IN THE MATTER OF THE CLAIM	*	**BEFORE JOCELYN L. WILLIAMS,**
OF LILLIAN ARMSTRONG,	*	**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	*	
PATRICK COPERTINO,	*	**OAH No.: LABOR-HIC-02-21-06592**
T/A SOLAR HOME AND ROOF USA,	*	**MHIC No.: 20 (90) 198**
RESPONDENT	*	

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PROPOSED DECISION

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STATEMENT OF THE CASE

On January 24, 2020, Lillian Armstrong (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 $46,666.00 in actual losses allegedly suffered as a result of a home improvement contract with Patrick Copertino, trading as Solar Home and Roof, USA (Respondent). Md. Code Ann., Bus. Reg.

[1] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor,

§§ 8-401 through 8-411 (2015).[2] On March 23, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On April 29, 2021, I conducted a hearing, the entirety of which was conducted using the Webex videoconferencing platform. Code of Maryland Regulations (COMAR) 28.02.01.20B. The hearing was initiated from the OAH in Hunt Valley, Maryland, and the parties participated from their respective locations. Bus. Reg. §§ 8-407(a), 8-312. Justin Dunbar, Assistant Attorney General, Department, represented the Fund. Lynne Krause, Esquire, represented the Claimant, who was present. The Respondent was not present or represented.

After waiting approximately twenty 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 25, 2021, the OAH provided a Notice of Remote 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 April 29, 2021, at 9:30 a.m., via the Webex videoconferencing platform. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service did not return the Notice to the OAH.[3] 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

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

[3] On June 10, 2021, the United States Postal Service returned the certified mail to the OAH as "return to sender, unclaimed, unable to forward." The Respondent had an obligation to keep his address updated with the MHIC and received notice from the MHIC that a Claim had been filed against him. Thus, I deem that he still received proper notice of the hearing.

28.02.01.16. I determined that the Respondent received proper notice and 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 offered by the Claimant:

Clmt. Ex. 1 - Home Improvement Claim Form, dated January 24, 2020; with attached supplementary statement

Clmt. Ex. 2 - Copy of cancelled check no. 6221 for $23,333.00 written to the Respondent from the Claimant, dated April 30, 2019; copy of cancelled check no. 6230 for $23,333.00 written to the Respondent from the Claimant, dated May 9, 2019

Clmt. Ex. 3 - Respondent's company information and contact information provided to the Claimant, undated

Clmt. Ex. 4 - Worksheets written by the Respondent and provided to the Claimant, undated

Clmt. Ex. 5 - Letter from Amanda Kerr to the Claimant, undated

Clmt. Ex. 6 - Copy of Home Improvement Contract, dated April 25, 2019; contract Addendum, dated April 25, 2019; Energy Point Program agreement, dated April 25, 2019

Clmt. Ex. 7 - Circuit Court for Anne Arundel County Case No. C-02-CR-20-000301JG- Notice of Recorded Judgement against the Respondent, in favor of the Claimant for $46,666.00, dated December 23, 2020

Clmt. Ex. 8 - Maryland Judiciary Case Search docket entries for Circuit Court for Anne Arundel County Case No. C-02-CR-20-000301JG docket entries for State of Maryland v. [Respondent], filed February 21, 2020

Clmt. Ex. 9 - Four black and white photographs depicting views of the front and back of the Claimant's house, taken April 6, 2021

The Respondent did not offer any exhibits.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Remote Hearing, issued March 25, 2021

Fund Ex. 2 - Hearing Order, dated March 11, 2021

Fund Ex. 3 - Home Improvement Claim Form, dated January 24, 2020 (received February 20, 2020)

Fund Ex. 4 - Letter to the Respondent from Joseph Tunney, dated February 20, 2020

Fund Ex. 5 - Respondent's MHIC Licensure Information, dated April 13, 2021

Testimony

The Claimant testified and did not present other witnesses.

The Respondent did not testify or present any witnesses.

The Fund did not present any testimony or witnesses.

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 5340245. (Fund Ex. 5).

2. At all relevant times, the Claimant owned residential property located in Annapolis, Maryland (Property).

3. On April 25, 2019, the Claimant and the Respondent entered into a contract for all materials and labor associated with the installation of a 16.24 kilowatt solar panel system on the

roof of the Property (Contract). The Contract stated that work was estimated to begin four weeks from the date of Contract signing and was estimated to be completed in eight weeks. (Clmt. Ex. 6).

