

**IN THE MATTER OF THE CLAIM
OF KEYSHEIA GREEN,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF BRYAN JONES,
T/A BOJ & SON'S CONSTRUCTION,
LLC,
RESPONDENT**

*** BEFORE ALECIA FRISBY TROUT,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-22-29114
* MHIC No.: 22 (75) 1446**

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PROPOSED DECISION

**STATEMENT OF THE CASE
ISSUES
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DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER**

STATEMENT OF THE CASE

On September 9, 2022, Keysheia Green, (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$16,500.00 for actual losses allegedly suffered as a result of a home improvement contract with Bryan Green, trading as BOJ & Son's Construction, LLC (Respondent). Md. Code Ann.,

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

Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).² On November 21, 2022, the MHIC issued a Hearing Order on the Claim. On November 28, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 15, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(a). Catherine Villareale, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent failed to appear at 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 14, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by 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 15, 2023, at 9:30 a.m., at the OAH in Hunt Valley, 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."

The United States Postal Service did not return the Notice to the OAH. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing and did not contact the OAH to explain his failure to appear. COMAR 28.02.01.16. I determined that the Respondent failed to appear after he received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05C; COMAR 28.02.01.23A.

² Unless otherwise noted, all references 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 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 – Text messages, undated³
- Clmt. Ex. 2 – Proposal, AGI Contracting, LLC, undated
- Clmt. Ex. 3 – Contract, BOJ & Sons Construction, LLC, November 14, 2018
- Clmt. Ex. 4 – Text messages, variety of dates between 2021 and 2022
- Clmt. Ex. 5 – Photographs of basement, undated

I admitted the following exhibits offered by the Fund:

- GF Ex. 1 – Letter from the MHIC to the Respondent, September 27, 2022; Claim, September 9, 2022
- GF Ex. 2 – Hearing Order, November 21, 2022
- GF Ex. 3 – Notice of Hearing, December 14, 2022
- GF Ex. 4 – Licensing History, printed January 23, 2023
- GF Ex. 5 – Affidavit of Charles Corbin, January 31, 2023

The Respondent was not present and did not offer exhibits.

³ The document is dated with the month and day, but not the year.

Testimony

The Claimant testified.

The Fund did not offer any witness testimony.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. In 2018, the Claimant met with the Respondent to discuss remodeling work at the Claimant's home. At that time, the Claimant planned on doing the project in pieces, but upon learning that the Respondent would not take a job under \$15,000.00, decided to hold off and save money in order to do the project all at once.

2. In 2018, the Respondent provided the Claimant with the following quote for remodeling her basement:

TV/Movie Room: \$6,500.00

\$250.00 Demo everything

\$1500.00 Design/frame & build a custom tv built in wall panel system

\$250.00 Install all new electrical

\$1,500.00 Install a new slotted/panel ceiling with recessed lighting

\$1,000.00 Demo/install the existing flooring. "Pergo-XP" laminate flooring, baseboard and trim in the entire tv/movie room area

\$250.00 Install a new (2) panel room door/frame and hardware

\$250.00 Install new baseboard, window and quarter round trim

\$500.00 Finish/prime and paint the entire area with "Behr" ceiling/flat, walls-doors-trim/semi-gloss paint. Accent colors designated by the Client.

\$1,000.00 Install new flooring ie: rubber back carpet square flooring, Pergo XP plan flooring, etc. for the bathroom

Weight Room: \$3,000.00

\$1,000.00 Finish/prime and paint the entire area with "Behr" ceiling/flat, walls-doors-trim/semi-gloss paint. Accent colors designated by the Client

\$1,500.00 Install new padding, carpeting, baseboards and trim throughout the entire designated area

\$250.00 Install a new (2) panel room door/frame and hardware

\$250.00 Install new recessed lightning bevels throughout the entire area

Bathroom: \$1,750.00

\$00.00 Install flooring on separate insurance claim quote

\$250.00 Demo backsplash, base cabinet, toilet, etc.
\$250.00 Install a new (2) panel room door/frame hardware
\$1,000.00 Install a new base sink cabinet, plumbing, hardware, medicine cabinet and light bar
\$250.00 Finish/prime and paint the entire bathroom with "Behr" ceiling/flat, walls-doors-trim/semi-gloss paint. Accent colors designated by the Client.

3. On or about March 22, 2022, the Claimant and the Respondent entered into a contract (Contract) for the remodel of the Claimant's basement. The Contract included the work quoted above, materials, a \$3,750.00 increase for inflation, and \$2,500.00 for additional plumbing work. The total agreed upon price was \$17,500.00.

4. At the time the Respondent provided his first quote to the Claimant, he was not licensed with the MHIC. At the time the Claimant and Respondent entered into the Contract, and the Claimant began making payments under the Contract, the Respondent was a licensed home improvement contractor under MHIC license number 01-118128.

5. Between November 2021 and April 2022, the Claimant paid the Respondent \$17,500.00 via checks and online payments through Zelle.

6. On March 22, 2022, the Respondent began work under the Contract.

7. The Respondent installed the floor in the movie room and the front part of the weight room, but did not include padding underneath; installed the ceiling, but left creases; partially painted the walls; and installed a bathtub.

8. Two weeks after the Respondent started, the Claimant notified him that she was dissatisfied with the quality of the work. The Respondent assured her that he would make all required repairs.

9. The Respondent last did work at the Claimant's home on June 26, 2022. The Respondent did not complete the project.

10. In text messages to the Claimant, the Respondent said the following:

August 18, 2022

Good morning, Ms. Green. My sincere apologies for the headaches in [sic] bad work that my team performed. It's been pretty overwhelming to say the least. I wasn't aware of a plumbing issue as well.

September 22, 2022

Good afternoon, Ms. Green. I sincerely apologize that your job was not completed to my satisfaction. I still have every intention of correcting it. I have explanations/not excuses for why it has not been corrected yet....Again, I am EXTREMELY SORRY that your build didn't go well. I want to fix it personally. I wish there were more hours in the day. Let me know a good time to call or meet if you are willing.

11. On a date not specified, the Claimant received a quote from a plumber for \$3,500.00 to complete the labor required for the plumbing work. In August 2022, the Claimant learned that the Respondent had improperly connected the bathroom plumbing with the washing machine causing water to fill the bathtub when the washing machine is used. The plumber added an additional \$3,000.00 to his initial quote for the labor required to correct the problem, bringing the total plumbing quote to \$6,500.00.

12. Later in 2022, the Claimant got an estimate from AGI Contracting, LLC (AGI) to complete the work originally outlined in the Contract, including fixing work the Respondent had completed improperly. The AGI estimate did not include the cost of materials. The AGI estimate totaled \$10,985.00 and included the following labor:

- Remove floor and baseboard
- Prepare drywall corners, walls and ceiling, repair imperfections, ready to paint
- Apply self-leveling in floors to make level
- Reinstall vinyl plank and vinyl plank in stairs and gym
- Reinstall baseboard
- Paint ceilings, walls baseboard
- Install rail in stairs
- Install rubber floor in gym area
- Install fan in bathroom first floor

13. The original Contract included materials, and the AGI and plumbing estimates include only labor. The Claimant will need to purchase additional materials to complete the

contracted-to project, including \$1,023.00 for flooring. The Claimant also lost materials due to the Respondent's faulty work. The Claimant paid the Respondent to install a custom shower, but because the shower will have to be removed to correct the plumbing, will reinstall a prefabricated shower. The prefabricated shower will cost approximately \$1,500.00.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217 (2021); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

A Claimant 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. 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." Bus. Reg. § 8-401.

The evidence in this case establishes there are no legal impediments barring the Claimant from filing a claim under sections 8-405 and 8-408 of the Business Occupations Article. The Respondent was a licensed home improvement contractor at the time of the contract. The home improvement work was to be performed on the Claimant's residence in Maryland. The Claimant is not a relative, employee, officer, or partner of the Respondent; and the Claimant is not related

to any of the Respondent's employees, officers, or partners. The Claimant did not reject any efforts by the Respondent to resolve the Claim. The Claimant timely filed the Claim with the MHIC on May 23, 2022. Finally, the Claimant has not taken any other legal action to recover monies from the Respondent.

The Claimant took the position that she suffered an actual loss incurred as a result of the Respondent's acts or omissions, entitling her to compensation from the Fund. Specifically, the Claimant argued that the Respondent abandoned the contract after performing only a portion of the contracted-to work, leaving a mess. After the Respondent abandoned the project, there were problems with the work that the Respondent completed, resulting in further work being required. Specifically, the improperly routed plumbing caused a flood, and the repairs will require the custom shower to be removed. The Claimant showed that the expense to make the necessary repairs, and complete the contracted-to work, will exceed the \$17,500.00 she paid the Respondent pursuant to the Contract. Specifically, the Claimant showed that the expense to repair and complete her basement remodel will be, at a minimum: \$6,500.00 (plumbing labor) + \$10,985.00 (AGI estimate for labor) + \$1,023.00 (flooring) + \$1,500 (prefabricated shower) = \$20,008.00.

I find that the Respondent did not complete the Claimant's basement, as he was contractually obligated to do. In his messages to the Claimant, the Respondent did not contest that he did not satisfactorily complete any work for the Claimant, and that he stopped working on the Claimant's basement before it was complete. The Claimant provided photographs to demonstrate the Respondent's work. (See Clmt. Ex. 5). The Respondent performed an incomplete, unworkmanlike and inadequate home improvement.

There is no question that the plumbing was improperly routed causing a flood, and the

repair will require the Claimant to remove her custom shower. The Respondent did not contest the Claimant's characterization of the work inadequate, when he sent her two text messages apologizing for the quality of the work stating that it was not to his satisfaction. The Respondent stated in those messages that he wanted to make repairs, but never returned to the Claimant's home.

The Fund argued that the Claimant is a person who qualifies for relief under the statute and showed that the Respondent performed an incomplete, unworkmanlike and inadequate home improvement. The Fund provided evidence that the Respondent was licensed when he did work under the Contract, and that AGI is licensed by the MHIC. Based on the foregoing, 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. Bus. Reg. § 8-405(e)(3) (Supp. 2022); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Respondent performed some work under the Contract, and the Claimants intend to retain another contractor to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a

proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c).

The Respondent completed some work, but by the Respondent's own acknowledgement, the work was inadequate. The Claimants received an estimate from a plumber, and from AGI, a MHIC licensed contractor, to provide the labor only at a cost of \$17,485.00. The Claimant testified that the cost of flooring and a prefabricated shower was \$2,523.00, and more materials will be needed to complete the project. The Fund argued that the estimates were reasonable. Therefore, I find the Claimants' actual loss is \$20,008.00.

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.⁴ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is less than \$30,000.00, but more than the amount paid to the Respondent. Therefore, the Claimant is entitled to recover \$17,500.00, the amount paid to the Respondent.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$17,500.00 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)(b). I further conclude that the Claimant is entitled to recover \$17,500.00 from the Fund. Md. Code Ann., Bus. Reg. 8-405(a), (e)(1) (Supp. 2022).

⁴ On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. See *Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$17,500.00; 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;⁵ and

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

May 9, 2023
Date Decision Issued

Alecia Frisby Trout
Alecia Frisby Trout
Administrative Law Judge

AFT/ac
#204943

⁵ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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***