IN THE MATTER OF THE CLAIM	*	**BEFORE MARY PEZZULLA**
OF FALLAK SIAL,	*	**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 ANDRE WILLIAMS,	*	
T/A VICTORIAN	*	**OAH No.: LABOR-HIC-02-21-02688**
RECONSTRUCTION,	*	**MHIC No.: 17 (05) 1261**
RESPONDENT	*	

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PROPOSED DECISION

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STATEMENT OF THE CASE

On January 3, 2018, Fallak Sial (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),[1] for reimbursement of $90,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Andre Williams,[2] trading as Victorian

[1] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.
[2] The Claimant's MHIC Complaint Form (Fund Ex. 3) also lists Lisa Barnes as a person the Claimant is filing his claim against. The MHIC licensing information (Fund. Ex. 5), however, shows the MHIC license to be held by Andre Williams trading as Victorian Re Construction.

Reconstruction[3] (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).[4] On January 27, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on April 20, 2021 via the Webex videoconferencing platform (Webex). Bus. Reg. §§ 8-407(a), 8-312. Justin Dunbar, Assistant Attorney General, Department, represented the Fund. David Cohen, Esquire, represented the Claimant, who was present.

On Sunday, April 18, 2021 at 9:08 p.m., Lisa Barnes sent an email to the OAH requesting a postponement of the April 20, 2021 hearing. The postponement request was denied by an OAH postponement officer on April 19, 2021, as lacking supporting documentation. On April 19, 2021 at 8:58 p.m., Ms. Barnes sent an email to the OAH postponement officer with two attachments: a letter from Greater Maryland Eye Physicians and Surgeons dated February 15, 2021 and a hearing notice in case number 1251m20, showing a trial date of April 20, 2021. The documentation was forwarded to me on the morning of April 20, 2021, as the assigned Administrative Law Judge. After reviewing the documents, I denied the postponement pursuant to Code of Maryland Regulations (COMAR) 28.02.01.16D.[5] I instructed my administrative aide, Deborah Allen, to contact the parties to inform them the postponement request was denied, and I would conduct the hearing as scheduled later that morning. Ms. Allen attempted to contact the Respondent at the number listed in the OAH file, but was unable to leave a message. At approximately 8:14 a.m., Ms. Allen emailed the Respondent at the email address from which Ms. Barnes had sent her documents, informing her the postponement was denied.

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[3] The trade name appears on various documents as Victorian Reconstruction, Victorian Reconstruction, LLC, Victorian Re Construction, and Victorian Re-Construction. All references are to the same company.

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

[5] The February 15, 2021 letter noted that Ms. Barnes had surgery on August 28, 2019 and noted she had driving and lifting restrictions. It did not establish a medical reason why the Respondent could not attend a hearing conducted via Webex. The only legible information on the hearing notice was the case number and trial date and time. In reviewing the hearing notice, I could not discern to whom or when the notice was sent.

I convened the hearing as scheduled. After waiting approximately 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. COMAR 28.02.01.23A. On March 4, 2021, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail and certified mail to the Respondent's address 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 April 20, 2021, at 9:30 a.m., via Webex. 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. Additionally, the Notice sent via certified mail was signed[6] for on March 10, 2021, and the OAH received the return receipt for the certified mail on March 26, 2021. For the following reasons, I determiend the Respondent had received proper notice: the Notice sent by regular mail was not returned; the OAH received a signed certified mail receipt for the Notice sent via certified mail; and Ms. Barnes' made two requests to postpone the hearing on behalf of the Respondent. Accordingly, 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.

[6] Neither the signature, nor the printed name on the return receipt was legible.

