

IN THE MATTER OF THE CLAIM	* BEFORE DANLA AYOUBI,
OF KATHLEEN PARKER,	* 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 ADAM WORON,	*
T/A CHOICE CONSTRUCTION, LLC,	* OAH No.: LABOR-HIC-02-23-25398
RESPONDENT	* MHIC No.: 22 (75) 1053

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On February 14, 2023, Kathleen Parker (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$21,449.78 for actual losses allegedly suffered as a result of a home improvement contract with Adam Woron, trading as Choice Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).² On September 15, 2023, the MHIC issued a Hearing Order on the Claim and forwarded the matter to the Office of Administrative Hearings (OAH) for 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.

On October 12, 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); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for November 9, 2023, at 10:00 a.m., at the OAH in Rockville, Maryland. 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.”

On November 9, 2023, I held a hearing at the OAH in Rockville, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Catherine Villareale, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. After waiting fifteen minutes, neither the Respondent nor a representative of the Respondent appeared. The Respondent did not notify the OAH of any change of mailing address or request a postponement prior to the hearing. COMAR 28.02.01.03E; COMAR 28.02.01.16. I determined that the Respondent received proper notice and proceeded to hear the captioned matter.³ 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?

³ 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. At the commencement of the hearing, the Department indicated that the address to which the Notice was mailed is the Respondent’s address on file with the MHIC. It is the responsibility of the Respondent to notify the MHIC of a change of address within ten days. See Bus. Reg § 8-309. On November 14 and 20, 2023, the United States Postal Service returned to the OAH the Notices mailed to the Respondent with the notations “RETURN TO SENDER UNABLE TO FORWARD,” “NOT DELIVERABLE AS ADDRESSED,” and “ATTEMPTED – NOT KNOWN.”

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 - Contract, Alpha Design Services, June 2, 2022
- Clmt. Ex. 2 - Statement, Alpha Design Services, June 6, 2022, with the following attachment:
 - Proposed contract, Alpha Design Services, August 7, 2022
- Clmt. Ex. 3 - Correspondence from Foundation Finance Company to the Claimant, November 29, 2022, with the following attachment:
 - Retail Installment Contract & Security Agreement, September 27, 2022
- Clmt. Ex. 4-1 - Photograph depicting bathtub, August 31, 2022
- Clmt. Ex. 4-2 - Photograph depicting tile grout, August 31, 2022
- Clmt. Ex. 4-3 - Photograph depicting removed floor tiles (inside bathroom), August 31, 2022
- Clmt. Ex. 4-4 - Photograph depicting removed floor tiles (outside bathroom), August 31, 2022
- Clmt. Ex. 4-5 - Photograph depicting removal of floor tiles (first view), August 31, 2022
- Clmt. Ex. 4-6 - Photograph depicting removal of floor tiles (second view), August 31, 2022
- Clmt. Ex. 4-7 - Photographs depicting wires from bathroom ceiling, September 2022
- Clmt. Ex. 4-8 - Photograph depicting insulation in bathroom ceiling, September 2022
- Clmt. Ex. 5 - Congressional Federal Credit Union statement, October 1 through 31, 2020, with the following attachments:
 - Carbon copy of check no. 8597, August 16, 2021
 - Carbon copy of check no. 8551, September 9, 2021
 - Carbon copy of check no. 8553, September 25, 2021
 - Email correspondence containing invoice from the Respondent, August 16, 2021
 - Email correspondence containing invoice from the Respondent, September 12, 2021
 - Email correspondence between the Claimant and the Respondent, September 13, 2021
- Clmt. Ex. 6 - Email correspondence from the Claimant to the Claimant, October 23, 2021, with the following attachment:
 - Email correspondence between the Claimant and Krystle Christian, Choice Construction, LLC, October 13 and December 8, 2021

- Clmt. Ex. 7 - Email correspondence from the Claimant to Logan Moore, Esq., December 3, 2021, with the following attachment:
- Bathroom design and proposal, Chase Remodeling, July 9, 2021
 - Email correspondence from the Claimant to Logan Moore, Esq., December 4, 2021
 - Correspondence from Logan Moore, Esq., to the Respondent, January 26, 2022
 - Email correspondence from the Claimant to Logan Moore, Esq., February 22, 2022
- Clmt. Ex. 8 - Claimant's Complaint to the MHIC, March 2, 2022, with the following attachment:
- Scope of work/invoice, Alpha Design Services, January 28, 2023
- Clmt. Ex. 9 - Order from the MHIC to the Respondent, March 30, 2022, with the following attachment:
- Correspondence from the MHIC to the Claimant, May 25, 2022
 - Email correspondence between the MHIC and the Claimant, January 18 and 20, 2023
- Clmt. Ex. 10 - Not admitted
- Clmt. Ex. 11 - Contract, Choice Construction, LLC, August 16, 2021, with the following attachment:
- Scope of work
- Clmt. Ex. 12 - Claimant's timeline, undated

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Letter from Joseph Tunney, MHIC, to the Respondent, February 22, 2023, with the following attachment:
- Home Improvement Claim Form, received February 14, 2023
- Fund Ex. 2 - Hearing Order, September 15, 2023
- Fund Ex. 3 - Notice of Hearing, October 12, 2023
- Fund Ex. 4 - Respondent's licensing history, November 8, 2023
The Respondent did not attend the hearing and therefore offered no exhibits.

Testimony

The Claimant testified and presented the testimony of Angel Casas, president of Alpha Design Services.

The Fund presented no testimony.

The Respondent did not attend the hearing and therefore 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 number 01-109626.
2. On August 16, 2021, the Claimant and the Respondent entered into a contract for the Respondent to renovate a hallway bathroom and the master bathroom in the Claimant's townhome (Contract). The scope of work for the hallway bathroom renovation included installation of a ventilation fan, toilet, light fixture, plumbing, vanity, faucets, medicine cabinet, bathtub, wall tile, and floor tile.
3. The original agreed-upon Contract price was \$18,465.00. The Contract called for five payments of \$3,693.00, with the first due upon signing the Contract, the second due upon the first day of work, the third due during the second week of work, the fourth due during the third week of work, and the fifth and final payment due upon completion of the work.
4. Upon signing the Contract on August 16, 2021, the Claimant paid the Respondent a deposit in the amount of \$3,693.00.
5. In September 2021, the Claimant made two additional payments to the Respondent in the amount of \$3,696.00 each.
6. In total, the Claimant paid the Respondent \$11,079.00.
7. The Respondent's crew began work on the hallway bathroom on September 7, 2021. Work continued through September and into October 2021. The crew sporadically performed work in November and December 2021 and one day in January 2022.
8. The Claimant grew displeased with the Respondent's performance and delay in completing the renovation of the hallway bathroom. The Respondent informed the Claimant that

he would complete the hallway bathroom renovation and would no longer perform the master bathroom renovation as contracted. The Claimant agreed. Accounting for the work performed in the hallway bathroom, which the Claimant estimated to be valued at \$7,079.00, on January 26, 2022, the Claimant requested that the Respondent provide a refund in the amount of \$4,000.00 to offset the payments already made towards the master bathroom renovation that the Respondent never began.

9. The Respondent did not reply or refund any payments to the Claimant.

10. Thereafter, in the summer of 2022, the Claimant began to notice cracks in the grout between the floor tiles and unevenness in the wall tile of the hallway bathroom installed approximately seven months prior by the Respondent.

11. The Respondent had improperly installed: the floor tile by failing to apply mortar to the back of each tile; the wall tile by using the wrong adhesive; the toilet by failing to adhere to the clearance requirements of the residential code; and the ventilation fan by failing to connect ductwork for proper ventilation.

12. On August 7, 2022, the Claimant contracted with Alpha Design Services to repair the hallway bathroom for \$12,000.00, \$4,629.95 of which was to remove and replace the floor tile.⁴ Alpha Design Services also replaced the uneven wall tile at the tub; reinstalled the toilet previously installed by the Respondent to comply with the residential code requirements; added fireproof wall insulation to comply with the residential code requirements; and properly configured the ventilation of the ceiling fan installed by the Respondent. Alpha Design Services is a home improvement contractor licensed by the MHIC.

⁴ The Claimant entered into a separate contract with Alpha Design Services for renovation of the master bathroom for \$16,835.78.

DISCUSSION

Applicable Law

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.

Burden of Proof

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).

Parties’ Positions

The Claimant argued that the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement of the hallway bathroom in her home by failing to properly install the wall tile, floor tile, toilet, and ventilation fan. Accordingly, the Claimant argued, she is entitled to recovery of her losses through reimbursement from the MHIC.

The Fund argued that the Claimant met her burden to demonstrate that she sustained an actual loss as a result of an act or omission by the Respondent. Specifically, the Fund argued that the Respondent’s installation of the tile and ventilation fan and plumbing and electrical work were unworkmanlike or inadequate. Further, the Fund argued that the Claimant is entitled to an award for her actual losses in the amount of \$11,079.00.

Analysis

For the reasons that follow, I conclude that the Claimant has proven eligibility for compensation from the Fund. The Claimant met her burden to demonstrate that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements. Further, I recommend an award in the amount of the Claimant's actual loss as explained below.

No Statutory Bars to Recovery

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 Respondent's Renovation of the Hallway Bathroom Was Unworkmanlike, Inadequate, or Incomplete

The record demonstrates that in August 2021, the Claimant contracted with the Respondent for the renovation of two bathrooms in her home—a hallway and master bathroom. The Respondent first began with renovations in the hallway bathroom that took approximately four months to complete. The Claimant testified regarding the Respondent's crew sporadically appearing to perform work as well as failing to adhere to the job specifications. For example, the Claimant explained that the crew installed the wrong toilet twice and furnished the wrong vanity. Once the hallway bathroom was complete, the Respondent and Claimant agreed that the Respondent would not perform the master bathroom renovations as originally contracted. The

Respondent ignored the Claimant's request for a refund for \$4,000.00, the amount the Claimant estimated that she had already paid towards the master bathroom renovation.

By the summer of 2022, the Claimant had hired Alpha Design Services to perform the master bathroom renovation. During that time, the Claimant began to notice cracks in the grout between the floor tiles and unevenness in the wall tile of the hallway bathroom installed approximately seven months prior by the Respondent. The Claimant requested that Mr. Casas evaluate the hallway bathroom. Mr. Casas determined that the floor tile had not been secured using the proper adhesive, causing the floor tile to shift and crack, and that the floor was not leveled before installing the tile. He further determined that the wall tile had been secured with the wrong adhesive that, near the bathtub, could not hold up with moisture. The toilet had not been installed with sufficient clearance as required by the residential code. Mr. Casas also observed that the ventilation fan in the ceiling was not properly ducted and freely blowing air into the attic.

Based on this evidence, I conclude that the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement by failing to properly install the floor and wall tile, ventilation fan, and toilet in the hallway bathroom of the Claimant's home. Within approximately just seven months of a full bathroom renovation, the floor tile was coming loose, the grout was cracking, and the wall tile was uneven. The Respondent failed to secure both the floor and wall tile using the proper adhesive. The Respondent also improperly installed the ventilation fan by failing to attach ductwork. The Respondent's installation of the toilet did not allow for sufficient clearance and was unworkmanlike for failing to comply with the residential code requirements. Additionally, in later renovating the hallway bathroom, Mr. Casas observed that the Respondent had failed to add fireproof wall insulation to comply with the residential code requirements for the Claimant's townhome, which further constitutes an unworkmanlike home improvement by the Respondent.

For these reasons, I conclude that the Claimant has met her burden to demonstrate that she is eligible for compensation from the Fund.

Amount of Actual Loss

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).

Depending on the status of the contract work, the MHIC's regulations provide the following three formulas to measure a claimant's actual loss:

(a) If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract.

(b) 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.

(c) 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)(a)-(c).

The Respondent performed some work under the Contract and the Claimant retained another contractor to complete or remedy that work. However, the third formula does not appropriately measure the Claimant's actual loss as to the hallway bathroom because the original Contract price included the renovation of the master bathroom, which the Respondent never commenced and is not at issue here. Accordingly, the second formula more appropriately measures the Claimant's actual loss. Under that calculation, the Claimant's actual loss is the

amount she paid to the Respondent minus the value of any materials or services provided by the Respondent. The Claimant paid the Respondent a total of \$11,079.00. The services and materials provided by the Respondent were of no value, as the defective work completed by the Respondent in the hallway bathroom of the Claimant's home was completely demolished and renovated anew by Alpha Design Services. Therefore, the Claimant's actual loss is \$11,079.00.

Effective July 1, 2022, 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. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is equal to the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$11,079.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant sustained an actual and compensable loss of \$11,079.00 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)(b). I further conclude that the Claimant is entitled to recover that amount from the Fund. 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 \$11,079.00; 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

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. 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;⁶ and

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

January 24, 2024
Date Decision Issued

Dania Ayoubi

Dania Ayoubi
Administrative Law Judge

DLA/ckc
#209138

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

PROPOSED ORDER

WHEREFORE, this 11th day of March, 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.

Joseph Tunney

Joseph Tunney

Chairman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***