IN THE MATTER OF THE CLAIM	*	**BEFORE BRIAN PATRICK WEEKS,**
OF EVELYN JEWELL,	*	**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 BRIAN CAMPBELL,	*	
T/A BC IMPROVEMENTS, LLC,	*	**OAH No.: LABOR-HIC-02-21-02689**
RESPONDENT	*	**MHIC No.: 19 (90) 942**

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PROPOSED DECISION

STATEMENT OF THE CASE

On June 15, 2019, Evelyn Jewell (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 $22,500.00 in actual losses allegedly suffered as a result of a home improvement contract with Brian Campbell, trading as BC Improvements, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).[2]

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[1] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.
[2] Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

On January 27, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a remote video hearing on April 20, 2021. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B. Andrew J. Brouwer, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself.

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 March 4, 2021, the OAH provided a Notice of Remote Hearing (Notice) to the Respondent by United States mail. 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., and provided the meeting number for the Webex platform. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you." On April 3, 2021, the Fund informed the OAH that it had obtained additional addresses for the Respondent, and requested that the OAH send the Notice to the Respondent at the new addresses. On April 5, 2021, the OAH sent Notices to the Respondent at the two additional addresses provided by the Fund.

The United States Postal Service did not return any copies of the Notices to the OAH. 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.

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:

Cl. Ex. 1 - Photos, undated

Cl. Ex. 2 - Master Contracts United contract proposal, May 21, 2019; Checks, various dates

Cl. Ex. 3 - Text messages, various dates

Cl. Ex. 4 - JD Michael Construction, Inc. estimate, December 10, 2018

Cl. Ex. 5 - Contract with Respondent, January 29, 2017; Invoice, March 30, 2017; Change Order, February 20, 2017; Change Order, March 15, 2017; Proposal, May 11, 2018

Cl. Ex. 6 - Claim summary, undated

The Respondent failed to appear and did not offer any documents.

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

Fund Ex. 1 - Hearing Order, January 20, 2021

Fund Ex. 2 - Notice of Remote Hearing, March 4, 2021

Fund Ex. 3 - Letter from the Fund to the Respondent with attached Claim, June 27, 2019

Fund Ex. 4 - Licensing history for the Respondent, April 3, 2021

Fund Ex. 5 - Affidavit of David Finneran, April 14, 2021

Fund Ex. 6 - Notice of Remote Hearing, April 5, 2021

Fund Ex. 7 - Letter from Mr. Finneran re: Master Contractors United, April 19, 2021

Fund Ex. 8 - State Department of Assessments and Taxation Business Entity Search history for Master Contractors United LLC, undated

Fund Ex. 9 - Letter from Mr. Finneran re: Aaron Singh, April 19, 2021

Fund Ex. 10 - Letter from Mr. Finneran re: JD Michael Construction Co., April 19, 2021

Testimony

The Claimant testified and did not present other witnesses.

The Respondent failed to appear and did not testify.

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 number 01-100499.

2. On January 30, 2017, the Claimant and the Respondent entered into a contract to perform a kitchen and second floor bath remodel (Contract). The Contract called for demolition of the existing kitchen and second floor bathroom. The Contract stated that work would begin on approximately March 6, 2017, and would be completed by April 28, 2017. The Claimant paid the Respondent $15,930.00 on January 30, 2017.

3. The original agreed-upon Contract price was $53,100.00 of which $36,050.00 was for the kitchen work and $17,050.00 was for the bath work.

4. On February 20, 2017, the Claimant and the Respondent agreed to a Change Order to the Contract to furnish a different microwave and dishwasher at a cost of $675.45 and the Claimant paid the Respondent $675.45 by check that day.

5. The Respondent began work in early March 2017. The Claimant returned from out of town to find the home filled with dirt, mud, and dust.

6. On March 6, 2017, the Claimant paid the Respondent $26,550.00 and $5,000.00 by two separate checks.

7. On March 15, 2017, the Claimant and the Respondent agreed to a Change Order to the Contract to construct a game room and laundry room at a total cost of $12,000.00.

8. On March 16, 2017, the Claimant paid the Respondent $9,600.00 by check.

9. On March 31, 2017, the Claimant paid the Respondent $6,248.69 by check.

10. On May 11, 2018, the Claimant and the Respondent agreed to a Change Order to the Contract to install roll-out shelves in the kitchen at a cost of $1,950.00. The Claimant paid the Respondent $975.00 that day.

11. In May 2017, the drywall workers hired by the Respondent walked off the job and did not return. At this time, the dry wall in the kitchen was not finished and the bathroom demo had not yet begun.

12. In late October 2017, the Respondent informed the Claimant that the work was complete. At this time, there were problems with chipped and broken tile and grout in the bathroom, the bathroom threshold was cracked, the bathroom door did not have a latch plate installed. In the kitchen, the floor snapped when it was walked on and was separating, the cabinets were not level with the ceiling, the counter-top granite had begun to separate, and the microwave exhaust fan did not vent properly. The laundry vent also was installed right above the kitchen window which means that the window cannot open.

