IN THE MATTER OF	*	**BEFORE LATONYA B. DARGAN,**
THE CLAIM OF	*	**AN ADMINISTRATIVE LAW JUDGE**
JESSICA BRINKLEY,	*	**OF THE MARYLAND OFFICE**
CLAIMANT	*	**OF ADMINISTRATIVE HEARINGS**
AGAINST THE MARYLAND	*	
HOME IMPROVEMENT	*	
COMMISSION GUARANTY FUND	*	
FOR THE ACTS OR OMISSIONS	*	
OF CALEB PERRIN,	*	
t/a HANDY HOME TEAM,	*	**OAH No.: LABOR-HIC-02-19-34262**
RESPONDENT	*	**MHIC No.: 19 (90) 847**

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

PROPOSED DECISION

STATEMENT OF THE CASE

On March 7, 2019, Jessica Brinkley (Claimant) filed a claim for reimbursement (Claim) from the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for actual monetary losses allegedly sustained as a result of the acts or omissions of Caleb Perrin (Respondent), t/a Handy Home Team, Inc., a licensed home improvement contractor. Md. Code

Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).[1] By order dated October 17, 2019, the MHIC directed that the Claimant have a hearing to establish eligibility for an award from the Fund. On October 21, 2019, the MHIC transmitted the matter to the Office of Administrative Hearings (OAH).

On November 16, 2020, I conducted a hearing at the OAH's headquarters in Hunt Valley, Maryland. The Claimant represented herself. Shara Hendler, Assistant Attorney General, Department of Labor (DOL), represented the Fund. The Respondent, who received notice of the hearing via certified mail on September 11, 2020,[2] failed to appear, and I proceeded with the hearing in his absence. Code of Maryland Regulations (COMAR) 28.02.01.23A.[3]

The contested case provisions of the Administrative Procedure Act, the Department of Labor's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 09.01.03 and 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?

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[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 OAH issued a Notice of Hearing (Notice) to the parties at their addresses of record on September 4, 2020. The certified mail return receipt card for the copy of the Notice that was sent to the Respondent's business address was signed by "D. Watson" on September 11, 2020 and returned to the OAH on September 15, 2020.

[3] 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. I determined that the Respondent received proper notice.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits for the Claimant:

CL Ex. 1: Complaint Form, with attached narrative, December 11, 2018
CL Ex. 2: Photographs, various dates
CL Ex. 3: Warranty, Handy Home Team, Inc., September 26, 2017
CL Ex. 4: Emails between the Claimant and the Respondent, May 13, 2018 through September 4, 2018
CL Ex. 5: Invoice, I.M. Custom Plumbing, Inc., May 31, 2018
CL Ex. 6: Invoice, Aellen Cook, June 2, 2018
CL Ex. 7: Lowe's Receipt, May 15, 2018

I admitted the following exhibits for the Fund:

FUND Ex. 1: MHIC Hearing Order, October 17, 2019
FUND Ex. 2: OAH Notices of Hearing, issued various dates
FUND Ex. 3: Home Improvement Claim Form, received March 11, 2019; Letter to the Respondent from the MHIC, March 19, 2019
FUND Ex. 4: MHIC Licensing Information, print date September 18, 2020

The Respondent did not submit exhibits.

Testimony

The Claimant testified and did not present other witnesses. The Fund did not present witnesses and no one testified for the Respondent.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all relevant times, the Respondent was licensed by the MHIC.

2. On or about December 30, 2016, the Claimant entered into a contract (Contract) with the Respondent for the him to perform certain renovation work at her newly purchased personal residence (the Property) in District Heights, Maryland.

3. The scope of the Contract included the renovation of the upstairs master bathroom, which, due to plumbing and other structural issues, caused water damage to the ceiling of the living room during the residency of the previous occupants.

4. At the time the Claimant bought the Property, the bathtub was clearly aged. As the renovation work included the removal and replacement of the existing tile on the floor and walls, including the wall portion of the bathtub, the Claimant advised the Respondent that she believed the tub should also be replaced. The Respondent assured the Claimant that fully demolishing the existing tub, removing the debris, and installing a new tub would be waste of time and money. He advised the Claimant that the more financially prudent solution was to re-glaze the tub. Relying on the Respondent's assertions, the Claimant authorized him to re-glaze the tub.

5. Under the Contract, the original cost of all the renovations[4] was $16,000.00.

6. The Respondent began work under the Contract sometime in the beginning of January 2017.

7. At the time the Claimant purchased the Property and throughout much of the renovation work, the bathtub's overflow drain was covered with electrical tape. At some point in or about April 2017, a new diverter had to be installed in the tub, at which time the subcontractor responsible for installing the new diverter removed the tape from the overflow drain. At that time, it was discovered the drain was severely rusted.

