

IN THE MATTER OF THE CLAIM	*	BEFORE MARY PEZZULLA,
OF HOWARD CLARKE,	*	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 WILLIAM	*	
BROADDUS, III,	*	OAH No.: LABOR-HIC-02-23-25568
T/A BROADDUS & BROADDUS	*	MHIC No.: 22 (75) 1397
CONTRACTING GROUP,	*	
RESPONDENT	*	
* * * * *		

PROPOSED DECISION

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

On April 12, 2023, Howard Clarke (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$65,183.73 for actual losses allegedly suffered as a result of a home improvement contract with William Broaddus, III, trading as Broaddus & Broaddus Contracting Group (Respondent).

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

Md. Code Ann., Bus. 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 December 1, 2023 and February 12, 2024,³ I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. Karla Moses, Esquire, represented the Respondent, who was present.

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:

- Clmt. Ex. 1 - Promissory Note, June 19, 2019; Check from the Respondent to Solrac Real Estate & Marketing (Solrac), July 31, 2019
- Clmt. Ex. 2 - List of additional costs, prepared by the Claimant, undated
- Clmt. Ex. 3 - Best Buy Waterproofing, LLC, Basement Field Report, November 11, 2020

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

³ The hearing began on December 1, 2023, but did not conclude on that date. A new hearing date was set for January 8, 2024; however, I was unexpectedly out on FMLA leave in January and the second day of hearing was rescheduled to an agreed upon date of February 12, 2024.

- Clmt. Ex. 4 - Claimant's Home Depot Account Statements for November 2020, August 2021, and July 2021⁴
- Clmt. Ex. 5 - [Not admitted]⁵
- Clmt. Ex. 6 - Claimant's Capital One Spark Business Account Statement for June 18, 2021-July 18, 2021⁶
- Clmt. Ex. 7 - Claimant's Capital One Spark Business Account Statement for July 19, 2021-August 18, 2021⁷
- Clmt. Ex. 8 - Department of Housing and Community Development Division of Construction and Building Inspection Permit No. COM2018-71054
- Clmt. Ex. 9 - Payment Schedule, prepared by the Respondent, undated
- Clmt. Ex. 10 - 68 photographs⁸ of 2938 Independence Street, Baltimore, Maryland 21218 (Independence Street Property)

I admitted the following exhibits offered by the Respondent:

- Resp. Ex. 1 - List of properties owned by Solrac, undated
- Resp. Ex. 2 - Real Property Data Search for Samaca United, Inc., undated
- Resp. Ex. 3 - Printout of Facebook page for Solrac, undated
- Resp. Ex. 4 - Printout of Solrac's website, undated
- Resp. Ex. 5 - Printouts of various Google Image searches, undated
- Resp. Ex. 6 - Contract between the Claimant and the Respondent, April 10, 2019; Credit Memo from the Respondent to the Claimant, July 10, 2019
- Resp. Ex. 7 - [Not admitted]⁹
- Resp. Ex. 8 - Email from the Baltimore City Department of Housing and Community Development, May 18, 2020
- Resp. Ex. 9 - Certificate of Occupancy, May 18, 2020

⁴ Each statement contains only the first and third page of the monthly statement.

⁵ The exhibit was not admitted as it was not relevant to the subject matter of the hearing. The document will be retained with the file.

⁶ Only pages one and two were provided.

⁷ Only pages two and three were provided.

⁸ The Claimant provided the photographs in digital format on a USB drive. The USB drive contains additional files. Only the photographs were offered and admitted into evidence.

⁹ The exhibit was not admitted as it was not relevant to the subject matter of the hearing. The document will be retained with the file.

Resp. Ex. 10 - Baltimore City Department of Housing and Community Development permit history for 2938 Independence St., undated

Resp. Ex. 11 - [Marked but not offered]

Resp. Ex. 12 - 2 videos of work done at Independence Street Property

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, October 30, 2023; Hearing Order, September 28, 2023

Fund Ex. 2 - The Respondent's licensing history with the MHIC

Fund Ex. 3 - Letter from the MHIC to the Respondent, April 27, 2023; Home Improvement Claim Form, date received April 12, 2023

Testimony

The Claimant testified and presented the testimony of Anghel Ashmeade and Sandra Campbell.