13. On October 17, 2018, the Claimant paid the Respondent $577.32 by check.

14. In April 2018, the shower in the newly renovated bathroom was leaking and ultimately it seeped through the kitchen ceiling to the lower level of the home.

15. In May 2018, the Claimant's roof began to leak as a result of the work to install a vent pipe from the bathroom by the Respondent. The Respondent fixed this problem and no more leaking occurred.

16. In October 2018, the Respondent stopped responding to the Claimant.

17. The Claimant paid the Respondent a total of $65,556.46.

18. On December 10, 2018, the Claimant obtained an estimate from JD Michael Construction, Inc. to remodel the bathroom for a total of $11,151.00. JD Michael Construction Inc. has a MHIC license.

19. On May 21, 2019, the Claimant obtained an estimate from Master Contractors United of $22,500.00 to repair the work done by the Respondent and complete the work called for in the Contract. The estimate has a handwritten license number at the top. Masters Contractors United does not have a MHIC license.

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." *Id.* § 8-401.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant and I conclude, for the reasons discussed below, that he performed unworkmanlike, inadequate, or incomplete home improvements.

At the time that the Respondent's workers walked off the job in May 2017, many items from the Contract had not been completed. The kitchen area had been gutted, but not the bathroom. The drywall was not finished in any of the rooms. The grout and tile in the bathroom had been installed such that they were already chipping and cracking. Between May 2017 and October 2018, when the Respondent stopped responding to the Claimant, the Claimant tried to get the Respondent to repair the problems with the work that had been done and to finish the rest of the work from the Contract. The Respondent sent workers to fix the drywall problems but they simply painted over the errors. In October 2017, the Respondent told the Claimant that the work was done. At this time, there were problems with chipped and broken tile and grout in the bathroom, the bathroom threshold was cracked, and the bathroom door did not have a latch plate installed. In the kitchen, the floor snapped when it was walked on and was separating, the cabinets were not level with the ceiling, the counter-top granite had begun to separate, and the microwave exhaust fan did not vent properly. The laundry vent also was not installed properly as it is right above the kitchen window which means that the window cannot open. In April 2018, the Claimant discovered that the shower was leaking onto the bathroom floor. The grout on both the walls and floor in the shower and the bathroom floor was cracking. The ceiling in the kitchen was not level. The contractors contacted by the Claimant informed her that they would have to redo the flooring in the kitchen and demolish the bathroom and start over because of the problems with the Respondent's work.

The Respondent did not appear to defend against the Claim, and I conclude that the Claimant has established through her testimony and documentary evidence that the Respondent's work was unworkmanlike and inadequate for the reasons described above.

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 intends to retain other contractors to complete or remedy that work. The following formula would usually apply to measure 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).

The problem with applying the above formula is that the Claimant does not have an estimate to repair the kitchen from a contractor that holds a MHIC license. The Fund's counsel argued that it would be appropriate to utilize a unique measurement because the Claimant has lung cancer and was not able to obtain an estimate during the COVID-19 pandemic because of the risks associated with having individuals inside her home. Further, the contractor that she

contacted to obtain an estimate for the kitchen work misrepresented to her that it was properly licensed. Therefore, I agree that a unique formula is needed to measure the Claimant's actual loss.

The Claimant obtained an estimate from JD Michael Construction, Inc., which holds a MHIC license, for work to complete the bathroom. The estimate is for a total of $11,551.00 and the scope of work is the same as that of the Contract. The Claimant also obtained an estimate from Master Contractors United, which does not hold a MHIC license. The estimate from Master Contractors United is for both the bathroom and kitchen work. The scope of work for the kitchen is to remove the existing laminate flooring that the Respondent installed and to install tile flooring. This is a more limited scope of work than what the Contract calls for. The scope of work for the bathroom is the same as that of the Contract. The total estimate is for $22,500.00 but the company did not specify how much the bathroom work would cost and how much the kitchen work would cost. The Fund's counsel argued that it would be permissible to infer that the difference between $11,551.00, the only estimate for repair of the bathroom from a licensed contractor, and $22,500.00, which includes an estimate for the same work to the bathroom, would represent the cost to complete the work to the kitchen floor. This inference can be drawn from the fact that the Contract had a line item of $36,050.00 for all of the kitchen work, including the installation of a new floor. Here, the difference between $22,500 and $11,551.00 is $10,949.00, which seems to be a reasonable amount to replace the floor due to the problems associated with the Respondent's work as it represents less than one-third of the total amount paid to the Respondent for the kitchen work. Adding this amount to $11,551.00 results in an actual loss amount of $22,500.00.

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 of $22,500.00 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 $22,500.00 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). 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;[3] and

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

May 27, 2021
Date Decision Issued

Brian Patrick Weeks
Administrative Law Judge

BPW/dlm
#192333

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

PROPOSED ORDER

WHEREFORE, this 9th day of July, 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