

IN THE MATTER OF THE CLAIM	* BEFORE ANN C. KEHINDE,
OF PAUL ROSENBLUM,	* 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 JORDAN JAVIER,	*
T/A KCG MD, LLC,	* OAH No.: LABOR-HIC-02-24-11217
RESPONDENT	* MHIC No.: 23(75)1025

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On November 19, 2023, Paul Rosenblum (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$33,276.70 for actual losses allegedly suffered as a result of a home improvement contract with Jordan Javier, trading as KCG MD, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2024).² On April 15, 2024, the MHIC issued a Hearing Order on the Claim. On April 15, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

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 Volume of the Maryland Annotated Code.

On August 26, 2024, I held a hearing by video. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Jonathan P. Phillips, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent was self-represented.

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. 2024); 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 Claimant and KCG, LLC, November 9, 2020
- Clmt. Ex. 2 - MHIC Complaint, November 16, 2023
- Clmt. Ex. 3 - MHIC Claim Form (undated), with attachments
- Clmt. Ex. 4 - House remodel timeline
- Clmt. Ex. 5 - Cedar shake siding cost
- Clmt. Ex. 6 - Rain gutters, downspouts, and leaf guards
- Clmt. Ex. 7 - Sanding and finishing hardwood floors
- Clmt. Ex. 8 - Drywall installation and painting cost
- Clmt. Ex. 9 - Exterior painting, frieze board installation, and ridge vent cut repair
- Clmt. Ex. 10 - Bracing cut rafters cost

Clmt. Ex. 11 - Outrigger repair cost

Clmt. Ex. 12 - Drip edge repair cost

Clmt. Ex. 13 - Line set cover

Clmt. Ex. 14 - Plaster repair cost

Clmt. Ex. 15 - Photograph of house with Tyvek on May 25, 2021

The Respondent offered one exhibit which was admitted into evidence:

Resp. Ex. 1 - Numerous change orders of various dates³

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Remote Hearing, May 28, 2024

Fund Ex. 2 - Hearing Order, April 15, 2024

Fund Ex. 3 - Home Improvement Claim Form, received November 29, 2023

Fund Ex. 4 - Licensing History

Testimony

The Claimant testified and presented testimony from co-owner, Marian Dombroski.⁴ The Respondent testified and did not present other witnesses. 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.

³ The change orders do not contain a date in the title but do contain a date they were "approved." Further, I assume the long number in the title contains digits for change orders, but they are not in any particular order and were not explained during the Respondent's testimony. The Respondent's office manager also sent two other files: a two-page undated document entitled, "Remaining Contract" in the amount of \$24,122.16, and a twenty-three page document of pictures of various dates of the house with Tyvek on it. Neither of these documents were explained or specifically offered by the Respondent during the hearing and were not admitted as evidence. In keeping with OAH procedure, for purposes of judicial review the exhibits will be maintained with the file. COMAR 28.02.01.22C.

⁴ Ms. Dombroski was not listed as a claimant but appeared at the hearing and fully participated without objection from the Respondent or the Fund.

2. On or about November 9, 2020, the Claimant and the Respondent entered into a contract to extensively remodel the Claimant's house including a construction of a new gable dormer for sleeping porch, new windows and closets, new standing seam roof, new shed dormer with shower, new windows and skylight, cedar shake siding, master bathroom remodel with drop-in tub, vanity with drop-in sink, replacement windows, new roof arch, and shingles.

(Contract).

3. The original agreed-upon Contract price was \$155,310.50.

4. There were numerous change orders which increased the Contract price by \$26,927.27; the total contract price was \$182,237.77.

5. The Claimant paid the Respondent \$144,697.47.

6. The Respondent's workers began work on May 19, 2021.

7. The Respondent's work in the following areas was unworkmanlike or inadequate: 1) roof was cut in the wrong location, 2) dormer was built with an incorrect slope, 3) windows were installed with improper flashing, 4) roof was not properly tarped which allowed water to enter the house during three rainstorms, 5) openings allowed racoons to enter the house, 6) shower pan did not have a drain and when the shower pan was rebuilt, the incorrect slope did not allow the water to properly drain, and 7) marble tiles were damaged during transport.

8. By December 2022, the Respondent did not have workers perform any further work according to the Contract and stopped returning the Claimant's telephone calls.

9. The Respondent left the following work incomplete: 1) drywall installation and painting of the sitting room and original bedroom, 2) cedar shake siding installation on new dormers and around replaced windows, 3) paint cedar shake siding on new dormers and around replaced windows, 4) sand and refinish hard wood floors, 5) install gutters, downspouts and leaf guards, 6) purchase and install five doors (to original bedroom, bathroom, and three closets), 7)

repair outriggers on porch, 8) install frieze board on west side dormer, 9) install soffit vents, and 10) enclose HVAC tubing and electrical wiring on outside of house.

10. The Claimant paid Palacios, Inc. \$22,616.00 to complete drywall and painting that was within the scope of the Contract with the Respondent and was left undone.

11. The Claimant paid Jerry's Siding and Roofing \$5,925.00 to install the cedar shake siding that was within the scope of the Contract with the Respondent and was left undone.

12. The Claimant paid Cheverly Home Improvement \$3,920.00 to sand and refinish hardwood floors that were within the scope of the Contract with the Respondent and was left undone.

13. The Contract provided that the Respondent would install rain gutters, downspouts, and leaf guards but the Respondent did not install these items. The Claimant solicited a contract from Roofworks in the amount of \$5,950.00 to install these items.

14. The Contract provided that the Respondent would paint the newly installed cedar shake siding on the dormers and around the replacement windows but the Respondent did not perform this work nor did it install a frieze board on the shed dormer which was part of the Contract. When installing the roof ridge vent, the Respondent accidentally cut the soffit. The Claimant obtained an estimate from Cheverly Home Improvements in the amount of \$10,300.00 to repair and finish this work.

15. The Respondent cut eleven rafters in order to construct the new shed dormer on the east side of the house. The Respondent did not brace the remaining portions of the rafters which caused the roof to sag over these rafters. The Claimant contracted with Cheverly Home Improvements to brace the rafter tails in the amount of \$2,825.00.

16. The Respondent agreed to repair the sagging porch roof overhang and temporarily braced the overhang but did not perform a permanent repair. The Claimant contracted with

Cheverly Home Improvements to permanently repair the porch roof overhang in the amount of \$3,900.00.

17. The Respondent installed a white drip edge at the overhangs of the shingle roof when it should have been a bronze color. The Respondent agreed to paint it but did not. It was not adequately anchored and began to peel up. The Claimant contracted with Cheverly Home Improvements to paint and anchor the drip edge in the amount of \$4,200.00.

18. When the Respondent installed wires and tubes for the HVAC system, the wires and tubes were left exposed. The Claimant contracted with Cheverly Home Improvements to cover and protect the exposed wires and tubes in the amount of \$1,250.00.

19. When the Respondent cut open a section of plaster wall in the stairway for electrical work, it was left open. Another section of plaster ceiling in a first floor bedroom was damaged when workers stepped off floor joists while working in the bathroom above. Water also entered the house when the Respondent did not tarp the roof adequately in the middle of construction and it rained. The Claimant contracted with Palacios Painting to plaster and finish the walls/ceiling in the amount of \$4,800.00.

20. After the Claimant filed his Claim with the Fund, the Respondent offered to complete the contract but the Claimant refused his offer. The Claimant did not believe the Respondent would timely and properly complete the 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. 2024); *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 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. 2024). 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. 2024). 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. 2024). 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. 2024).

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2024). After the Claimant filed his Claim with the MHIC, the Respondent offered to complete the contract, but Claimant rejected that offer. The Claimant testified that he had no assurance that the Respondent would properly complete the work given the length of time that had passed since the Respondent started the project and the numerous deficiencies in the Respondent’s work. The Claimant’s rejection was reasonable under the circumstances.

The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. When the Respondent stopped work in December 2022 numerous aspects of the project were incomplete, permits pulled by the Respondent were still open and had not passed inspection, and work that was performed was unworkmanlike. The Claimant supported his claim with detailed notes and pictures of the work performed – often with pictures of before and after the Respondent's work. The Claimant also clearly explained how he had multiple other contractors finish the work (often soliciting multiple bids and selecting the lower bid to perform the work) and how he excluded costs for items that were outside of the scope of his Contract with the Respondent.

The Respondent did not personally perform or supervise the work, so he was not in a position to contest the Claimant's testimony about the problems with the work. The Respondent testified that the company works in seven states and had approximately one hundred and fifty projects and he was determined to finish the Claimant's project but it was impossible to please Ms. Dombroski. The Respondent testified that Ms. Dombroski was extremely difficult to work with and that she harassed his project manager and workers to the point that none of his employees wanted to complete the project. The Respondent's testimony that four different project managers tried to complete the project but were stymied by Ms. Dombroski's micromanaging was challenged on cross examination when he admitted that one of the project managers actually stopped working on the project after he stole \$150,000.00 from the company and fled to Miami.

The Respondent also testified that it was impossible for him to perform the Contract because, although the prices quoted in the Contract were reasonable prior to the COVID pandemic, building materials became much more expensive during and after COVID and he sustained tremendous losses on the project. The fluctuating price of building materials is an inherent risk in the business of being a contractor and does not provide justification for

unworkmanlike performance of the work that was completed, followed by the abandonment of the project.

Counsel for the Fund asked the Respondent specifically which parts of the Claim he disputed. The Respondent questioned why he should have to pay for the cost to have the drip edge painted when that was not part of the original Contract. Although it is true that the Contract did not provide for the drip edge to be painted, the Claimant testified credibly that when he noticed the workers using a white drip edge, he objected and pointed out that it contrasted sharply with the darker colored shingles and was different from the drip edge on other parts of the house. The Claimant further testified that the project manager told him that the workers would continue using the white drip edge so as not to further delay the project but that they would paint it to match the cedar shake shingles. The Respondent's workers did not paint the drip edge before abandoning the project. Further, the Claimant testified that the drip edge was not attached properly and started peeling up in places and therefore another contractor had to be hired to attach the drip edge properly and paint it. I find the Claimant's testimony credible about the drip edge not being properly attached or the correct color and therefore, the expense to make the drip edge what it should have been is a cost to repair the unworkmanlike and incomplete work performed by the Respondent.

The second specific area identified by the Respondent was in connection to a change order dated October 18, 2021, that he identified was claimed by the Claimant in the amount of \$3,675.00. Unfortunately, the Respondent did not present the change orders in an organized way by number or date and therefore trying to match the change order to the amount noted by the Respondent was difficult at best. There was a change order that was discussed on October 18, 2021, but it was referred to as change order number three. It addressed a recommendation by the Respondent to sister the joist under the tub from "bearing wall to bearing wall to ensure proper strength" in the amount of \$560.00. (Ex. 1, p. 34). Ms. Dombroski responded on October 18,

2021: "Thank you for suggesting this work. I will mail a check in this amount in the morning."

There is a further note on the change order, dated May 24, 2022, in which Ms. Dombroski wrote: "This item was PAID by check mailed by owner on October 19, 2021. Kindly indicate as paid." (Ex. 1, p. 34). In the thirty-six pages of unorganized change orders that comprise Respondent's Exhibit 1, I was unable to find an amount that corresponded to \$3,675.00 for October 18, 2021, and therefore I did not deduct this amount from the Claimant's Claim.

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. 2024); 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 has retained 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 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).

Applying the facts of this case to the formula results in the following:

Amount paid to Respondent:	\$144,697.47
Costs to correct:	\$ 63,036.00 ⁵
Total	\$207,733.47
Minus original contract price (including change orders)	\$182,237.77
Actual Loss	\$ 25,495.70

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.⁶ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2024); COMAR 09.08.03.03B(4). 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 his actual loss of \$25,495.70.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$25,495.70 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2024); COMAR 09.08.03.03B(3)(c).

I further conclude that the Claimant is entitled to recover \$25,495.70 from the Fund.

⁵ The amounts paid or the bids solicited referenced in Findings of Fact numbers 10 through 19, total \$65,686.00; however, the Claimant noted that the total was \$63,036.00 and I have used that figure as during his testimony and in several of the bids, the Claimant noted that a lower amount was actually charged as the work was not as extensive as anticipated and this may account for the difference.

⁶ 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 \$25,495.70; 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;⁷ and

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

November 25, 2024
Date Decision Issued

Ann C. Kehinde

Ann C. Kehinde
Administrative Law Judge

ACK/ckc
#215182

⁷ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 16th day of April, 2025, 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.

Wm. Bruce

Quackenbush

Wm. Bruce Quackenbush

Chairman

Panel B

**MARYLAND HOME IMPROVEMENT
COMMISSION**