

<p>IN THE MATTER OF THE CLAIM</p> <p>OF MARC SOLOWESZYK,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF JOHN ATILIIIS,</p> <p>T/A HANDYMAN PLUS, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE JENNIFER L. GRESOCK,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-24-02048</p> <p>* MHIC No.: 21 (75) 1000</p>
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STATEMENT OF THE CASE

On April 12, 2023, Marc Soloweszyk (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$53,070.00 for actual losses allegedly suffered as a result of a home improvement contract with John Attiliis, trading as Handyman Plus, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through -411 (2015 & Supp. 2023).² On December 29, 2023, the MHIC issued a

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).
² Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

Hearing Order on the Claim. On December 29, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On April 8, 2024, I held a hearing by video. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Jonathan P. Phillips, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent did not appear.

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. COMAR 28.02.01.23A. On January 30, 2024, the OAH provided a Notice of Hearing (Notice) to the Respondent by certified mail and first-class mail. Bus. Reg §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for April 8, 2024, at 9:30 a.m., via Webex. COMAR 09.08.03.03A(2). The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The Notice was returned to the OAH with the notation "insufficient address" and "not deliverable as addressed." The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E.³ I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05.

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 & Supp. 2023); COMAR 09.01.03; COMAR 28.02.01.

³ Mr. Phillips stated that the MHIC confirmed that the address to which Notice was sent matched the most current address on file with the MHIC as well as the Motor Vehicle Administration:

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:

- Cl. Ex. 1 Demand for Arbitration, undated
- Cl. Ex. 2 Award of Arbitrator, dated March 30, 2021
- Cl. Ex. 3 Proposal of the Respondent (identified as JT Home Remodeling, a Division of Handyman Plus, LLC) to the Claimant, dated October 12, 2019
- Cl. Ex. 4 Contract, dated October 2, 2019
- Cl. Ex. 5 Draw Request, Academy Mortgage Corporation, dated December 16, 2019
- Cl. Ex. 6 Draw Request, Academy Mortgage Corporation, dated December 27, 2019
- Cl. Ex. 7 Change orders, dated December 6, 2019
- Cl. Ex. 8 Emails between the Respondent and the Claimant, dated February 19 and 20, 2020
- Cl. Ex. 9 Email from the Respondent to the Claimant, dated April 6, 2020
- Cl. Ex. 10 Emails between the Respondent and the Claimant, dated April 14 and 17, 2020
- Cl. Ex. 11 Email from the Respondent to the Claimant, dated April 23, 2020
- Cl. Ex. 12 Permit documents, various dates
- Cl. Ex. 13 Emails reflecting Baltimore City Department of Housing & Community Development inspection failures, dated May 11, 2020
- Cl. Ex. 14 Email chain between the Claimant and the Assistant Commissioner, dated November 6, 2020

- Cl. Ex. 15 Report from Skarda and Associates, Inc., Structural Consultants, dated June 18, 2020, with Addendum, dated June 30, 2020
- Cl. Ex. 16 Photographs of the basement beam, undated
- Cl. Ex. 17 Photographs of the home interior, May 2020
- Cl. Ex. 18 Estimates from Empire Builders, Inc., dated July 11, 2020
- Cl. Ex. 19 Contract, JW Cornerstone Remodelers, dated August 13, 2020, with attached proof of payment, dated August 13 and 28, 2020, and September 3, 2020
- Cl. Ex. 20 Contract, Davey's Electric, LLC, dated September 3, 2020, with attached proof of payment, dated September 3, 2020 and November 2, 2020
- Cl. Ex. 21 Estimate/Contract, Maximum Plumbing, dated June 10, 2020, with attached proof of payment, dated October 15, 2020 and November 27, 2020
- Cl. Ex. 22 Estimate/Contract, Quality HVAC Mechanical Services, Inc., dated September 4, 2020, with attached proof of payment, dated September 4, 2020 and December 30, 2020
- Cl. Ex. 23 MHIC licensing information for Demetrius Angelo Manansala (of Quality HVAC Mechanical Services, Inc.); Sean D. Davey (of Davey's Electric, LLC); JW Cornerstone Remodelers; and Moshe P. Binder (of Maximum Plumbing), undated⁴

I admitted the following exhibits offered by the Fund:

- GF Ex. 1 Notice of Remote Hearing, dated January 30, 2024
- GF Ex. 2 MHIC Transmittal for appeal received December 29, 2023, undated, and Hearing Order, dated December 29, 2023
- GF Ex. 3 Home Improvement Claim Form, dated March 26, 2023 (marked as received in April 2023⁵)
- GF Ex. 4 Licensing information for the Respondent, dated March 21, 2024

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

⁴ This exhibit was submitted after the conclusion of the hearing; I held the record open to allow the Claimant to submit proof of licensure, as further explained below.

