

<p>IN THE MATTER OF THE CLAIM OF COLLEEN MCDONALD, CLAIMANT AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ALLEGED ACTS OR OMISSIONS OF ROBERT BOSTICK, T/A WIN WIN HOME IMPROVEMENT, RESPONDENT</p>	<p>* BEFORE STEPHEN W. THIBODEAU, * AN ADMINISTRATIVE LAW JUDGE * OF THE MARYLAND OFFICE * OF ADMINISTRATIVE HEARINGS * * * * OAH No.: LABOR-HIC-02-22-29134 * MHIC No.: 21 (75) 402</p>
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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On August 10, 2022, Colleen McDonald (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$8,800.00 for actual losses allegedly suffered as a result of a home improvement contract with Robert Bostick, trading as Win Win Home Improvement (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).² On November 21, 2022, the MHIC issued a

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

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Court at the City of New York, this 15th day of June, 1964.

CLERK OF THE COURT

REPORTED BY THE CLERK

FOR THE COURT

RECORDED

INDEXED

FILED

IN THE OFFICE OF THE CLERK OF THE COURT

NEW YORK, N.Y.

STATEMENT OF THE COURT

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Hearing Order on the Claim. On November 28, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 23, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Eric B. London, Assistant Attorney General, Department of Labor (Department), represented the Fund. The Claimant was self-represented.

After waiting thirty 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 December 14, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail. COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for February 23, 2023, at 9:30 a.m., at the OAH. 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 did not return the Notice to the OAH. 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 proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

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); 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?

On 10/10/2011, the Chairman of the Board of Directors of the Company, Mr. [Name], was elected as the Chairman of the Board of Directors of the Company. The Chairman is responsible for the overall management and direction of the Company and for the appointment and removal of the other members of the Board of Directors. The Chairman is also responsible for the appointment and removal of the members of the Executive Committee and for the appointment and removal of the members of the Board of Directors. The Chairman is also responsible for the appointment and removal of the members of the Board of Directors. The Chairman is also responsible for the appointment and removal of the members of the Board of Directors.

ISSUES

The Board of Directors has identified the following issues for consideration:

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:

- Clmt. Ex. 1 - Claimant's Contract with the Respondent, February 27, 2018
- Clmt. Ex. 2 - Emails between the Claimant and the Respondent, August 23, 2019
- Clmt. Ex. 3 - Email from the Claimant and the Respondent, October 28, 2019
- Clmt. Ex. 4 - Five photographs of the Claimant's roof, taken by Elite Remodeling, Inc. (Elite), November 2019
- Clmt. Ex. 5 - Claimant's Contract with Elite, November 20, 2019

The Respondent did not offer any exhibits.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, December 14, 2022
- Fund Ex. 2 - MHIC Hearing Order, November 21, 2022
- Fund Ex. 3 - MHIC Licensing History for the Respondent, January 12, 2023
- Fund Ex. 4 - Claimant's MHIC Guaranty Fund Claim Form, August 10, 2022
- Fund Ex. 5 - Letter from the MHIC to the Respondent, August 26, 2022
- Fund Ex. 6 - Itemized Contract between the Claimant and the Respondent, February 22, 2018
- Fund Ex. 7 - Claimant's Complaint Form with timeline prepared by the Claimant, October 10, 2020

Testimony

The Claimant testified and did not present other witnesses. The Respondent and the Fund did not present any testimony.

STATEMENT OF THE CHAIRMAN

Chairman

- 1. The following members of the Commission were elected by the Chairman:
- 2. Mr. J. H. ...
- 3. Mr. ...
- 4. Mr. ...
- 5. Mr. ...
- 6. Mr. ...
- 7. Mr. ...
- 8. Mr. ...
- 9. Mr. ...
- 10. Mr. ...

The Report of the Commission is hereby approved.

I submit the following exhibits as evidence:

- 1. Exhibit A - ...
- 2. Exhibit B - ...
- 3. Exhibit C - ...
- 4. Exhibit D - ...
- 5. Exhibit E - ...
- 6. Exhibit F - ...
- 7. Exhibit G - ...
- 8. Exhibit H - ...
- 9. Exhibit I - ...
- 10. Exhibit J - ...

Witness my hand and seal this ... day of ... 19...

Very truly yours,

Chairman

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 01-89185.
2. On February 22, 2018, the Claimant and the Respondent entered into a contract (Contract) for a whole house renovation at 825 Chauncey Avenue, Baltimore, Maryland (Property), a home owned by the Claimant.
3. The original agreed-upon Contract price was \$96,644.30.
4. As part of the whole home renovation, the Contract provided for a full replacement of the Property's roof.
5. The Claimant paid the Contract in full through bank draws.
6. The Respondent began work on the Contract in February 2018, and completed the replacement of the roof in April 2018.
7. Some fourteen months later, in August 2019, water began to leak in the upper floor of the Property.
8. On August 23, 2019, the Claimant contacted the Respondent to have him address the leak, and the Respondent replied that he would look into the issue.
9. The Respondent did not return to the Property to address the leak issue.
10. The last time the Claimant spoke with the Respondent was on September 5, 2019. From that date through the end of October 2019, the Claimant called, texted, and emailed the Respondent with no response.
11. The Claimant contacted Elite to get an estimate on resolving the leak.
12. Elite visited the Property on November 20, 2019, and inspected the roof. Elite discovered a large hole in the roof causing the leak. Moreover, Elite determined that the

THE HOUSE COMMITTEE REPORT

1. The Committee has the honor to acknowledge the receipt of the report of the subcommittee on the subject of the investigation of the activities of the Communist Party, U.S.A., in the United States, dated and captioned as above, and to express its appreciation for the thoroughness and accuracy of the information furnished.
2. The report of the subcommittee is hereby approved and its findings and conclusions are hereby adopted as the findings and conclusions of the Committee.
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12. The report of the subcommittee is hereby approved and its findings and conclusions are hereby adopted as the findings and conclusions of the Committee.

Respondent had improperly installed the roof by covering it with an N95 underlayment and no primary layer.

13. As a result, Elite determined that the Claimant needed a full roof replacement to address the Respondent's work on the roof.

14. The Claimant paid Elite \$8,800.00 to install a new roof with proper materials.

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; 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. 2022); *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.

It is undisputed that the Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. It is further undisputed that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements. As was shown at the hearing, the Respondent performed a variety of projects as part of a whole house renovation of the Property. Part of the Contract was to tear out the old roof and install a new bitumen, or torch down tar, roof. (Clmt. Ex. 1). However, as Elite discovered after the leak, the

DECLARATION

The undersigned hereby certifies that the information furnished herein is true and correct to the best of his knowledge and belief, and that he is not aware of any information which would cause the information furnished herein to be untrue or misleading in any material particular.

Respondent only installed an N95 underlayment and nothing else, which caused a large hole and subsequent leak into the interior of the Property. As a result, the Respondent's work was both incomplete, because it did not comport with the requirements of installing a proper torch down roof by only using an underlayment product, and inadequate, because the use of only the underlayment led to a hole in the roof and a leak into the interior of the Property. 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. 2022); 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 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).

Here, the Claimant paid the Respondent a total of \$96,664.30 on the Contract. The Claimant retained Elite to replace the roof for a total of \$8,800.00, for a total of \$105,464.30.

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Applying the formula above and subtracting the original Contract price from this amount, the Claimant's actual loss is \$8,800.00 (\$105,464.30 minus \$96,664.30 equals \$8,800.00).

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.³ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); 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 their actual loss of \$8,800.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$8,800.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund. Bus. Reg. § 8405(e)(1), (5); 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 \$8,800.00; 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

³ 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").

under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;⁴ and

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

May 15, 2023
Date Decision Issued

Stephen W. Thibodeau.

Stephen W. Thibodeau
Administrative Law Judge

SWT/dlm
#205065

⁴ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

1. The first step in the process of the...
2. The second step is to...
3. The third step is to...

4. The fourth step is to...
5. The fifth step is to...

PROPOSED ORDER

WHEREFORE, this 26th day of June, 2023, 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.

Lauren Lake

Lauren Lake

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

