IN THE MATTER OF THE CLAIM	*	**BEFORE STEPHEN W. THIBODEAU,**
OF JONATHAN A. WARD,	*	**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,	*	**OAH No.: LABOR-HIC-02-21-15278**
T/A CF ORE CONSTRUCTION,	*	**MHIC No.: 20 (75) 1242**
RESPONDENT	*	

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

PROPOSED DECISION

STATEMENT OF THE CASE

On September 3, 2020, Jonathan A. Ward (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 $49,155.00 for actual losses allegedly suffered as a result of a home improvement contract with Christopher Ore, trading as CF Ore Construction (Respondent). Md. Code Ann., Bus. Reg.

§§ 8-401 to -411 (2015).[1] On June 9, 2021, the MHIC issued a Hearing Order on the Claim. On June 21, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On September 16, 2021, I held a hearing at the OAH in Rockville, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Andrew J. Brouwer, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. Andrew Kiphart, Esquire, represented the Respondent, who was present.

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, unless otherwise noted:

Clmt. Ex. 1 - Contract between the Claimant and the Respondent, November 2, 2019 and January 19, 2020

Clmt. Ex. 2 - Series of photos of the project, taken by the Claimant on April 21, 2020, sub-numbered as follows:
2a: Post connecting to floor of elevated deck
2b: Ceiling of portion under deck
2c: Photo of back of home showing deck and stairs
2d: Photo of roof trim on home

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

2e: Photo of incomplete siding on home
2f: Photo of underside of deck
2g: Photo of deck, joist, and post
2h: Photo of damaged leftover materials from project
2i: Close up photo of decking

Clmt. Ex. 3 - Text messages between the Claimant and the Respondent, March 27, 2020 through June 16, 2020

Clmt. Ex. 4 - Emails between the Claimant and the Respondent, April 14, 2020 through April 28, 2020

Clmt. Ex. 5 - Emails between the Claimant and the Respondent, April 20, 2020 through April 28, 2020

Clmt. Ex. 6 - (Offered but not admitted)

Clmt. Ex. 7 - Letter to the MHIC from the Claimant attached to the Fund Claim, undated

Clmt. Ex. 8 - Estimate from Classic Design Group, Inc., May 8, 2020

Clmt. Ex. 9 - Email from Edram General Construction, LLC, to the Claimant, May 11, 2020

Clmt. Ex. 10 - Estimate from Deck Tekton, May 27, 2020

Clmt. Ex. 11 - Email between the Claimant and Steve Blickenstaff, Chief Building Inspector for Frederick County, May 4, 2020 through May 7, 2020

Clmt. Ex. 12 - Text message from the Respondent to the Claimant, June 16, 2020

Clmt. Ex. 13 - Email from the Claimant to the Respondent, June 16, 2020

Clmt. Ex. 14 - Emails between the Claimant and the Respondent, June 22, 2020 through June 30, 2020

Clmt. Ex. 15 - Emails between the Claimant and Shannon Walters, Permits Coordinator, Frederick County Permits and Inspections, May 5, 2020 through June 17, 2020

Clmt. Ex. 16 - Emails between the Claimant and David Finneran, Executive Director, MHIC, June 25, 2020 through June 30, 2020

Clmt. Ex. 17 - Permit application submitted by the Respondent to the Frederick County Office of Permits and Inspections, June 16, 2020

Clmt. Ex. 18 - Footing Inspection by the Frederick County Office of Permits and Inspections, August 12, 2020

Clmt. Ex. 19 - Report of Alan Martinez Argueta, Deck Tekton LLC, issued to the Claimant, undated[2]

I admitted the following exhibits offered by the Respondent:

Resp. Ex. 1 - Photo of the Claimant's Property, taken by the Respondent, November 2019

Resp. Ex. 2 - Photo of the Claimant's Property, taken by the Respondent, January 2020

Resp. Ex. 3 - Photo of the Claimant's Deck, taken by the Respondent, February 2020

