

IN THE MATTER OF THE CLAIM	* BEFORE EDWARD J. KELLEY,
OF ALESIA BENSTON,	* 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 JOSE COREA, T/A	*
M & M HANDYMAN SERVICES,	* OAH No.: LABOR-HIC-02-23-31817
LLC,	* MHIC No.: 22 (75) 928
RESPONDENT	*

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On March 16, 2023, Alesia Benston (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$11,500.00 for actual losses allegedly suffered as a result of a home improvement contract with Jose Corea, trading as M & M Handyman Services, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).² On November 30, 2023, the MHIC issued a

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

² 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. On the same date, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 12, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Eric London, Assistant Attorney General, Department of Labor (Department), represented the Fund. The Claimant represented herself. The Respondent did not appear for the hearing.

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 December 28, 2023, the OAH provided a Notice of Hearing (Notice) to the Respondent by certified mail and first-class mail to his address of record with the OAH and the MHIC. Bus. Reg §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for March 12, 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 United States Postal Service did not return the Notice sent to the Respondent by first-class mail. The Notice sent to the Respondent by certified mail was returned to the OAH with the notation "vacant." The Respondent did not notify the OAH or the MHIC 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 - Contract between the Claimant and the Respondent, November 26, 2021
- Clmt. Ex. 2 - Payment paperwork, November 29, 2021
- Clmt. Ex. 3 - Payment paperwork, January 7, 2022
- Clmt. Ex. 4 - Picture of foundation, undated
- Clmt. Ex. 5 - Email correspondence between the Claimant and the Respondent, January 22-February 5, 2022
- Clmt. Ex. 6 - Contract between the Claimant and Lewis & Son Development, LLC (Lewis), April 7, 2022
- Clmt. Ex. 7 - Lewis Estimate, April 2022
- Clmt. Ex. 8 - MHIC Complaint Form, February 22, 2022

The Respondent did not offer any exhibits for admission.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Remote Hearing, December 28, 2023
- Fund Ex. 2 - Certification of Custodian of Records, February 20, 2024
- Fund Ex. 3 - Hearing Order, November 30, 2023
- Fund Ex. 4 - MHIC Claim Form, March 14, 2023
- Fund Ex. 5 - Letter from Tenaea Thomas, Panel Specialist, MHIC, November 30, 2023

Testimony

The Claimant testified and did not present other witnesses.

The Respondent did not appear.

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 01-109527.
2. On November 26, 2021, the Claimant and the Respondent entered into a contract to build an addition to the Claimant's residence where her mother could live (Contract).
3. The original agreed-upon Contract price was \$95,000.00.
4. The Contract stated that work would begin on December 1, 2021, and take five months to complete.
5. On November 29, 2021, the Claimant paid the Respondent \$20,000.00.
6. The Respondent began the project in December 2021, as scheduled.
7. On December 13, 2021, the Respondent completed excavation and construction of the foundation.
8. The Respondent made a mistake when he constructed the foundation. An in-laid decorative brick design fashioned into the concrete, which was supposed to be visible from the exterior of the home, was visible from the interior of the home.
9. Notwithstanding the Respondent's error, the Claimant considered the foundation completed.
10. On January 7, 2022, the Claimant paid the Respondent \$30,000.00, which was intended to cover the next phase of construction: framing, roofing, electrical, and plumbing.

11. On January 22, 2022, the Respondent informed the Claimant by email that due to a dramatic increase in material costs, he could not continue with the Contract unless the Claimant paid him an additional \$15,000.00.

12. The Claimant refused to adjust the negotiated Contract price.

13. The Respondent refunded the Claimant \$28,000.00 and terminated the Contract. He did no further work on the project.

14. The Claimant sought other licensed contractors to finish the project, but most of the contractors she consulted refused to construct an addition on the foundation built by the Respondent.

15. In April 2022, the Claimant and Lewis & Son Development, LLC (Lewis), a licensed contractor, entered into a contract to complete the project for \$83,800.00, using the foundation constructed by the Respondent.

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

The undisputed evidence presented at the hearing demonstrated that the Respondent did not perform a complete home improvement. The Claimant testified thoroughly and credibly about all facets of the project, and this testimony was corroborated by exhibits, which explained a timeline of the relevant events and her communications with the Respondent. The Respondent underbid the project and then abandoned the job when the Claimant refused to pay him additional money to overcome his misjudgment, leaving her with an incomplete home improvement.

The Respondent did not attend the hearing to dispute any of the allegations against him. Based on the evidence presented, both the Claimant and the Fund’s counsel argued that the Claimant proved eligibility for compensation from the Fund. I find that the Claimant is eligible for compensation from the Fund because the evidence demonstrates conclusively that the Respondent did not fulfill his obligation to perform a complete home improvement.

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 retained Lewis to complete that work. Accordingly, as the Fund’s counsel proffered at the hearing, 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 Claimant paid the Respondent \$22,000.00 under the Contract and will pay Lewis \$83,800.00 to complete the work under the Contract. Added together, these figures total \$105,800.00. When the Contract price of \$95,000.00 is subtracted from \$105,800.00, the Claimant's total loss amount equals \$10,800.00. The Fund's counsel recommended that the Claimant be awarded this amount.

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 is \$10,800.00, which 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 \$10,800.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$10,800.00 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 \$10,800.00 from the Fund.

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").

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$10,800.00; 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

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

April 17, 2024
Date Decision Issued

Edward J. Kelley

Edward J. Kelley
Administrative Law Judge

EJK/dlm
#210912

⁴ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 2nd day of July, 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.

Michael Shilling

Michael Shilling

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***