

IN THE MATTER OF THE CLAIM	* BEFORE KATHLEEN A. CHAPMAN,
OF STEPHEN MASSEY,	* 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 SARATH	*
PUTHUSSEY,	*
T/A BALTIMORE DESIGN &	*
REMODELING,	* OAH No.: LABOR-HIC-02-24-11919
RESPONDENT	* MHIC No.: 23 (75) 1266

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On February 5, 2024, Stephen and Promila Massey (Claimants)¹ filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)² Guaranty Fund (Fund) for reimbursement of \$19,533.00 for actual losses allegedly suffered as a result of a home improvement contract with Sarath Puthussery, trading as Baltimore Design & Remodeling

¹ Mr. and Mrs. Massey jointly signed and submitted the home improvement claim form. Together, they will be referred to as the Claimants. Whenever necessary, I will refer to them individually as Claimant S. Massey and Claimant P. Massey.

² The MHIC is under the jurisdiction of the Department of Labor (Department).

(Respondent).^{3,4} On May 1, 2024, the MHIC issued a Hearing Order on the Claim. On May 1, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 20, 2024, the OAH mailed a Notice of Hearing (Notice) to the Respondent by certified and first-class mail to his address of record on file with the MHIC.⁵ The Notice advised the Respondent of the date, time, and location of the hearing regarding this matter.⁶ The Notice further advised the Respondent that failure to attend the hearing might result in “a decision against you.” The United States Postal Service (USPS) did not return the Notice sent via first-class mail to the OAH. On May 22, 2024, the Respondent signed the certified mailing receipt accepting receipt of the Notice. Accordingly, I determined that the Respondent received proper notice.⁷

On August 6, 2024, at 9:30 a.m., I held a hearing at the OAH in Hunt Valley, Maryland.⁸ Jonathan Phillips, Assistant Attorney General, Department, represented the Fund. The Claimants were self-represented, with Claimant P. Massey presenting the case on their behalf.⁹ The Respondent was not present.

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.¹⁰

³ The Respondent also marketed under the name of “Old Bay Remodeling.”

⁴ Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023). Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

⁵ “The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission.” *Id.* § 8-312(d); *see also id.* § 8-407(a); Code of Maryland Regulations (COMAR) 28.02.01.05C(1).

⁶ COMAR 09.08.03.03A(2).

⁷ COMAR 28.02.01.05.

⁸ Bus. Reg. §§ 8-407(a), 8-312.

⁹ Hindi interpreter Chandrakant Ruparelia provided interpreter services for the benefit of Claimant S. Massey. COMAR 28.02.01.09A.

¹⁰ COMAR 28.02.01.23A.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure.¹¹

ISSUES

1. Did the Claimants 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 have attached a complete Exhibit List as an Appendix.

Testimony

Claimant P. Massey testified and did not present other witnesses.

The Respondent was not present at the hearing and offered no witness testimony.

The Fund offered no 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 number 119037, trading as Baltimore Design & Remodeling, but marketing under the name Old Bay Remodeling.
2. The Claimants are not relatives, employees, officers, or partners of the Respondent, and are not related to any employee, officer, or partner of the Respondent.
3. The Claimants reside at a single family residence located on Cresthill Court, Laurel, Maryland.

¹¹ Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); COMAR 09.01.03; COMAR 28.02.01. Unless otherwise specified, all references to the State Government Article ("State Gov't") are to the 2021 Replacement Volume.

4. The Claimants do not own any other dwellings.

5. On a date not identified in the record, the Claimants and the Respondent entered into a contract to build a 16 x 12 addition on top of an existing deck at the Claimants' home (Contract).¹² The scope of work included the following:

- Claimant to obtain the property plot plan and any homeowner's association approval;
- Respondent to obtain all required county building permits and drawings;
- Insulate under deck, three walls, and ceiling;
- Build shed roof, match shingle color to main house color, finish with matching vinyl siding, and white maintenance-free trim;
- Install framed walls under new roof (2x4, 16" on center), two-foot high knee wall. Also install seven white vinyl two section slider windows;
- Drywall finish inside walls, house wall, knee wall, and ceiling. Tape and finish with paint with homeowner chosen paint colors;
- Remove six-foot patio door, open wall six feet more with a pass thru to proposed room. Install 14" lintel beam for support, based on inspection approval;
- Install four skylights;
- Replace steps to the backyard; and
- Clean up and haul away all job debris.¹³

6. The original agreed-upon Contract price was \$40,000.00, with the following payment schedule:

<u>\$10,000.00</u>	deposit
<u>\$10,000.00</u>	payable upon issuance of permits
<u>\$10,000.00</u>	completion of siding
<u>\$10,000.00</u>	payable upon substantial completion of the project

7. The Contract indicated that the estimated start date for work to begin was thirty days from permit approval, and the estimated end date for work to finish was one-hundred and eighty days from the start date.

