IN THE MATTER OF THE CLAIM	*	BEFORE TRACEE N. HACKETT,
OF KELLY BEALL,	*	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 CHRISTOPHER	*	
ORE, T/A CFORE	*	OAH No.: LABOR-HIC-02-21-21086
CONSTRUCTION/CORRECT	*	MHIC No.: 19 (75) 453
CARPENTRY,	*	
RESPONDENT	*	

* * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE

On August 2, 2019, Kelly Beall (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 $27,268.00 for actual losses allegedly suffered as a result of a home improvement contract with Christopher Ore, trading as CFORE Construction/Correct Carpentry (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 411

(2015).[1] On September 15, 2021, the MHIC issued a Hearing Order on the Claim. On September 15, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On December 6, 2021, I held a hearing at the OAH in Rockville, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Shara Hendler, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent represented himself.[2]

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); Code of Maryland Regulations (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 offered by the Claimant:

Clmt. Ex. 1 - Contract between the Claimant and the Respondent, signed March 15, 2018 with copies of checks to Respondent, dated March 16, 2018, May 1, 2018, and June 7, 2018

Clmt. Ex. 2 - Letter from the Claimant to the Respondent with original certified mail envelope, United States Mail receipt, and certified mail receipt, dated September 4, 2018

[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 Fund had an Entry of Appearance for Andrew M. Kiphart, Esquire, for the Respondent and a Notice of Hearing was sent to Mr. Kiphart by the OAH on September 21, 2021. I confirmed with Mr. Kiphart by phone on the date of the hearing that he was not retained for this hearing. I confirmed with the Respondent that he had not retained Mr. Kiphart for this matter and the Respondent indicated on the record that he was representing himself in this hearing.

Clmt. Ex. 3 - Letter from the Respondent to the Claimant with handwritten note at bottom written by Claimant, undated[3]

Clmt. Ex. 4 - Contract between Claimant and R. Wayne Kline Builder, dated October 15, 2018; Carroll Insulation Work Agreement with R. Wayne Kline Builder, dated September 24, 2018; The Plumber, Plumbing and Heating Proposal to R. Wayne Kline Builder, dated October 10, 2018; Fredericktowne Electric, Inc. Proposal and Acceptance to R. Wayne Kline Builder, dated October 12, 2018; and Email communication for HVAC proposal to R. Wayne Kline Builder, dated September 26, 2018

Clmt. Ex. 5 - Letter from R. Wayne Kline Builder to the Claimant, dated April 30, 2019[4]

Clmt. Ex. 6 - Duplicate Copy/Reprint of 84 Lumber receipt, dated August 1, 2018

Clmt. Ex. 7 - Copies of Checks from the Claimant to R. Wayne Builder dated October 21, 2018, November 12, 2018, November 19, 2018, November 24, 2018, January 12, 2019, and January 25, 2019

Clmt. Ex. 8 - Six color photographs of the inside of the home, taken by the Claimant the week of November 22, 2021

Clmt. Ex. 9 - Four color photographs of the home, taken by the Claimant on September 26, 2018

The Respondent did not offer any exhibits.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Hearing Order, dated September 3, 2021

Fund Ex. 2 - Notice of Hearing, dated September 21, 2021

Fund Ex. 3 - Home Improvement Claim Form, signed August 2, 2019 and Letter from MHIC to Respondent, dated August 15, 2019

Fund Ex. 4 - Maryland Department of Labor, I.D. Registration Home Improvement Commission Inquiry for Respondent, printed November 22, 2021

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[3] The Claimant and Respondent testified that they believed that this letter was written and sent by the Respondent in September or October of 2018.

[4] The parties agreed that the last sentence would be redacted by me because it contained an expert opinion and Mr. Kline was not present during the hearing in order to be qualified as an expert and/or to be cross-examined.

Testimony

The Claimant testified and did not present other witnesses. The Respondent testified and did not present other witnesses. The Fund did not present any witnesses.

STIPULATIONS

With facilitation by the Fund, the Claimant and the Respondent stipulated to the following facts which were stated on the record:[5]

1. There is a March 15, 2018 contract to put an addition on Claimant's home in the total amount of $48,600.00.
2. Of that contract, the Claimant paid to the Respondent $37,400.00.
3. The Respondent left the job incomplete.
4. The Claimant has submitted that she paid another contractor $58,472.00 to complete the job.

PROPOSED FINDINGS OF FACT

In addition to the stipulations noted above, 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 with the MHIC under license number 5188926.

2. The completion of the addition to the Claimant's home was time sensitive as it was needed for the Claimant's mother to reside in her home after her mother suffered a stroke.

3. The Contract was silent on when the work would begin, however, it began in April 2018.

[5] The stipulations have been reproduced in the decision exactly as the parties stated and agreed to them on the record.

4. The Contract required one-third of the total due upon contract signing ($16,200.00); one-third due upon completion of the foundation ($16,200.00); one-half of the remaining balance due upon completion of the framing portion of project ($8,100.00); one-half of remaining balance due upon shingle and siding installation ($4,050.00); one-half of the remaining balance due upon completion of interior ($2,025.00); and the remaining balance due upon completion of the project ($2,025.00).

