

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF NAKIA GREEN SCALES,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF BRYAN JONES,</b></p> <p><b>T/A BOJ &amp; SON'S CONSTRUCTION</b></p> <p><b>LLC,</b></p> <p><b>RESPONDENT</b></p>	<p>* <b>BEFORE MARY PEZZULLA,</b></p> <p>* <b>AN ADMINISTRATIVE LAW JUDGE</b></p> <p>* <b>OF THE MARYLAND OFFICE</b></p> <p>* <b>OF ADMINISTRATIVE HEARINGS</b></p> <p>*</p> <p>*</p> <p>*</p> <p>* <b>OAH No.: LABOR-HIC-02-24-02065</b></p> <p>* <b>MHIC No.: 22 (75) 708</b></p> <p>*</p>
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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On November 27, 2023, Nakia Green Scales (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$87,939.58 for actual losses allegedly suffered as a result of a home improvement contract with Bryan Jones, trading as BOJ & Son's Construction LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).<sup>2</sup> On December 29, 2023, the MHIC issued a

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<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).

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

Hearing Order on the Claim. Also on December 29, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On April 11, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Kris King, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent failed to appear.

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 February 13, 2024, the OAH provided a Notice of Hearing (Notice) to the Respondent by certified mail and first-class mail to two addresses of record for the Respondent. Bus. Reg §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for April 11, 2024, 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 Notice sent via regular mail to the Respondent's Post Office Box was returned to the OAH with the notation of "Not Deliverable as Addressed Unable to Forward. The Notice sent via certified mail to the Respondent's Post Office Box was returned to the OAH as unclaimed. The Notice sent via regular mail to a physical address for the Respondent was not returned; the return receipt for the certified mail to the physical address was not returned to the OAH as either claimed or unclaimed. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05.

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 - Letter from the Claimant to the Respondent, November 21, 2021
- Clmt. Ex. 2 - Email from the Respondent to the Claimant, August 9, 2021 with attached Contract, September 6, 2020
- Clmt. Ex. 3 - Email from the Respondent to the Claimant, May 27, 2021 with attached estimate from R E B JR Heating and air conditioning, May 22, 2021
- Clmt. Ex. 4 - Check from the Claimant to the Respondent for \$25,000.00, November 11, 2020;  
Check from the Claimant to the Respondent for \$25,000.00, January 5, 2021;  
Check from the Claimant to the Respondent for \$30,000.00, May 3, 2021;  
Check from the Claimant to the Respondent for \$12,800.00, June 3, 2021;
- Clmt. Ex. 5 - Text message from the Respondent to the Claimant, April 28, 2021
- Clmt. Ex. 6 - Email from the Claimant to the Respondent, September 1, 2021
- Clmt. Ex. 7 - Email chain between the Respondent and the Claimant, September 24, 2021 through November 3, 2021
- Clmt. Ex. 8 - Photographs taken by the Claimant of the work performed as of November 18, 2021
- Clmt. Ex. 9 - Photographs taken by the Claimant of the work performed as of the Summer of 2021
- Clmt. Ex. 10 - Estimate from White Diamond Services, LLC (White Diamond), July 2, 2022
- Clmt. Ex. 11 - Estimate from R.E. Michel Company (R.E. Michel), July 11, 2022

- Clmt. Ex. 12 - Estimate from Abbott Brothers Plumbing & Heating of MD, Inc. (Abbott Brothers), July 31, 2022
- Clmt. Ex. 13 - Text message thread between the Claimant, her brother, and the Respondent, September 8, 2021 through September 20, 2021
- Clmt. Ex. 14 - Text messages between the Respondent and the Claimant, November 5, 2021 through November 18, 2021

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Returned mail packet including: OAH coversheet, February 8, 2024; Notice of Hearing, January 30, 2024; Hearing Order, December 29, 2023; information sheet regarding OAH hearings, March 2023; blank Request for Accommodations form, revised January 2021; returned mail envelope, received February 7, 2024
- Fund Ex. 2 - Returned mail packet including: OAH coversheet, February 28, 2024; Notice of Hearing, February 13, 2024; Hearing Order, December 29, 2023; information sheet regarding OAH hearings, March 2023; blank Request for Accommodations form, revised January 2021; returned mail envelope, received February 27, 2024
- Fund Ex. 3 - MHIC licensing information for the Respondent, March 19, 2024
- Fund Ex. 4 - Affidavit of David Finneran, March 20, 2024
- Fund Ex. 5 - Home Improvement Claim Form, received by MHIC November 27, 2023
- Fund Ex. 6 - Letter from Joseph Tunney, MHIC, to the Respondent, December 1, 2023

The Respondent did not appear and did not offer any exhibits.