¹² The Contract does not contain any signatures or dates.

¹³ CLMT Ex. 1.

8. On October 19, 2021, the Respondent applied for a Residential Addition Single Family Dwelling Permit for the project. On June 27, 2022, the Howard County Department of Inspections, Licenses and Permits (HC Permits) approved the permit.¹⁴

9. The Claimants paid the Respondent \$40,500.00¹⁵ to perform the terms and conditions of the Contract, as follows:

- SunTrust, check no. 4818, in the amount of \$10,000.00, June 17, 2021;
- SunTrust, check no. 4893, in the amount of \$10,000.00, June 6, 2022;
- SunTrust, check no. 101, in the amount of \$10,000.00, June 16, 2022; and
- SunTrust, check no. 4906, in the amount of \$10,500.00, August 23, 2022.

10. The Respondent completed the addition, but he failed to obtain the requisite inspections and approvals from the HC Permits prior to completing the work.

11. On March 10, 2023, the HC Permits notified the Claimants in writing that their home had not passed the appropriate inspections and was in violation of the Howard County Building Code. If the Claimants did not correct the following items, they would sustain a minimum \$250.00 per day civil citation:

- Existing deck plans did not match construction plans;
- Footings inspection had not been completed;
- Wall braces/sheathing inspection had not been completed;
- Frame inspection had not been completed;
- Insulation inspection had not been completed;
- Final inspection had not been completed;
- Electrical permit was required; and
- Anything else revealed through subsequent inspections.¹⁶

12. On April 24, 2023, the Claimants hired MHIC-licensed contractor, Gary Sweltzer Services, Inc., t/a Excellent Contracting (Contractor Sweltzer), to accommodate the HC Permits' demand letter and perform the following rehabilitation of the home improvement:

- Rebuild landing of steps to include top landing and rails, \$2,525.00;
- Build missing beam under deck, \$2,650.00;

¹⁴ *Id.*

¹⁵ The Claimants did not explain why they paid \$500.00 more to the Respondent.

¹⁶ CLMT Ex. 4.

- Dig out footer holes for the inspector to see depth and size, \$800.00;
- Uncover floor bottom and remove insulation for the inspector to see, \$750.00;
- Relocate two sprinkler heads with permit included, \$1,670.00;
- Remove and replace sheetrock and insulation for inspection, and paint, \$7,830.00;
- Meet with inspectors, submit permits, and engineering costs, \$1,400.00; and
- Any other actions, as required by the HC Permits, price unknown.¹⁷

13. Contractor Sweltzer estimated the cost for the rehabilitation work to be \$15,000.00.¹⁸

14. The Claimants paid Contractor Sweltzer \$15,040.00¹⁹ for the rehabilitation services, as follows:

- SunTrust, check no. 4741, in the amount of \$5,000.00, April 11, 2023;
- SunTrust, check no. 4949, in the amount of \$6,000.00, April 24, 2023;
- SunTrust, check no. 4955, in the amount of \$200.00, June 14, 2023;
- SunTrust, check no. 4954, in the amount of \$810.00, July 3, 2023
- SunTrust, check no. 4970, in the amount of \$1,500.00, September 26, 2023;
- SunTrust, check no. 4972, in the amount of \$600.00, October 12, 2023;
- SunTrust, check no. 4974, in the amount of \$500.00, October 20, 2023; and
- SunTrust, check no. 4975, in the amount of \$500.00, October 22, 2023.²⁰

15. On a date not specified in the record, the Claimants filed a MHIC complaint against the Respondent. In response to the complaint, on May 22, 2023, the Respondent wrote:

- Customer and contractor has agreed into a mutual agreement to accept the work AS IS on a settlement without prejudice.
- Both parties have agreed to hold each other parties harmless in case any issues arise in the future.

¹⁷ CLMT Ex. 5.

¹⁸ When I added up the individual line items, I arrived at a different figure; specifically, \$17,625.00. Contractor Sweltzer did not appear at the hearing to explain the discrepancy.

¹⁹ The Claimants did not explain the discrepancy in the proposal price and the amount paid to Contractor Sweltzer.