⁵ The specific date in April is not legible.

Testimony

The Claimant testified and did not present other witnesses.

The Fund did not present witnesses. The Respondent was not present to testify or offer 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.

2. On October 2, 2019, the Claimant and the Respondent entered into a contract to renovate the Claimant's newly purchased home (Contract). The renovation was extensive, and included demolition (removal of walls, windows, closets, radiators, and bathroom fixtures); addressing structural integrity by shoring up a basement column; framing the basement, kitchen, bedroom closets, master bedroom wall; repairing water damage; installing HVAC units and ducts; roughing in three bathrooms; installing drywall in the recreation room and master bedroom; painting the entire interior; replacing windows; installing a railing, trim, and door; installing bathroom fixtures; installing kitchen countertops, cabinets, and appliances; and installing carpeting and vinyl flooring.

3. The original agreed-upon Contract price was \$74,600.00.

4. The Contract did not include a start date but stated that "time is of the essence."

The Claimant and Respondent understood that the work would begin promptly and be completed by the end of April 2020.

5. The Claimant financed the work through a U.S. Department of Housing and Urban Development (HUD) rehab mortgage insurance program. That program included a separate contract (HUD Contract) between a third-party lender (Lender), the Claimant, and the

Respondent. The HUD Contract required the work to be completed by April 30, 2020. It also required the Respondent to obtain a structural engineer's report for structural work.

6. The following change orders were agreed upon: \$1,450.00 for removing a half bath and reframing the wall; \$225.00 for an attic opening; \$700.00 to add a linen closet in the bedroom; \$1,200.00 to move an electrical panel box from the bathroom; \$1,500.00 for extending a basement wall; \$1,075.00 to install living room cabinets; \$1,200.00 for additional HVAC duct work; and \$1,000.00 for two metal columns. These change orders total \$8,350.00, bringing the Contract price to \$83,200.00.

7. None of the items that were the subject of change orders were completed, or even started by the Respondent.

8. The Claimant paid the Respondent \$50,420.00. These payments were made through draws from the Lender, Academy Mortgage Corporation.

9. The Respondent began work promptly but worked slowly. Often, only one worker was on the job.

10. By January 2020, work on the project stalled.

11. As delays continued into spring, the Respondent falsely told the Claimant that the delays were due in part to closure of the Baltimore City inspection office because of the pandemic. In fact, the inspection office was not closed, and the Respondent did not actually obtain electrical permits until mid-April 2020. He never obtained a building permit.

12. Electrical work was performed before permits were obtained. The permits named electrician Holden Washington, but Mr. Washington did not know the Respondent and did not perform or oversee the electrical work.

13. At the end of April 2020, only about 25% of the work was complete. Required inspections were not done, and framing and rough in work was not complete. Drywall installation and painting were not done and cabinets and fixtures were not installed.

14. The Claimant contacted Mr. Washington, who said he did not know the Respondent but nonetheless reviewed the electrical work on May 11, 2020. Mr. Washington told the Claimant that the work was poorly done and would not pass inspection. Mr. Washington subsequently removed his name from the electrical permits.

15. On May 11, 2020, the Respondent's work failed multiple Baltimore City inspections, including electrical and rough inspections.

16. Because of the poor quality of the Respondent's work and the misrepresentations he made regarding permits and the electrician, the Claimant terminated the Contract and sought other contractors to complete the work.

17. The Claimant contacted over 70 different contractors, but most declined because they did not want to finish work done by another contractor.

18. Ultimately, the Claimant hired subcontractors himself; the work was subsequently completed over the twelve-month period after termination of the Contract.

19. Substantial work completed by the Respondent needed to be redone to pass inspection, and other work needed to be completed, including structural work (\$10,550.00 paid to JW Cornerstone Remodelers); electrical work (\$9,500.00 paid to Davey's Electric, LLC); plumbing (\$4,000.00 paid to Maximum Plumbing); and HVAC installation (\$15,500.00 paid to Quality HVAC Mechanical Services, Inc.). These costs, paid to contractors licensed by the MHIC, totaled \$39,550.00.

