

<p>IN THE MATTER OF THE CLAIM</p> <p>OF JONTE JOBES,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF BRYAN JONES,</p> <p>T/A BOJ & SON'S CONSTRUCTION,</p> <p>LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE PATRICIA M. DEMAIO,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-22-28188</p> <p>* MHIC No.: 22 (75) 1157</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On August 16, 2022, Jonte Jobes (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$22,830.00¹ for actual losses allegedly suffered as a result of a home improvement contract with Bryan Jones, trading as BOJ & Son's Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411 (2015 & Supp.

¹ The original Claim was for reimbursement of \$19,725.00. During the hearing, the Claimant testified that he made an accounting error. The Claimant made a motion to amend the Claim to request reimbursement of \$22,830.00. The Respondent was not present at the hearing and the Fund did not object. The Claimant's motion was granted.

2022).² On October 26, 2022, the MHIC issued a Hearing Order and forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 7, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-407(a), 8-312. Andrew Brouwer, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. The Respondent failed to appear for the hearing.

After waiting over 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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On December 8, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by standard and certified United States mail to the Respondent's address on record with the OAH. COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for February 7, 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 certified or standard mail 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.

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

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 an unworkmanlike, inadequate, or incomplete home improvement by the Respondent?
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 Contract between Claimant and Respondent, July 2, 2021 - \$24,500.00; Check No. 147, July 2, 2021 - \$4,000.00; Check No. 149, July 7, 2021 - \$4,000.00; Check No. 151, August 2, 2021 - \$10,000.00; Statement of Account for Respondent, Statement Period July 19, 2021 – August 18, 2021³
- Clmt. Ex. 2 Photograph of Check No. 151; Photographs of incomplete renovation⁴
- Clmt. Ex. 3 Letter to Respondent from Evani R. Patel, Esquire, February 21, 2022; Request for refund and surrender of merchandise, undated; United States Postal Service Certified Mail Receipt Tracking No. 9590 9402 6057 0125 2988 61
- Clmt. Ex. 4 Text Messages between Claimant and Respondent, June 15, 2021 - March 14, 2022
- Clmt. Ex. 5 Text Messages and call log between Jacqueline Jobs and Respondent, December 30, 2021 - June 1, 2022
- Clmt. Ex. 6 MHIC Order to respond to MHIC Complaint No. 1157-2022, April 21, 2022
- Clmt. Ex. 7 L&L Contracting, LLC evaluation of work Respondent completed on the Contract, April 17, 2022
- Clmt. Ex. 8 L&L Contracting, LLC estimate to complete home renovation, May 8, 2022 – \$27,625.00; Invoice, August 20, 2022 - \$2,705.00; Check No. 3674, June 7, 2022

³ At the Claimant's request, I redacted the documents to remove the Claimant's bank account number and access number before admitting the exhibit into evidence.

⁴ There are fifty-six photographs that were admitted collectively as Clmt. Ex. 2.

\$9,200.00; Check No. Unknown, July 28, 2022 - \$10,200.00; Check No. 3697, August 8, 2022 - \$5,000.00; Check No. 3698, August 25, 2022 - \$5,430.00

Clmt. Ex. 9 Home Improvement Claim Form, August 11, 2022

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 Hearing Order, October 26, 2022

Fund Ex. 2 Notice of Hearing, December 8, 2022

Fund Ex. 3 Letter to the Respondent from Joseph Tunney, Chairman MHIC, with attached Claim, August 26, 2022

Fund Ex. 4 Department I.D. registration printout – Respondent, printed January 19, 2023

Fund Ex. 5 Affidavit from David Finneran, Executive Director MHIC, January 24, 2023

The Respondent did not attend the hearing and did not offer any exhibits.

Testimony

The Claimant testified and presented the testimony of his wife Jacqueline Jobes and Luis Likourgos, who was accepted as an expert in general contracting and home improvement. The Respondent did not attend the hearing and the Fund did not present any witnesses.

PROPOSED FINDINGS OF FACT

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC individual license number 01-118128 and corporate license number 05-137602. (Fund Ex. 5).

2. The Claimant's property subject to this matter is a residential investment property located in Randallstown, Maryland (the Property).

3. The Claimant does not own more than three residences or dwelling places.

4. On July 2, 2021, the Claimant and the Respondent entered into a contract to renovate the Property (Contract). The scope of work as outlined in the Contract was extensive and included:

- Finish, prime and paint the entire first and second floors;
- Install new front and rear exterior doors, frames, storm doors, and hardware;
- Install new light fixtures throughout the first floor;
- Install door knobs, HVAC registers, and electrical cover plates throughout the living and dining rooms;
- Install new blinds throughout the house;
- Install new cabinets, granite countertops, sink, electrical and plumbing infrastructure, luxury vinyl flooring, base boards, trim, and hardware in the kitchen;
- Install new carpeting and light fixtures throughout the second floor;
- Install ceramic tile surrounds and shower diverters, sink, vanity, medicine cabinets, light bars, chair height toilets, faucet fixtures and hardware, towel racks, toilet paper holder, hand towel holder racks, luxury vinyl flooring, baseboards and trim in two bathrooms; and
- Install a new concrete front walkway, maintenance for the rear deck, wash the exterior siding, and paint the wooden area on the front porch.

5. The agreed-upon Contract price was \$24,500.00⁵ which included demolition, bulk trash removal, labor, and materials. (Clmt. Ex. 1).

6. On July 2, 2021, the Claimant paid the Respondent \$4,000.00, which was half of the amount due at signing, as specified in the Contract.⁶ (Clmt. Ex. 1.)

⁵ The original Contract price was \$25,000.00. The Respondent reduced the price by \$500.00 to accommodate the Claimant for the delay in completing the renovation project.

⁶ Per the Contract, the initial deposit of \$8,000.00 was due when the Contract was signed. (Clmt. Ex 1.)

7. On July 7, 2021, the Claimant paid the Respondent \$4,000.00, which was the second half of the amount due at signing, as specified in the Contract.
8. The Contract specified that the work was to begin on July 30, 2021 and conclude approximately two months later.
9. On August 2, 2021, the Claimant paid the Respondent \$10,000.00. (Clmt. Ex. 1.)
10. On multiple occasions, the Claimant visited the Property and documented the progress the Respondent made toward completing the home improvement project.
11. On or about August 5, 2021, the Respondent began demolition work at the Property by removing the carpet on the second floor. (Clmt. Ex. 2.)
12. As of August 16, 2021, the Respondent had removed the cabinets, sink and countertops in the kitchen and the sinks, vanities and a toilet from the bathrooms. The Respondent placed the debris from the demolition in the living room. (*Id.*)
13. As of August 18, 2021, the Respondent had patched the walls to prep for painting. (*Id.*)
14. As of August 23, 2021, primer had been applied to the walls, and the Respondent had removed the demolition debris from the Property. Included with the debris was a new dishwasher that should not have been removed from the property. (*Id.*)
15. As of September 16, 2021, the Respondent had painted the walls throughout the first and second floors of the Property. (*Id.*)
16. As of November 10, 2021, the Respondent had demolished the shower walls in the bathrooms. The Respondent left the demolition debris in the Property.
17. The Respondent did not return to the Property after November 10, 2021.
18. The Claimant and Mrs. Jobes repeatedly called and text messaged the Respondent to inquire about the Respondent completing the project.

19. On or about December 30, 2021, the Respondent advised Mrs. Jobses that he would return to the Property and complete the renovation by the end of January 2022.

20. Between December 30, 2021 and January 12, 2022, the Respondent did not return to the Property.

21. On January 12, 2022, Mrs. Jobses called the Respondent who advised her that he had been in the hospital dealing with a medical issue and that he needed to catch up on his projects. He instructed Mrs. Jobses to text him her name and address so he could save it in his telephone. Mrs. Jobses text messaged the Respondent requesting to be updated on the progress of the renovation. The Respondent replied by thanking Mrs. Jobses but failed to provide an update as requested. (Clmt Ex. 5.)

22. On January 31, 2022, Mrs. Jobses called the Respondent and left a voicemail message advising him that they needed to discuss the Property. The Respondent did not reply.

23. On February 21, 2022, the Claimant's attorney issued a letter to the Respondent providing the Respondent thirty days to complete the renovation. (Clmt. Ex. 3.)

24. On a date not specified in the record, the Respondent contacted the Claimant and requested the amount the Claimant sought as reimbursement for not completing the renovation.

25. On or about March 7, 2022, the Claimant emailed the Respondent and requested that the Respondent pay the Claimant \$25,290.00.⁷ The Claimant also requested that the Respondent surrender merchandise that the Respondent purchased toward completion of the home improvement project. (Clmt. Exs. 3, 4.)

⁷ The Claimant included the expenses he incurred to maintain the property between November 2021 and March 2022.

26. The Respondent advised the Claimant that he would not be able to refund the amount requested. The Claimant agreed to allow the Respondent to return to the Property to complete the Project.

27. On March 10, 2022, the Respondent text messaged the Claimant and advised that he would call him that day. The Respondent failed to contact the Claimant.

28. On March 12, 2022, the Respondent text messaged the Claimant and advised the Claimant that he would call him that day with his plan. (Clmt. Ex. 4.)

29. On March 14, 2022, the Claimant text messaged the Respondent and asked whether he would be at the Property that night. The Respondent responded "not yet sir," and the Claimant stated "Okay I'll hear from you tomorrow then." (*Id.*)

30. On March 19, 2022, Mrs. Jobes text messaged the Respondent and asked how everything was going. The Respondent did not respond to the message. (Clmt. Ex. 5.)

31. On April 17, 2022, the Claimant obtained an evaluation of the work performed by the Respondent at the Property from L&L Contracting, Inc. The estimated value of the work performed toward completion of the Contract is \$7,450.00. (Clmt. Ex. 7.)

32. On June 1, 2022, Mrs. Jobes sent the Respondent a text message accusing him of fraud. The Respondent replied and advised that he did not intend to defraud the Claimant but that his business partner left and took most of the workforce. The Respondent stated that he would complete the renovation and apologized that it took so long. (Clmt. Ex. 5.)

33. On June 7, 2022, the Claimant entered into a contract with L&L Contracting, LLC to remediate and complete the renovation of the Property to the same specifications contained in

the original Contract between the Claimant and the Respondent. The total contract price for the work performed within the scope of the original Contract was \$29,530.00.⁸ (Clmt. Ex. 8.)

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. § 8-407(e)(1); Md. Code Ann., 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.” Md. Code Ann., 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.” Md. Code Ann., Bus. Reg. § 8-401.

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. Md. Code Ann., Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022). The Claimant does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2022). 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. 2022). 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

⁸ Mr. Likourgos recommended that a wall in the kitchen be painted a different color to create an accent wall. The itemized expense to paint the accent wall was \$300.00. This was beyond the scope of the original Contract.

Respondent. *Id.* § 8-405(f)(1) (Supp. 2022). Further, the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022).

Analysis

The Claimant testified in detail and provided credible evidence which documented the unworkmanlike, inadequate, and incomplete work performed by the Respondent as well as the work necessary to remediate and complete the renovation of the Property. The Claimant credibly testified that the Respondent did very little work toward completing the renovation. The Claimant emphasized that he relied on the Respondent, as an expert in his field, to advise him of what needed to be done to complete the renovation and prepare the Property for resale.

The Claimant explained that while the Respondent agreed to complete the renovation within two months of the start date, over six months passed, and the Respondent had not completed the renovation project. Further, the Respondent had not performed any work toward completing the home improvement project since on or about November 10, 2021. During his testimony, the Claimant outlined the steps that both he and his wife took to try to get the Respondent to complete the project. The Claimant credibly testified that he and his wife made repeated attempts to contact the Respondent by calling and texting. The Respondent had a consistent pattern of either not responding or failing to appear, without a credible explanation, after he repeatedly assured the Claimant that he would return to work at the Property.

Mr. Likourgos credibly testified that although the Respondent completed the painting of the Property, based on the Respondent's poor workmanship, Mr. Likourgos had to repaint two walls in each bathroom after he installed the shower tile; sand and repaint several doors in the Property because they would not close; and repaint a wall in the kitchen that had been damaged when the Respondent removed the countertop.

The Respondent failed to appear for the February 7, 2023 hearing and did not present any witnesses or testimony to rebut the Claimant's case. Thus, the Claimant's evidence is undisputed. Accordingly, after considering the testimony, and after reviewing all exhibits, I find that the Respondent performed an unworkmanlike, inadequate, and incomplete home improvement.

The Claimant established, by a preponderance of the evidence, the Contract price, the amount paid to the Respondent, and that the Respondent performed a home improvement that was inadequate, unworkmanlike, and incomplete. The Claimant established that the Respondent abandoned the home improvement project which caused the Claimant to suffer an actual loss. The Claimant provided evidence of the amount necessary to remediate and complete the home improvement project.

The Fund agreed that the Respondent performed work on the home renovation in an inadequate, unworkmanlike, and incomplete manner. The Fund argued that the Claimant's credible evidence shows that he sustained a loss from the Respondent's acts or omissions, and it therefore recommended an award to the Claimant from the Fund. Based on all of the above, I 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. Md. Code Ann., 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," unless a unique measure is necessary. COMAR 09.08.03.03B(3).

The controlling regulation provides, as follows:

(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 remediate and complete the unworkmanlike, inadequate, and incomplete work done by the Respondent. The Fund argued, and I agree, that the third regulatory formula as outlined in COMAR is appropriate in this case. Therefore, I shall apply COMAR 09.08.03.03B(3)(c) to measure the Claimant's actual loss, using the following calculations:

	\$29,530.00	Amount the Claimant paid L&L Contracting, LLC to remediate and complete the home renovation
	<u>+ \$18,000.00</u>	Amount the Claimant paid the Respondent
Total	\$47,530.00	
	<u>-\$24,500.00</u>	Less the Original Contract Amount
Equals	\$23,030.00	Actual Loss

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.⁹ Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$23,030.00 exceeds the amount the Claimant paid the Respondent. Therefore, the Claimant's recovery is limited to \$18,000.00, which is the amount paid by the Claimant to the Respondent.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$23,030.00 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). I further conclude that the Claimant is entitled to recover \$18,000.00 from the Fund. Bus. Reg. § 8-405(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 \$18,000.00; 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;¹⁰ and

⁹ 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").

¹⁰ *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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

May 8, 2023
Date Decision Issued

PMD/cj
#204947

Patricia M. DeMaio

Patricia M. DeMaio
Administrative Law Judge

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***