8. As a result of the condition of the overflow drain, the Claimant again advised the Respondent that she wanted the tub replaced. The Respondent advised her that the tub simply needed to be re-glazed and that completely replacing the tub would require re-doing some of the

[4] The work under the Contract was extensive, but the Claim focuses on the work in the master bathroom, specifically the bathtub and tile work.

tile work on the portion of the bathroom walls that surrounded the tub. The Claimant would only agree to the Respondent's proposed solution of re-glazing the tub if the Respondent would provide her with a written, five-year warranty for the work which made the Respondent responsible for correcting any future damage if his suggested solution proved to be inadequate.

9. The Respondent provided the Claimant with the requested warranty on or abut September 26, 2017.

10. The re-glazing of the bathtub occurred on or about September 28, 2017.

11. The last day the Respondent performed any work at the Property was on or about September 28, 2017.

12. On or about March 12, 2018, the surface of the bathtub began to crack and peel in various places. On or about that same date, the Claimant contacted the Respondent and advised him that she wanted the tub replaced, as the glaze had proven to be an inadequate repair.

13. On or about March 12, 2018, the Respondent agreed to replace the bathtub and made an appointment with the Claimant to perform the work sometime later in the month. The Respondent kept re-scheduling the repair date throughout the remainder of March 2018 and into April 2018. Eventually, the Respondent and the Claimant agreed the repair would be performed on May 14, 2018.

14. On May 13, 2018, the Claimant sent a text to the Respondent's subcontractor, Irving,[5] to confirm he would be at the Property the following day to replace the bathtub. Irving advised the Claimant he was not coming to the Property on May 14, 2018.

15. On May 13, 2018, at approximately 6:24 p.m., the Claimant sent a text and an email to the Respondent in which she advised him of her communication with Irving, that she

[5] The record does not contain Irving's last name.

had purchased the replacement tub and it was at Home Depot for the Respondent to retrieve, and that if the Respondent did not take steps to be at the Property and ready to perform the work on May 14, 2018, she would take the necessary steps to get the work completed, including hiring another contractor.

16. On May 13, 2018, at 10:15 p.m., the Respondent replied to the Claimant's email. He apologized for the lateness of his response, advised her that he had other projects which were occupying his time, and agreed with her suggestion that it might be wise to contact a plumber and another contractor to do the work. The Respondent further indicated that if he was to do the repair, he would not be available to do so until towards the end of the month.

17. Eventually, the Claimant and the Respondent reached a verbal agreement with each other for the Claimant to hire another contractor to replace the tub, with the Respondent reimbursing the Claimant for the cost of the materials and labor. The Respondent agreed to reimburse the Claimant for the materials and labor associated with the replacement of the bathtub, including the replacement of the existing tile, because he acknowledged to her that the job was beyond his expertise, which is why he kept stalling about it whenever she indicated she wanted the tub replaced.

18. The Claimant hired I.M. Custom Plumbing (I.M.), a licensed Maryland contractor, to demolish and remove the old tub and to install the new tub assembly, which included removing a portion of the newly installed tile. The Claimant hired Aellen Cook (Cook), a licensed Maryland contractor, to replace any tile work that was removed during the course of the new tub installation.

19. The Claimant paid I.M. $850.00 for the installation of the new tub assembly and associated plumbing work.

20. The Claimant paid Cook $350.00 for the replacement tile work.

21. The Claimant spent $152.14 to purchase replacement tile, and the materials associated with the tile work, from Lowe's.

22. Between them, I.M. and Cook completed the installation of the new bathtub and accompanying tile on or about June 2, 2018.

23. The total cost of the repairs done by I.M. and Cook, including labor and materials, was $1,352.14.

24. On June 4, 2018 at 9:30 p.m., the Claimant sent an email to the Respondent in which she advised him of the final cost associated with the replacement of the bathtub and tile. The Claimant further advised the Respondent that she was willing to forgive the cost of the tile and its associated materials as long as he reimbursed her for the cost of the labor associated with replacing the tub and tile, per the verbal agreement they made with each other. The cost of the labor and materials associated with the replacement of the tub and tile was $1,200.00. The Claimant further advised the Respondent that I.M. provided her with a warranty for its work, which overrode the warranty the Respondent provided to her on September 26, 2017.

25. On June 6, 2018 at 9:10 p.m., the Respondent emailed the Claimant and advised her that he did not have $1,200.00 to make a lump sum payment to her. He offered instead to pay her in installments of $100.00 per month until the balance was paid in full.

26. On June 6, 2018 at 9:49 p.m., the Claimant advised the Respondent that it was "not a reasonable response" to suggest that he reimburse her at a cost of $100.00 per month because that meant it would take a year for her to be fully reimbursed, and this was after the Respondent was non-responsive to performing the repair for several months. In response to the Claimant, the Respondent iterated he could pay $100.00 per month, starting on July 1, 2018.

27. On June 9, 2018, at 6:52 p.m., the Claimant emailed the Respondent and advised that she could give him until August 31, 2018 to reimburse her in full, as he had agreed to do before she undertook hiring I.M. and Cook to complete the bathroom repairs.

28. On June 12, 2018, at 5: 57 p.m., the Respondent emailed the Claimant and indicated that he "agree[s] to work as closely to the timeline specified" and he would "work hard to achieve it for you[.]" (CL Ex. 1, p. 1.)

29. The Respondent never made any payments to the Claimant, nor did he communicate with her again after his June 12, 2018 email.

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); COMAR 28.02.01.21K(1)-(2). 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.

There is no dispute that at all relevant times, the Respondent was a licensed home improvement contractor. The Claimant does not have any relationship with the Respondent that operates as a legal impediment to her receiving an award from the Fund. Bus. Reg.

§ 8-405(f)(1). The remaining question, then, is whether the Claimant is entitled to such an award. Based on the evidence, I find that she is.

The record demonstrates that the Claimant hired the Respondent to perform renovations at the Property, including in the master bathroom. Early in the process, the Claimant clearly advised the Respondent of her belief that the bathtub should be replaced. For reasons that only became apparent almost sixteen months later, the Respondent insisted the tub merely needed to be re-glazed and that a full demolition and replacement was costly and unnecessary. As the Claimant explained, she is not a home improvement contractor and, therefore, she relied on the Respondent's professional expertise when he insisted to her that the issues with the bathtub's appearance could be easily remedied.

The Claimant gave the Respondent multiple opportunities and ample time to complete the bathroom repair, first, by allowing him to try the re-glazing remedy. Then, when that proved to be inadequate, she gave him multiple opportunities to actually replace the tub. It was not until sometime in May 2018, approximately sixteen months after the project initially started, that the Respondent finally acknowledged to the Claimant the reason he kept diverting her attention from a wholesale replacement of the bathtub – because such a project was beyond his experience and capability. At that point, the Respondent entered into an agreement with the Claimant that if she purchased the necessary materials and hired a contractor skilled in such work to perform it, he would reimburse her for the costs associated with the repair. When the time came for the Respondent to honor that agreement, he essentially, as the Claimant described it, "ghosted her" after making an inadequate, installment-plan style suggestion for repayment.

The Claimant hired the Respondent to perform renovations at her Property, including the master bathroom. The master bathtub was in questionable condition. Against the Claimant's

better judgment, she agreed to let the Respondent attempt a less-costly repair than the one she preferred. The Respondent's repair work was inadequate, as the glaze he applied to the bathtub began to peel and crack within six months of its application. When the Claimant put her foot down and insisted on the original renovation – a complete replacement of the tub – the Respondent strung her along for two more months before finally admitting he did not have the capability to perform the work. *Then,* despite promising to reimburse the Claimant for the costs of repairing his inadequate and unworkmanlike renovation, he failed to do so. The Claimant is entitled to an award from the Fund.

Having found eligibility for compensation, I must now 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). The 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 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).

Using the above formula, I calculate the Claimant's actual monetary loss as follows:

Amount paid to the Respondent	$ 16,000.00[6]
+ Amount paid to correct or complete the work	$ 1,352.14[7]
	$ 17,352.14
- Amount of original contract	$ 16,000.00
Amount of actual loss	**$ 1,352.14**

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). Here, the Claimant expressly sought an award in the amount of what she paid to I.M., Cook, and Lowe's for the replacement of the bathtub and installation of new tile. (FUND Ex. 3.) Accordingly, I recommend an award in the amount of $1,352.00 from the Fund.

PROPOSED CONCLUSIONS OF LAW

Based on the Proposed Findings of Fact and Discussion, I conclude as a matter of law that the Claimant sustained an actual and compensable loss of $1,352.14 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). I further conclude that the Claimant is entitled to recover $1,352.14 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 $1,352.14; and

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[6] CL Ex. 1.
[7] CL Exs. 5-7

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

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

CONFIDENTIAL

February 12, 2021
Date Decision Issued

Latonya B. Dargan
Administrative Law Judge

LBD/kdp
#190492

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

PROPOSED ORDER

WHEREFORE, this 9th 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