

IN THE MATTER OF THE CLAIM
OF BRIAN FAITH,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF JASON BOBBITT,
T/A J. SCOTT DESIGNS, LLC
RESPONDENT

BEFORE RACHAN BARNETT,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-23-25537
* MHIC No.: 21 (75) 564

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PROPOSED DECISION

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STATEMENT OF THE CASE

On May 31, 2023, Brian L. Faith (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$54,556.00 for actual losses allegedly suffered as a result of a home improvement contract with Jason Bobbitt, trading as J. Scott Designs, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 411 (2015 & Supp. 2023).² On September 28, 2023, the MHIC issued a Hearing

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.

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

On October 30, 2023, 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); Code of Maryland Regulations (COMAR) 28.02.01.05C(1). The Notice stated that a hearing was scheduled for November 30, 2023, at 9:30 a.m., at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland 21031. COMAR 09.08.03.03A(2). The Notice further advised the Respondent's that failure to attend the hearing might result in "a decision against you."

On November 30, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Bus. Reg. §§ 8-407(a), 8-312. Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. 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.

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. 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.

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:

- Clmt. Ex. 1a - J. Scott Designs, Home Renovation Specialist, Tommy Gabbert, Vice President, MHIC #117575, business card, undated
- Clmt. Ex. 1b - J. Scott Designs, Home Renovation Specialist, Jason Bobbitt, Owner, MHIC #117575, business card, undated
- Clmt. Ex. 2a - Photograph - view from crawlspace showing gap in sub-floor covered with only floor tile, 12/5/2020
- Clmt. Ex. 2b - Photograph - "Repairs" to hole in sub-floor, 1/2/2021
- Clmt. Ex. 2c - Photograph - High moisture reading in drywall, 7/26/2021
- Clmt. Ex. 2d - Photograph - Kitchen drywall showing high moisture, 7/21/2021
- Clmt. Ex. 2e - Photograph - HVAC duct filled with water, 7/20/2021
- Clmt. Ex. 2f - Photograph - HVAC duct filled with water, 7/20/2021
- Clmt. Ex. 2F - Photograph - Flexible gas line cemented into foundation, 11/28/2021
- Clmt. Ex. 2g - Photograph - Trash from construction never removed, 7/31/2021
- Clmt. Ex. 2h - Photograph - Trash in driveway never removed, 8/23/2021
- Clmt. Ex. 2i - Photograph - Gas line vent valve turned upside down, 9/1/2021
- Clmt. Ex. 2j - Photograph - Kitchen wall leaking during storm, 9/1/2021
- Clmt. Ex. 2k - Photograph - Living room wall leaking during storm, 9/1/2021
- Clmt. Ex. 2l - Photograph - Exposed water pipe extending through hole in outside covering, 11/28/2021

