

IN THE MATTER OF THE CLAIM	* BEFORE ANGELA C. DIEHL,
OF BYRON Q. HOLMES,	* 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	*
LUIS AVILES ORDONEZ,	* OAH No.: LABOR-HIC-02-24-06337
T/A ST. JOSEPH CARPENTRY AND	* MHIC No.: 23 (75) 1075
REMODELING LLC	*
RESPONDENT	*

\* \* \* \* \*

**PROPOSED DECISION**

STATEMENT OF THE CASE  
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RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On October 10, 2023, Byron Q. Holmes (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$45,076.52 for actual losses allegedly suffered as a result of a home improvement contract with Luis Aviles Ordonez, trading as St. Joseph Carpentry and Remodeling LLC (Respondent).

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

Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).<sup>2</sup> On March 1, 2024, the MHIC issued a Hearing Order on the Claim. On March 1, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 4, 2024, I held a hearing via the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented.

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. COMAR 28.02.01.23A. On March 29, 2024, the OAH provided a Notice of Hearing (Notice) to the Respondent by certified mail and first-class mail. Bus. Reg. §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for June 4, 2024, at 9:30 a.m., via the Webex videoconferencing platform with log in instructions. 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 was returned to the OAH with the notation as undeliverable. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. This was also the address of record with the Fund. 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.,

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

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 - Outline for Remote Hearing by the Claimant, unknown date
- Clmt. Ex. 2 - Contract between the Claimant and the Respondent, February 2021
- Clmt. Ex. 3 - Emails between the Claimant and the Respondent, February 2021 to December 21, 2022
- Clmt. Ex. 4 - Copies of cancelled checks from the Claimant to the Respondent: \$8,400.00 on March 18, 2021; \$7,447.09 on September 30, 2021, Zelle payment receipt for \$500.00 on November 21, 2021, \$8,200.00 on October 28, 2021, \$8,400.00 on November 20, 2021
- Clmt. Ex. 5 - Contract between the Claimant and Alonzo Malone doing business as A&M Home Improvement, February 16, 2023
- Clmt. Ex. 6 - Printouts from Navy Credit Union showing payments to Alonzo Malone: \$800.00 on January 31, 2023, \$1,200.00 on February 3, 2023, \$5,000.00 on March 28, 2023, \$5,000.00 on March 31, 2023, \$5,000.00 on June 27, 2023
- Clmt. Ex. 8 - Lowe's receipt for \$460.29 for supplies<sup>3</sup> such as 5/8 inch x 12 foot boards, April 4, 2023
- Clmt. Ex. 9 - Lowe's receipt with unknown amount and date
- Clmt. Ex. 10 - Contract with Luxe designs for flooring and vapor barrier for \$5,392.22, June 13, 2023

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Remote Hearing, March 29, 2024, Hearing Order dated March 1, 2024
- Fund Ex. 2 - Maryland Department of Labor, Home Improvement Commission ID Registration, May 21, 2023

<sup>3</sup> The Claimant testified and information provided in Clmt. Ex. 1 indicated that the Lowe's receipt for supplies was for \$46.29. However, \$46.29 was the discount that the Claimant received for the supplies he purchased. The amount on the receipt indicates that the Claimant paid \$460.29 for the supplies.

Fund Ex. 3 - Letter from the Fund to the Respondent with a copy of the Home Improvement Claim Form, October 17, 2023

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

Testimony

The Claimant testified.

The Fund did not offer any witnesses.

As the Respondent failed to appear, the Respondent did not testify or 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 121006.

2. On February 21, 2021, the Claimant and the Respondent entered into a contract to convert the Claimant's car port into a dining room which included cutting of existing brick wall for dining room opening, installing beam supports and posts where brick wall was removed, digging area for footing, pouring concrete on existing car port to level floors, installing new brick wall to close up dining room, framing, framing of new door, installing roofing, paint, soffit and fascia for door overhang only, installing windows and doors, insulation and add drywall, adding flooring and trim and baseboards. The cost to convert the car port to a dining room was \$20,000.00.

3. The contract also included the addition of a bathroom to the main bedroom which included cutting existing brick wall for new bathroom, installing concrete slab/footing for new bathroom addition, installing new brick wall to close up the bathroom, framing, electrical, plumbing, installing windows and doors, insulating, drywalling, painting, installing tile, new

toilet, new vanity, new standing shower and a shower door. The cost for the new main bathroom addition was \$14,000.00.

4. The contract also provided for retaining an architect and engineer and obtaining any needed permits which was listed as \$3,000.00 in the contract.

5. The last item in the contract was to build a deck which was delineated at \$3,500.00.

6. The total original agreed-upon Contract price was \$40,500.00.

7. On March 17, 2021, the Respondent and Claimant revised the Contract to include everything encompassed in the February contract but also included waterproofing the dining room and bathroom and a footing for the walls. The cost to convert the car port to a dining room increased to \$25,000.00. The March contract no longer included the cost of installing a deck. All other amounts in the February contract remained the same. The revised Contract price was now \$42,000.00 (Contract).

8. The Claimant paid the Respondent \$32,947.09 per the following payment schedule: \$8,400.00 on March 18, 2021, \$7,447.09 on September 30, 2021, \$8,900.00 on November 20, 2021, and \$8,200.00 on October 28, 2021.

9. In December 2022, the Respondent stopped work on the Contract and advised the Respondent that he needed more money to complete the Contract. The Claimant stated that both parties agreed to the price and work in the revised Contract and he was not providing the Respondent with any additional money.

10. As of December 2022, the Respondent dug a trench where the bedroom and bathroom were to be located, built the framing, and installed the concrete footing for the dining

room that was previously the car port. The Respondent also installed the windows for the dining room, but no other work from the Contract had been completed.

11. On February 16, 2023,<sup>4</sup> Claimant contracted with Alonzo Malone doing business as A&M Home Improvement to complete the work abandoned by the Respondent, specifically to:

- extend duct work, install two lights, build a knee wall
- remove a section of brick from brick wall
- sand, finish and paint drywall on ceiling and walls
- remove a section on vinyl siding and replace siding into new addition
- install a new floor into new addition
- install new window and door molding
- install plywood and shingle on small roof
- cover existing wood post
- insulate additional walls and ceiling
- haul away debris
- install one down spout
- install one entry door

12. The Claimant paid A&M Home Improvement \$17,000.00<sup>5</sup> to complete the work abandoned by the Respondent.

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<sup>4</sup> Clmt. Ex. 5 provides a date of February 16, 2023 on the contract between the Claimant and A&M Home Improvement; however, there are payments to Alonzo Malone started on January 31, 2023 and February 3, 2023 that predate the contract with A&M Home Improvement.

<sup>5</sup> The contract with A&M Home Improvement was for \$30,000.00. The Claimant did not explain the \$13,000 difference in the contract price and the money paid to A&M Home Improvement.

13. On June 13, 2023, the Claimant entered into a contract with Luxe Designs to install flooring and a vapor barrier in the dining room for \$5,392.22.

### **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.

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 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). The Claimant testified that he attempted to resolve

these issues through arbitration with the Respondent; however, the Respondent failed to respond to any notices regarding arbitration.

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023). The Claimant testified that the Respondent stopped working on the project in December 2022. The Respondent stated that the cost of supplies had dramatically increased after Covid and he needed more money to complete the Contract. The Claimant stated that they had a Contract which established the parameters of the work and the price for that work. The Claimant declined to provide any more money to the Respondent.

The Respondent performed incomplete home improvements. After the Claimant rejected the Respondent's request to increase the cost of the Contract, the Respondent stopped work on the Contract. As of December 2022, the Respondent had dug a trench where the bathroom was to be located, built the framing, and installed the concrete footing for the dining room that was previously was the car port; but no other work had been completed. The Respondent also installed the windows for the dining room. For the main bedroom, the Respondent had dug the trench for the bedroom. Portions of the Claimant's home were left exposed to the elements and animals because of the incomplete work performed by the Respondent.

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 retained other contractors to complete or remedy that work. When the Respondent failed to return to complete the work that he had started, the Claimant contracted with A&M Home Improvement on February 16, 2023 to extend duct work, install two lights, build a knee wall; remove a section of brick from brick wall; sand, finish and paint drywall on ceiling and walls; remove a section on vinyl siding and replace siding into new addition; install a new floor into new addition, new window and door molding; install plywood and shingle on small roof; cover existing wood post; insulate additional walls and ceiling; haul away debris; install one down spout; and install one entry door. The Claimant testified that he had received an estimate for \$25,000.00 to add siding to the dining room. Adding brick to the exterior to the addition was included in the Contract with the Respondent. Because this was a change to the Contract terms, I find the \$25,000.00 is excluded from this claim. Additionally, the cost of the siding was not part of the Claimant's Claim Form.

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).

Application of the regulatory formula results in an actual loss to the Claimant of \$13,799.60, calculated as follows:

\$32,947.09	amount paid by the Claimant to the Respondent
+ <u>\$22,852.51</u> <sup>6</sup>	(\$17,000.00 to A&M Home Improvement + \$5392.22 for Luxe Designs + \$460.29 for supplies at Lowe's), amount required to complete the contract
\$55,799.60	total paid by the Claimant
- <u>\$42,000.00</u>	revised contract price
\$13,799.60	actual loss per formula

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. 2023); 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 their actual loss of \$13,799.60. On Claimant's Claim Form, he requested \$45,076.92 as his claim; however, based on the Claimant's testimony and evidence provided, the Claimant is entitled to \$13,799.60.

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

I conclude that the Claimant has sustained an actual and compensable loss of \$13,799.60 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 \$13,799.60 from the Fund.

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<sup>6</sup> The Claimant testified that the total cost to complete the work not performed by the Respondent was \$22,447.51. However, after adding the payments made to A&M Home Improvement, Luxe Designs and the Lowe's receipt, I calculate the total as \$22,852.51.

<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").

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$13,799.60; 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>8</sup> and

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

June 26, 2024  
Date Decision Issued

*Angela C. Diehl*

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Angela C. Diehl  
Administrative Law Judge

ACD/ja  
#212233

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

**PROPOSED ORDER**

***WHEREFORE, this 23<sup>rd</sup> day of October, 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.***

**W. Bruce**

**Quackenbush**

**W. Bruce Quackenbush**

**Chairman**

**Panel B**

**MARYLAND HOME IMPROVEMENT  
COMMISSION**