

<p>IN THE MATTER OF THE CLAIM</p> <p>OF JEFFREY HUSTER,</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 CURTIS BOSLEY,</p> <p>T/A CURTIS STEVEN BOSLEY</p> <p>CONSTRUCTION, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE RACHAEL BARNETT,</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>* OAH No.: LABOR-HIC-02-23-11486</p> <p>* MHIC No.: 22(75)391</p> <p>*</p>
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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On September 15, 2022, Jeffrey Huster (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$43,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Curtis Bosley, trading as Curtis Steven Bosley Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).² On April 10, 2023, the MHIC issued a

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 Replacement Volume of the Maryland Annotated Code.

Hearing Order on the Claim. On April 20, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On July 18, 2023, 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. The Respondent was not present.

After waiting 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 May 19, 2023, 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 July 18, 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 Notice to the OAH. In fact, the Respondent signed the certified mail receipt on May 22, 2023, noting his receipt of the Notice. The OAH received the certified mail receipt on May 26, 2023. 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.

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?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 - Judgement of Restitution, July 29, 2022
- Clmt. Ex. 2 - Email from State Farm Insurance Company to the Claimant, May 5, 2021
- Clmt. Ex. 3 - Email from Proctor Loan Protector to the Claimant, June 30, 2021
- Clmt. Ex. 4 - Text Message Exchange Between the Claimant and the Respondent, various dates
- Clmt. Ex. 5 - Complaint, September 30, 2021
- Clmt. Ex. 6 - Check for \$100.00 from the Respondent to the Claimant, August 1, 2022
- Clmt. Ex. 7 - Photograph, taken between May 13, 2021 and July 1, 2021
- Clmt. Ex. 8 - Photograph, taken between May 13, 2021 and July 1, 2021
- Clmt. Ex. 9 - Photographs, undated
- Clmt. Ex. 10 - Summons for Trial, January 19, 2022

The Respondent was not present to offer any exhibits for admission.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, May 19, 2023
- Fund Ex. 2 - Home Improvement Commission I.D. Registration for the Contractor, June 28, 2023
- Fund Ex. 3 - Letter of Claim Acknowledgement from the Department, September 27, 2022

Testimony

The Claimant testified and presented the testimony of David Raphael Huster, his husband.

The Respondent did not testify.

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 5230948.
2. The Claimant and his husband reside in Carroll County on a parcel that historically has included a home and a detached garage.
3. On April 16, 2021, the Claimant's detached garage burned down.
4. On May 2, 2021, the Claimant and the Respondent entered into a contract to rebuild the detached garage on the Respondent's property at a cost of \$51,750.00. The Claimant initially paid the Respondent \$3,000.00 to begin work.
5. Shortly after receiving the \$3,000.00, the Respondent's employees removed the concrete base that remained from the original garage and hauled it away.
6. In June 2021, the Claimant received a check for \$40,000.00 from his insurance company.
7. On July 1, 2021, the Claimant signed over the entire amount of the check to the Respondent, and the Respondent deposited the check into his bank.
8. After receiving the funds, the Respondent delayed in beginning work. He ultimately ordered a pallet of cement.

9. On September 10, 2021, Lowe's delivered a pallet of cement to the Claimant's home.

10. The Claimant exchanged text messages with the Respondent about a work start date, but the Respondent never returned to the job, nor did any of his employees do any additional work.

11. On July 29, 2022, the Claimant received a Judgement of Restitution in the District Court of Maryland for Carroll County against the Respondent for \$41,900.00.

12. The Respondent has only repaid \$1,100.00 to date. The last payment occurred on July 29, 2022.

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; 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 proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. 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 Claimant resides on the property that is the subject of the claim or 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 claim was timely filed, and there is no pending court claim for the same loss, and the Claimant did not recover the alleged losses (beyond \$1,100.00) from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2023).

The District Court of Maryland for Carroll County ("the district court") granted the Claimant's claim in the amount of \$41,900.00 on July 29, 2022 (accounting for payment of \$1,100.00) but the Respondent has not made any payments subsequent to this date. Thus, the full amount of the judgment is outstanding. When a court has issued a final judgment in favor of an individual who is also a claimant in an MHIC matter, the MHIC shall approve a claim against the Fund. Bus. Reg. § 8-408(b)(2). This statute does not dictate that the MHIC shall pay the full amount of the judgement, however.

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). The 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 Claimant is not seeking other contractors 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 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." COMAR 09.08.03.03B(3)(b). The relevant statute dictates that the Commission shall approve a claim against the Fund in the case of a verdict in favor of the Claimant; however, the statute does not specify whether this shall be in the full amount of the judgment. Bus. Reg. § 8-408(b)(3)(i). For this reason, I will proceed under the relevant formula typically used to determine the amount of compensation when a contractor performs some work and then abandons a contract.

The Claimant testified that the way in which the Respondent removed the concrete was not consistent with business standards, and he explained that another contractor had offered this opinion after looking at the construction site. However, the Claimant did not offer any testimonial or written opinion from the contractor to demonstrate that the Respondent's concrete removal was done incorrectly. For this reason, I find that the Respondent's concrete removal had some value. Since the Claimant had paid the Respondent \$3,000.00 to start the job and the job was to begin with the removal of the concrete, I will deduct \$3,000.00 from the \$43,000.00 contract amount in the Respondent's favor. Additionally, the Respondent had a pallet of concrete delivered to the Claimant's address. I have no way of valuing this delivery, given the information in the record, nor do I know if it can still be used after sitting outside for so long. For this reason, I will assign no value for the pallet of concrete. This leaves \$40,000.00 outstanding. After receiving the \$40,000.00 check, the Respondent did not do any work on the garage construction. The Respondent repaid the Claimant \$1,100.00, bringing the amount owed to \$38,900.00.

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.³ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$38,900.00 exceeds \$30,000.00. Therefore, the Claimant's recovery is limited to \$30,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$30,000.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405, 8-408 (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. Md. Code Ann., Bus. Reg. §§ 8-405, 8-408 (2015 & Supp. 2023); 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 \$30,000.00; 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;⁴ and

³ 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").

⁴ *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.

October 16, 2023
Date Decision Issued

RAB/at
#207610

Rachael Barnett

Rachael Barnett
Administrative Law Judge

PROPOSED ORDER

WHEREFORE, this 22nd day of December, 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.

J Jean White

J Jean White

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***