### Testimony

The Claimant testified in her own behalf.

The Respondent did not appear and did not offer any testimony.

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 01-11812.

2. On November 21, 2020, the Claimant and the Respondent entered into a contract to fully gut and renovate her home in Baltimore, Maryland (Contract). The scope of the contract included a full renovation of the basement, first floor, second floor, and roof. It also included installing new interior and exterior doors and windows, exterior concrete work, and installing a rear deck.
3. The original agreed-upon Contract price was \$80,000.00.
4. Work was to begin in November 2020 with an estimated completion timeframe of May 2021.
5. On April 28, 2021, the Respondent told the Claimant that the renovation would be completed in approximately three weeks.
6. On or about May 27, 2021, the parties amended the Contract in order to include the installation of an HVAC system in the amount of \$12,800.00, thereby increasing the Contract price to \$92,800.00.
7. The Claimant made payments totaling \$92,800.00 to the Respondent as follows:
  - \$25,000.00—November 11, 2020;
  - \$25,000.00—January 5, 2021;
  - \$30,000.00—May 3, 2021; and
  - \$12,800.00—June 3, 2021
8. The Claimant's brother, Kevin, visited the property in May and June 2021 and expressed concerns that the project was not progressing. He also observed that a closet door was installed lopsidedly and some of the sheetrock was uneven.
9. On August 6, 2021, the Claimant and Kevin met with the Respondent at the property to express these concerns. The Respondent agreed to refund \$20,000.00 to the Claimant because of the delays, thereby decreasing the Contract price to \$72,800.00.
10. The Respondent never refunded the \$20,000.00 to the Claimant.

11. On September 1, 2021, the Claimant emailed the Respondent, requesting that he provide her with weekly updates on the progress of the renovation, including pictures.

12. At some point in September 2021, the Claimant learned that the Respondent had not obtained permits for any of the work he had performed at the property. The Claimant requested that the Respondent obtain the proper permits.

13. On September 22, 2021, the Respondent submitted an application for a building permit with the Baltimore City Department of Housing and Community Development.

14. The Respondent did not provide the Claimant with any updates regarding the renovation in October or November 2021.

15. The Claimant visited the property on November 18, 2021. No work had been performed on the renovation since she had last visited the property in August 2021.

16. The Respondent stopped responding to the Claimant via email and text message.

17. In December 2022, the Respondent texted the Claimant in response to a post the Claimant had made on social media about the work on her property, stating that he was not trying to scam her. That was the last communication the Claimant had with the Respondent.

18. In July 2022, the Claimant obtained the following estimates to try to complete the renovations at her home:

- \$62,300.00—White Diamond: total renovations, not including plumbing, electrical, and HVAC work
- \$4,419.79—R.E. Michel: HVAC work
- \$8,400.00—Abbott Brothers: plumbing work

### **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).

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.

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 Claimant resides in the home 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).

There is no evidence before me that the Claimant unreasonably rejected any good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023). The Claimant testified credibly that even when it became clear that the work on the renovation was not on schedule and the Respondent was not making progress, she negotiated with him for him to continue working. The Respondent agreed to give the Claimant a \$20,000.00 refund and the Claimant requested weekly updates regarding the work. The Claimant reached out to the Respondent multiple times to try to get the work to continue and for him to complete the project.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Claimant presented uncontroverted testimony and evidence showing that the Respondent performed an incomplete and unworkmanlike home improvement on her home located in Baltimore, Maryland. The Claimant testified that the work seemed to start out well. She explained that she signed the initial contract with the Respondent in November 2020 and she paid him \$25,000.00. He picked up the keys to the property on or about January 6, 2021, and she gave him another check for \$25,000.00 at that time. The Claimant initially believed she would be out of the home for approximately three months but was not terribly surprised it was taking longer than expected since it was a total, top to bottom, renovation. At the end of April 2021, the Respondent informed her that the renovation would take approximately three more weeks.

The Claimant made another payment to the Respondent on May 3, 2021 for \$30,000.00. Around that time, the Claimant had a conversation with the Respondent regarding the HVAC system. The parties agreed to amend the Contract to include the installation of a new HVAC system for \$12,800.00. On June 3, 2021, the Claimant gave the Respondent a check for \$12,800.00. Then, in June, the Respondent told the Claimant the project would take another six weeks.

In August 2021, the Claimant and her brother met the Respondent at the property because the Claimant was concerned about the progress of the work and the quality of the work that had been performed. At that time, the Respondent offered to refund \$20,000.00 to the Claimant since the work was so behind schedule. The Respondent's agreement to refund \$20,000.00 to the Claimant because of the delays decreased the Contract price to \$72,800.00.

On September 1, 2021, the Claimant emailed the Respondent, asking when he was going to pay the \$20,000.00 refund, and requesting that he provide her with weekly updates of the



work. Around this same time, the Claimant learned that the Respondent had not obtained work permits for any of the work performed at the property. She immediately requested that he obtain the proper permits.

The Claimant explained that by November 2021, it became clear to her that the Respondent was not going to refund her money to her and was not going to finish the work on the property. She attempted multiple times to set up meetings with the Respondent, but he would either not respond, or if he did respond, he would not show for the meeting. The Claimant testified that she went to the property on November 11, 2021 and no work had been performed from when she was last there in August. She testified that she never received copies of any permits and was not sure if the Respondent ever obtained any permits for the work.

In July 2022, the Claimant began getting estimates to try to complete the renovation. She obtained an estimate from White Diamond for \$62,300.00. This estimate did not include HVAC, plumbing, or electrical work. She also received an estimate from R.E. Michel to install an HVAC system for \$4,419.79. Finally, she received an estimate from Abbott Brothers for the plumbing work for \$8,400.00.

Based on the evidence and testimony presented, I find that the Respondent performed unworkmanlike and incomplete home improvements on the Claimant's property. First, it is clear from the Claimant's testimony and photographs that the Respondent did not complete the work as described in the Contract. The pictures show holes dug into the basement, drywall partially hung, and electrical wiring in various states of installation. The work performed by the Respondent, however, was not only incomplete, but also unworkmanlike. Not only are there holes in floors and drywall, and doors hanging askew, but the Respondent never obtained permits for any of the work performed. The Fund argued, and I agree, that it is fundamentally unsafe and

unworkmanlike to disregard permit and inspection requirements. I thus 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. 2023); 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 Claimant intends to retain 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 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). Using this formula, the Claimant's loss would be calculated as follows:

Amount the Claimant paid to the Respondent	\$ 92,800.00
Amount the Claimant paid to repair/complete the work	<u>+ \$ 75,119.79</u>
	\$ 167,919.79
Minus contract price	<u>-\$ 72,800.00</u>
<b>Actual loss</b>	<b>\$ 95,119.79</b>

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.<sup>3</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$95,119.79 exceeds \$30,000.00, as well as the amount she paid to the Respondent. Therefore, the Claimant's recovery is limited to \$30,000.00.

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual loss of \$95,119.79 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)(c). I further conclude that the Claimant is entitled to recover \$30,000.00 from the Fund. Bus. Reg. § 8-405(e)(1), (5) (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;<sup>4</sup> and

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<sup>3</sup> 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").

<sup>4</sup> *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.

June 27, 2024  
Date Decision Issued

*Mary Pezulla*  
\_\_\_\_\_  
Mary Pezulla  
Administrative Law Judge

MP/kh  
#212176

**PROPOSED ORDER**

***WHEREFORE, this 20<sup>th</sup> day of September, 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.***

***Chandler Louden***

***Chandler Louden***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***