, to the Claimant/grantee, by quitclaim deed. It was recorded with Montgomery County on October 4, 2021. (Cl. Ex. 25.).

21. The Claimant is not seeking additional contractors to complete the home improvement as she and her husband are completing the project.

DISCUSSION

The Claimant had 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 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." (Emphasis added.); 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.

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. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022). The Claimant now resides in the home that is the subject of the claim and does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2022). The Claimant was not the title owner of the property at the time she contracted with the Respondent for the home improvement on April 24, 2021. She was the personal representative for the estate of her father, the title owner of the property at that time. As personal representative, she transferred title to the property by quitclaim deed to herself on September 7, 2021. The Claimant meets the definition of owner, as it includes a person who buys, contracts for, orders or is entitled to a home improvement. As personal representative for the estate of her father, the Claimant was entitled to contract for the home improvement of the estate property. Bus. Reg § 8-101(k). There was no arbitration provision within the agreement between the Claimant and the Respondent. *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).

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023). According to the Claimant, although she terminated his services, there were no efforts made by the Respondent to resolve the claim. The Claimant did not prevent the Respondent from returning to make repairs and complete the home improvement. The Respondent did not offer to correct his work and did not return to the Property after

July 22, 2021. The Respondent performed an unworkmanlike, inadequate, or incomplete home improvement. For the following reasons, I find that the Claimant has proven eligibility for compensation from the Fund.

According to the Claimant's testimony and admitted exhibits, the Contract totaled \$140,000.00. Surprisingly, the Claimant paid the Respondent a total of \$100,000.00 for deposit toward the final contract price. The allowed one-third deposit should have been \$46,666.66. The Claimant paid up front over seventy percent of the total contract price, a risk she took which proved detrimental to her financially.

The Claimant testified that the Respondent failed to complete certain work agreed upon within the Contract and did most of the work inadequately and in an unworkmanlike way. The work the Respondent failed to complete is valued by the Claimant to be approximately \$40,000.00. The Claimant testified that she and her husband, who both have moved into the Property as they could not afford to maintain two residences, are completing the work on their own and do not plan to hire additional contractors. The photographic evidence admitted shows the renovation mess the Respondent left for the Claimant and her husband to correct. The Claimant testifies that the value she received for work completed by the Respondent was \$60,000.00 after paying him \$100,000.00. She further testified and the evidence shows by a preponderance that the value of the unfinished work left by the Respondent is at least \$40,000.00. The Respondent provided an estimate of rate to the Claimant on July 12, 2021. The Claimant's testimony and her exhibit 18 were used to determine an estimate of the value of the work the Respondent did not complete after receiving a \$100,000.00 deposit from the Claimant.

The Fund argued that the value of the work the Respondent did not complete was approximately \$40,000.00. The Fund further argues that the Claimant has met her burden of proof that she is entitled to an award from the Fund. According to the Fund, the Claimant has

proved that she suffered an actual monetary loss due to work performed by the Respondent. The Fund is convinced that due to the Respondent failing to complete the agreed upon work, the evidence admitted tends to show by a preponderance that the Respondent's work was unworkmanlike, incomplete or inadequate.

I agree with the Fund. The evidence by a preponderance, shows that the Respondent failed to complete the project after the Claimant notified him on July 22, 2021, that she was not pleased with his work. He made no reasonable effort to convince the Claimant that he was ready, willing, and able to complete the project or make repairs. He took \$100,000.00 as a deposit from her and without apparent remorse, provided nothing workmanlike as agreed upon within the Contract. No further work was done by the Respondent. The Respondent did not make efforts to correct the unworkmanlike, incomplete, and inadequate construction. The Respondent told the Claimant via text message that he would return on or about July 24, 2021, to remove trash and concrete and stated he would deliver the materials he purchased for the renovation. Additionally, the Respondent told the Claimant, by text message, that she owed him \$40,000.00 as he considered the project to be seventy-five percent complete. (Cl. Ex. 22.) The photographs tend to show that the work was unworkmanlike, and the renovation was not seventy-five percent complete. (Cl. Ex. 23.)

The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). None are claimed here.

The MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3) sets forth the various formulas for determining an "actual loss." The appropriate formula is the following:

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, 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.

Using the formula in COMAR 09.08.03.03B(3)(c), the following calculations apply:

\$100,000.00	Payment made to the Respondent by the Claimant as deposits and toward the contract price for the home improvement pursuant to the contract of April 24, 2021
Less <u>\$ 60,000.00</u>	The value of materials and services provided by the Respondent
\$40,000.00	Actual Loss

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.⁶ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is less than the amount paid to the Respondent. The actual loss is more than the statutory cap of \$30,000.00. Therefore, the Claimant is entitled to recover as her actual loss the sum of \$30,000.00.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained, and is entitled to recover from the Fund, an actual and compensable loss of \$30,000.00 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)(c).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$30,000.00; and

⁶ 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").

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;⁷ and

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

October 30 2023
Date Decision Issued



John T. Henderson, Jr.
Administrative Law Judge

JTH/at
#208145

⁷ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 22nd day of December, 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.

J Jean White

I Jean White

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***