

IN THE MATTER OF THE CLAIM	*	BEFORE JENNIFER A. NAPPIER,
OF JULIE WOLF,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	OAH No.: LABOR-HIC-02-23-01538
FOR THE ALLEGED ACTS OR	*	MHIC No.: 22 (75) 602
OMISSIONS OF JASON BLAKE, JR.,	*	
T/A BLAKE & SONS CONTRACTING,	*	
LLC,	*	
RESPONDENT	*	

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On June 24, 2022, Julie Wolf (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$35,595.11 for actual losses allegedly suffered as a result of a home improvement contract with Jason Blake, Jr.,² trading as Blake & Sons Contracting, LLC (Respondent).³ On January 6, 2023, the MHIC

¹ The MHIC is under the jurisdiction of the Department of Labor.
² Mr. Blake is registered with the MHIC as Jason Blake. However, in all of his written communications with the Claimant, he used "Jayson" as the spelling of his first name.
³ Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411 (2015 & Supp. 2022). Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

issued a Hearing Order on the Claim. On January 17, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 28, 2023, I held a hearing by video.⁴ The Claimant represented herself. Hope Sachs, Assistant Attorney General, Department of Labor (Department), represented the Fund. The Respondent failed to appear for 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.⁵ On February 2, 2023, the OAH mailed the Respondent a Notice of Remote Hearing (Notice) by certified and first-class mail to the Respondent's address of record with the Department and the OAH.⁶ The Notice stated that a hearing was scheduled for March 28, 2023, at 9:30 a.m. via the Webex videoconferencing platform.⁷ 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 copy of the notice that was sent by first-class mail. On March 22, 2023, the copy of the Notice sent by certified mail was returned to the OAH with the notation "RETURN TO SENDER[.] UNCLAIMED." The Respondent did not notify the OAH of any change of mailing address either before or after the hearing.⁸ The Respondent made no request for postponement of the hearing.⁹ I determined that the Respondent received proper notice, and after waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing.¹⁰

⁴ Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b).

⁵ COMAR 28.02.01.23A.

⁶ COMAR 28.02.01.05C(1).

⁷ COMAR 09.08.03.03A(2).

⁸ COMAR 28.02.01.03E.

⁹ COMAR 28.02.01.16.

¹⁰ 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.¹¹

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 Detailed Explanation of Facts and Circumstances, undated
- CL Ex. 2 Installation Agreement, February 19, 2021; Estimate, February 19, 2021; Estimate, March 2, 2021
- CL Ex. 3 Various emails between the Respondent and Appellant, February 19, 2021 to October 27, 2021
- CL Ex. 4 Photographs of the Claimant's basement, undated¹²
- CL Ex. 5 QuickBooks payment receipts, February 20, February 22, March 2, March 3, March 9, March 19, March 27, July 9, and July 14, 2021
- CL Ex. 6 Contract between the Claimant and By Design Group, LLC (By Design), December 8, 2021

I admitted the following exhibits offered by the Fund:

- GF Ex. 1 Notice of Remote Hearing, February 2, 2023; Hearing Order, January 6, 2023
- GF Ex. 2 Department I.D. Registration, Occupational/Professional License History, and Change Code Screen printouts, February 16, 2023
- GF Ex. 3 Letter from the MHIC to the Respondent, July 6, 2023, with attachments

¹¹ Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; COMAR 28.02.01.

¹² The Claimant testified that the photographs were taken in November 2021.

Testimony

The Claimant testified on her own behalf. 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 under MHIC license number 538199.

2. At all relevant times, the Claimant was the owner of a home located on Tremont Avenue in Cheverly, Maryland, which is her personal residence. The Appellant does not own any other dwellings.

3. On February 19, 2021, the Claimant and the Respondent entered into a contract for the first phase of a basement remodel at the Claimant's personal residence (Contract). The Contract included the following work:

- Demolition of the basement
- Removal of concrete along the perimeter
- Removal/replacement of the existing waterproofing system, as needed
- Removal/replacement of two sump pump systems
- Installation of drainage holes in the foundation, if applicable
- Spraying Anabec Mold Treatment
- Installation of a vapor barrier system
- Installation of concrete
- All permits/inspections

The timeline for completion was four to five "working days/inspections."

