

IN THE MATTER OF THE CLAIM	* BEFORE LEIGH WALDER,
OF JOHN HENEGHAN,	* 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 JUSTIN LEE	*
CARPENTER,	*
T/A THE REAL ESTATE CORNER,	*
LLC,	* OAH No.: LABOR-HIC-02-23-27194
RESPONDENT	* MHIC No.: 23 (75) 1137

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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 May 31, 2023, John Heneghan (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$15,200.93 for actual losses allegedly suffered as a result of a home improvement contract with Justin Lee Carpenter, trading as The Real Estate Corner, LLC (Respondent). Md. Code Ann.,

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

Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).<sup>2</sup> On October 13, 2023, the MHIC issued a Hearing Order on the Claim. Thereafter, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On December 27, 2023, I held a hearing on the Webex video conference platform (Webex). Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Catherine Villareale, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. As set out below, the Respondent failed to appear to the hearing.

On November 7, 2023, the OAH mailed a Notice of Hearing (Notice) to the Respondent by United States mail. The Notice was sent to the Respondent's address of record in Pasadena, Maryland. The Notice stated that a hearing was scheduled for December 27, 2023, at 9:30 a.m., via Webex, and provided a Webex meeting number. COMAR 09.08.03.03A(2). The Notice advised the Respondent that failure to attend the hearing might result in "a decision against you." The Notice sent by certified mail was returned to the OAH as undeliverable with the notation that it was "unclaimed."<sup>3</sup> The notice sent by regular mail was not returned as undeliverable.

I waited until 9:45 a.m. to see if either the Respondent or anyone representing the Respondent would appear. Neither did. 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. I determined that the Respondent received proper notice and proceeded in the Respondent's absence. COMAR 28.02.01.05A, C.

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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.

<sup>3</sup> Ms. Villareale indicated that the Fund had no other address on record for the Respondent and that the Respondent had last updated his address with the MHIC on August 11, 2023. *See* Md. Code Ann., Bus. Reg. § 8-309 ("Within 10 days, a licensee shall notify the [MHIC] of a change of control in ownership, management, address, or trade name.").

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**

Except as noted,<sup>4</sup> I admitted the following documents offered by the Employee into evidence:

Clmt. Ex. 1 – Packet of documents, including:

- Complaint Form, received March 13, 2023
- Contract, dated October 20, 2022
- Change Order Addendum, dated December 12, 2022
- Email from the Respondent to the Claimant, dated January 20, 2023
- Text message thread, various dates
- Withdrawal, dated October 27, 2022
- Check, dated October 28, 2022
- Text message thread, various dates

Clmt. Ex. 2 – Not offered

No documents were submitted on behalf of the Respondent.

I admitted the following exhibits offered by the Fund:

GF Ex. 1 – Letter from the MHIC to the Respondent, dated May 31, 2023; Claim Form, dated May 16, 2023

GF Ex. 2 – Hearing Order, dated October 13, 2023

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<sup>4</sup> Claimant's Exhibit 2 was not offered but is retained for the record. See COMAR 28.02.01.22C ("All exhibits marked for identification, whether or not offered in evidence and, if offered, whether or not admitted, shall be retained for purposes of judicial review.").

GF Ex. 3 – Notice, dated November 7, 2023

GF Ex. 4 – Licensing information, printed November 27, 2023

Testimony

The Claimant testified on his own behalf.

The Respondent was not present to testify or offer any witnesses.

The Fund did not offer any witness 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 numbers 01-105422 (individual) and 05-136486 (corporate).

2. On October 20, 2022, the Claimant and the Respondent entered into a contract with the Respondent's representative, Jason Deal, where the Respondent agreed to build and install a new composite deck with railings and staircase, in exchange for \$30,401.86. The work was to consist of:

- Dig footer for deck to proper depth and width set by county code;
- When footer passes inspection install 6x6 post into hole with concrete to anchor post and begin deck substructure;
- Install 2x12 beam on top of post to create support system for joists;
- Install 2x10 joists on top of beams to create support system for composite boards;
- Install composite boards in the color "beach house," using hidden fasteners;
- Install 4x4 posts on deck and anchored to substructure to begin vinyl railing system;
- Install vinyl railing system to 4x4;
- Build and install stair stringers to deck landing to begin structure of staircase;
- Install all posts necessary for support system of staircase;
- Install composite boards in the color "beach house," to create stair treads;
- Install vinyl railing system on staircase;

- Wrap perimeter of deck and risers of staircase with PVC;<sup>5</sup> and
- Clean and haul away debris left/created on job site.

3. The Claimant was obligated to pay the Respondent a fifty percent deposit (\$15,200.93) prior to work commencing.

4. On October 27, 2022, the Claimant paid the Respondent \$13,000.00.

5. On October 28, 2022, the Claimant paid the Respondent \$2,200.93.

6. On December 12, 2022, the Claimant and the Respondent entered into a change order where the Respondent agreed to change the location of the deck's staircase. This change order did not increase or reduce the price of the contract, which remained at \$30,401.86.

7. The Respondent was scheduled to begin work in January 2023. Work did not begin in January 2023.

8. In February and March 2023, the Claimant sent text messages to the Respondent's workers requesting status updates about the construction project. The Respondent's workers passed on the Claimant's concerns to their boss but were unable to assist the Claimant any further.

9. The Respondent never returned to the Claimant's property to complete any work.

### **DISCUSSION**

#### **Applicable Law**

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).

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<sup>5</sup> Polyvinyl chloride.

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.

#### Eligibility for Compensation

The evidence in this case establishes there are no legal impediments barring the Claimant from filing a claim under section 8-405 of the Business Occupations Article.

The Respondent was a licensed home improvement contractor at the time of the contract. 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).

The Claimant argued, and the Fund agreed, that he suffered an actual loss incurred as a result of the Respondent’s acts or omissions, entitling him to compensation from the Fund. Specifically, the Claimant argued that, despite being paid a down payment, the Respondent failed to perform any work to construct a deck, as contracted. The Claimant produced the contracts that required the Respondent to construct a deck after receiving a down payment. (Clmt. Ex. 1).

Despite being paid a total of \$15,200.93 as a down payment, the Respondent performed no work under the contract.

The Claimants' assertion that the Respondent performed no work is uncontroverted and, based on the Claimant's testimony, credible. Further, the Claimant produced correspondence between himself and the Respondent's employees requesting status updates about when the Respondent would construct the deck, as contracted. (*See id.*). Despite these messages, the Respondent never returned to the Claimant's property to perform any work. Therefore, the Claimant established that he suffered an actual loss due to an incomplete 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.

#### Award

The Claimant seeks the return of the \$15,200.93 deposit that he paid the Respondent. The Fund agreed the Claimant is entitled to this amount. 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.

Here, the Respondent abandoned the contract without doing any work. Accordingly, the following formula appropriately measures the Claimants' 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). The Claimant submitted proof that he paid the Respondent a total of \$15,200.93 under the contract. (Clmt. Ex. 1). Therefore, the Claimant's actual loss is \$15,200.93.

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>6</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 equal to the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$15,200.93.

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$15,200.93 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)(a). I further conclude that the Claimant is entitled to recover \$15,200.93 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a) (Supp. 2023); COMAR 09.08.03.03B(3)(a).

### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$15,200.93; 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>7</sup> and

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<sup>6</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>7</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.

March 19, 2024  
Date Decision Issued

*Leigh Walder*  
Leigh Walder  
Administrative Law Judge

LW/sh  
#210792

**PROPOSED ORDER**

***WHEREFORE, this 3<sup>rd</sup> day of June, 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.***

***I Jean White***

***I Jean White***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***

<b>IN THE MATTER OF THE CLAIM OF JOHN HENEGHAN AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMISSIONS OF JUSTIN LEE CARPENTER AND THE REAL ESTATE CORNER, LLC</b>	* MARYLAND HOME * IMPROVEMENT COMMISSION * * MHIC CASE NO. 23(75)1137 * OAH CASE NO. LABOR-HIC- * 02-23-27194 *
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**FINAL ORDER**

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on December 27, 2023. Following the evidentiary hearing, the ALJ issued a Proposed Decision on March 19, 2024, concluding that the homeowner, John Heneghan (“Claimant”) suffered an actual loss as a result of the acts or omissions of Justin Lee Carpenter and The Real Estate Corner, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p. 8. In a Proposed Order dated June 3, 2024, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to grant an award of \$15,200.93 from the Home Improvement Guaranty Fund. The Contractor subsequently filed exceptions to the MHIC Proposed Order.

On August 15, 2024, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant and Contractor participated without counsel. Assistant Attorney General Hope Sachs appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Contractor’s exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. The Claimant timely filed a request for leave to present new evidence, but failed to demonstrate that the evidence he sought to present was unavailable to him prior to the OAH hearing. Therefore, the Panel’s

review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, and the exhibits offered as evidence at the OAH hearing. COMAR 09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for the construction of a deck at the Claimant's home. The ALJ found that the Contractor abandoned the contract without performing any work, and in accordance with COMAR 09.08.03B(3)(a), found that the Claimant's actual loss was \$15,200.93, the amount the Claimant paid to the Contractor. *ALJ's Proposed Decision* p. 7. The Contractor did not attend the OAH hearing and, therefore, did not present any evidence.

At the exceptions hearing, the Contractor argued that he did not receive notice of the OAH hearing. The ALJ found that OAH mailed the hearing notice to the Contractor via regular and certified mail, and that the notice sent via regular mail was not returned as undeliverable and that the notice sent via certified mail was returned because it was unclaimed. The ALJ therefore concluded that the Contractor was provided with proper notice and proceeded with the hearing in his absence. The record confirms that the OAH sent the notice to the Contractor's current address of record with the Commission, that the certified mail copy was returned to OAH as unclaimed, and that the regular mail copy was not returned. The Contractor did not identify or offer any evidence in support of his assertion that he did not receive notice of the OAH hearing. Therefore, the Commission agrees with the ALJ's finding that OAH provided proper notice to the Contractor. Moreover, assuming, *arguendo*, that the Contractor did not receive actual notice of the OAH hearing, the lack of notice was attributable to the Contractor's failure to claim the certified mailing.

On exception, the Contractor also made several factual allegations without reference to the record and without identifying specific alleged errors in the ALJ's Proposed Decision. The

Commission's review of the record reveals no errors by the ALJ.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 23<sup>rd</sup> day of August 2024, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AFFIRMED**;
- D. That the Claimant is awarded \$15,200.93 from the Maryland Home Improvement Guaranty Fund;
- E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, *Md Code Ann.*, Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a);
- F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- G. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

*Robert Altieri*  
**Chairperson –Panel**  
**Maryland Home Improvement**  
**Commission**