

<p>IN THE MATTER OF THE CLAIM OF LAURENCE DANIELS, CLAIMANT AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ALLEGED ACTS OR OMISSIONS OF WILIAN MEJIA, T/A WILIAN'S CONTRACTINGS, RESPONDENT</p>	<p>* BEFORE MARY PEZZULLA, * AN ADMINISTRATIVE LAW JUDGE * OF THE MARYLAND OFFICE * OF ADMINISTRATIVE HEARINGS * * * * OAH No.: LABOR-HIC-02-23-31808 * MHIC No.: 23 (75) 1229</p>
--	--

* * * * *

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 July 9, 2023, Laurence Daniels (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$68,999.00² for actual losses allegedly suffered as a result of a home improvement contract with Wilian Mejia, trading as Wilian's Contractings (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).³ On November 30, 2023, the MHIC issued a Hearing

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

² At the hearing, the Claimant testified that he was seeking \$18,999.00 and that he must have made a mistake on his claim form.

³ Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

Order on the Claim. On November 30, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 11, 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). Catherine Villareale, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent failed to appear.

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 December 28, 2023, the OAH provided a Notice of Remote 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 remote hearing was scheduled for March 11, 2024, at 9:30 a.m. 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. 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 - Explanation of Complaint, undated
- Clmt. Ex. 2 - Contract between the Respondent and the Claimant, November 8, 2022
- Clmt. Ex. 3 - Check number 5150 from the Claimant to the Respondent in the amount of \$10,000.00, November 14, 2022; Check number 5151 from the Claimant to the Respondent in the amount of \$4,000.00, November 14, 2022; Check number 102 from the Claimant to the Respondent in the amount of \$4,333.00, December 16, 2022; Check number 103 from the Claimant to the Respondent in the amount of \$4,333.00, December 16, 2022; Check number 104 from the Claimant to the Respondent in the amount of \$4,333.00, December 16, 2022; Check number 106 from the Claimant to the Respondent in the amount of \$2,500.00, December 28, 2022; Check number 107 from the Claimant to the Respondent in the amount of \$2,500.00, December 28, 2022; Check number 109 from the Claimant to the Respondent in the amount of \$3,500.00, January 9, 2023; Check number 110 from the Claimant to the Respondent in the amount of \$3,500.00, January 9, 2023
- Clmt. Ex. 4 - Estimate from LeftOver 2 MakeOver LLC, March 3, 2023
- Clmt. Ex. 5 - Photograph of basement taken by the Claimant, July 2023
- Clmt. Ex. 6 - Estimate from Affordable Home Improvements, October 3, 2022

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Letter from the Fund to the Respondent, July 18, 2023 with attached Home Improvement Claim Form, July 5, 2023
- Fund Ex. 2 - Hearing Order, November 30, 2023

Fund Ex. 3 - Notice of Remote Hearing, December 28, 2023

Fund Ex. 4 - Respondent's Licensing History, March 5, 2024

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

Testimony

The Claimant testified and presented the testimony of his wife, Gilda Daniels.

The Respondent did not appear and did not offer any testimony.

The Fund did not present any 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 number 01-115808.
2. In October 2022, the Claimant received an estimate from Affordable Home Improvements, a company licensed to perform home improvements by the MHIC, to finish his basement for the cost of \$70,010.00.
3. The Claimant decided not to enter into a contract with Affordable Homes Improvements and chose to enter a contract with the Respondent instead.
4. On November 8, 2022, the Claimant and the Respondent entered into a contract to finish the basement at the Claimant's home in Bowie, Maryland (Contract). The scope of the work included framing, drywalling, installing electrical outlets, installing new lights, building a bathroom with a shower, floor installation, and painting the finished basement.
5. The original agreed-upon Contract price was \$34,000.00.
6. The Respondent began work on the project on or about November 14, 2022.
7. From November through December 2022, the Claimant paid the Respondent a total of \$31,999.00.

8. By the end of December 2022, the Respondent had completed the framing work in the basement.
9. On January 9, 2023, the Claimant paid the Respondent an additional \$7,000.00. This \$7,000.00 was for the remainder of the Contract price and to add built-in bookshelves. This changed the total contract amount to \$38,999.00.
10. After January 9, 2023, the Respondent and his workers began to come to the property less frequently and for only a few hours at a time.
11. On February 10, 2023, the Respondent informed the Claimant that he was having an issue with his bank account, but the issue should be resolved by February 21, 2023, and he would be able to resume work then. The Respondent requested an additional \$7,000.00 to be able to continue work in the interim, but the Claimant refused to pay additional monies toward the project.
12. After February 10, 2023, the Respondent did not return to the property or perform any more work under the Contract.
13. As of February 10, 2023, only the framing work had been completed. The Respondent had begun to jackhammer a trench in the basement for the bathroom plumbing, but it remained unfinished.
14. On March 3, 2023, the Claimant obtained an estimate from LeftOver 2 MakeOver LLC (LeftOver) to finish the basement. The LeftOver estimate was for \$70,000.00. LeftOver is not licensed by the MHIC.

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 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 did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023).

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Claimant presented uncontroverted testimony and evidence showing that the Respondent performed an incomplete home improvement. The Respondent began the work to finish the Claimant’s basement and build a bathroom in November 2022. The

Original Contract amount was \$34,000.00. This amount was then increased to \$38,999.00 in order to include built-in shelves. The Respondent completed the framing work and began jackhammering into the concrete to lay the plumbing for the bathroom. The Respondent did not perform the drywalling, bathroom build, electrical and lighting installation, floor installation, or painting that was outlined in the Contract.

Despite having only completed the framing, the Claimant paid the Respondent a total of \$38,999.00. The Claimant explained that he had used the Respondent for other home improvement work in the past, had a good working relationship with him, and trusted him, so was not concerned initially that the Respondent needed more money upfront for the project. It was not until the Claimant made the final payment to the Respondent on January 9, 2023, that the Respondent began to come to the property less frequently, then stopped coming altogether in the first week of February 2023. The Claimant testified that he spoke with the Respondent on February 10, 2023 and the Respondent told him that he was having an issue with his bank account but should have it remedied by February 21, 2023. The Respondent, however, never returned to the property or performed any additional work.

Based on the evidence and testimony presented, I find that the Respondent performed an incomplete home improvement, and the Claimant has proven eligibility for compensation.

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 Claimant testified that he believed the framing work to be worth \$20,000.00. He also testified that he had another company, LeftOver, provide him an estimate for finishing the basement work. LeftOver's estimate was for \$70,000.00. The Fund, however, argued that LeftOver's estimate should not be used because LeftOver is not licensed by the MHIC. The Fund argued that its policy is to only reimburse claimants for work performed by licensed home improvement contractors and that I should not accept an estimate from an unlicensed contractor. In this case, however, the Claimant is not seeking to use LeftOver to complete the work from the Contract. It was clear from his testimony that he had obtained the estimate from LeftOver to see what his options were, as well as to gauge the value of the work performed by the Respondent.

I find it more appropriate to consider that the Claimant, at least at this time, is not seeking another contractor to complete the work of finishing the basement. Accordingly, the following formula appropriately measures the Claimant's actual loss: "If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor." COMAR 09.08.03.03B(3)(b).

As stated, the Claimant testified that he believes the framing work performed by the Respondent to be valued at \$20,000.00. The Fund did not contest or oppose this valuation. Additionally, I find that the estimate that the Claimant received from Affordable Home Improvements in October 2022 supports this valuation. The Affordable Home Improvements estimate (Clmt. Ex. 6) notes a payment of \$21,000.00 was to be paid after completion of the framing/flooring. Based on the Claimant and his wife's testimony, the framing was a large portion of the work that needed to be completed for the remodeling of the basement. Although he did not present expert testimony regarding the value of the work completed by the Respondent,

I find that the Claimant's testimony, coupled with the Affordable Home Improvements estimate, provides sufficient evidence to support the valuation of the Respondent's work to be \$20,000.00.

Amount the Claimant paid to the Respondent:	\$ 38,999.00
Value of materials or services provided by the Respondent:	- \$ 20,000.00
Actual loss:	\$ 18,999.00

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.⁴ 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 his actual loss of \$18,999.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$18,999.00 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)(b). I further conclude that the Claimant is entitled to recover that amount from the Fund. COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Home Improvement Commission:
ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$18,999.00; 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

⁴ 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;⁵ and

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

May 16, 2024
Date Decision Issued

Mary Pezulla

Mary Pezulla
Administrative Law Judge

MP/kh
#210642

⁵ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 14th day of August, 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***