IN THE MATTER OF THE CLAIM	*	**BEFORE ABENA Y. WILLIAMS,**
OF BELINDA MATTHEWS,	*	**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 DANY RIVERA,	*	
T/A THE BEST LANDSCAPING &	*	**OAH No.: LABOR-HIC-02-21-00795**
REMODELING, LLC,	*	**MHIC No.: 20 (75) 736**
RESPONDENT	*	

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PROPOSED DECISION

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STATEMENT OF THE CASE

On May 5, 2020, Belinda Matthews (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 $21,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Dany Rivera, trading as The Best Landscaping and Remodeling, LLC (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 December 21, 2020, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on February 24, 2021 at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Andrew Brouwer, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself.

After waiting 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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On January 15, 2021, the OAH provided a Notice of 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 February 24, 2021, at 9:30 a.m., at the OAH in Hunt Valley, Maryland. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service returned both Notices sent by first class and certified mail to the OAH as undeliverable. The Respondent is an active licensee of the MHIC and is therefore obligated to inform the agency of any updates or changes in his address. Md. Code Ann., Bus. Reg. § 8-310. The Respondent did not notify the MHIC of any change of mailing address. 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 constructive notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

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

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; 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:

Clmt. Ex. 1 Contract, dated September 30, 2019

Clmt. Ex. 2 Payment to the Respondent (via squareup.com for $1,500.00), dated October 28, 2019

Clmt. Ex. 3 Payment to the Respondent (via squareup.com for $6,500.00), undated

Clmt. Ex. 4 Payment to the Respondent (via squareup.com for $13,000.00), undated

Clmt. Ex. 5 Photograph (front of home), October 28, 2019

Clmt. Ex. 6 Photograph and online posting (front of home), undated

Clmt. Ex. 7 Photograph (window), November 8, 2019

Clmt. Ex. 8 Photograph (double doors), November 8, 2019

Clmt. Ex. 9 Photograph (steps), November 19, 2019

Clmt. Ex. 10 Photograph (paint), November 19, 2019

Clmt. Ex. 11 Photograph (paint), November 19, 2019

Clmt. Ex. 12 Photograph (door), November 19, 2019

Clmt. Ex. 13 Photograph (Respondent installing door), October 30, 2019

Clmt. Ex. 14 Screenshot of text with photograph (door), dated October 14, 2019

Clmt. Ex. 15 Screenshot of text with photograph (deck), dated October 21, 2019

Clmt. Ex. 16 Screenshot of text with photograph (shed floor), dated October 29, 2019

Clmt. Ex. 17 Screenshot of text with photograph (vanity backsplash), dated October 29, 2019

Clmt. Ex. 18 Screenshot of text with photograph (light fixture, door frame), dated November 1, 2019

Clmt. Ex. 19 Photograph (siding), dated November 2, 2019

Clmt. Ex. 20 Photograph (siding), November 22, 2019

Clmt. Ex. 21 Receipt for Tart Lumber Co., Inc. ($800.00), dated October 28, 2019

Clmt. Ex. 22 Screenshot of text messages, dated October 30, 2019

Clmt. Ex. 23 Photograph (flooring), dated November 26, 2019

Clmt. Ex. 24 Photograph (flooring), dated November 26, 2019

Clmt. Ex. 25 Photograph (flooring), dated November 26, 2019

Clmt. Ex. 26 Photograph (shingles), dated November 26, 2019

Clmt. Ex. 27 Photograph (enclosure area), dated November 26, 2019

Clmt. Ex. 28 Photograph (office), dated November 26, 2019

Clmt. Ex. 29 Photograph (debris), dated November 26, 2019

Clmt. Ex. 30 Photograph (debris), dated November 26, 2019

Clmt. Ex. 31 Photograph (windows), dated November 26, 2019

Clmt. Ex. 32 Photograph (windows), dated November 26, 2019

Clmt. Ex. 33 Photograph (siding), dated November 26, 2019

Clmt. Ex. 34 Photograph (siding), dated November 26, 2019

Clmt. Ex. 35 Photograph (back of house), dated November 26, 2019

Clmt. Ex. 36 Photograph (windows), dated November 26, 2019

Clmt. Ex. 37 Photograph (debris), dated November 26, 2019

Clmt. Ex. 38 Photograph (purchased wood), dated November 26, 2019

Clmt. Ex. 39 Photograph (trash), dated November 26, 2019

Clmt. Ex. 40 Photograph (installed roof), dated November 23, 2019

Clmt. Ex. 41 Receipt for work done by Juan Cordona, January 25, 2021

Clmt. Ex. 42 Twins Construction Invoice, dated March 1, 2020

Clmt. Ex. 43 Jose Contreras Invoice, dated November 7, 2020

Clmt. Ex. 44 Juan Cardona Construction, LLC Business Card, undated

The following exhibit was offered by the Claimant but not admitted:

