

IN THE MATTER OF THE CLAIM	* BEFORE RICHARD O'CONNOR,
OF MALITA RICE,	* ADMINISTRATIVE LAW JUDGE,
CLAIMANT,	* THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF ROCHELLE YOUNG,	*
T/A LEO MORGAN CONTRACTORS	* OAH No.: LABOR-HIC-02-24-07766
LLC,	* MHIC No.: 21 (75) 254
RESPONDENT	*

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On or about December 7, 2020, Malita Rice (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$19,561.00 for actual losses allegedly suffered as a result of a home improvement contract with Rochelle Young, trading as Leo Morgan Contractors LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2024).²

¹ The MHIC is part 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.

On March 18, 2024, the MHIC issued a Hearing Order on the claim and, on the same date, forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On September 4, 2024, I held a hearing by videoconference. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Ernie Dominguez, Assistant Attorney General, represented the Fund. The Claimant participated without representation. The Respondent did not appear for the hearing.

After waiting fifteen minutes for the Respondent or a 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 July 10, 2024, the OAH provided a Notice of Remote 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 September 4, 2024, at 9:30 a.m., on the Webex videoconferencing platform and provided the Webex meeting number and instructions for joining the hearing. 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 United States Postal Service returned the certified mail copy of the Notice to the OAH with the notation "Refused." The copy of the Notice sent by first-class mail was not returned. I determined that the Respondent received proper notice and proceeded to hear the above-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. 2024); 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 into evidence the following exhibits offered by the Claimant:³

- Clt. Ex. 1. Contract between MLP Homes, LLC, and GrassGrow Inc., February 17, 2021.
- Clt. Ex. 2. Notice of Remote Hearing, July 10, 2024.
- Clt. Ex. 3. Home Improvement Claim Form, signed December 7, 2020.
- Clt. Ex. 4. Wire transfer records from Chase Bank, May 8, 2019.
- Clt. Ex. 5. Contract between the Claimant and the Respondent, May 7, 2019.
- Clt. Ex. 6. Email from Kimberly Rice to the Respondent, June 25, 2019.
- Clt. Ex. 7. Email from Kimberly Rice to the Respondent, July 17, 2019.
- Clt. Ex. 8. Email from the Respondent to Kimberly Rice and the Claimant, July 17, 2019.
- Clt. Ex. 9. Email from Kimberly Rice to the Respondent, July 17, 2019.
- Clt. Ex. 10. Email from the Respondent to Kimberly Rice and the Claimant, July 23, 2019.
- Clt. Ex. 11. Email from the Claimant to the Respondent, July 23, 2019.
- Clt. Ex. 12. Email from Kimberly Rice to the Respondent, August 17, 2019.
- Clt. Ex. 13. The Respondent's licensing status with the MHIC, August 28, 2019.
- Clt. Ex. 14. Twenty-eight photographs of the subject property, undated.

³ I left the record open for ten days to allow the Claimant to submit Exhibits 3 through 14. The Fund received copies and did not object to their inclusion.

I admitted into evidence the following exhibits offered by the Fund:

- Fund Ex. 1. Notices of Remote Hearing, April 4, 2024, and July 10, 2024.
- Fund Ex. 2. Hearing Order, March 18, 2024.
- Fund Ex. 3. Home Improvement Claim Form, signed December 7, 2020.
- Fund Ex. 4. The Respondent's licensing history with the MHIC, June 20, 2024.

Testimony

The Claimant testified and presented additional testimony from Kimberly Rice.

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 numbers 01-111016 (individual) and 05-133514 (corporate).
2. On May 7, 2019, the Claimant and the Respondent entered into a contract to completely gut and renovate a house on Reisterstown Road that the Claimant owned as an investment property.
3. The contract price was \$54,245.00.
4. The contract stated that work would begin on approximately May 15, 2019 and would be completed by approximately July 15, 2019.
5. The contract stated that the cost of demolition of existing drywall, carpet, and two walls was \$2,500.00.
6. The contract stated that an initial deposit of \$22,061.00 was required to begin the work.
7. On May 8, 2019, the Claimant transferred \$25,061.00 to the Respondent by wire.

8. Kimberly Rice oversaw the project for the Claimant, who lives in Georgia.
9. The Respondent began work and performed the demolition as called for in the contract.
10. The Respondent did no more work for about a month.
11. On June 25, 2019, realizing that the date of completion called for in the contract could not be met, the Claimant ordered the Respondent to stop work, return the key to the house, and return the deposit after deducting the \$2,500.00 for demolition.
12. The Respondent did not return the key or the deposit.
13. Kimberly Rice met with the Respondent and received a new list of dates specifying when each aspect of the work called for in the contract would be completed.
14. The Respondent installed some framing in the basement, poured a concrete slab for the rear patio, put on some siding, and dug a hole in the basement for a sump pump.
15. The Respondent used materials left over from another job for the framing and siding. The materials were of poor quality, were not installed properly, and had to be removed.
16. The concrete slab for the patio was wavy, and the Respondent agreed that it would have to be removed and replaced.
17. The Respondent did not complete any of the work called for in the contract, except the demolition, by the agreed-upon dates for completion.
18. On July 17, 2019, the Respondent requested the second draw of \$15,122.00 from the Claimant.
19. According to the contract, the second draw was due after completion of demolition, installation of a new roof, repairs to the front porch, pointing up brick as needed, pouring the concrete slab in the rear, repairs to the rear deck, installation of siding, and installation of five windows.