4. The agreed-upon Contract price was \$10,925.00 and set forth the following payment schedule:

- \$3,600.00 deposit
- \$3,800.00 due upon start of the work
- \$3,525.00 due upon completion

5. On or about March 3, 2021, the Respondent satisfactorily completed the work under the Contract.

6. The Claimant made the final payment on the Contract on March 3, 2021.

7. On March 2, 2021, the Claimant and Respondent entered into a new contract for the second phase of the basement remodel, including:

- Installation of framing
- Repair/installation of "electric" with added recessed lighting where necessary
- Repair/installation of plumbing
- Installation of insulation, as needed
- Installation of drywall/finish/prime/paint for walls, trim, and ceiling
- Replacement of the rear door
- Installation of vinyl flooring
- Creation of a closet behind the staircase, with a door, shelf, closet pole, and space for pet storage tote/litter box
- Replacement of the existing water heater
- Creation of half bathroom with a utility sink, cabinetry, and shelving
- Installation of deep shelving in the storage area
- Building a workbench for the work area

8. The total cost of the second contract (Second Contract) was \$42,050.00, including:

- Materials - \$19,050.00
- Labor - \$14,600.00
- P&O/Delivery/Mobilization Fees - \$8,400.00

9. The Second Contract set forth the following payment schedule:

- \$7,000.00 deposit
- \$7,000.00 due upon start of the work
- \$8,500.00 due upon completion of plumbing/electric rough-in
- \$6,525.00 due upon insulation/drywall installation¹³
- \$6,525.00 due upon flooring installation¹⁴
- \$6,500.00 due upon completion of the project

10. In April 2021, the Respondent began the framing work in the basement.

11. In May 2021, the subcontractor electrician completed some electrical work, including installation of electrical wiring.

¹³ It is unclear whether this payment was due upon the start or completion of the insulation/drywall installation.

¹⁴ It is unclear whether this payment was due upon the start or completion of the flooring.

12. On or about June 3, 2021, the electrician performed more electrical work, including the wiring and addition of electrical outlets.
13. Around September 2021, the Respondent completed the framing for the basement.
14. On or about September 28, 2021, the electrician returned to perform more electrical work. While he was there, the framing inspection failed because the Respondent did not apply foam in accordance with the applicable sections of the Prince George's County Code.
15. As a result, the Respondent's framing work never passed inspection.
16. The electrician was unable to complete the remainder of the electrical work because the framing needed to pass inspection before he could finish the work.
17. The Claimant paid \$36,027.11 toward the Second Contract, as follows:
 - \$7,000.00 on March 9, 2021
 - \$7,000.00 on March 19, 2021
 - \$5,000.00 on March 27, 2021
 - \$10,027.11 on July 9, 2021
 - \$7,000.00 on July 14, 2021
18. Prior to October 2021, the plumbing subcontractor, Old Line Plumbing (Old Line), obtained a permit for the plumbing work but the Respondent never reimbursed Old Line for the \$2,850.00 cost of the permit.
19. The Claimant last received communication from the Respondent, in the form of an email, on October 14, 2021. The Claimant was unable to reach the Respondent, either by telephone or email after that date.
20. On November 5, 2021, the Claimant called the Respondent and reached a message stating that the telephone number was out of service. The Claimant then sent a final email to the Respondent, asking him for an explanation of what was happening and to inform her of whether he needed to withdraw from the project.

21. The Claimant found other telephone numbers for the Respondent (individually, as well as the company) but each number she called was disconnected.

22. Around November 2021, the Claimant's husband visited the Respondent's business address and found that the Respondent's company name had been scraped off the door. A few days later, the Claimant visited a neighboring business where she spoke with an employee who said that his boss had purchased a bunch of tools and trucks from the Respondent and told him that the Respondent was moving to Florida with his family.

23. On December 8, 2021, the Claimant contracted with By Design to complete the basement remodel project. The contract provided that By Design would complete the following work for the total price of \$25,000.00:

- Repair electrical and lighting by code, in order to pass rough in inspection
- Electrical trim out
- Plumbing trim out for bathroom and sink
- Repair all framing per code, including walls, bulkheads, and ceiling
- All insulation for the outside walls
- All doors and trim
- All drywall, including drywall hanging, taping, plastering, and sanding
- All painting (up to two colors), including walls, ceiling trim, and doors
- One basement exterior door

24. By Design is a licensed contractor.

25. The Claimant paid Old Line \$2,850.00 to have Old Line release the plumbing permit so that By Design could obtain the permit to perform the plumbing work.

26. The Claimant paid By Design a total of \$38,000.00 for work performed on the basement. The \$13,000.00 that was in excess of the original \$25,000.00 By Design contract price was the result of inflation, as well as some additions that were outside of the scope of work to be performed by the Respondent.

27. The Claimant is not an officer or employee of the Respondent, related to the Respondent, or related to an officer or employee of the Respondent.

28. The Claimant has no other pending claims related to this matter and has not otherwise recovered for any losses connected to the Claim.

DISCUSSION

LEGAL FRAMEWORK

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence.¹⁵ 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.¹⁶

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor”¹⁷ “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”¹⁸ The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest.¹⁹

By statute, certain claimants are excluded from recovering from the Fund altogether. 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.²⁰ The Claimant resides in the home that is the subject of the claim.²¹ The parties did not enter into a valid agreement to submit their disputes to arbitration.²² The Claimant is not a relative, employee, officer, or partner of the Respondent and

¹⁵ Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov’t § 10-217; COMAR 09.08.03.03A(3).

¹⁶ *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

¹⁷ 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.”).

¹⁸ Bus. Reg. § 8-401.

¹⁹ Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

²⁰ Bus. Reg. §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022).

²¹ *Id.* § 8-405(f)(2) (Supp. 2022).

²² *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022).

is not related to any employee, officer, or partner of the Respondent.²³ Additionally, the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim.²⁴

For the following reasons, I find that the Claimant has proven eligibility for compensation.

THE MERITS OF THIS CASE

The facts of this case are undisputed. The Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. The credible evidence in the record establishes that the Respondent performed unworkmanlike, inadequate, and/or incomplete home improvements with regard to the Second Contract with the Claimant.

The Claimant credibly testified that although the Respondent was initially very communicative and completed the first phase of her basement remodel to her satisfaction, the Respondent abandoned the second phase of the job without making corrections to the framing that the Respondent had already completed, completing the electrical work that had begun, or otherwise finishing the second phase of the project. The Claimant last heard from the Respondent on October 14, 2021. By early November 2021, it became clear to the Claimant that the Respondent had abandoned the second phase of the job. Upon visiting the Respondent's business address around November 2021, the Claimant's husband discovered that the name of the business had been removed from the front door. Shortly thereafter, the Claimant spoke with an employee of a neighboring business who reported that the Respondent had sold some of his business equipment and planned on relocating to Florida. The Claimant's testimony is corroborated by copies of emails that she exchanged with the Respondent between February 19 and October 14, 2021, as well as a unanswered emails that she sent to the Respondent on

²³ *Id.* § 8-405(f)(1) (Supp. 2022).

²⁴ *Id.* § 8-405(d) (Supp. 2022).

October 28 and November 5, 2021,²⁵ and photos taken of the unfinished basement in November 2021.²⁶ The photos show exposed framing, unfinished floors, and piles of debris.

I thus find that the Claimant is eligible for compensation from the Fund. The Fund agrees. 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.

MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. The first formula is applicable when a contractor abandons the contract without performing any work.²⁷ In this case the Respondent performed some work, and thus the first formula is clearly not applicable here.

The second formula applies when "the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract...."²⁸ Under this circumstance, "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."²⁹

In this case, the Respondent performed some work under the Contract, and the Claimant retained another licensed contractor to complete and 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.³⁰

²⁵ Claimant Exhibit 3.

²⁶ Claimant Exhibit 4.

²⁷ COMAR 09.08.02.03B(3)(a).

²⁸ COMAR 09.08.03.03B(3)(b).

²⁹ *Id.*

³⁰ COMAR 09.08.03.03B(3)(c).

The Claimant's actual loss is as follows:

\$36,027.11	paid to and on behalf of the Respondent under the Second Contract
+ \$27,850.00 ³¹	cost for By Design to complete the work per the Second Contract
\$63,877.11	
- \$42,050.00	amount of the Second Contract
\$21,827.11	proposed actual loss ³²

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.^{33,34} In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$21,827.11.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$21,827.11 as a result of the Respondent's acts or omissions.³⁵ I further conclude that the Claimant is entitled to recover that amount from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$21,827.11; and

³¹ \$25,000.00 cost for By Design to complete the scope of work in the Second Contract + \$2,850.00 paid to Old Line for the release of the plumbing permit = \$27,850.00.

³² The Fund recommended that I find an actual loss of \$24,777.11, which is \$2,950.00 more than \$21,827.11. When the Fund calculated the amount paid for By Design to complete the work, the Fund used \$2,800.00 as the amount paid to Old Line for the release of the plumbing permit. However, the Claimant testified that she paid \$2,850.00 for the release of the permit. Additionally, the Fund found that the Claimant paid the Respondent \$39,027.11 under the Second Contract, but the receipts submitted as Claimant's Exhibit 5 indicate that the Claimant made five payments between March 9 and July 14, 2021, totaling \$36,027.11. *See* Finding of Fact number 17.

³³ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4).

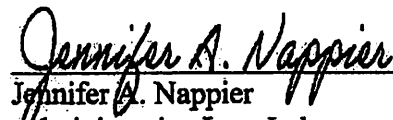
³⁴ On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. *See Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature 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").

³⁵ Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3)(c).

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;³⁶ and

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

June 26, 2023
Date Decision Issued



Jennifer A. Nappier
Administrative Law Judge

JAN/dlm
#205888

³⁶ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 20th day of September, 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.

Chandler Louden

Chandler Louden

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***