Clmt. Ex. 45 Claimant Receipts[3]

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

Fund Ex. 1 Hearing Order, dated December 21, 2021

Fund Ex. 2 Notice of Hearing, dated January 15, 2021

Fund Ex. 3 Letter to the Respondent from the Fund, dated November 4, 2020 with attached Home Improvement Claim Form, dated May 1, 2020

Fund Ex. 4 Respondent MHIC Licensing History

Fund Ex. 5 MHIC Licensing Information for Jose Marvin Contreras

[3] The record was kept open until Friday, February 26, 2021 to allow the Fund to provide information on the licensing status of three contractors named by the Claimant (Juan Cardona, Jose Contreras, John/Jacob Williams of Twin Construction) and for the Claimant to provide receipts for materials that she paid for along with an index outlining each receipt or transaction and its relevance to the Contract. The Fund objected to the admission of Claimant Exhibit 45, noting that page 1 entitled "Electrical Work" is beyond the scope of the purpose of the submission and pages 2 - 39, which are various receipts from Lowes, Home Depot, and Wayfair, should not be admitted without sworn testimony, subject to cross examination, to establish proper foundation and relevance to discern what specific receipt items relate to the materials noted in the Contract. The Claimant in response stated, the electric work was "done in alignment with the contractors so that was the total for the whole job and the company came out [through] the whole project when things got started and ended." She further stated, "2/1/2020 [is] when the first set of work was done and they finished 12/2020 when the addition was done. The original contract included two bathrooms and a foyer and [an] addition which requires electrical and plumbing which [the Respondent] was supposed to do and didn't. I have proven my case and provided receipts, texts, and pictures. I deserve to get my money. I have more text of more details to the contract that states his plumber and electrician guy was coming and never showed but once." While I certainly am sympathetic to the Claimant's argument, I agree with the Fund. Page 1 of Claimant Exhibit 45 notes work from another contractor not previously identified, named Lionel Thomas, who did electrical work. Though the Contract included electrical work, the Claimant failed to mention Mr. Thomas, despite naming three additional contractors who performed work that was supposed to be performed under the Contract. It is also unclear whether Mr. Thomas is a licensed contractor. Further, the Claimant failed to provide any index or explanation regarding the receipts that were submitted, making it difficult to discern the connection between the expenses incurred and the Contract. As such, Claimant Exhibit 45 is not admitted.

Fund Ex. 6 MHIC Licensing Information for Juan Cardona, LLC

Fund Ex. 7 MHIC Licensing Information for Juan Cardona t/a Centricity Group LLC

Fund Ex. 8 MHIC Licensing Information for Jose Lemus Barillas t/a Twins Construction, LLC

Fund Ex. 9 MHIC Licensing Information for Jacob Williams

Fund Ex. 10 MHIC Licensing Information for John Williams

The Respondent was not present to offer any exhibits for admission into evidence.

Testimony

The Claimant testified on her own behalf and did not offer any other witnesses.

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.

2. The Claimant resides in a home located in Baltimore, Maryland (Property).

3. On September 30, 2019, the Claimant and the Respondent entered into a contract to install siding, remodel two bathrooms and a foyer, construct an addition requiring electrical and plumbing, replace 26 roofing squares, replace 28 siding squares, flash 25 windows and two exterior doors, clean and paint gutters, install one exterior door and two windows, remodel front porch and enclose it, replace rear deck and enclose it, cut the bushes front and side, install kitchen cabinets, install sheet rock and paint the foyer, install wood flooring in the office, install a sink and shower in the existing a master bathroom, patch holes around the house, install a bathroom on the first floor including a sink, jacuzzi tub, and toilet, install kitchen cabinets, install a kitchen sink, install appliances including a refrigerator and stove, install three bedroom doors,

install tile wall in foyer, insulate pipes and install pipes under the porch, and remove trash and debris, (Contract) at the Property.

4. The original agreed-upon Contract price was $26,000.00. Work was to begin on October 1, 2019 and was to be completed by December 30, 2019. The Respondent agreed to provide materials for roofing squares, siding squares, flashing for windows and doors, paint, electrical and plumbing materials. The Contract did not address the responsibility for the purchase of the remaining materials.