4. The original agreed-upon Contract price was $70,000.00. $23,333.000 to be paid as a deposit, $23,333.00 to be paid one month prior to installation and $23,334.00 to be paid upon completion of the installation. (*Id.*).

5. The Claimant hired a separate company to remove trees from the Property to prepare for the installation of the solar panel system.

6. On April 30, 2019, the Claimant paid the Respondent $23,333.00 by check. The check cashed on May 1, 2019. (Clmt. Ex. 2).

7. On May 9, 2019, the Claimant paid the Respondent $23,333.00 by check. The check cashed on May 10, 2019. (Clmt. Ex. 2).

8. The Respondent did not perform any work under the Contract.

9. There are no solar panels installed on the roof of the Property. (Clmt. Ex. 9).

10. The Claimant received an Order of Judgment as part of restitution in the criminal case brought by the State of Maryland against the Respondent. (Clmt. Ex. 7). The Claimant has not received any monies from the judgment.

11. The Claimant has not contracted with any other companies for the installation of solar panels to the roof of the Property.

DISCUSSION

Legal Framework

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."). An "actual loss" means "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401.

Statutory Eligibility

The evidence in this case establishes there are no impediments barring the Claimant from recovering from the Fund. The home improvement work was to be performed on a residential property owned by the Claimant in Maryland. The Claimant does not own more than three residences or dwelling places. The Claimant is not a relative, employee, officer, or partner of the Respondent; the Claimant is not related to any of the Respondent's employees, officers, or partners. The Claimant did not reject any efforts by the Respondent to resolve the claim. The Contract between the Claimant and the Respondent does not contain an arbitration provision. Finally, the Claimant has not taken any other legal action to recover monies.[4] Bus. Reg. §§ 8-101(g)(3)(i), 8-405(c), (d), (f), 8-408(b)(1) (2015 & Supp. 2020).

For the following reasons, I find that the Claimant has proven eligibility for compensation from the Fund.

[4] The Claimant was awarded restitution in a criminal proceeding in which the Respondent was the Defendant. However, the Claimant has not received a judgement or recovered any monies.

Analysis

The Claimant testified that for several years she had been considering installing solar panels on her home to reduce her electrical bill. She explained that she found the Respondent's company through an internet search on Home Advisor. The Respondent came out her home and did a presentation, and she entered into the Contract to have a fifty-six panel system installed. The Claimant testified that upon signing the Contract she paid the Respondent the first installment due, which represented one-third of the total or $23,666.00. She explained that she entered into a contract with a separate company to remove trees from around the Property. The Claimant testified that the Respondent came out to her home on the day of the tree removal and she paid him the second installment, due under the Contract, that was due at the start of the work, or $23,666.00.

The Claimant testified that after the trees were removed, a week elapsed and she had not heard from the Respondent. She explained that she contacted the Respondent's office several times and spoke with Ms. Kerr, who assured her that the work was delayed because they needed to obtain a permit. Subsequently, the Claimant contacted the permit office in July 2019 and September 2019 and learned that no permit had been obtained to perform the solar panel installation. She testified that she contacted an attorney, who contacted the States Attorney's Office and criminal charges were subsequently filed against the Respondent.

The Respondent was charged and found guilty of Theft Scheme $25,000.00 to under $100,000.00. (Clmt. Ex. 8). As part of the criminal case, a Judgement of Restitution was entered, and the Claimant received a Notice of Recorded Judgment in the amount of $46,666.00. The Claimant has not received any monies as a result of the Notice of Recorded Judgement. The Fund took the position that the Claimant's Notice of Recorded Judgment does not bar her Claim

from the Fund, I agree. I find that the Respondent performed no work under the Contract. 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 testified that she borrowed money from her individual retirement account and made two payments to the Respondent by check. Each check was written for $23,333.00 for a total of $46,666.00 paid to the Respondent. (Clmt. Ex. 2).

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 $46,666.00 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 $46,666.00 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 $20,000.00 from the Fund. Bus. Reg. § 8-405(e)(5); 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;[5] and

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

Jocelyn L. Williams

July 27, 2021
Date Decision Issued

Jocelyn L. Williams
Administrative Law Judge

JLW/at
#192819

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

PROPOSED ORDER

WHEREFORE, this 26th day of October, 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.

I Jean White

I Jean White
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION