

IN THE MATTER OF THE CLAIM	* BEFORE JENNIFER L. GRESOCK,
OF NAYANA BARODIA,	* 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 CHRISTOPHER	*
STECK,	* OAH No.: LABOR-HIC-02-23-25522
T/A CHRISTOPHER WALTER	* MHIC No.: 22 (75) 1328
STECK,	*
RESPONDENT	*

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On September 6, 2022, Nayana Barodia (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$10,327.38 for actual losses allegedly suffered as a result of a home improvement contract with Christopher Steck, trading as Christopher Walter Steck (Respondent). Md. Code Ann., Bus.

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).

Reg. §§ 8-401 to -411 (2015 & Supp. 2023).² On September 28, 2023, the MHIC issued a Hearing Order on the Claim. On September 29, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On November 14, 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. Jessica Kaufman, Assistant Attorney General, Department, represented the Fund. The Claimant and the Respondent were both self-represented.

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); Code of Maryland Regulations (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:

- Cl. Ex. 1 Contracts, Cornerstone Flooring and Remodeling Inc.,³ dated February 10, 2022, and February 12, 2022⁴
- Cl. Ex. 2 Photographs, lettered A through L,⁵ undated

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

³ Contracts I and II (Cl. Exs. 1 and 3) include this trade name, as does the Home Improvement Claim Form submitted by the Claimant (GF Ex. 2). However, MHIC records do not; the Respondent's trade name is listed as Christopher Walter Steck (GF Ex. 3).

⁴ These are the dates the contracts were signed; they were prepared February 6 and 11, 2022, respectively.

⁵ The Claimant's photographs were grouped two-to-three to each page, with several duplicates. Photographs not marked with a letter either were not offered or were duplicative. Notations on the photographs were made by me, as the photographs were unlabeled when submitted.

- Cl. Ex. 3 Documentation of Payment to Cornerstone Flooring and Remodeling Inc., (receipts and checks), various dates
- Cl. Ex. 4 Remodeling expenses spreadsheet, printed May 23, 2022; "Independent Contractor Agreement" with Morales Construction, LLC, dated April 20, 2022; Documentation of Payment to Morales Construction, LLC, various dates; receipts for materials purchased, various dates

The Respondent did not offer any exhibits for admission into evidence.

I admitted the following exhibits offered by the Fund:

- GF Ex. 1 Notice of Hearing, dated October 12, 2023
- GF Ex. 2 MHIC Transmittal to OAH, with appeal receipt date of September 28, 2023, and with attached Hearing Order, dated September 28, 2023, and Home Improvement Claim Form, dated August 24, 2022
- GF Ex. 3 MHIC Identification/Registration Inquiry and License History for the Respondent, printed October 26, 2023
- GF. Ex. 4 Letter to the Respondent from the MHIC, dated September 20, 2022, with attached Home Improvement Claim Form, dated August 24, 2022

Testimony

The Claimant and the Respondent each testified; neither presented other witnesses.

The Fund did not present any witnesses.

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.
2. On February 10, 2022, the Claimant and the Respondent entered into a contract to remodel her kitchen (Contract I). The Contract included: careful removal of kitchen cabinets to allow for reuse; removal of the pantry and dividing wall; installation of new base cabinets; installation of 42-inch wall cabinets with custom hood vent; installation of custom island; installation of quartz countertops; construction of a custom pantry; installation of 12 recessed

lights and a pendant light; installation of a custom tile backsplash; installation of new kitchen flooring; installation of new appliances, including a gas stove, electric oven microwave, and dishwasher; patching of the ceiling and walls. All labor and materials were included.

3. The original agreed-upon contract price for Contract I was \$29,375.00.

4. On February 12, 2023, the Claimant and Respondent entered into a second contract (Contract II). Contract II involved work in the basement temple room and garage. Specifically, it included (a) framing two walls and a 36-inch doorway in the temple room, and installing a pre-hung door, followed by drywall installation, spackling, and painting, and (b) in the garage, applying two coats of spackle, then sanding and painting, then cleaning the floor and applying epoxy.

5. The original agreed-upon Contract II price was \$3,200.00.

6. The Claimant informed the Respondent that the work needed to be completed by April 26, 2022, because her elderly mother-in-law was scheduled for surgery on that date.

7. The Respondent began work at the end of February 2022.

8. The Claimant paid the Respondent a total of \$26,501.00.

9. During the Respondent's performance of the work, the Claimant frequently changed her mind about the layout of the kitchen. This delayed the electrical work, as the location of the lighting to be installed changed each time.

10. The Respondent performed additional work at the Claimant's request, including installation of laundry room flooring, repair of the back steps, installation of a custom fireplace, and flooring and painting throughout the first floor, rather than just in the kitchen.

11. The Respondent and his workers worked on the project steadily and reliably until sometime in mid-April 2022. Around that time, the Respondent was ill for three days and unable to work. He was also concerned about exposing the Claimant's family to his illness.

12. At this time in mid-April 2022, performance of Contracts I and II was not complete. Incomplete work in the kitchen included recessed lighting and a pendant light that had not been installed; areas of the walls and ceiling that were not patched; kitchen appliances that were not installed (microwave and dishwasher); missing cabinet shelving; and a hood vent that was not yet wired for use. In the basement temple room, the walls were framed but the pre-hung door was not installed and painting and electrical work was not completed. Additionally, the garage was not painted and the epoxy was not applied.

13. None of the changes to Contract I and II, nor the additional work upon which the parties agreed, was memorialized in writing, either through change orders or separate contracts.

14. On April 20, 2022, the Respondent texted the Claimant that he would like to finish the work and was able to do so. The Claimant rejected the offer.

15. On April 20, 2022, Morales Construction, LLC (Morales), an unlicensed contractor hired by the Claimant, began work on the items left unfinished by the Respondent.

16. The Respondent paid to have the Claimant's home cleaned after work was completed.

DISCUSSION

Legal Framework

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*

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 not proven eligibility for compensation.

Positions of the Parties

The Claimant contended that she and the Respondent agreed on the scope of work and the price, but most importantly on the critical nature of the April 26, 2022 deadline, as her mother-in-law was to have surgery on that date. The Claimant explained that she was particularly concerned about the need to have good lighting in the home during her mother-in-law’s recovery. When the work was not finished a week prior to the deadline and the Respondent had stopped coming, the Claimant reached out to another contractor, Morales, whose employees worked sixteen-hour days to complete the work by April 26, 2022.

The Claimant also complained that the flooring the Respondent installed throughout the first floor was poorly done and chipping, the electric oven he installed was a heavy commercial oven and not what she wanted, and that he used cabinets for the pantry instead of installing the custom pantry specified in Contract I.

The Respondent maintained that he and the Claimant had a great relationship and trusted one another. For that reason, he tried to make the changes she requested as the work proceeded. He did not dispute that some of the work was incomplete in mid-April 2022. However, he argued that the Claimant had initially changed the layout for the kitchen several times, delaying work overall and especially the completion of electrical work and subsequent patching. He disagreed that the backsplash was missing grout. He also contended that he used cabinets for the pantry instead of building a custom pantry because that was what the Claimant asked him to do.

The Respondent further testified that in an effort to work with the Claimant, he did numerous additional jobs – not included in either of the Contracts – at her request, including installing additional flooring, installing blinds, repairing steps, and extra painting, and that he trusted he would be compensated for this work. The Respondent explained that he did not abandon the job and he noted that he paid to have the Claimant's home cleaned after the completion of work.

Analysis

Based on the evidence before me, I find that the Claimant has not shown that she is eligible for an award from the Fund. An essential element of the Claimant's case is to prove that she suffered an actual loss due to the Respondent's misconduct. Such misconduct can manifest in either the quality or sufficiency of work completed, or relate to a failure to complete the work. Regardless, implicit in "misconduct" is a wrongful or improper act or omission by a contractor. Here, the Claimant has not shown that any misconduct occurred. I first address allegations related to incomplete work; I then consider work the Claimant alleges was unworkmanlike or inadequate.

The Incomplete Work is Not Attributable to Any Act or Omission by the Respondent

The Claimant testified that the following work was not completed in the kitchen: kitchen cabinets were installed but missing shelving; wiring for the hood vent was not done; the ceiling remained open where electrical work had not been completed; recessed lighting and the pendant light were not installed; grout had not been applied to the backsplash; the microwave and dishwasher were not purchased or installed; and the walls and ceiling were not entirely patched. In the basement temple room, the walls were framed but the pre-hung door was not installed and painting and electrical work was not completed. Additionally, the garage was unfinished because the painting was not done and the epoxy was not applied. The Claimant characterized the unfinished work as over half of the job contemplated by Contracts I and II.

There is no dispute that performance of both Contract I and II was incomplete in mid-April 2022, and that the Respondent did no further work after this time. It is therefore true that the Respondent did not complete the work specified in these contracts. However, I conclude that the Claimant did not give the Respondent an opportunity to complete the work. The Claimant testified that she became stressed when the job was not yet completed and felt compelled to look for a new contractor “overnight.” That the Claimant might feel some concern is certainly understandable, as her deadline was approaching. Nonetheless, that the Claimant opted to hire a new contractor does not establish that an act or omission by the Respondent resulted in any loss, and I conclude that the Claimant’s assertion to the contrary is not supported by the evidence. Rather, I find that the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim and that her claim should be denied on this basis. *Id.* § 8-405(d) (Supp. 2023).