20. As required by the Contract, the Claimant sought arbitration. An arbitrator with the American Arbitration Association conducted an evidentiary hearing, in which both the

Claimant and Respondent participated. On March 30, 2021, the Arbitrator awarded the Claimant \$25,745.27, due to the Claimant from the Respondent within thirty days. As of the hearing date, the Respondent has not paid the Claimant.

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); 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 Cnty. 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) (Supp. 2023); *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.⁶

It is undisputed that the Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant.

Based on the evidence presented, I conclude that the Respondent performed unworkmanlike, inadequate, and incomplete home improvements.⁷ The Claimant credibly

⁶ By statute, certain claimants are excluded from recovering from the Fund altogether. Based on the testimony of the Claimant during cross-examination by the Fund, I conclude there are no such statutory impediments to the Claimant's recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimant did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2023). The Claimant resides in the home that is the subject of the claim; he owns one other property and thus does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2023). The Claimant sought arbitration, as required by the Contract, and a final award was decided in favor of the Claimant. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2023). The Claimant is not a relative, employee, officer, or partner of the Respondent, and is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2023).

⁷ The Fund's position was that the Claimant met his burden to prove the validity of his claim.

testified, without contradiction, that the Respondent completed approximately twenty-five percent of the work specified in the Contract. The Claimant submitted photographs depicting largely unfinished work, as well as extensive debris throughout the home, which corroborate his account. (Cl. Ex. 17.) The Claimant explained that the work was to be done by the end of April 2020; however, not only did the Respondent complete a mere fraction of the work by that time, but the Claimant also learned that the Respondent had misrepresented reasons for the delay by falsely claiming that the Baltimore City inspections office was closed. (Cl. Ex. 14.) In May 2020, the Claimant also learned that the Respondent had used the name of an electrical contractor without his knowledge or permission. Further, in May 2020, work completed by the Respondent, including electrical work and rough ins, failed multiple inspections. (Cl. Ex. 13.)

At that time, the Claimant reasonably determined that the best course of action was to terminate the Contract. As the evidence clearly establishes that the Respondent did not complete the job, and that the work he did complete was both inadequate and unworkmanlike, I 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) (Supp. 2023); 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 subcontractors to complete or remedy that work. The Claimant explained that when he sought to hire a new contractor, he had difficulty finding anyone willing to take over the job. For this

reason, he hired subcontractors himself and the work was subsequently completed.⁸ While he noted that the cost of completion exceeded \$90,000.00, he documented costs of \$39,550.00. (Cl. Exs. 19, 20, 21, and 22.)

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 Fund recommended that, as the change orders were essentially ephemeral – with no work done to complete them and no funds specifically directed to that work – the original Contract price should be used to calculate actual loss, rather than a price amended to reflect the change orders. I agree that this approach is both fair and reasonable. Accordingly, actual loss is calculated as follows: the Claimant paid the Respondent \$50,420.00,⁹ to which the cost to complete and correct work (\$39,550.00) is added, equaling \$89,970.00. From this amount, the original Contract price of \$74,600.00 (which excludes the change orders) is subtracted, resulting in an actual loss of \$15,370.00.

⁸ The Fund questioned whether the subcontractors were licensed by the MHIC, as it generally opposes a Fund award for actual loss caused by unlicensed contractors. I held the record open to allow the Claimant to submit documentation reflecting proper licensure and for any response from the Fund to the submission. The Claimant timely submitted proof of licensure and the Fund did not subsequently challenge it.

⁹ The Fund noted that, as a matter of policy, it makes no difference that these payments were made by the Lender through a rehabilitation loan, rather than by the Claimant directly. I agree, as the Claimant is responsible for the cost of the loan. (Cl. Exs. 2, 5, and 6.)

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.¹⁰ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$15,370.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$15,370.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund. Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$15,370.00; 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;¹¹ and

¹⁰ On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. See *Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

¹¹ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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

Jennifer L. Gresock

July 1, 2024
Date Decision Issued

Jennifer L. Gresock
Administrative Law Judge

JLG/dlm
#212627

PROPOSED ORDER

WHEREFORE, this 23rd day of October, 2024, 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.

W. Bruce

Quackenbush

W. Bruce Quackenbush

Chairman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***