- Clmt. Ex. 2m Photograph Old gas line cemented into foundation, 3/6/2022
- Clmt. Ex. 2n - Photograph – Water dripping down wall from rain, 7/17/2021
- Clmt. Ex. 2o - Photograph – Water on floor due to rain, 7/17/2021
- Clmt. Ex. 2p - Photograph – Back view of drywall replaced between upper and lower kitchen cabinets, 3/6/2022
- Clmt. Ex. 3 – Contract between J. Scott Designs, LLC and Brian L. Faith, 9/10/2020
- Clmt. Ex. 4 – Copies of Checks made out to J. Scott Designs: Check No. 1077 - \$6,500.00, 9/10/2020; Check No. 1078 - \$19,876.00. 9/10/2020; Check No. 1107 - \$26,630.00, 11/25/2020; Check No. 1080 - \$16,378.00, 6/25/2021
- Clmt. Ex. 5 – Letter addressed to Whom It May Concern, undated
- Clmt. Ex. 6 – Flash Drive Video with pictures, 7/17/2021
- Clmt. Ex. 7 – Letter from Golden State Claims Adjusters to Brian Faith, dated 9/22/2021
- Clmt. Ex. 8 – Home Improvement Claim Form, 9/16/2021
- Clmt. Ex. 9 – Estimate Quote from Gem Construction Co., Inc., 9/13/2021
- Clmt. Ex. 10a – BGE Installation Design and Contract, 5/26/2022
- Clmt. Ex. 10b – Check No. 122 to BGE Revenue Processing \$5,754.00, 5/26/2022
- Clmt. Ex. 11 – Horizon Services Invoice with Description of Work, 4/12/2022
- Clmt. Ex. 12 – Baltimore County Uniform Code Enforcement Correction Notice, 9/20/2021
- Clmt. Ex. 13 – Timeline of Work for Project at 3010 Baybriar Road, undated
- Clmt. Ex. 14 – J. Scott Designs Contract, 9/10/2020
- Clmt. Ex. 15 – Horizon Services Invoice with Description of Work, 4/3/2022
- Clmt. Ex. 16 – Check No. 1119, Horizon - \$10,000.00, 4/6/2022 and Check No. 1120 to Mansa Electric \$1,716.00, 4/11/2022
- Clmt, Ex. 17a – Power Home Remodeling Custom Remodeling and Improvement Agreement, 4/1/2022
- Clmt. Ex. 17b – Power Home Remodeling Receipt, 11/27/2023

- Clmt. Ex. 18 – Mansa Electric, LLC, Proposal and Scope of Work, 4/7/2022
- Clmt. Ex. 19 – Check No. 130 to Mansa Electric, \$1,850.00, 2/27/2023
- Clmt. Ex. 20 – Abrons Home Improvement, LLC Proposal, 9/16/2022
 Payments: Check No. 129, \$350.00, 2/4/2023; Check No. 128, \$2,500.00, 11/5/2022; Check No. 126, \$3,203.00, 10/19/2022; Check No. 125, \$5,700.00, 10/11/2022; Check No. 1084, \$143.00, 9/20/2022; Check No. 1082, \$5,400.00, 9/16/2022
- Clmt. Ex. 21 – LL Flooring, Inc. Invoices, 10/28/2022 and 9/3/2022
- Clmt. Ex. 22 – Home Depot Customer Receipt, 9/14/2022
- Clmt. Ex. 23 – Home Depot Customer Receipt, 9/24/2022
- Clmt. Ex. 24 – Check No. 1086 to Ferger HVAC, \$2,500.00, 1/18/2023 & Bank Statement notation Check No. 121 to Ferger HVAC, \$1,800.00, 5/3/2022
- Clmt. Ex. 25 – Letter from J. Scott Design to Brian and Mary Faith, 5/10/2022
- Clmt. Ex. 26 – Total of Work Receipts Listing Totaling \$50,686.03, undated

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

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - OAH Notice of Hearing dated 10/30/2023 and MHIC Hearing Notice dated 9/28/2023
- Fund Ex. 2 - MHIC Registration and Licensing History for Jason Bobbitt d/b/a J. Scott Designs, LLC, 11/14/2023

Testimony

The Claimant testified and presented the testimony of Mary Faith, his wife.

The Respondent was not present.

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 under MHIC license number 117575.

2. The Claimant and his spouse own a single-floor ranch-style home in Maryland; it is their only residential property.

3. On September 10, 2020, the Claimant and the Respondent entered into a contract to renovate a bathroom in the original portion of their home, as well as to demolish and reconstruct an addition. (Contract).

4. The purpose of the renovation was to make the bathroom handicap-accessible for the Respondent's father-in-law, an amputee, who was going to be moving into the home and to create a comfortable living space for him in the new addition.

5. The addition would include a bedroom, bathroom, laundry room, and closet.

6. The original agreed-upon Contract price was \$79,130.00.

7. On September 10, 2020, the Claimant paid the Respondent \$26,376.00 via check.

8. Tommy Gabbert, an employee of the Respondent, informed the Claimant that it would take three to four weeks to secure the necessary permit.

