IN THE MATTER OF THE CLAIM	*	**BEFORE WILLIS GUNTHER BAKER,**
OF WILLIAM R. HALL,	*	**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 STEPHEN PATRICK	*	
SNYDER,[1]	*	**OAH No.: LABOR-HIC-02-21-00670**
T/A ALL STATE HOME	*	**MHIC No.: 19 (90) 1457**
IMPROVEMENT CO., INC.,	*	
RESPONDENT	*	

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PROPOSED DECISION

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STATEMENT OF THE CASE

On November 14, 2019, William Hall (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),[2] for reimbursement of $9,100.00 in actual losses allegedly suffered as a result of a home improvement contract with Stephen Patrick

[1] The Fund Claim and OAH documents have used "Steven" but the MHIC Licensing information shows the Respondent's name as "Stephen."
[2] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

[illegible]

Snyder, trading as All State Home Improvement Co., Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).[3] On December 29, 2020, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a remote hearing via the Webex platform on February 19, 2021 from the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B. Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself.

After waiting at least 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 January 14, 2021, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States 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 February 19, 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 (USPS) did not return the Notice to the OAH. The USPS did return the green certified mail receipt indicating that it had delivered the Notice on January 22, 2021 to the Respondent's address of record but did not attempt signature due to the COVID-19 pandemic. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

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

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 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 for new front porch at Claimant's residence (Contract), November 6, 2017

Clmt. Ex. 2 - Better Business Bureau Complaint Activity, March 18, 2019 to May 13, 2019

Clmt. Ex. 3 - Bank Statements with cancelled checks, November 2017

Clmt. Ex. 4 - Emails between the parties, July 2018 and June 2019

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

Fund Ex. 1 - Notice of Remote Hearing, January 14, 2021, and Hearing Order

Fund Ex. 2 - MHIC Licensing Information of the Respondent

Fund Ex. 3 - MHIC Notice to the Respondent of the Complaint attaching the Claim Form, November 21, 2019

The Respondent did not offer any exhibits.

Testimony

The Claimant testified and did not present other witnesses. Neither the Respondent nor the Fund presented 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.

2. On November 6, 2017, the Claimant and the Respondent entered into a contract to construct a new front porch on the Claimant's home (Contract).

3. The original agreed-upon Contract price was $27,500.00.

4. On November 6, 2017, the Claimant paid the Respondent a deposit of $9,100.00.

5. The Respondent was also building a back screened deck at the Claimant's home and was to begin the Contract when the other work was completed.

6. The back deck project was not substantially complete until September 2018. The Respondent needed to complete trash and material removal and fix a roof leak on the back deck, which never occurred.

7. There were issues with the Respondent acquiring the necessary permits to begin the Contract so the Claimant had to take on the issue himself with Anne Arundel County.

8. The Respondent had some personal issues which he blamed for the delay, but also had unexplained delays with the start of the Contract.

9. The Contract was never started and the Claimant demanded a refund of the deposit, which he has not received.

10. The Claimant filed a complaint with the Better Business Bureau (BBB) on March 18, 2019. The Respondent responded to the BBB on April 8, 2019 that he would complete the

issues related to the back screened deck promptly and would complete the front porch within sixty days or would refund the Claimant's deposit.

11. The Respondent did not complete the back screened deck issues and never started the Contract.

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 Respondent was a licensed home improvement contractor at the time he entered the Contract with the Claimant. The Respondent performed unworkmanlike, inadequate, or incomplete home improvements at the Claimant's home because no work was ever done. The Respondent and the Claimant entered the Contract in November 2017 and the Claimant provided the required deposit, but the Respondent never started work. He continued to promise he would start the work but gave months and months of excuses instead.

[illegible]

The Claimant tried for a year and a half to get the Respondent to do the work or refund his deposit. The Respondent did neither. Therefore, I find that the Respondent performed an inadequate and incomplete home improvement at the Claimant's home. 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 abandoned the Contract without doing any work. Accordingly, the following formula appropriately measures the Claimant's 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." COMAR 09.08.03.03B(3)(a). The Claimant paid the Respondent a deposit of $9,100.00. The Respondent did not do any work, so the Claimant's actual loss is $9,100.00.

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); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is the amount paid to the Respondent, which is less than $20,000.00. Therefore, the Claimant is entitled to recover his actual loss of $9,100.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $9,100.00 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 Claimant is entitled to recover that amount from the Fund. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $9,100.00; 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;[4] and

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

April 26, 2021
Date Decision Issued

Willis Gunther Baker
Administrative Law Judge

WGB/emh
#191770

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

PROPOSED ORDER

WHEREFORE, this 10th 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.

Lauren Lake

Lauren Lake
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION