IN THE MATTER OF THE CLAIM	*	**BEFORE RICHARD O'CONNOR,**
OF CHRISTOPHER ROLLIN,	*	**ADMINISTRATIVE LAW JUDGE,**
CLAIMANT	*	**THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF JEROD WILKS,	*	
T/A PRECISION POOLS LLC,	*	**OAH No.: LABOR-HIC-02-21-10792**
RESPONDENT	*	**MHIC No.: 20 (75) 686**

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PROPOSED DECISION

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STATEMENT OF THE CASE

On May 1, 2020, Christopher Rollin (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of $17,160.00 in actual losses allegedly suffered as a result of a home improvement contract with Jerod Wilks, trading as Precision Pools LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).[1] On May 4, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

[1] All references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

I held a hearing on June 29, 2021 by videoconference. Bus. Reg. §§ 8-407(a), 8-312. Shara Hendler, Assistant Attorney General, Department, represented the Fund. The Claimant participated without representation. The Respondent did not appear for the hearing. After waiting fifteen minutes for the Respondent or his 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. Code of Maryland Regulations (COMAR) 28.02.01.23A.

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 into evidence on the Claimant's behalf, except as noted[2]:

Clt. Ex. 1. MHIC Complaint Form, November 21, 2019.

Clt. Ex. 2. Swimming Pool Construction Contract, October 25, 2018.

Clt. Ex. 3. Copies of four checks and one withdrawal slip, October 26, 2018 to July 3, 2019.

[2] I left the record open ten days to allow the Claimant to submit documentation of his expenses to complete the contract. He sent in Exhibits 6, 7, 8, and 9, and the Fund's counsel stated that she did not object to their admission.

Clt. Ex. 4. Three photographs.

Clt. Ex. 5. Not admitted.

Clt. Ex. 6. Pool Cover Proposal from Aqua Wonders, October 14, 2019.

Clt. Ex. 7. Invoice from Aqua Wonders LLC, October 14, 2019.

Clt. Ex. 8. Invoice from Aqua Wonders LLC, December 9, 2019.

Clt. Ex. 9. Invoice from MCS Ferrara Land Services, LLC, February 29, 2020.

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

Fund Ex. 1. Hearing Order, April 22, 2021.

Fund Ex. 2. Notices of Remote Hearing, May 20, 2021 and June 3, 2021.

Fund Ex. 3. Home Improvement Claim Form, received May 1, 2020; letter from the MHIC to the Respondent, May 13, 2020.

Fund Ex. 4. The Respondent's licensing history with the MHIC, June 1, 2021.

Testimony

The Claimant testified and presented the testimony of A. J. Ferrara.[3]

The Fund presented no 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 01-95239. The Respondent's license expired on December 11, 2019.

2. On October 25, 2018, the Claimant and the Respondent entered into a contract to build a swimming pool at the Claimant's home in Fallston, Maryland. The contract stated that

[3] Mr. Ferrara testified by telephone.

work would begin on November 15, 2018 and would be substantially completed by May 30, 2019.[4]

3. The contract included excavation, installation, electrical work and lighting, filtration, pavers around the pool, grading and seeding after installation, a four-foot-high aluminum fence, a robotic cleaner, a heater, water to fill the pool, initial start-up and balancing of chemicals, a pool cover with a pump, closing the pool in 2019, and a hydrotherapy spa with a cover.

4. The contract price was $137,500.00.

5. The Claimant paid the Respondent $137,500.00 under the contract.

6. The Respondent excavated the pool in the winter of 2018 but did not begin installation until the spring of 2019.

7. The Respondent installed the pool and filled it with water by July 2, 2019. He also put pavers around the pool as specified in the contract and did the grading.

8. A. J. Ferrara was the Respondent's project manager for the Claimant's pool.

9. The Respondent did not provide the pool and spa covers or install the fence as called for in the contract.

10. The Respondent told the Claimant that he would install the covers when he came back to close the pool in the fall.

11. The Respondent never came back to close the pool and never installed the covers.

12. The Claimant tried many times to contact the Respondent by telephone, email, and by talking to other people involved in the project, but the Respondent did not communicate with the Claimant.

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[4] The contract states "May 30, 2018" but I consider this a typographical error.

13. The Claimant engaged other contractors to furnish and install the covers, close the pool, and build the fence.

14. The Claimant paid $6,190.00 to Aqua Wonders LLC (Aqua Wonders) to close the pool in 2019 and supply covers for the pool and the spa as called for in the contract with the Respondent.

15. The Claimant paid $8,520.00 to MCS Ferrara Land Services, LLC (Ferrara) to build the aluminum fence around the pool as called for in the contract with the Respondent.

16. The Respondent's business address of record with the MHIC was 1705 Ingleside Road, Forest Hill, MD 21050.

17. On May 20, 2021, the OAH sent notices of the hearing to the Respondent at his MHIC address of record by both certified and first-class mail, informing him that a hearing was scheduled for June 29, 2021, at 9:30 a.m., on the Webex videoconferencing platform and providing the Webex meeting number for joining the hearing.

18. On June 2, 2021, the MHIC informed the OAH that it had a "better address" for the Respondent: 1506 Singer Road, Joppa, MD 21085.

19. On June 3, 2021, the OAH sent notices of hearing to the Respondent at the Singer Road address by both certified and first-class mail, informing him that a hearing was scheduled for June 29, 2021, at 9:30 a.m., on the Webex videoconferencing platform and providing the Webex meeting number for joining the hearing.

20. The United States Postal Service (USPS) returned both notices sent to the Ingleside Road address on August 10, 2021, with the notation "no such number."

21. The USPS did not return the notices sent to the Singer Road address.

DISCUSSION

The Respondent's Failure to Appear

Section 8-312 of the Business Regulation Article, entitled "Hearings," states, in pertinent part, as follows:

> (a) Except as otherwise provided in § 10-226 of the State Government Article, before the Commission takes any final action under § 8-311 of this subtitle, or if requested under § 8-620(c) of this title, it shall give the person against whom the action is contemplated an opportunity for a hearing before the Commission or, as provided under § 8-313 of this subtitle, a hearing board.
>
> (b) The Commission shall give notice and hold the hearing in accordance with Title 10, Subtitle 2 of the State Government Article.
>
> . . . .
>
> (d) The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission.
>
> . . . .
>
> (h) If, after due notice, the person against whom the action is contemplated does not appear, nevertheless the Commission may hear and determine the matter.

Bus. Reg. § 8-312.

Although the above statute applies to disciplinary proceedings against licensees, the MHIC uses the same procedures for hearings involving claims against the Fund, such as this case. *Id.* § 8-407(a). These procedures ensure, as much as possible, that a contractor against whom a claim is filed is made aware of the date, time, and place of the hearing.

The notices of hearing in this case went to the Respondent's address of record with the MHIC on May 20, 2021 by certified mail and by first-class mail. The USPS eventually returned both notices with the notation "no such number." The Respondent had no duty to keep the MHIC informed of his address after his license expired on December 2019, but the MHIC indicated that

it had an address for the Respondent on Singer Road in Joppa.[5] The OAH sent notices to that address on June 3, 2021, and the USPS did not return them undelivered. I find that the OAH provided "due notice" to the Respondent under Business Regulation section 8-312(h), above, and I held the hearing in the Respondent's absence.

The Merits of the Claim

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." 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. The parties executed the contract on October 25, 2018. The Respondent worked on the contract from the time of the excavation sometime in the winter until July 2, 2019, when the pool was filled. The Respondent's license expired on December 11, 2019, so he was a licensed contractor during the entire time he worked on the pool.

[5] The MHIC often obtains updated addresses by checking the Motor Vehicle Administration's records.

The Claimant had paid the full contract price by the time the pool was filled. The Respondent abandoned the contract after July 2, 2019 and refused all entreaties by the Claimant to provide the remaining contract goods and services. Specifically, the Claimant proved that the Respondent failed to build the fence around the pool as called for in the contract, did not provide covers for the pool and the spa, and did not return in the fall to close the pool.

The Claimant then paid $6,190.00 to Aqua Wonders for the covers and to close the pool. Ferrara built the fence at a cost of $8,520.00, bringing the Claimant's expenses to complete the contract to $14,710.00. 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, none of which the Claimant is seeking in this case. 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.

The Respondent performed some work under the contract, and the Claimant retained other contractors to complete 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). The calculation is as follows:

$137,500.00 paid to the Respondent; plus
+14,710.00 paid to complete the contract; equals
$152,210.00 less
-137,500.00 the original contract price; equals
$14,710.00 actual loss.

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). The Claimant's actual loss is less than the amount paid to the Respondent and less than $20,000.00. Therefore, the Claimant is entitled to recover his actual loss of $14,710.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $14,710.00 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 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 $14,710.00; and

ORDER that the Respondent be 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;[6] and

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

Richard O'Connor

September 9, 2021
Date Decision Issued

Richard O'Connor
Administrative Law Judge

ROC/dlm
#193919

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

PROPOSED ORDER

WHEREFORE, this 28th day of January, 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