9. After two to three weeks of waiting, the Claimant called the local permit office and learned the office had not received a permit application from the Respondent. The Claimant communicated her concern to Mr. Bobbit, the owner of the company. From this point on, the Claimant was in direct communication with Mr. Bobbit.

10. On November 25, 2020, The Claimant paid the Respondent \$26,630.00.

11. The first day of work was on November 30, 2020. The Respondent began by turning off the water in the house and gutting the bathroom. The Respondent left the worksite without turning the water back on and without installing a new toilet. As a result, the Claimant was left without a working toilet while living in the home; this condition persisted for several days.

12. The Respondent built the new bathroom in the main portion of the house:

however, there were workmanship issues including the following:

- No shower door,
- No towel holder,
- No toilet paper holder,
- Mismatched tile,
- No handicap railing (per the Contract),
- The screws in the shower area rusted immediately,
- The subfloor was not replaced before installing the new flooring and the new flooring cracked, and
- The threshold between the bathroom and the hallway was uneven (it had a dip) that made it unsafe for someone who required a handicapped bathroom.

13. On February 22, 2021, the Respondent began demolishing the old addition.³

14. On March 14, 2021, the Respondent began digging up the trench and the footers.

15. The digging work progressed through April 2021.

16. Between May and June of 2021, the Respondent laid the foundation for the new addition. By this point, the Respondent spent several days away from the job at a time.

17. On June 25, 2021, the Claimant paid the Respondent \$16,378.00, bringing the total payment under the Contract to \$69,393.00. The Claimant made no further payments to the Respondent.

18. In July 2021, the Respondent installed interior framework in the new addition and partially constructed the roof over the new addition.

³ One of the Complainant's older children was living in the addition. It had slanted floors and generally was not in a condition the Complainant deemed suitable for his disabled father-in-law.

19. On July 19, 2021, the roof was in a partial state of construction and rain was forecasted. The Respondent left the worksite without tarping the roof, causing flooding in the home in both the new addition and the main area of the home.

20. On September 20, 2021, Baltimore County issued a code enforcement correction notice, because the roof was still not water-tight and was leaking at the place where the addition met the original portion of the home.

21. September 27, 2021 was the last date the Respondent worked on the Claimant's property. The Respondent did not return to complete the job.

22. The Respondent never connected the new addition to plumbing, left electrical work incomplete, and failed to install insulation, drywall, windows, doors, and flooring. The Respondent's work in the main house bathroom remained in a deficient state.

23. In April 2022, the Claimant hired Horizon Services to perform plumbing work in accordance with the Contract and paid them \$10,000.00. The work included plumbing repairs and connecting the addition to plumbing.

24. Also in April 2022, the Claimant paid Mansa Electric \$1,716.00 to perform electrical work in accordance with the Contract.

25. On May 10, 2022, the Respondent sent the Claimant a letter notifying them that due to the increase in materials cost, their project would cost more to complete than the original contract indicated. The Claimant did not accept this proposal.

26. The Claimant paid Power Home Remodeling \$5,958.18 to install windows and a sliding door.

27. The Claimant paid Abrons Home Improvement LLC \$7,296.00 to perform the following work in accordance with the Contract:

- Insulation and drywall installation,
- Move bathroom wall to fit the tub,⁴
- Install tub, vanity, toilet, install tub surrounding materials,
- Install vent for dryer,
- Install three doors, and
- Install vinyl flooring.

28. The Claimant paid Ferger HVAC \$4,300.00 to install heating and cooling equipment for the addition.

29. The Claimant purchased the following materials on his own to complete the project:

- Vinyl flooring \$292.47
- Insulation and drywall \$2,278.43
- Toilet and light switch \$118.16

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*

⁴ The Respondent constructed a wall that did not allow adequate space for the tub to be installed in the addition.

