

IN THE MATTER OF THE CLAIM	* BEFORE SUSAN A. SINROD,
OF BETH AND JILL LAKE,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANTS	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF BRIAN MASON T/A	*
STUDS CONSTRUCTION,	* OAH No.: LABOR-HIC-02-23-31820
RESPONDENT	* MHIC No.: 23 (75) 125

* * * * *

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 March 27, 2023, Beth and Jill Lake (Claimants) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$14,680.00 for actual losses allegedly suffered as a result of a home improvement contract with Brian Mason t/a Studs Construction LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).² On November 30, 2023, the MHIC issued 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.

Order on the Claim. On November 30, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 20, 2024, I conducted a hearing at the OAH in Salisbury, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Kris King, Assistant Attorney General, Department, represented the Fund. The Claimants represented themselves. The Respondent did not appear for the hearing.

After waiting 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 January 24, 2024, the OAH sent a Notice of Hearing (Notice) to the Respondent by certified mail and first-class mail to the address on record with the MHIC. Bus. Reg §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for March 20, 2024, at 10:00 a.m. at the OAH in Salisbury, Maryland. COMAR 09.08.03.03A(2). The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

After the hearing, on April 16, 2024, the United States Postal Service returned the Notice sent by certified mail as unclaimed. The United States Postal Service did not return the Notice sent by regular mail. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. He did not request a postponement. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05.

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 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 offered by the Claimants:

- Cl. Ex. #1- Contract, undated
- Cl. Ex. #2- Copies of checks from the Claimants to the Respondent, dated July 14, 2021; August 20, 2021; and November 15, 2021
- Cl. Ex. #3- Email from the Respondent to the Claimants, dated November 14, 2021
- Cl. Ex. #4- Text messages between the Claimants and the Respondent, various dates
- Cl. Ex. #5- Photographs of the Respondent's work, undated
- Cl. Ex. #6- Estimate from CPR Restoration & Remodeling, dated April 21, 2022
- Cl. Ex. #7- Letter from Tony Crossed, President, CPR Restoration & Remodeling, no recipient listed, dated July 29, 2022
- Cl. Ex. #8- Three invoices and receipts from Benjamin Franklin Plumbing, dated April 12, 2022; May 2, 2022; and May 6, 2022
- Cl. Ex. #9- Estimate from The Glass Guy, Inc., dated April 11, 2022
- Cl. Ex. #10- Estimate from Matt the Carpet Guy, dated April 12, 2022
- Cl. Ex. #11- Email from the Claimant Jill Lake to the Respondent dated April 4, 2022
- Cl. Ex. #12- Letter from the Claimant Beth Lake to the MHIC, dated November 14, 2023
- Cl. Ex. #13- Complaint Form, dated August 12, 2022
- Cl. Ex. #14- Text message between the Claimants and the Respondent, dated August 8, 2022

The Respondent did not appear or offer any exhibits.

I admitted the following exhibits offered by the Fund:

Fund Ex. #1- Notice of Hearing, dated January 24, 2024; certified mail green card received January 30, 2024

Fund Ex. #2- Hearing Order, dated November 30, 2023

Fund Ex. #3- Licensing history, as of March 19, 2024

Fund Ex. #4- Affidavit of David Finneran, dated March 19, 2024

Fund Ex. #5- Home Improvement Claim Form, undated

Fund Ex. #6- Letter from the MHIC to the Respondent, dated March 28, 2023

The Fund did not present the testimony of any witnesses.

Testimony

The Claimant, Jill Lake, testified on behalf of the Claimants.

The Respondent did not appear or offer any testimony.

The Fund did not present any testimony.

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 01-140204 (individual) and 05-143081 (corporate).

2. On a date not reflected in the record,³ the Claimants and the Respondent entered into a contract wherein the Respondent agreed to remodel the interior and exterior of the Claimants' home in Ocean Pines, Maryland (Contract).

3. For the interior remodel, the Contract required the Respondent to completely gut and remodel the great room, kitchen, study, stairwell, master bathroom, and downstairs

³ The contract between the Claimants and the Respondent is not dated. However, the first payment the Claimants made to the Respondent was due upon execution of the contract. They made that payment by check dated July 4, 2021.

bathroom, remove and replace interior doors, trim, electrical switches and receptacles and paint the entire interior of the house.

4. The price for the interior project was \$33,350.00.

5. For the exterior work, the Respondent agreed to remove and replace three interior windows with new flashing outside and new trim inside and remove and replace sliding doors on the rear porch and upstairs.

6. The price for the exterior project was \$4,500.00.

7. The total Contract price for the interior and exterior work was \$37,850.00.

8. The Respondent began the work under the Contract in November 2021.

9. The work proceeded slowly throughout the next few months. The Respondent had difficulty getting workers to assist on the project and he worked most of the time on his own.

10. The Claimants were living in Florida during this time. While the Respondent's work proceeded, the Claimants and the Respondent corresponded daily regarding the progress of the work.

11. The Respondent was aware that the Claimants intended to move into the property on February 26, 2022.

12. On February 26, 2022, the Claimants arrived at the property. They intended to stay there, but when they arrived, they found that the Respondent had completed very little work pursuant to the Contract except for gutting the house and painting. The property was uninhabitable, so they stayed with a friend for ten days. At this point, the Respondent had been working at the Claimants' home for more than three months.

13. There were continuing delays. The Respondent's subcontractors frequently failed to appear on the project when they said they would.

14. The Claimants again planned to move into the property on March 10, 2022. The Respondent told them that the kitchen would be finished by then, but it was not. The Respondent had not finished the bathrooms either, and they could not be used. The Claimants did not move in that day.

15. When the Claimants moved into the property on March 12, 2022, there were problems with the plumbing and the heat, and the only kitchen appliance was a microwave. The kitchen was not finished. There was a significant amount of work yet to be completed. The Respondent promised the Claimants that most everything would be completed by the end of that week. However, the delays continued.

16. On April 1, 2022, the Claimants, frustrated with continuing delays and work not getting done, terminated the Contract. They asked the Respondent for the materials that they paid for but had not yet received and pursued other contractors to finish the project.

17. The Claimants paid the Respondent \$5,000.00 on July 4, 2021; \$6,005.50 on August 20, 2021, \$12,490.50 on November 15, 2021, and \$1,485.00 on an unknown date for a total of \$24,981.00.⁴

18. The Respondent left the kitchen incomplete. He laid vinyl plank flooring with a gap between the planks and the walls. He failed to hang fourteen doors. The door jambs were incorrect, and many were incomplete. The Respondent did not complete the drywall work. The carpet installation was substandard to the point that it needed to be torn out and replaced. The Respondent never properly hooked up the shower. When the Claimants showered, water leaked into the crawl space.

⁴ The Claimants submitted three canceled checks showing payments they made to the Respondent which totaled \$23,946.00. Throughout the hearing, the Claimants stated consistently that they paid the Respondent \$24,981.00, a difference of \$1,485.00. The first payment for the exterior remodel was to be \$1,485.00. I find it reasonable to infer that upon signing the Contract, the Claimants made the initial payment on the exterior remodel as scheduled in the Contract, which accounts for the \$1,485.00 difference. Cl. Exs. #1 and 2.

19. The Claimants paid CPR Restoration (CPR) \$14,647.22 to repair the Respondent's work and to complete the interior remodel as specified in the Contract.
20. The Claimants paid Benjamin Franklin Plumbing (Benjamin Franklin) \$2,451.00 to repair and complete the Respondent's plumbing work. This consisted of \$1,846.00 to install a vanity and new toilet in the upstairs bathroom and complete installation of the tub spout; \$236.00 to fix the tub trap in the second floor bathroom which had been installed improperly and caused a leak; and \$369.00 to connect the first floor shower drain and to disassemble the tub trap and align it to the tub properly.
21. The Claimants paid The Glass Guy, Inc. (Glass Guy) \$2,700.00 to furnish and install windows and a sliding glass door.
22. The Claimants paid Matt the Carpet Guy (Matt) \$2,260.00 to tear out and replace the carpet; none of the carpet the Respondent installed was salvageable.
23. On August 8, 2022, the Respondent sent the Claimants a text message informing them that he had closed his business and filed for bankruptcy.

DISCUSSION

LEGAL FRAMEWORK

The Claimants have 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 Claimants have 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 Claimants’ recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimants did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2023). The Claimants resided in the home that is the subject of the claim⁵ or they did 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 Claimants are not relatives, employees, officers, or partners of the Respondent, and are not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2023).

ANALYSIS

The Claimant Jill Lake testified regarding the Claimants’ dealings with the Respondent. He continually had excuses for why he was not getting the work done. She felt his excuses were largely untrue. Jill Lake testified that it seemed like the Respondent had a stomach bug every other day. The Claimants communicated with the Respondent primarily by text messages, and the Claimants presented a printout of their text message communications from November 16, 2021 through April 1, 2021. Cl. Ex. #4. They corresponded daily about options and progress. The Respondent made promises about completion dates he did not keep. The text messages corroborated Jill Lake’s testimony regarding the Respondent’s perpetual excuses about why the

⁵ The Claimants have since sold the property.

work was not getting completed. Throughout the process, the Claimants politely pushed the Respondent to get the work done; however, after five months on the project, the Respondent accomplished very little.

The Claimants kept the Respondent informed about when they would be returning from Florida to move into the property. When they arrived on February 26, 2022, they were surprised to see that the Respondent had only gutted the house and painted the interior. The house was uninhabitable. Appliances were sitting in boxes. The Respondent never communicated with the Claimants that the house was not livable. The Claimants had to stay with friends for the following ten days. When they finally moved into the property, there was a significant amount of work left to do. According to the Claimants, their relationship with the Respondent deteriorated rapidly in the following weeks.

The Claimants also submitted photographs of the house as the Respondent left it. Cl. Ex. #5. The kitchen was incomplete, the walls were not painted, appliance hookups were exposed. The carpet did not lie flat. Jill Lake testified that the Respondent told them that a worker spilled paint on the carpet, and he had to rip it up; however, that never happened. The carpet was not installed properly because the Respondent was not a carpet person and did not know how to do it. Under the house, the shower was not hooked up properly, which, according to Jill Lake, caused a leak into the crawl space. The photographs established that the Respondent left the Claimants' home in an unsightly, messy, incomplete condition.

Although the Claimants terminated the Contract, they did so justifiably. The Respondent lacked diligence, made endless excuses, and gave him chances. He made no effort to resolve the matter after the Claimants told him not to return. He had been on the project for five months and accomplished very little.

I conclude that the Claimants established that they suffered an actual loss due to the incomplete and inadequate home improvement by the Respondent.

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) (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.

The Respondent performed some work under the Contract, and the Claimants have retained other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimants' 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).

The Claimants paid \$22,058.22 to other contractors, which consisted of \$14,647.22 to CPR, \$2,451.00 to Benjamin Franklin, \$2,700.00 to the Glass Guy⁶ and \$2,260.00 to Matt to repair and complete the work the Respondent was to perform under the Contract. The Claimants

⁶ The Fund questioned whether the Glass Guy was a licensed home improvement contractor; however, the Fund did not object to the use of the Glass Guy for the windows because the Claimants' property manager referred the Claimants to him and said he was licensed. Although the Fund could not find the company name in its database, it surmised that it was possible that someone in the company was individually licensed.

paid \$24,981.00 to the Respondent. Added together, the total is \$47,039.22. After subtracting the original Contract price of \$37,850.00, the Claimants' actual loss is \$9,189.22.

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.⁷ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimants' actual loss is less than the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimants are entitled to recover their actual loss of \$9,189.22.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of \$9,189.22 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 Claimants \$9,189.22; 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;⁸ and

⁷ 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").

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

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

May 23, 2024
Date Decision Issued

Susan Sinrod
Susan A. Sinrod
Administrative Law Judge

SAS/ckc
#211924

PROPOSED ORDER

WHEREFORE, this 20th day of August, 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.

Michael Shilling

Michael Shilling

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***