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 on the Claimant's behalf:

Clmt. Ex. 1 - Contract between the Claimant and the Respondent, signed June 21, 2016

Clmt. Ex. 2 - Permit No COM2016-17113, issued July 1, 2016; Permit No. COM2016-19662, issued August 1, 2016; Permit No. COM2016-20333, issued August 9, 2016; and Certificate of Liability Insurance, issued May 3, 2016

Clmt. Ex. 3 - Photocopy of check no. 1049 to the Respondent in the amount of $30,000.00, June 21, 2016; Photocopy of check no. 1044 to the Respondent in the amount of $30,000.00, July 21, 2016; Photocopy of check no. 1054 to the Respondent in the amount of $30,000.00, September 1, 2016;

Clmt. Ex. 4 - Email from the Claimant to the Respondent, February 8, 2017

Clmt. Ex. 5 - Email chain between the Claimant to the Respondent, February 17, 2017 through March 2, 2017

Clmt. Ex. 6 - Complaint in the Circuit Court for Baltimore City (Circuit Court) case no. 24-C-17-004743, filed September 22, 2017[7]

Clmt. Ex. 7 - Not offered[8]

Clmt. Ex. 8 - Order in Circuit Court case no. 24-C-17-004743, December 11, 2018

Clmt. Ex. 9 - Memorandum and Order Vacating and Amending Judgments in Circuit Court case no. 24-C-17-004743, April 12, 2019

Clmt. Ex. 10 - Not Offered

[7] The date on the exhibit is illegible, but Mr. Cohen proffered that the complaint was filed on September 22, 2017, which I accept as true.

[8] The Claimant pre-marked proposed exhibits. Exhibits 7 and 10 were not offered. Both exhibits have been retained with the file.

I admitted the following exhibit(s) on the Fund's behalf:

Fund Ex. 1 - Notice of Remote Hearing, March 4, 2021

Fund Ex. 2 - Hearing Order, March 11, 2021

Fund Ex. 3 - Claimant's Home Improvement Claim Form, signed December 18, 2017, received by MHIC January 3, 2018

Fund Ex. 4 - Letter from the MHIC to the Respondent, January 22, 2018

Fund Ex. 5 - MHIC Licensing History of Andre Williams trading as Victorian Re Construction, April 5, 2021

As the Respondent was not present, he submitted no exhibits at the hearing.

Testimony

The Claimant testified and did not present other witnesses.

No other testimony was presented.

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 100590.

2. On June 21, 2016, the Claimant and the Respondent entered into a contract for a total gutting and renovation of a property located at 4015 Woodlea Avenue in Baltimore, Maryland (Contract).

3. The original agreed-upon Contract price was $100,000.00 with payments to be made as follows: an initial payment of $30,000.00; a payment of $30,000.00 upon completion of 66% of the project; a payment of $30,000.00 upon completion of the project and a payment of $10,000.00 upon receipt of the occupancy permit.

4. The Claimant made the following payments to the Respondent: June 21, 2016 - $30,000.00; July 21, 2016 - $30,000.00; and September 1, 2016 - $30,000.00.

[illegible]

[illegible]

[illegible]

5. The property is titled in the name of Capital Holdings, LLC, of which the Claimant is the principal member. The payments made to the Respondent were made through the LLC.

6. The Claimant never resided in the property. The Claimant owns one other residence in Maryland.

7. Despite having made three payments to the Respondent, by March 2017, the Respondent had only completed the demolition work at the property and had cleaned and removed some exterior debris from around the property.

8. The Contract lists the value of "Demo" as $3,500.00 and the value of "Clean exterior debris" as $1,200.00.

9. The Respondent stopped work at some time in approximately September 2016.

10. The Claimant contacted the Respondent multiple times through February and March 2017, requesting that the Respondent return to the property and continue the project.

11. The Respondent did not return to the property and the Claimant has had no substantive communication with the Respondent since March 2017.

12. The Claimant has no legal impediment to being awarded compensation for an actual loss.

DISCUSSION

In this case, the Claimant has 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 Claimant has proven eligibility for compensation.