²⁰ *Id.*

- This was signed explicitly because the homeowner requested many items that was not ok as per code. The homeowner insisted on including these items and released us from all liabilities.
- Any code violations is the responsibility of the homeowner.²¹

16. On June 23, 2023, the Claimants entered into a second contract with Contractor Sweltzer to perform the following rehabilitation of the home improvement:

- Install LVL²² beam across room to remove post in the middle of the room;
- Remove and replace tile, as needed;
- Reinstall title and sheetrock, and prime and paint; and
- Haul away job-related debris.²³

17. On June 19, 2023, the Claimants paid Contractor Sweltzer \$3,150.00, with SunTrust check no. 4749.²⁴

18. In two payments of \$700.00 each, on June 16, 2023 and August 8, 2023, the Claimants paid Eastern Engineers Group a total of \$1,400.00 for engineering designs associated with removing and replacing the bearing post.²⁵

19. On June 30, 2023, the Claimants entered into a contract with Prime Fire Protection to supply and install sprinklers.²⁶ On July 1, 2023, the Claimants paid Prime Fire Protection \$1,217.00.²⁷

²¹ CLMT Ex. 5 (syntax errors in original, and I changed the numbering to bullet points for easy reading). On a date not specified in the records, Claimant S. Massey and the Respondent signed a "Settlement with Prejudice" statement which provided, in part, that:

[Claimant S.] Massey will be responsible for any costs/effort directly or indirectly related to obtaining and or modifying permits for the work order related to #1464. It is [the Respondent's] best knowledge and recommendation that the items stated below may not be admissible as per the codes and regulations of Howard County, MD:

- o Add two windows on the side wall
- o Remove the load bearing wall completely between the addition and the main house.

²² *Id.*

²³ Laminated veneer lumber (LVL).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

20. On July 11, 2023, September 6, 2023, September 22, 2023, and October 27, 2023, the HC Permits inspected the rehabilitation work and on each date the work passed inspection.

21. In a letter to the Respondent, on July 9, 2023, Claimant S. Massey asked the Respondent if he intended to participate in arbitration. The Respondent did not reply.

22. On January 10, 2024, the Claimants paid Contractor Sweltzer \$740.00 for “bathroom tiles & full wall.”²⁸

23. On February 5, 2024, the Claimants filed their Claim with the MHIC.

24. The Claimants paid Contractor Sweltzer \$18,260.00,²⁹ Eastern Engineering Group \$1,400.00, and Prime Fire Protection \$1,217.00, for a total of \$20,877.00, to repair the unworkmanlike and inadequate home improvement performed by the Respondent.

DISCUSSION

The Claimants have the burden of proving the validity of the Claim by a preponderance of the evidence.³⁰ 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.³¹

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.”³² “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”³³

²⁸ CLMT Ex. 5.

²⁹ \$15,110.00 + \$3,150.00 = \$18,260.00.

³⁰ Bus. Reg. § 8-407(e)(1); State Gov’t § 10-217; COMAR 09.08.03.03A(3).

³¹ *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

³² 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.”).

³³ Bus. Reg. § 8-401.

For the following reasons, I find that the Claimants have proven eligibility for compensation.³⁴

The facts are undisputed. The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimants. The credible evidence shows that the Respondent failed in his obligation to obtain the proper clearances from the HC Permits office prior to concluding the home improvement project at the Claimants' home. This was sufficiently established by and through Claimant P. Massey's testimony, coupled with the March 10, 2023 notice from the HC Permits office informing the Claimants that their home was in violation of the Howard County Building Code.³⁵ Furthermore, the HC Permits office demanded numerous items to be immediately corrected or the Claimants would suffer a daily civil penalty.

Claimant P. Massey testified how "very scared and worried" she and her husband were because they did not have that kind of money, referencing the \$250.00 per day fine. She further indicated how "sick" she felt upon learning that their newly completed home improvement project required demolition so that the HC Permits office could perform the requisite inspections before approving any rehabilitation.

Claimant P. Massey described the whole ordeal as a "bad experience for us" because her family was not able to enjoy the space until it was fully rehabilitated in January 2024. Further, Claimant P. Massey stated that her family was not able to celebrate the holidays or Christmas "nicely" in the interim.

³⁴ The Claimants are not excluded from recovering from the Fund. In this case, there are no such statutory impediments to the Claimants' recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimants did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2023). The Claimants reside in the home that is the subject of the claim and do 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 Claimants are not a relative, employee, officer, or partner of the Respondent, and are not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2023).

³⁵ CLMT Ex. 4.

To further underscore this point, she highlighted how not being able to host her bible study group at her home to pray, or to be able to entertain family and friends during the holiday season really had an impact on her. The anxiety was overwhelming, and it led to her feeling depressed and suffering from hypertension. In fact, the thought of utilizing the space for the 2024 holiday season put a smile on Claimant P. Massey's face as she testified.

Claimant P. Massey described finding Contractor Sweltzer through her church and how very pleased with his work she is, commenting that she and her husband "now live very happily."

Finally, Claimant P. Massey testified that she and her husband attempted several times to reach out to the Respondent by letter to no avail, including an offer to participate in arbitration.

Based on this record, I find that the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement project at the Claimants' property. The Claimants provided a comprehensive package of documents corroborating Claimant P. Massey's testimony that they contracted for the renovation of their home in 2021 and paid the Respondent a total of \$40,500.00. While it is true that the Respondent performed the work as envisioned by the Contract, the work clearly resulted in no value to the Claimants because the HC Permits office demanded them to remove everything, including sheetrock and insulation, to conduct an inspection. Once inspected, the Claimant had to install all new material and paint. Moreover, the Claimants learned during this process that the beam they contracted for with the Respondent needed removal and replacement as well.

When the Respondent was notified of the Claim as well as a concurrent complaint filed by the Claimants with the MHIC, he suggested to the MHIC that Claimant S. Massey agreed to accept the work "AS IS."³⁶

³⁶ CLMT Ex. 5.

Even assuming this to be true, I am not persuaded by a preponderance of the evidence that it matters.³⁷ The work claimed by the Respondent to have been covered by this alleged Settlement with Prejudice agreement was the addition of two windows on the side wall and the removal of a load bearing wall. The credible evidence shows that the HC Permits office did not pinpoint a problem with the windows nor ask for them to be removed and replaced. On the other hand, the HC Permits office did identify a problem with the Respondent's installation of a 14" lintel beam only because it was never inspected or approved. After inspection, however, the HC Permits office required the removal of the 14" lintel beam and the installation of a LVL beam across the room instead. Even assuming the installation of the 14" lintel beam was tangentially associated with Claimant S. Massey's demand for the removal of the load bearing wall, as the licensed contractor with the MHIC, it was incumbent on the Respondent to push back on any demand he admittedly knew was a building code violation.³⁸ By capitulating his obligation under the regulations to please a customer, the Respondent squarely performed an unworkmanlike and/or inadequate home improvement as it pertained to the load bearing wall and the installation of the 14" lintel beam.

Fund Compensation and Calculation

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.³⁹ MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

³⁷ The Respondent bears the burden to show this defense by a preponderance of the evidence. COMAR 28.02.01.21K(1), (2)(b).

³⁸ See COMAR 09.08.01.08.

³⁹ Bus. Reg. § 8-405(e)(3) (Supp. 2023); COMAR 09.08.03.03B(1).

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 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.⁴⁰

The amount paid to the Respondent:	\$40,500.00
Plus, payments made to other contractors:	<u>\$20,877.00</u> ⁴¹
	\$61,377.00
Minus the original Contract price:	<u>\$40,000.00</u>
The Claimants' actual loss:	\$21,377.00

Not included in the calculation above is a payment the Claimants made to Contractor Sweltzer, in the amount of \$740.00, for "bathroom tiles & full wall" on January 10, 2024.⁴² Because the Contract is silent as to any work being performed in a bathroom, I am not persuaded that it is more likely so than not so that the Respondent agreed to perform this work. In addition, the HC Permits office does not mention the need to remove or replace tiles in a bathroom or reference a "full wall" rehabilitation. Therefore, I am not recommending reimbursement for this amount.

⁴⁰ COMAR 09.08.03.03B(3)(c).

⁴¹ Contractor Sweltzer (\$18,260.00) + Eastern Engineering Group (\$1,400.00) + Prime Fire Protection (\$1,217.00) = \$20,877.00. See CLMT Ex. 5.

⁴² *Id.*

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.⁴³ In this case, the Claimants' actual loss less than the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimants are entitled to recover their actual loss of \$21,377.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant sustained an actual and compensable loss of \$21,377.00 as a result of the Respondent's acts or omissions.⁴⁴ I further conclude that the Claimant is entitled to recover \$21,377.00 from the Fund.⁴⁵

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$21,377.00; 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 under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;⁴⁶ and

⁴³ 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"). *See also* Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4).

⁴⁴ Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(a).

⁴⁵ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4).

⁴⁶ *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.

August 20, 2024
Date Decision Issued

KAC/sh
#213481v1A

Kathleen A. Chapman
Kathleen A. Chapman
Administrative Law Judge

PROPOSED ORDER

WHEREFORE, this 27th day of December, 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.

Wm Bruce

Quackenbush

Wm Bruce Quackenbush

Chairman

Panel B

**MARYLAND HOME IMPROVEMENT
COMMISSION**