5. The Respondent began work on October 1, 2019 and arrived with a crew.

6. On October 3, 2019, the Respondent and Claimant verbally agreed to a second contract for an additional $1,500.00. The second contract was not reduced to writing and work was not initiated on the second contract.

7. The Claimant paid the Respondent in three installments: $13,000.00 on October 3, 2019, $6,500.00 on October 11, 2019 with a third installment on October 28, 2019 in the amount of $1,500.00 for a total amount paid of $21,000.00.

8. Respondent failed to completely install siding, remodel two bathrooms, build a foyer and an addition requiring electrical and plumbing, replace 26 roofing squares, replace 28 siding squares, flash 25 windows and two exterior doors, clean and paint gutters, install one exterior door and two windows, remodel front porch and enclose it, replace rear deck and enclose it, cut the bushes front and side, and install kitchen cabinets. The Respondent failed to complete any of the work he started, but for the deck and door, both installed improperly.

9. The Respondent failed to seal windows, touch up paint, fix chipping paint, complete the installation of siding, remove, and replace gutters, repaint, or adjust them and repair a hole in the soffit.[4]

10. He installed a roof that protruded over the gutters.

11. He also caused damaged to several portions of the Claimant's property including, putting two dents in the Claimant's front door, broke the Claimant's vanity backsplash, scratched and cracked the Claimant's wooden floors and ceiling fan, and put a hole in her outdoor shed floor.

12. The Claimant purchased additional composite boards from Lowes for $2,000.00 after the Respondent improperly installed her deck. The Respondent caused these composite boards for the deck to be damaged because he left unused boards strewn about the property. The deck was not repaired to the contract's specifications and subsequent contractors were unable to use the now damaged composite board.

13. The Property was left with siding that raises up from the home, rotting windows that were left uncapped, trash and debris left around the Property, and an improperly installed door with a large gap at the bottom.

14. On or around October 28, 2019, the Respondent agreed to pay $500.00 towards the replacement of the door that he installed improperly, but he failed to do so.

15. The last time the Respondent or his workers appeared at the Property to perform work was on November 5, 2019. The Respondent left trash and debris behind on the Property.

[4] The Claimant alleged this was within the scope of the Contract and included in the installation of siding on the Property.

16. The last time the Respondent responded to the Claimant's attempts at communicating was on November 25, 2019. The Respondent asked if he could complete part of the job and return $1,000.00 to the Claimant. The Claimant told him "no" and asked him to complete the work he agreed to do. She last tried reaching out to the Respondent on December 1, 2019 and has not heard from him since that day.

17. On February 1, 2020, the Claimant contracted with John and Jacob Williams of Twins Construction, LLC, an unlicensed contractor to install sheet rock and paint the foyer, install wood flooring in the office, install a sink and shower in the existing a master bathroom, patch holes around the house, install a bathroom on the first floor including a sink, jacuzzi tub, and toilet, install kitchen cabinets, install a kitchen sink, install appliances including a refrigerator and stove, install three bedroom doors, install tile wall in foyer, insulate pipes and install pipes under the porch for a total amount of $15,000.00.

18. On November 7, 2020, the Claimant contracted with Jose Contreras, an unlicensed contractor, to add a laundry addition, deck, and door for a total amount $7,000.00.

19. On January 25, 2021, the Claimant hired Juan Cardona of Construction Cardona, LLC, an unlicensed contractor, to wrap 28 windows, repair six windows, install gutters, and cap windows for a total of $3,590.00. The front of the Property is still incomplete and in disrepair.

20. All repairs completed and to be completed by these additional contractors were within the scope of the Contract.

21. The total amount the Claimant paid to all three additional contractors is $25,590.00.

DISCUSSION

Legal Framework

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). I conclude that the Claimant has met her burden to show that the Respondent's work was unworkmanlike, incomplete, and inadequate, and that she is therefore entitled to compensation, which I explain further below.

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.

Quality of Respondent's Work and Rejection of Good Faith Efforts

First, there is no dispute that the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. (Fund Ex. 4.) In addition, the Claimant testified credibly and without contradiction that she paid the Respondent $21,000.00 to perform work under the Contract, that the Respondent performed the work in an unworkmanlike manner and abandoned the job.

Based on the credible, detailed testimony of the Claimant, which was supported by a copy of the Contract, photographs of the deficiencies in the work, and the text messages sent by the Claimant to the Respondent of her continued dissatisfaction and requests for him to complete

the work under the Contract, I am persuaded the Respondent's work was so extremely poor that any layman would recognize a failure to meet industry standards. The Respondent performed unworkmanlike, incomplete, and inadequate home improvements under the Contract. Siding that raises up from the home, rotting windows that are left uncapped, trash and debris left around the Property, improperly installed doors with large gaps at the bottom, makes it clear the Respondent's work was improper and inadequate.