The Respondent testified and did not present other witnesses.

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 01-76795.
2. The Claimant is the sole owner of Solrac. Solrac is the title holder of the Independence Street Property.
3. On April 10, 2019, the Claimant and the Respondent entered into a contract to renovate the Independence Street Property (Contract).
4. The original agreed-upon Contract price was \$136,000.00.
5. On June 19, 2019, the Respondent signed a promissory note in which Solrac loaned the Respondent \$34,122.46, which was due in full on July 31, 2019.

6. The Respondent wrote Solrac a check for \$34,122.46, dated July 31, 2019. The Claimant did not cash the check.
7. On July 10, 2019, the Respondent gave the Claimant a \$1,000.00 contract adjustment, making the total Contract price \$135,000.00.
8. At the time of the Contract, Solrac held title to two other properties in Maryland.
9. The Contract stated that the work pursuant to the Contract would be completed approximately ninety days from the date of signing.
10. Work was not completed on the project until May 2020.
11. The Respondent received the occupancy permit for the Independence Street Property from Baltimore City on May 18, 2020.
12. The Respondent performed some agreed upon work that was outside the scope of the Contract for no additional charge, including removing additional trees and a fence from the yard.
13. Because the Contract took longer than ninety days to complete, the Claimant incurred additional water, gas and electric, and security bills for the Independence Street Property, which he had intended to quickly sell or "flip." The Claimant also had to continue to make mortgage and insurance payments on the property.
14. In approximately June 2020, the basement of the Independence Street Property flooded.
15. Although the Contract included a provision regarding work to be completed on the basement, it did not include waterproofing the basement.
16. The Claimant paid the Respondent approximately \$100,000.00 on the Contract.
17. From approximately the summer of 2020 to the fall of 2021, the Claimant had Anghel Ashmeade, a contractor not licensed by the MHIC, come to the Independence Street

Property to perform work and repairs, including fixing siding that was coming off and sealing portions of the roof that were lifting.

18. The Claimant also performed some work on the Independence Street Property with the assistance of unlicensed day laborers.

DISCUSSION

The Burden of Proof and the Legal Standard

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.

Statutory Pre-Requisites

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 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 argued that the claimant in this matter should actually be Solrac, since the Contract is with Solrac, and that Solrac and Mr. Clarke together own more than three properties, which prohibits a claim. *Id.* § 8-405(f)(2) (Supp. 2023). The Respondent further argued that as Solrac and Mr. Clarke are essentially the same entity, since Mr. Clarke is the sole owner of Solrac, all properties held by Mr. Clarke and by Solrac should be counted together. The Respondent offered no caselaw to support this position.

The statute defines an “owner” to include “a homeowner, tenant, or other person who buys, contracts for, orders, or is entitled to a home improvement.” *Id.* § 8-101(k) (Supp. 2023). It likewise notes that an “an owner may recover compensation from the Fund...” *Id.* § 8-405(a) (Supp. 2023). Mr. Clarke, as the sole owner of Solrac, entered into a contract with the Respondent. Mr. Clarke clearly falls into the category of an “other person who...contracts for...or is entitled to a home improvement” and is therefore properly the Claimant in this matter. *Id.* § 8-101(k) (Supp. 2023). The evidence before me also does not support the assertion that Solrac, during the time of the Contract, owned more than three properties, or that Solrac and Mr. Clarke together owned more than three properties. The Respondent offered a chart he prepared to show that at the time of the Contract, Solrac owned three properties. He maintained that Mr. Clarke owned another property on Gorsuch Avenue, but the Claimant testified he sold that property to a company, Samaca United, Inc. (Samaca), and that Samaca is held by Ms. Campbell, with whom he lives. Although the Respondent tried to paint the Claimant as engaging in deceitful business practices, or perhaps creating shell corporations to mask assets,

none of that, even if true, is relevant to this matter. I find that neither Solrac nor the Claimant owned more than three dwellings and therefore is not barred from recovering from the Fund. *Id.* § 8-405(f)(2) (Supp. 2023).

The Positions of the Parties

The Claimant argued that the Respondent performed unworkmanlike, inadequate, and incomplete home improvements at the Independence Street Property. He testified that the Respondent did not begin or complete the work on time, which cost the Claimant money because he had to continue to pay the mortgage, insurance, property taxes, gas, electric, and water bill when he had hoped to have quickly sold the property. He further testified that he and the Respondent orally agreed to modify the Contract to include finishing and waterproofing the basement and laying sod in the backyard, neither of which was done. The Claimant averred that the Respondent's work was unworkmanlike, as the roof leaked, causing water damage on the ceiling in multiple rooms.

The Respondent argued that he completed the terms of the Contract, and he obtained the use and occupancy permit for the property. He argued that the Contract did not include finishing or waterproofing the basement, nor did it include any landscaping, other than removing a tree. The Respondent further contended that although there had been a leak at the property, the leak was due to a storm that blew the cap off an exhaust fan, not an unworkmanlike installation of the roof, and that he repaired that damage.

Analysis

The Claimant has failed to establish that the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement.

The Claimant testified that he had an oral contract with the Respondent to finish and waterproof the basement at the Independence Street Property, as well as to do landscaping in the yard. He testified that the Respondent did not finish the basement and that the Claimant had to purchase additional supplies to waterproof and finish the basement, and to lay the sod for the back yard. He presented credit card statements showing that he purchased sod and other "building materials" that he used to do this work.

Ms. Campbell also testified for the Claimant. She explained that after the Contract was signed in April 2019, she and the Claimant discussed that finishing the basement was not included in the Contract. Ms. Campbell recounted that the Claimant wanted the basement finished so she advised him to speak to the Respondent to make sure that this work was going to be included. While she stated that he did speak to the Respondent about the issue, she offered no testimony to show that she was present during any subsequent conversations between the two regarding the scope of work.

Through her testimony, Ms. Campbell presented photographs she had taken at the Independence Street Property. Some of the photographs were taken prior to the Contract, some during, and some after. Many of the photographs showed areas of drywall that had been installed, but not finished, water damage on the ceiling, and water in the basement. One of the photographs showed damage to an exterior door, but on cross examination, Ms. Campbell testified that at some point there had been a break in at the property during which the door was kicked in and a window broken. She was not sure if the damage to the door came from the break in.

Although Ms. Campbell's testimony that she and the Claimant discussed including the basement in the Contract was credible, she was not a party to the Contract, nor did she have personal knowledge of any conversations between the Claimant and the Respondent regarding

the basement, or even whether such conversations occurred. Therefore, she was unable to confirm that additional basement work was added to the Contract.

The Claimant presented the testimony of Mr. Ashmeade to corroborate that Mr. Ashmeade inspected the roof and saw “potential leak areas” that he repaired for the Claimant, including areas where the shingles were lifting. Mr. Ashmeade also noticed that the siding was coming off in places and he repaired that as well.

The Respondent, however, testified that the water damage that the Claimant alleged occurred due to the roof being improperly installed, was actually damage from a storm that blew a cap off an exhaust fan. The Respondent stated that he repaired the damage from the storm, and also repaired the areas in the house where water entered because of the damage. In one of the photographs that Ms. Campbell used to show that the Claimant had to have additional workers come to repair the roof, the Respondent pointed out that the truck in the picture is actually one of his trucks and the workers on the roof were his workers.

The Respondent also testified that he did not have an oral contract with the Claimant to finish the basement or to do landscaping work. He explained that the removal of only one tree was included in the Contract. However, when he was removing this tree, it hit and damaged the fence, so he ended up removing additional trees and the fence as compensation. According to the Respondent, there was never a conversation about laying sod. He also stated that the photographs of water in the basement that the Claimant submitted were from when a pipe burst because there was no heat at the property. Finally, the Respondent asserted that he had pumped out the water and at the time he completed work at the property, there was no water in the basement.

The Respondent concluded his testimony by showing two short videos of the scope of the work completed. He testified that he took videos at each stage in order to provide proof to the

lender to make draws for completion of the work. He also explained that he was able to obtain the use and occupancy permit in May when the work was completed, meaning the work had been inspected and approved by the city.