Resp. Ex. 4 - Photo of the Claimant's Property, taken by the Respondent, March 2020

Resp. Ex. 5 - Receipts from 84 Lumber, November 6, 2019, March 4, 2020, March 6, 2020, and March 27, 2020

Resp. Ex. 6 - Blueprint sketch created by the Respondent, February 2020

Resp. Ex. 7 - Dispute Summary from PNC Merchant Services, May 5, 2020

Resp. Ex. 8 - Bank Statement for the Respondent, August 2020

Resp. Ex. 9 - Chargeback Statement, June 2020

Resp. Ex. 10 - Bank Statement for the Respondent, June 2020

Resp. Ex. 11 - Dispute Summary from PNC Merchant Services, July 5, 2020

Resp. Ex. 12 - Bank Statement for the Respondent, July 2020

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Hearing Order, June 9, 2021

Fund Ex. 2 - Notice of Hearing, July 14, 2021

Fund Ex. 3 - Letter from the MHIC to the Respondent, September 16, 2020, with attached Fund Claim form

Fund Ex. 4 - MHIC Licensing History for the Respondent, printed August 16, 2021

[2] Mr. Argueta testified that he wrote the letter to the Claimant on January 6, 2021.

Testimony

The Claimant testified and presented the testimony of Alan Martinez Argueta, Contractor, Deck Tekton LLC, who testified by telephone and who I accepted as an expert in general contracting.

The Respondent testified and I accepted him as an expert in general contracting. The Respondent did not present other witnesses.

The Fund did not present any testimony.

PROPOSED FINDINGS OF FACT

At the beginning of the hearing, the parties stipulated to the following: The contract between the Claimant and the Respondent contained an arbitration clause requiring the parties to submit to binding arbitration through the Better Business Bureau (BBB). The parties entered into arbitration with the BBB but the claim remained unresolved through the arbitration process.

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 01-90839.

2. On November 2, 2019, the Claimant and the Respondent entered into a contract to repair damage to the Claimant's house due to a fallen tree at 3303 Knolls Parkway, Ijamsville, Maryland, in Frederick County. The original Contract called for the replacement of siding on the rear of the house; replacement of decking stairs and railing; installation of a new gutter; replacement of the rear deck; and renovation of the rear patio. (Contract).

3. Due to the discovery of structural issues with the deck during the pendency of the project, on January 19, 2020, the Contract was later amended to include work to address the structural issues surrounding the deck.

4. Both the original and amended Contract required the Respondent to pull all necessary permits and schedule all necessary inspections.

5. The total original agreed-upon Contract price was $61,620.00.

6. From November 2019 through April 2020, the Claimant made several payments on the Contract to the Respondent, by both check and credit card, totaling $47,775.00.

7. Beginning in April 2020, the Claimant expressed serious concerns about the progress of the project as well as the Respondent's MHIC license status.

8. On April 21, 2020, the Claimant researched whether the necessary permits for the project were pulled, and whether the Respondent had applied for the permits. After consulting with the Frederick County Permits and Inspections Office (FCPIO), the Claimant discovered there was no application or approval of permits for the project.

9. Due to the lack of permits on the project, the Claimant asked the Respondent to stop work on the project on April 27, 2020.

10. The Respondent submitted a permit to the FCPIO on June 16, 2020, after he stopped work on the project. That permit was never approved by the FCPIO.

11. On May 27, 2020, the Claimant hired Deck Tekton Construction, LLC, (Deck Tekton), MHIC License #136766, to complete the project. The Claimant paid Deck Tekton $63,614.00 to finish the project, which included significant correction to the Respondent's prior work on the project.

12. On August 12, 2020, per a permit application from Deck Tekton, the FCPIO failed the project on a footing inspection. The failure was due primarily to the workmanship of the Respondent that Deck Tekton would eventually correct.

13. Beginning in June 2020, the Claimant sought refunds from the credit card company in the form of "chargebacks" wherein he disputed charges made to the Respondent for payment on the Contract.