The Claimant testified that due to the Respondent's work, she was left in financial turmoil and her home was left in disrepair. The Claimant detailed her efforts to contact the Respondent with her concerns and complaints and acknowledged that the Respondent made an attempt to correct the deficiencies and offered $1,000.00 to settle. However, the Claimant did not find the offer to be adequate to resolve the substantial scope of work the Respondent failed to complete. (Clmt. Ex. 22.) Thus, when the Claimant rejected his offer, I agree with the Fund that this was a reasonable rejection and does not constitute a rejection of the Respondent's good faith efforts.

Work Performed by Unlicensed Contractors

The Claimant testified consistently and credibly that she had to save up money to complete the work the Claimant failed to complete under the Contract and repair items that he improperly installed, such as the roof and siding. The Claimant hired three contractors between February 2020 and November 2021, including: Juan Cardona trading as Construction Cardona, LLC, Jose Contreras, and John Williams with his sons Jacob and John Williams trading as Twins Construction, LLC. The Claimant was unable to confirm whether any of the contractors were licensed but averred that she believed they were. The Fund agreed to provide confirmation of the licensure status of all three contractors. (Fund Exs. 5-10.)

According to the Fund, Juan Cardona, LLC has never been licensed with the MHIC as a contractor, subcontractor, or salesman. (Fund Ex. 6.) The Fund also performed a general search of the name Juan Cardona and located a Juan Cardona trading as Centricity Group LLC, located at 4313 Chapel Road, Perry Hall, Maryland 21128 who was licensed at the time work was performed at the Property. (Fund Ex. 7.) The business card provided by Juan Cardona, however, has a different business name, Construction Cardona, LLC. (Clmt. Ex. 44). Thus, based on the information presented by the Fund and the evidence of record, Juan Cardona is not licensed with the MHIC as a contractor, subcontractor, or salesman.

According to the Fund, Jose Marvin Contreras Senior trading as A D M K Drywall LLC is licensed under the MHIC as a contractor, subcontractor, or salesman; is located at 8857 Willowwood Way, Jessup, MD 20794; and was licensed at the relevant period of time. The receipt provided by the Claimant does not have a business heading and the contractor wrote his name, "Jose Contreras" with an address that does not match the individual and business identified by the Fund. (Clmt. Ex. 43; Fund Ex. 5.) Based upon the information presented by the Fund and the evidence of record, Jose Contreras is not a licensed contractor. (Fund Ex. 5.)

The Claimant testified that John Williams and his two sons John and Jacob Williams of Twins Construction, LLC performed work on her home that was within the scope of the Contract. According to the Fund, the MHIC has no record of the names John or Jacob Williams being affiliated with "Twins Construction" and/or "Twin Construction." (Fund Exs. 9-10.) The Fund noted Twins Construction is associated with a licensed third party by the name of Jose Lemus Barillas. Although, a person who works for a contractor for a salary or wages but who is not a salesperson for the contractor, is not required to be licensed, the contractor did not list any MHIC license number on his invoice. Bus. Reg. § 8-301(c)(1). Additionally, the address associated with the licensed contractor affiliated with Twins Construction does not match the

address listed on the invoice. (Claimant Ex. 42). As such, the record does not support a finding that John or Jacob Williams of Twins Construction are licensed contractors. (Fund Ex. 8.)

Based on the Fund's evidence, the subsequent work done on the Property appears to have been completed by unlicensed contractors. (Fund Exs. 5-10.) The Claimant argued that despite all of the communication she had with MHIC, she was never told she needed to specifically hire a licensed contractor and was told "the work could be performed by anybody."

Though I am sympathetic to the Claimant's argument, the MHIC's legislative policy is designed to encourage contractors to be licensed and to discourage homeowners from using unlicensed contractors. This is reflected in a number of ways via statute and case law. A homeowner may recover compensation from the Fund only for an actual loss resulting from an act or omission by a *licensed* contractor. Bus. Reg. §§ 8-401, 8-405(a). In other words, if the Respondent was not licensed by the MHIC, the Claimant would have been barred from asserting its claim against the Fund. Further, if the Respondent was unlicensed when he performed the work, he would have committed a misdemeanor crime and been subject to a fine of $1,000.00 or imprisonment not exceeding six months, or both, for a first offense. *Id.* § 8-601 (Supp. 2020).

Additionally, Maryland appellate decisions have offered some guidance on the treatment of unlicensed home improvement contractors. Because the Maryland home improvement law was enacted for the protection of the public and mandates a licensing system to encourage contractors to be licensed and to discourage homeowners from using unlicensed home improvement contractors, the courts, as a matter of public policy, will not enforce contracts made by or with unlicensed contractors. In *Goldsmith v. Mfrs.' Liability Ins. Co. of N.J.*, 132 Md. 283, 286 (1918), the Court of Appeals held:

> [A] contract entered into by an unlicensed person, engaged in a trade, business, or profession required to be licensed, and made in the course of such trade, business, or profession, cannot be enforced by such person, if it appears that the license required by the statute is, in whole or in part, for the protection of the public, and to prevent improper persons from engaging in such trade, business, or profession.

See also Balt. St. Builders v. Stewart, 186 Md. App. 684, 706 (2009) (unlicensed contractor cannot enforce a home improvement contract with a homeowner); *Fosler v. Panoramic Design, Ltd.*, 376 Md. 118, 134 (2003) (homeowner can repudiate a contract made with a consultant if the consultant is performing a home improvement without a license).

Accordingly, the purpose of the Fund is to compensate a homeowner for an actual loss resulting from an act or omission of a licensed home improvement contractor. Bus. Reg. § 8-405(a); COMAR 09.08.03.03B(2). When an award is granted, the Fund is entitled to reimbursement from the original contractor in the amount paid to a claimant, plus interest. Bus. Reg. § 8-410(a)(1)(iii). The MHIC is also permitted to suspend a contractor's license until the Fund is reimbursed. *Id.* § 8-411(a).

If the Fund were to grant reimbursement for the work performed by unlicensed contractors, in essence it would be rewarding a claimant who was a party to an illegal contract with an unlicensed contractor at the expense of a licensed contractor who, although deficient, observed the licensing requirements of the State. It would be improper for the Fund to act against public policy and condone a contract undertaken by a claimant with a party that the Fund considers in violation of the law. Therefore, I find that the Claimant is not eligible, as a matter of law, for reimbursement for the monies paid to Mr. Cardona, Mr. Contreras or, Mr. Williams.

Reimbursement for Materials

The Claimant testified forthrightly and without hesitation that she paid for materials, some of which should have been provided under the Contract. She averred due to the Respondent's inadequate work, she had to purchase composite deck wood twice in the amount of $2,000.00. She also noted the Respondent agreed to pay her $500.00 for a door that cost $800.00 after he incorrectly installed the first door. (Clmt. Exs. 21-22.) The Respondent never reimbursed her for the door as agreed. The Claimant can recover for the cost of these materials as they were within the scope of the contract and the associated costs were to restore an inadequate, incomplete, unworkmanlike home improvement.

The record was kept open for the Claimant to provide additional receipts for other materials, however, the Claimant failed to provide any explanation of how each expense was connected or related to the scope of the Contract. The Contract does not clearly outline the materials to be purchased by the Respondent and the Claimant, making it nearly impossible to discern each expense and its association with the Contract. Accordingly, the evidence does not establish that these are costs that are recoverable as part of the actual loss, as opposed to consequential damages, which are not recoverable.

I thus find that the Claimant is partially eligible for compensation from the Fund. The Fund does not agree.

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 retained other contractors to complete or remedy that work. The Claimant was also responsible for purchasing some of the materials. As such, it is appropriate to apply a unique formula. COMAR 09.08.03.03B(3).

The Claimant provided the invoice for the replacement of the door improperly installed by the Respondent. (Clmt. Exs. 21-22.) Though she did not provide the invoice for the $2,000.00 spent on composite wood for her deck, she provided photographs and testified emphatically, consistently, and credibly, regarding the expense. The Claimant is eligible to receive the following award from the fund:

Amount paid under the Contract.....	$21,000.00
Plus amount paid for materials.....	$ 2,500.00
Subtotal.....	$23,500.00
Minus the amount paid under the Contract price.....	$21,000.00
Total.....	$ 2,500.00[5]

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 is less than the amount paid to the Respondent and less than $20,000.00. Therefore, the Claimant is entitled to recover her actual loss of $2,500.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR

[5] This amount covers solely the out-of-pocket costs for the materials highlighted and corroborated by the Claimant's testimony and evidence.

09.08.03.03B(3). I further conclude that the Claimant is entitled to recover $2,500.00 from the Fund. Md. Code Ann., 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 $2,500.00; 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;[6] and

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

Abena Y. Williams

May 24, 2021
Date Decision Issued

Abena Y. Williams
Administrative Law Judge

AYW/at
#192273

[6] *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