In reviewing the Contract (Resp. Ex. 6), I note that the first page contains the heading, "Basement," under which is the following list:

- a. Remove water heater
- b. Furnace
- c. Gas and water pipes
- d. Electrical wiring
- e. Repair left side of house foundation wall and reframe mechanical room
- f. Build 36" wood step [from] basement to First Floor
- g. Remove all trash and debris from basement

The third page of the Contract also lists a heading of "Basement" and has the following three bullet points:

- Unfinish basement
- Paint
- Doors

The Contract is poorly written and unclear. It notes "doors" although the Respondent testified the basement only had one door. It states "furnace" but does not explain if the Respondent was removing or installing a furnace, or both. The Claimant argued that "Unfinish basement" should have read "Finish basement" while the Respondent argued that it meant the basement was to be left unfinished. The Claimant did not explain why the Contract would say "Finish Basement" when he testified that the amendment to include finishing the basement was oral and not in writing. Regardless, the parties clearly did not have a meeting of the minds regarding what work was to be completed. There is simply insufficient evidence for me to find by a preponderance of the evidence that the parties had agreed that the scope of the Contract included finishing the basement, or what that would have entailed.

The Claimant also contended that the Respondent was supposed to provide a new architectural drawing, but never did.

The Respondent explained that he had an engineer complete a structural report and modify the existing drawing, although he agreed that a copy had not been provided to the Claimant. I note that the Contract only states "Modify drawing to meet new design requirement." (Resp. Ex. 6).

The Claimant's and the Respondent's testimony are at odds with each other on all issues. I found neither more persuasive than the other. The Contract terms are vague and poorly defined, with the result that each party clearly had different ideas about what the Contract included and meant. It is possible that the parties had additional conversations about what work was going to be done in the basement and the yard, but I have no clear understanding of what those conversations may have entailed. As such, I find the evidence to be in equipoise. The Claimant argued that the parties agreed to oral changes to the Contract; the Respondent disagreed. As the Claimant bears the burden of proof by a preponderance of the evidence, I find that he has failed to meet that burden. Additionally, while Mr. Ashmeade testified that he had to make repairs to parts of the roof and to the siding, I cannot find by a preponderance of the evidence that any such repairs were due to an unworkmanlike home improvement. Therefore, I find the Claimant is not eligible for compensation.

The Claimant has failed to establish that he suffered an actual loss.

Had I found the Claimant eligible for compensation, I would then determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant would be 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); COMAR 09.08.03.03B(1). The Claimant's allegations of lost income because he had to continue to pay the mortgage and additional bills on the Independence Street Property are

considered consequential damages¹⁰ and so are not compensable by the Fund. There is no guarantee that the Claimant would have been able to quickly sell the property and would not still have had to have paid those bills. Not only are these alleged costs consequential, they are speculative at best, and do not demonstrate an actual loss.

In addition, it is unclear exactly how much the Claimant paid the Respondent under the Contract. He testified on cross examination by the Fund that he paid the Respondent at approximately \$100,000.00, but he provided no proof of payment by way of cancelled checks or receipts. The Respondent likewise did not provide an amount that he was paid by the Claimant, although he did state that the Claimant did not pay him in full. Additionally, although the Claimant provided a breakdown of the amount he should be compensated by the Fund (Clmt. Ex. 2), not only did this include the mortgage and bills for the Independence Street Property, it included items such as “chair cover,” “security camera,” and “HomeDepot Bldg Mat.” Without further information, I have no way to know what these items were for or if they were within the scope of the work of the Contract. Accordingly, even had I found the Claimant was eligible for compensation, I do not have sufficient evidence before me to have been able to calculate an award.¹¹

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss 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)(a)-(c).

¹⁰ Though neither the statute nor the regulation defines the term consequential, it commonly refers to something “indirect.” (*Merriam-Webster’s Collegiate Dictionary* 365 (Eleventh Ed. 2003)). This is in line with the Black’s Law Dictionary definition which provides that consequential damages are “[l]osses that do not flow directly and immediately from an injurious act but that result indirectly from the act. (*Black’s Law Dictionary* 489 (11th. Ed. 2019)). The lost income is not a direct result from any poor work on the part of the Respondent and thereby constitute consequential damages.

¹¹ See COMAR 09.08.03.03B(3)(a)-(c) regarding the formulas to be used to calculate an award from the Fund.


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.

April 2, 2024
Date Decision Issued



Mary Pezzulla
Administrative Law Judge

MP/kh
#210024

PROPOSED ORDER

WHEREFORE, this 11th day of June, 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**