5. There were delays caused by rainfall which prevented the Respondent from accessing the backyard in order to pour concrete and required the Respondent to hire a pump truck and rent buggies.

6. The Respondent completed "the foundation and crawl space, dug and poured footers, set panels 3' tall and poured concrete for walls, installed treated plates 2 x 8", [and] set T.J.I.[6] on 19 1/8" center." Clmt. Ex. 5.

7. Other than picking up garbage on September 15, 2018, the last time that work was completed by the Respondent was on August 29, 2018 from 11:30 a.m. to 1:30 p.m.

8. At some point in August 2018, the Respondent had a lien imposed on his company bank account for a judgment related to a different project, which prevented him from having funds to purchase the necessary materials to complete the work on the Claimant's property. This affected all of the Respondent's pending projects.

9. Around September 15, 2018 (after the Claimant filed the MHIC complaint),[7] the Respondent offered to resume the work if the Claimant would advance money to the Respondent for the materials or if the Claimant paid money directly to 84 Lumber for materials. The Claimant rejected this offer.

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[6] Trus Joist® TJI® joists.

[7] As part of the process, a Claimant is required to file an MHIC complaint first and then if not resolved, a Claim Form is completed by the Claimant.

DISCUSSION

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 (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 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 parties stipulated that the home improvement for the addition to the home was not completed by the Respondent. The Claimant testified that the last time that work was done was for two hours on August 15, 2018, and she filed her complaint with the MHIC in September 2018. The Respondent testified that he was unable to complete the work due to the lack of available funds for materials resulting from the business lien on his bank account. Therefore, I find that the Claimant has proven actual loss as defined by statute. Bus. Reg. § 8-401.

In accordance with Bus. Reg. § 8-405(d), "[t]he Commission may deny a claim if the Commission finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim." Although the Respondent offered to complete the work in September 2018, his offer was contingent upon the Claimant paying above the $37,400.00 that she had already

paid him. Despite the fact that the foundation was not completed until the summer of 2018,[8] the Claimant had paid the second installment by May 1, 2018 and a portion of the third installment ($5,000.00 of the $8,100.00) by June 7, 2018. Clmt. Ex. 7. The Contract did not require these payments until certain work had been completed, i.e., completion of the foundation and completion of the framing portion of project. The materials that were purchased by the Respondent on August 1, 2018 amounted to $2,877.17. Clmt. Ex. 8.

I find that it was not unreasonable for the Claimant to reject the Respondent's offer to complete the work on the condition that the Claimant pay potentially thousands of additional dollars to the Respondent or to the vendor when the Respondent had not worked on the project for one and a half months. Additionally, the Respondent had not completed all of the work for which he had already been paid. Therefore, the Claimant is not barred from recovering from the Fund pursuant to § 8-405(d), and the evidence does not support any other statutory prohibition. Bus. Reg. § 8-405(d) and (f)-(g).

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.

[8] The Claimant testified that the concrete was poured on July 11, 2018 and that the last work was completed on August 29, 2018. It is unclear the exact date that the foundation was finished, but it was sometime in the summer of 2018.

The Respondent performed some work under the Contract, and the Claimant has retained 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 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).

Under the original Contract, the Claimant paid Respondent a total of $37,400.00. This consisted of a payment of $16,200.00 on March 16, 2018, a payment of $16,200.00 on May 1, 2018, and a payment of $5,000.00 on June 7, 2018. Clmt. Ex. 1. The Claimant testified that the work was completed by R. Wayne Kline Builder. Clmt. Ex. 4, 5 and 7. The parties stipulated that the Claimant paid R. Wayne Kline Builder a total of $58,472.00.[9] The original contract price between the Claimant and the Respondent was $48,600.00. This would make the actual loss $47,272.00, calculated as follows:

Amount paid to the Respondent:	$37,400.00
Added to	+
Amount paid to another contractor:	$58,472.00
	$95,872.00
Less	-
The original contract price:	$48,600.00
	$47,272.00

[9] The Claimant submitted checks for a total of $58,700.00 which consisted of a payment of $20,000.00 on October 21, 2018; a payment of $20,000.00 on November 12, 2018 (the Claimant testified that this was from her sister's bank account); a payment of $700.00 on November 19, 2018; a payment of $7,000.00 on November 24, 2018; a payment of $4,000.00 on January 12, 2019; and a payment of $7,000.00 on January 25, 2019. Clmt. Ex. 8. However, the total cost of the contract was $58,472.00, which was the amount stipulated by the parties. Clmt. Ex. 4.

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 of $47,272.00 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)(c), (4), and D(2)(a). I further conclude that the Claimant is 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 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;[10] and

[10] *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.

February 3, 2022
Date Decision Issued

Tracee N. Hackett

Tracee N. Hackett
Administrative Law Judge

TNH/ja
#196078

PROPOSED ORDER

WHEREFORE, this 9th day of May, 2022, 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