20. Except for demolition, the Respondent had not completed any of the items contemplated in the second draw.

21. The Claimant asked the Respondent for a list of what had been completed with the first draw, i.e., the deposit.

22. On July 23, 2019, the Respondent stated that the roof was seventy percent complete, the front porch decking was “arriving today,” the concrete slab was poured, the repairs to the rear deck were seventy percent complete, the siding was ninety percent complete, and that three new windows had been installed and seven others repaired.

23. The Claimant emailed the Respondent stating that she would pay the second draw when all the items called for in the contract were one hundred percent complete.

24. The Respondent did no more work under the contract.

25. The Claimant made no more payments under the contract.

26. The totality of the Respondent’s work was to complete the demolition, install some unworkmanlike framing and siding, and pour a faulty concrete slab.

27. On March 20, 2021, the Claimant contracted with GrassGrow Inc. to complete the renovation of the subject property for \$76,000.00.

28. The Claimant paid GrassGrow Inc. \$50,000.00.

29. GrassGrow Inc. did not complete the renovation.

DISCUSSION

The Claimant has the burden of proving the validity of her 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. 2024); *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. 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. 2024); COMAR 09.08.03.03B(1). 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. 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 Claimant does not reside in the home that is the subject of the claim but does not own more than three dwellings. Bus. Reg. § 8-405(f)(2) (Supp. 2024). The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2024).

The evidence establishes that the Respondent collected \$22,061.00 from the Claimant⁴ and performed unworkmanlike, inadequate, and incomplete home improvements. Essentially, the Respondent did nothing under the contract except the demolition. The small amount of framing, siding, and concrete that he provided were incompetently constructed of poor materials and could not be used.

⁴ There is a discrepancy between the wire transfer document, which shows \$25,061.00 being transferred to the Respondent, and Kimberly Rice’s testimony that the Claimant paid the Respondent \$22,061.00. The latter number appears in the contract as the initial deposit and in the Home Improvement Claim Form as the amount paid to the contractor. Ms. Rice did not mention the wire transfer in her testimony or explain the different numbers. I find it more likely than not that the Claimant paid the Respondent \$22,061.00, as stated under oath.

The Claimant's photographs, although not dated, show the condition of the house after the Respondent stopped working. The house was full of debris, and none of the renovations called for in the contract had been completed. The Respondent was untruthful with the Claimant about progress on the roof, front porch, rear deck, and windows. The photographs demonstrate that no work had been done in those areas. Obviously, the Respondent left the project because the Claimant refused to pay him for work that he had not performed.

The Claimant engaged GrassGrow Inc. to complete the project. The contract with GrassGrow Inc. includes the same scope of work that the Respondent was hired to complete. Except for demolition, GrassGrow Inc. had to start the project from the beginning. Their contract price was \$76,000.00. The Claimant testified that she paid GrassGrow Inc. \$50,000.00, but they, like the Respondent, did not finish the project either and it remains incomplete today.

Based on this evidence, I find that the Claimant is eligible for compensation from the Fund. The Claimant filed this claim before she hired GrassGrow Inc. and calculated the claim under COMAR 09.08.03.03B(3)(b), which states: "If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor." Using the contract price of \$2,500.00 for the value of the demolition, the Claimant subtracted that amount from the \$22,061.00 she paid to the Respondent to reach a requested award number of \$19,561.00.

The Claimant's requested award was correct at the time, but she subsequently engaged GrassGrow Inc. and paid them \$50,000.00.

The Fund argued that this places the award calculation under a different paragraph of COMAR, 09.08.03.03B(3)(c), which provides the following method of calculation:

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.

The Fund contended that, since the Claimant did solicit another contractor to complete the contract and paid that contractor \$50,000.00, the award should be limited to \$17,816.00 under the above paragraph.

The evidence establishes that the Claimant contracted with GrassGrow Inc. to complete the contract and repair the Respondent's poor work. She paid GrassGrow Inc. \$50,00.00 toward completion, but GrassGrow Inc. did not complete the contract. The \$76,000.00 contract price for GrassGrow Inc. to complete the job would be the "reasonable amount" the Claimant "will be required to pay" to finish the renovation. The amount of work that GrassGrow Inc. actually performed is unknown. Given this state of the evidence, I find that the Claimant is entitled to the amount she claimed under COMAR 09.08.03.03B(3)(b), \$19,561.00, since GrassGrow Inc. did not complete the contract, and the Claimant's expenses of completion are unknown at this time.

A claimant's recovery is capped at \$30,000.00 for the 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.⁵ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2024); 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 her actual loss of \$19,561.00.

⁵ 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.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$19,561.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2024); 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 \$19,561.00; 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.

November 13, 2024
Date Decision Issued

Richard O'Connor
Richard O'Connor
Administrative Law Judge

ROC/SH
#214882

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

PROPOSED ORDER

WHEREFORE, this 7th day of April, 2025, 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.

Michael Shilling

Michael Shilling

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***