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, 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 and 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 not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023). The Respondent stopped reporting to the job after September 27, 2021, which led the Claimant to find new contractors to complete the project beginning in April 2022. On May 10, 2022, the Respondent sent the Claimant a letter notifying them that due to the increase in materials cost, their project would cost more to complete than the original contract indicated. The Respondent was not offering to honor the signed Contract, so this was not a good faith effort to resolve the construction issues. Additionally, the Claimant had

already found and began paying new contractors to complete the project, so the Respondent's letter arrived too late to be a viable option to complete the project.

The Respondent performed unworkmanlike, inadequate, and incomplete home improvements. The Respondent's deficient work led to the original bathroom that was contracted to be handicap accessible not having a grab bar and having uneven flooring at the access point. There were other deficiencies with the bathroom, as described herein, but these deficiencies in particular made it not functional for its stated purpose, to serve as a handicap accessible bathroom. The Respondent did not cure the deficiencies in the bathroom and walked off the job in late September 2021.

Additionally, the Respondent left the roof partially constructed and untarped when rain was in the forecast. The rain indeed occurred, causing damage to the main portion of the home. These damages are consequential damages and cannot be compensated, but the Respondent's negligent decision to leave a partially constructed roof untarped when rain was forecasted was unworkmanlike. Further, the Respondent's unexplained delays, including the act of leaving the Complainant without a working toilet for several days, was unworkmanlike. Moreover, the Respondent's act of leaving unsealed the connection between the roof to the addition and the roof to the main house resulted in a code enforcement notice, just a week prior to the Respondent's last day of work. This was yet another indication that the Respondent's work did not meet industry standards.

When the Respondent departed the job, he left a significant amount of work incomplete. The addition did not have plumbing connections, meaning there was no running water in the addition. Additionally, some of the electrical work was deemed unsafe by the new electrician, Mansa Electric, and this company redid the unsafe electrical installations. The new electrical work included hooking up the electric water heater and installing light fixtures and receptacles in

the master bathroom, bedroom, and laundry area. Additionally, the Respondent left HVAC work undone, which necessitated hiring Ferger HVAC for installation. Windows and a sliding door were not installed by the Respondent, so Power Home Remodeling did this work for the Claimant. Abrons Home Improvement, LLC did the most work on the original Contract, installing drywall, a tub, vanity, toilet, dryer vent, vinyl flooring and doors in the addition. All of these items were in accordance with the original Contract and necessary for the addition to be functional. The Claimant purchased his own materials, including the drywall, toilet, light switch, vinyl flooring and insulation, to ensure costs would be contained. The receipts for these modest purchases are in evidence.

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 has 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.

CLAIMANT'S RECOVERY. The Claimant paid the Respondent \$69,393.00. This amount shall be added to following payments: Horizon Services (\$10,000.00), Mansa Electric (\$1,716.00), Power Home Remodeling (\$5,958.18), Abrons Home Improvement (\$17,296.00), Ferger HVAC (\$4,300.00), and materials purchased (\$2,570.90), totaling \$41,841.08.⁵ \$69,393.00 added to \$41,841.08 is \$111,234.08. From this total, the amount of the original Contract must be subtracted as follows: \$111,234.08 - \$79,130.00 for a resulting loss of \$32,104.08.

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.⁶ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$32,104.08 exceeds \$30,000.00. 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. Md. Code Ann., Bus. Reg. § 8-405(a) (Supp. 2023).

⁵ The record includes evidence of some other payments, related to consequential damages and payments that do not include documentation or testimony explaining what they were for. These amounts were therefore not considered.

⁶ 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").

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;⁷ and

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

February 14, 2024
Date Decision Issued

Rachael Barnett

Rachael Barnett
Administrative Law Judge

RAB/at
#209642

⁷ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 20th day of May, 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.

J Jean White

J Jean White

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***