14. The Claimant received a total of $3,700.00 in refunds to his credit card as a result of the credit disputes with the Respondent.

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 Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. There was some dispute during the hearing as to whether the Respondent's license was suspended after he began work on the Contract. However, that dispute is not dispositive to any issue in this case. At the time the Contract was executed in November 2019, it is undisputed that the Respondent was a licensed MHIC contractor.

Similarly, the significant disputes regarding the quality of some of the details of the Respondent's workmanship are also not dispositive in this case. Indeed, at the hearing, competing experts testified as to whether the Respondent's work amounted to unworkmanlike, inadequate, or incomplete home improvements. Mr. Martinez Argueta, as the expert for the Claimant and the contractor the Claimant hired to complete and correct the Respondent's work, noted several issues with Respondent's work that was, in his opinion, incorrect. The Respondent, testifying on his own behalf, disputed this. Again, this was a dispute that does not need to be resolved in order to determine this case.

What is dispositive in this case is that the Respondent never applied for, obtained, or received approved permits from the FCPIO prior to or during his work on the Contract. The Contract required him to obtain all the necessary permits and schedule inspections for the project. At no time from the beginning of his work in November 2019, until the Claimant asked him to stop work in April 2020, did the Respondent apply, obtain, or receive a permit for the work, nor schedule any inspection for his work, with the FCPIO.

Suffice to say, the scale of the project at issue in this case was massive. It started as a correction to the Claimant's home for tree damaging and ballooned to a full redo of the Claimant's elevated deck and patio. Moreover, by the Respondent's own admission and as evidenced by the amendment to the original contract, the Respondent found significant structural issues with the Claimant's deck that needed to be corrected and took measures to ensure that the deck was stable during the work. In all of this, the Respondent never sought a permit or inspection from Frederick County to ensure his work was proper.

The Respondent's answer as to why he never sought a permit was oversimplistic. He claimed that he was not required to seek permits from the FCPIO prior to beginning his work because Frederick County did not require it. That does not explain why he *never* applied for a

permit or sought inspection during the five months of work on the Contract. Nor does it explain why he violated the terms of the Contract by failing to do so. The failure to pull permits or have his work inspected at any time during the five months of his work under the Contract, in direct violation of the terms of the Contract, and the subsequent work required to correct the Respondent's failure to obtain permits in order to subsequently pass inspection, amounts to an inadequate home improvement, thus making the Claimant 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.

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).

In applying the formula, I note there is a significant dispute regarding how much the Respondent was actually paid for the work under the Contract. Indeed, there is no dispute that

the Claimant made payments totaling $47,775.00 to the Respondent, at least initially. However, there is a dispute regarding the chargebacks made by the Claimant in order to get a refund on the work performed by the Respondent. The Claimant notes that only one of his chargebacks, for $3,700.00, was successful and he received that money back; the Respondent states that a total of $27,900.00 was charged back and he lost that money on the Contract. As a result, I will give credit only for the amount of chargeback not disputed, specifically the $3,700.00. Thus, the total amount the Claimant paid on the Contract was $44,075.00 (initial payments of $47,775.00 minus $3,700.00 in refunded payments equals $44,075.00). However, the Claimant paid Deck Tekton $63,614.00 to repair the poor work of the Respondent. Thus, applying the formula above, the Claimant's actual loss is $46,069.00 ($44,075.00 paid to the Respondent plus $63,614.00 equals $107,689.00, minus the original contract price of $61,620.00, which equals $46,069.00).

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 $46,069.00 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), the amount paid to the Respondent. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $46,069.00 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). 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.

Stephen W. Thibodeau

December 13, 2021
Date Decision Issued

Stephen W. Thibodeau
Administrative Law Judge

SWT/da
#195444

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

PROPOSED ORDER

WHEREFORE, this 18th day of March, 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.

Chandler Louden

Chandler Louden
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION