

IN THE MATTER OF THE CLAIM	*	BEFORE ROBERT B. LEVIN,
OF SADI COHEN,	*	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 JOSE ARGUELA	*	
REYES,	*	OAH No.: LABOR-HIC-02-23-29491
T/A REYES CONSTRUCTION	*	MHIC No.: 21 (75) 1011
GROUP, LLC,	*	
RESPONDENT	*	

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On June 30, 2023, Sadi Cohen (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$58,882.27 for actual losses allegedly suffered as a result of a home improvement contract with Jose Argueta Reyes, trading as Reyes Construction Group LLC (Respondent). Md. Code Ann., Bus. Reg.

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).

§§ 8-401 to -411 (2015 & Supp. 2023).² On November 15, 2023, the MHIC issued a Hearing Order on the Claim. On November 15, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 13, 2024 and April 2, 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). The Claimant and the Respondent each appeared at the February 13, 2024 first day of the hearing, and were self-represented. Catherine P. Villareale, Assistant Attorney General, Department, represented the Fund. The hearing did not conclude on February 13, 2024. Pursuant to the February 13, 2024 on-the-record agreement of the parties, the second day of the hearing was scheduled for April 2, 2024. The Claimant and Ms. Villareale each appeared on April 2, 2024.

On April 2, 2024, 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 February 28, 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 2, 2024, at 9:30 a.m., on the Webex video conference platform. 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 to the Respondent by certified mail was returned to the OAH with the notation "Return to Sender No Mail Receptacle Unable to Forward." The United States Postal Service did not return to the OAH the Notice mailed to the Respondent by first-class mail. The

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

Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter on April 2, 2024. COMAR 28.02.01.05; *see also Md. State Bd. of Nursing v. Sesay*, 224 Md. App. 432, 447 (2015).

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.

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

Exhibits³

I admitted (except where indicated otherwise) the following exhibits offered by the Claimant:

- A. Complaint #1, May 13, 2021, with the following attachments:

Complaint #1 Exhibit 1, the Respondent's Invoice, February 3, 2021

³ By way of explanation of the numbering of the Claimant's exhibits, the Claimant filed two separate Claim Forms and Complaint Forms against the Respondent with the HIC. The February 13 and April 2, 2024 hearing and this Proposed Decision relate only to the Claimant's May 18, 2023 Claim for \$58,882.27 and the related May 13, 201 Complaint Form (Complaint #1) for which the HIC assigned HIC File No. MHIC No.: 21 (75) 1011. On May 18, 2023, the Claimant filed a second Claim against the Respondent with the HIC seeking \$25,622.22 and the related Complaint Form dated May 14, 2021 (Complaint #2). The HIC file number for Complaint #2, which concerns the Claimant's basement, is not included in the record. Complaint #2 is separately pending; it was not before me for decision at the hearing in this case held on February 13 and April 2, 2024.

At the hearing in this case, the Claimant presented two batches of proposed exhibits: The Claimant labeled the first batch as "Complaint #1" with accompanying Exhibits 1-6, all of which I admitted. The Claimant labeled the second batch as "C1 & 2" with accompanying Exhibits 1-5, of which I admitted Exhibits 1, 2, and 5. The Claimant also submitted to the OAH prior to the hearing Complaint #2 and accompanying exhibits 1-10. Of the Complaint #2 exhibits, only Exhibit 9 to Complaint #2 was admitted, as it concerned the Claimant's claims concerning her electrical box, which was raised in Complaint #1 and the May 18, 2023 Claim.

Complaint #1 Exhibit 2, the Respondent's Invoice, March 3, 2021

Complaint #1 Exhibit 3, the Claimant's Wells Fargo Bank checks paid to the Respondent: check no. 3 (February 26, 2021 for \$10,500.00), check no. 5 (March 3, 2021 for \$10,000.00), check no. 8 (March 17, 2021 for \$5,000.00), check no. 6 (March 3, 2021 for \$3,707.27), and check no. 11 (April 1, 2021 for \$2,500.00)

Complaint #1 Exhibit 4, the Claimant's email to herself, February 2, 2024, with fourteen attached photographs, undated

Complaint #1 Exhibit 5, Glenroy Davis Composite Services invoice to the Claimant for electrical work, October 20, 2021

Complaint #1 Exhibit 6, Home Improvement Claim Form, May 18, 2024 in the amount of \$55,882.27

- B. C1 & 2 Exhibit 1, HIC license information for the Respondent, received by OAH February 6, 2024

C1 & 2 Exhibit 2, the Claimant's Lightstream loan account summary, date next payment due: February 27, 2024

C1 & 2 Exhibit 3, text messages between the Claimant and Martin Hamilton, May 8, 2021
[NOT ADMITTED]

C1 & 2 Exhibit 4, text messages between the Claimant, Mr. Hamilton, and the Respondent, May 8-13, 2021 [NOT ADMITTED]⁴

C1 & 2 Exhibit 5, text messages (pp. 1-89) between the Claimant and the Respondent, February 2-4, 2021

C1 & 2 Exhibit 6, text messages between the Claimant and the Respondent, February 2-May 8, 2021

- C. Complaint #2 Exhibit 9, email from Jennifer Grimes to the Claimant, October 1, 2021, with attached Response of the Respondent to the Claimant's Complaint #1⁵

The Respondent did not offer any exhibits.

⁴ C1 & 2 Exhibits 3 and 4 were not admitted because they concern settlement negotiations.

⁵ See footnote 3 for the reason Exhibit 9 to Claimant's Complaint #2 (which was otherwise not before me in connection with the February 13 and April 2, 2024 hearing in this case) was admitted in evidence.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Correspondence from Joseph Tunney to the Respondent re: HIC File No. 1011-2023, with attached Home Improvement Claim Form, May 18, 2023

Fund Ex. 2 - Hearing Order, November 15, 2023

Fund Ex. 3 - Notice of February 13, 2024 Remote Hearing, December 26, 2023

Fund Ex. 4 - Licensing information for the Respondent, printed February 6, 2024

Testimony

The Claimant testified and presented the testimony of Mr. Hamilton, her friend.

Neither the Respondent nor the Fund presented any testimony.⁶

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 individual MHIC license number 110225, and trade license 05-135529.
2. On February 2, 2021, the Claimant and the Respondent entered into a contract providing for the Respondent to perform the following work on the upper level of the Claimant's home: create and install a new children's bathroom, create and install a laundry room from the existing master bathroom, and demolish and remodel the primary bathroom (Contract).
3. The Claimant signed the Contract on February 23, 2021 by an email exchange with the Respondent.
4. The original agreed-upon Contract price was \$31,207.27, which the Claimant paid in full by five checks.

⁶ The Respondent cross-examined the Claimant and her witness Mr. Hamilton at the February 13, 2024 first hearing day, and did not appear for testimony or argument at the April 2, 2024 second hearing day.

5. The Claimant purchased from various vendors (not the Respondent) approximately \$21,000.00 in materials to be used for the project, including a washer and dryer for the laundry room, a toilet and vanity for the children's bathroom, tiles for the flooring, and a whirlpool tub, shower, and vanity for the master bathroom.

6. The Claimant obtained the Respondent's approval of the sizes of the washer and dryer she purchased, and that the Respondent would install in the laundry room.

7. The parties agreed that the Respondent would start work on February 25, 2021, and would take three weeks to complete.

8. The Contract included electrical, plumbing, and HVAC work for which the Respondent failed to pull permits from Anne Arundel County.

9. The Respondent started work on February 21, 2021 as agreed, but pulled his workers off the job in March 2021.

10. The Respondent's performance of the entire job was inadequate, unworkmanlike, and incomplete in that:

- a) the master bathroom that was demolished was not reconstructed,
- b) the master bathroom floor leaks,
- c) the master bathroom plumbing is inadequate,
- d) the master bathroom doors were not installed,
- e) the master bathroom floor is water-damaged,
- f) the children's bathroom and the master bathroom do not vent properly and flooded,
- g) the children's shower has an excessively high water flow,
- h) the whirlpool tub is unusable due to leaks and the risk of electric shocks,
- i) the laundry room does not vent properly, causing a fire hazard

- j) the washer and dryer are too big for the laundry room space, so that the laundry room door does not close,
- k) the wrong material was used for the first floor HVAC,
- l) the Respondent caused cracks and a tilted floor in the middle bathroom despite that bathroom's non-inclusion from the Contract,
- m) the Respondent improperly installed an electrical subpanel for which a permit was not pulled,
- n) the subpanel caused electrical outlets in the house do not work, causing the Claimant to lack power in half of her house, and
- o) the children's bathroom leaks.

11. The Claimant obtained an estimate from Advance Reliable Construction, LLC (Advance), a licensed home improvement contractor, to correct and complete the Respondent's work for the total cost of \$70,000.

12. Advance proposed to do the following work to correct and complete the project:

- a) remove fixtures, open walls to expose water, waste and vent lines in three bathrooms and one washroom, haul away trash, remove sheet rock and studs to "make new" in two bathrooms, remove plugs, switches, and lights to prevent damage,
- b) Supply sheet rock, boards for studs, jambs and header, install new sheet rock and boards for bathrooms and "make new,"
- c) Remove doors, supply and install new with locks and trims,
- d) supply sheet rock, frame and install dry wall for washroom and "make new",
- e) supply and install six panel doors with lock and butt hinges,
- f) supply materials to tape and plaster all areas and "make new,"

g) supply and install bathroom cabinets,

h) provide flooring, plumbing, and electrical. (Complaint #1, Ex. 6).

13. The Claimant and the Respondent conducted settlement negotiations with the assistance of a mutual acquaintance, Mr. Martin, who had referred the Claimant to the Respondent, but they were unable to reach an agreement.

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.

The Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant.

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimant's recovery. The claim was

timely filed,⁷ 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 or does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2023). The parties did not enter into a valid agreement to submit their disputes to arbitration. *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).

The Claimant did unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023). She engaged in settlement discussions with the Respondent that their mutual acquaintance Mr. Hamilton facilitated, but the parties were unable to reach agreement.

The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. The Claimant credibly testified to the Respondent's deficient performance as described in Finding of Fact no. 10. Her testimony was corroborated by numerous photographs, *e.g.*, Complaint # 1, Ex. 4; Complaint # 2, Ex. 9.

The Respondent, who did not appear at the April 2, 2024 second hearing day, did not testify, present any witnesses or exhibits, or otherwise refute the Claimant's evidence. He cross-examined the Claimant on the February 13, 2024 first hearing day, suggesting she threatened and humiliated his workers, that her child splashed water in the shower, that she constantly moved plumbing and adjusted various aspects of the project, and that her plumbing issues were caused by the house's prior owner. The Claimant credibly denied these accusations.

⁷ The Contract was made on or about February 3, 2021, and the Claim was filed on May 18, 2023, within the three year statute of limitations

The Claimant further testified credibly, which the Respondent did not refute, that when she learned he had not pulled permits the Respondent guaranteed that he could and would obtain permits and knew the permit people, but then quit the job. Regarding permits, the Claimant credibly testified based on her conversations with other contractors that permits were required for the HVAC and plumbing work. Now floors and walls will need to be opened up so a permit inspector can access the work and determine if it was done properly. The Respondent's failure to obtain permits is inadequate, unworkmanlike, and incomplete performance of the Contract. As the Fund argued in its April 2, 2024 closing statement, the Contract, which is construed against the drafter (the Respondent), does not explicitly state that no permits would be obtained and that the Claimant assumed the risk of no permits. And as noted, the Claimant credibly testified that the Respondent agreed to obtain permits.

The Fund further argued that the Respondent's performance was inadequate, unworkmanlike, and incomplete, noting that the tub leaks and should be used until inspected due electrical hazard, the bathrooms' HVAC vents were incorrectly installed, and the washer and dryer (whose size the Respondent approved) are too large to fit in the laundry room space to vent properly, causing a fire hazard.

The Fund also noted that the \$70,000.00 Advance estimate covers electrical, HVAC, plumbing, and resurfacing the walls and flooring that need to be reopened to allow repairs, inspections, and permitting. While the Claimant submitted two lower estimates, the AT Plumbing proposal did not include electrical work, HVAC, or resurfacing, and the PHI Group proposal did not include flooring, walls, and tile. Accordingly, the Fund argued that the \$70,000.00 Advance estimate is the correct one to use in calculating the Claimant's actual loss.

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) (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 intends to retain another 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).

Application of this formula is straightforward. The amount the Claimant paid the Contractor (\$31,027.27) plus the \$70,000.00 Advance repair estimate totals \$101,207.27. From that total \$31,027.27 is subtracted, leaving damages of \$70,000.

Effective July 1, 2022, however, 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.⁸ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR

⁸ 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").

09.08.03.03B(4). In this case, the Claimant's actual loss of \$70,000.00 exceeds \$30,000.00 and also the amount paid to the Respondent. Therefore, the Claimant's recovery is limited to \$30,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$30,000.00 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.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$30,000.00; 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;⁹ and

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

June 13, 2024
Date Decision Issued

Robert B. Levin

Robert B. Levin
Administrative Law Judge

RBL/emh
#211932

⁹ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 20th day of September, 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.

Chandler Louden

Chandler Louden

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***