

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF LINDA MCMILLIAN<sup>1</sup>,</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 SYEETAH HAMPTON-EL,</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><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>* OAH No.: LABOR-HIC-02-22-28223</b></p> <p><b>* MHIC No.: 23 (75) 101</b></p> <p><b>*</b></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 26, 2022, Linda McMillion (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>2</sup> Guaranty Fund (Fund) for reimbursement of \$24,500.00 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.,

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<sup>1</sup> The OAH file spells the last name as McMillian; however, the Claimant spells her name as McMillion.

<sup>2</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).

Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).<sup>3</sup> On October 26, 2022, the MHIC issued a Hearing Order on the Claim. On November 7, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 27, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Andrew Brower, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent failed to appear.

After waiting over 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 1, 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 January 27, 2023, at 9:30 a.m., at the OAH headquarters located 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. 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.

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<sup>3</sup> 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 Fund:

- Fund Ex. 1 - OAH Notice of Hearing, dated December 1, 2022
- Fund Ex. 2 - MHIC Hearing Order, dated October 26, 2022
- Fund Ex. 3 - Letter from the MHIC to the Respondent, dated October 5, 2022, and MHIC Claim Form, dated September 22, 2022
- Fund Ex. 4 - LABOR Licensing Information for the Respondent, dated January 23, 2023
- Fund Ex. 5 - Affidavit from Charles Corbin, dated January 24, 2023 and Motor Vehicle Administration Driving Record for the Respondent, dated January 23, 2023<sup>4</sup>

I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 - Signed contract between the Respondent and the Claimant, dated June 12, 2021
- Clmt. Ex. 2 - Cancelled check #1666 in the amount of \$6,000.00 from the Claimant to Respondent, dated June 23, 2021, and cancelled check #1679 in the amount of \$18,500.00 from the Claimant to the Respondent, dated August 30, 2021
- Clmt. Ex. 3 - Extra Space storage unit ledger, dated August 4, 2021 through January 4, 2022
- Clmt. Ex. 4 - Estimate from WatterLnk, LLC (WatterLnk), dated July 19, 2022

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<sup>4</sup> This document notes the Respondent's address as 3002 W. Lanvale, Baltimore, MD 21201.

I did not admit exhibits on behalf of the Respondent as the Respondent failed to appear.

Testimony

The Claimant testified and did not present other witnesses.

The Respondent did not testify as the Respondent failed to appear.

**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 5750642.
2. On June 23, 2021, the Claimant and the Respondent entered into a contract to demolish and renovate the kitchen, dining room, second floor bathroom, and basement over a period of four to six weeks (Contract).
3. The original agreed-upon Contract price was \$50,000.00. The draw schedule included three payments of \$12,500.00, a payment of \$10,000.00, and a final payment of \$2,500.00. On June 23, 2021, the Claimant paid the Respondent a \$6,000.00 deposit. On August 30, 2021, the Claimant paid the Respondent \$18,500.00.
4. After payment of the deposit, the Contract stated that work would begin in August 2021 and would be completed within four to six weeks.
5. On August 4, 2021, the Claimant moved items to storage and paid \$164.90 per month until November 4, 2021. Beginning in December 2021, the monthly rate increased to \$174.40 and the Claimant paid the monthly rate each month until May 4, 2022.
6. The Respondent never began the Contract.

7. On July 19, 2022, the Claimant contracted with WatterLnk, LLC (WatterLnk),<sup>5</sup> to renovate the second floor bathroom and renovate the first floor including the kitchen and dining room. The total contract price was \$9,800.00. The Claimant paid WatterLnk \$4,900.00.<sup>6</sup>

### 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. 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. 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. The Respondent provided a detailed estimate for the demolition and renovations requested by the Claimant.

The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. In this case, the Claimant paid the Respondent \$24,500.00 or half of the

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<sup>5</sup> Neither the Fund nor the Claimant indicated that WatterLnk was not a licensed contractor.

<sup>6</sup> The Claimant did not provide additional testimony or evidence about the fulfillment of the contract by WatterLnk.

\$50,000.00 Contract. The Respondent promised to begin the renovations in August 2021, but failed to start. In preparation for the renovations, the Claimant placed her belongings in storage where they remained until May 2022. In September 2021, the Respondent told the Claimant that his mother had died, but he intended to begin the renovations. The Claimant called the Respondent in May 2022 and the Respondent promised to come over after church, but he never came. In June 2022, the Claimant sent the Respondent a letter regarding the unfulfilled Contract, but she did not receive any response. Ultimately, the Respondent failed to respond to additional telephone calls from the Claimant seeking work updates.

The Respondent abandoned the Contract and the Claimant did not make future payments as required by the Contract. The Claimant ultimately hired WatterLnk, another contractor, to complete the renovations as documented in the original contract. The Claimant hired WatterLnk to complete the terms as outlined in the original contract; however, WatterLnk was only contracted to complete the first floor renovation including the living room and dining room, and second bathroom for \$9,800.00.

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. 2022). 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. 2022). 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.

2022). 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. 2022).

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

Having found eligibility for compensation, I now 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. MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. COMAR 09.08.03.03B(3).

The Claimant filed a MHIC Claim and sought \$24,500.00 but also testified about expenses incurred from storage fees. The law is clear that the Claimant cannot recover the storage costs of \$1591.35, as they are consequential costs and cannot be used to determine the actual loss amount. COMAR 09.08.03.03B(1).

In this case, the Respondent abandoned the Contract without performing under the terms or making good faith efforts to perform the Contract. In total, the Claimant paid the Respondent \$24,500.00. First, the Claimant paid the Respondent a deposit in the amount of \$6,000.00 at the signing of the Contract. One month later, the Claimant paid the Respondent \$18,500.00. The Respondent never began any of the agreed upon renovations. The Claimant hired WatterLnk to complete the work abandoned by the Respondent. The Claimant paid WatterLnk \$4,900.00.

Accordingly, the following formula appropriately measures the Claimant's actual loss:

"If the contractor abandoned the contract without doing any work, the claimant's actual loss shall

be the amount which the claimant paid to the contractor under the contract.” COMAR 09.08.03.03B(3)(a).

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>7</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant’s actual loss of \$24,500.00 is equal to the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover their actual loss of \$24,500.00.

#### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$24,500.00 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)(a). 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 \$24,500.00; 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

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<sup>7</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”).




under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>8</sup> and

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

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

April 19, 2023  
Date Decision Issued

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Syeeta Hampton-EL  
Administrative Law Judge

SAH/kkc  
#204261

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

**PROPOSED ORDER**

***WHEREFORE, this 21<sup>st</sup> day of August, 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.***

***Michael Newton***

***Michael Newton***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***