The Claimant expressed frustration that the work was not completed by the agreed-upon date; however, she acknowledged that the Respondent completed numerous additional tasks at her request that were not specified in Contract I or II, even though work in these contracts that the Claimant considered critical remained unfinished. Further, when the Claimant hired a new contractor, nearly a week remained before the deadline and she had received communication from the Respondent around that time indicating that he was prepared to complete the job. In her testimony, the Claimant expressed skepticism about the Respondent’s reliability, stating that the Respondent had been unresponsive for several days before he told her that he would work on April 19, 2022 – and then he failed to work on that date. For these reasons, she claimed that she did not trust that he would show up and complete the work.

Neither party provided copies of the texts they exchanged, and the Claimant expressed some uncertainty about her recollection. For example, the Claimant said that the last day the Respondent (rather than one of his workers) was on the job was April 10, 2022 – but she

characterized this as a rough estimate. She also initially testified that the first text she received from the Respondent after his absence and offering to work was on April 20, 2022, but she then mentioned a text referring to April 19, 2022, which she must have received prior to April 20, 2022.

- What most likely occurred, based on the evidence, is that the Claimant was highly stressed about the unfinished work and that the Respondent's absence had shaken her confidence that he was willing and able to complete the work. This led her to reject his good faith effort to resolve the situation by completing the job, and I find that her rejection was unreasonable. I find that his effort was made in good faith based on his credible testimony that he was able and willing to complete the job, and on his uncontradicted testimony that he and the Claimant had a good and trusting relationship that included his willingness to do numerous additional tasks at her request and to respond flexibly to her frequent changes as he completed the agreed-upon work. My conclusion that her rejection was unreasonable is based on evidence that prior to mid-April 2022, the Respondent was reliably performing the contracted work, as well as additional as-requested work;⁶ that the Respondent credibly testified he was absent from the job for only a few days, due to illness⁷ (and the Claimant's admission that she was unsure of the length of his absence); and the likelihood that her high level of anxiety, rather than a fair and reasoned assessment of the situation, was the primary reason for the alacrity with which she hired a new contractor.

Work Performed by the Respondent was Neither Unworkmanlike Nor Inadequate

I also find that the Respondent did not perform unworkmanlike or inadequate home improvements. The Claimant alleged that the flooring the Respondent installed on the first floor

⁶ Both parties testified that this was the case.

⁷ Unlike the Claimant, the Respondent was able to recall the timeframe with specificity, and for that reason, I find his testimony more credible.

of the home was "chipping," leaving holes.⁸ Her testimony was not clear about the specifics of this claim. She did not explain where it was occurring or how extensively. The photographs she submitted do not appear to show any problems with the flooring. Contract I specifies that "Luxury Vinyl" was to be installed in the kitchen; the parties agreed that the Respondent in fact installed it throughout the first floor at the Claimant's request. The contract with Morales does not include any repair or replacement of defective or chipping flooring. Accordingly, there is insufficient basis on this record to support a conclusion that the vinyl flooring installed in the kitchen, pursuant to Contract I, was poorly or improperly installed.

The Claimant also complained that the pantry the Respondent constructed was not to her liking. She testified that instead of the custom-built pantry specified in Contract I, the Respondent installed a pantry made of cabinetry. The Respondent did not dispute her assertion; rather, he explained that as work progressed, the Claimant decided that she would prefer a pantry made of cabinetry, and he installed the pantry according to her verbally expressed wish. He further testified that building a custom pantry would have been much easier than constructing one of cabinetry. The Claimant is correct that Contract I specifies that the pantry was to be custom-built. However, I find the Respondent more credible on this point, based on his reasonable and uncontradicted explanation, and therefore conclude that the Respondent's performance of the work by installing a cabinet pantry was not inadequate.

Finally, the Claimant testified that the Respondent installed a heavy commercial oven that she did not want, and that when Morales replaced the oven, the oven purchased by the Respondent sat in the entranceway to her home until she hired someone to remove it. Contract I does not provide any specifications for any of the listed appliances, including the electric oven,

⁸ At one point in her testimony, the Claimant stated that she was "not making a claim" related to the flooring. I nonetheless address it here for completeness, as the kitchen flooring is included in Contract I and the Claimant herself raised the issue.

either in terms of the oven features or a price range. The Claimant ultimately selected an oven/microwave combination for which she paid \$3,599.00 and which Morales installed. A combination oven/microwave is different from the appliances listed in Contract I. The Respondent was not required to provide the electric oven/microwave combination that the Claimant ultimately selected, and that he did not do so does not constitute inadequate home improvement.

I thus find that the Claimant is not eligible for compensation from the Fund and recommend denial of the claim.⁹

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss of as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023).

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

February 5, 2024
Date Decision Issued

Jennifer L. Gresock

Jennifer L. Gresock
Administrative Law Judge

JLG/at
#209811

⁹ I note that the Fund's position was that I should consider whether the Claimant unreasonably rejected a good faith effort by the Respondent to resolve the matter, with the credibility of the parties key to my determination. The Fund provided its recommendation regarding the calculation of any award, were I to find that the Claimant met her burden to show actual loss.

PROPOSED ORDER

WHEREFORE, this 16th day of April, 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**