The Claimant presented uncontroverted testimony and evidence showing that the Respondent performed an incomplete home improvement on his property located in Baltimore, Maryland. The parties entered into a Contract in 2016 for the Respondent to completely gut and renovate the Claimant's property. The scope of the work was extensive, and the Contract included work and repairs to the basement, first floor, second floor, attic, plumbing, electrical, HVAC, garage, deck, roof, porch, fence, and yard. Despite the Claimant paying the Respondent a total of $90,000.00, the Respondent performed only minimal work on the property – demolition work and cleaning up exterior debris. The Claimant was forthcoming in his testimony that he did see the Respondent perform the demolition work, and he also noted that the Respondent filled and had hauled away two dumpsters worth of garbage and debris from the property.

The Contract price for the project was $100,000.00. The Contract provided a payment schedule, but each time the Respondent asked the Claimant for a payment, the Claimant paid him, even though the requisite work was not complete. The Claimant explained that he told the Respondent numerous times that he was not happy with the slow progress on the Contract work and that he gave the Respondent the bulk of the Contract price in order to push him to finish the project. However, the only thing the Respondent did over the course of approximately nine

months was the demolition and some clean-up. The Contract lists the demolition work as being valued at $3,500.00 and the value of cleaning the exterior debris from the property at $1,200.00. The Claimant further testified that he contacted the Respondent multiple times from June 2016 through March 2017 to find out what was holding up the project and to get the Respondent to continue working. The last email he sent to the Respondent was on March 2, 2017 asking if the Respondent had renewed the permits for the work. (Clmt. Ex. 5). The Respondent did not respond and did not complete any additional work at the property.

The Claimant explained that he never lived at the property and once the Respondent stopped working, he could not find another contractor to complete the renovations. The Claimant testified that he has since sold the property in "as is" condition since the renovations were never completed. On cross-examination, the Claimant testified that he owns one other property located in Prince George's County, Maryland.

The Fund argued that the fact that the Claimant did not reside in the property makes him ineligible for compensation from the Fund. Specifically, the Fund cited to Md. Code Ann., Bus. Reg. § 8-405(f)(2), which states, "[a"]n owner may make a claim against the Fund only if the owner: (i) resides in the home as to which the claim is made; or (ii) does not own more than three residences or dwelling places." I disagree with the Fund's interpretation of this statute. The plain language of the statute is clear that the Claimant must meet one *or* the other prong of section 8-405(f)(2), not both.[9] While the Claimant does not, and by his testimony, never did, reside in the property, he was clear that he only owns one other property, which is located in Prince George's County, Maryland. As such, I do not find that the fact that the Claimant does

[9] Merriam Webster defines "or" as "a function word to indicate an alternative." MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/or (last viewed May 13, 2021).

not reside in the property to be a bar to his eligibility for compensation from the Fund. I thus find that the Claimant is eligible for compensation from the Fund.

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 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 performed some work under the Contract, and the Claimant did not seek other contractors 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 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." COMAR 09.08.03.03B(3)(b).

The Claimant paid the Respondent a total of $90,000.00 in three separate payments. The Respondent performed some demolition work valued in the Contract at $3,500.00, as well as performing some debris clean-up, valued in the Contract at $1,200.00.

Amount the Claimant paid to the Respondent:	$ 90,000.00
Value of materials or services provided by the Respondent:	-$ 4,700.00[10]
Actual loss:	$ 85,300.00

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);

[10] $3,500.00 + $1,200.00 = $4,700.00.

COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss of $85,300.00 exceeds $20,000.00. Therefore, the Claimant's recovery is limited to $20,000.00. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $20,000.00 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)(b). I further conclude that the Claimant is entitled to recover $20,000.00 from the Fund. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $20,000.00; 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;[11] and

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

May 13, 2021
Date Decision Issued

Mary Pezzulla
Administrative Law Judge

MP/da
#191706

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

PROPOSED ORDER

WHEREFORE, this 28th day of June, 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