

IN THE MATTER OF THE CLAIM	* BEFORE GWENLYNN D'SOUZA,
OF FRANCIA FRANCK,	* 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 JOSE GAMEZ CRUZ,	* OAH No.: LABOR-HIC-02-24-06144
T/A GAMEZ CONTRACTORS, LLC	* MHIC No.: 23 (75) 1300
RESPONDENT	*

* * * * *

PROPOSED DECISION

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PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On December 11, 2023, Francia Franck (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$2,618.10 for actual losses allegedly suffered as a result of a home improvement contract with Jose Gamez Cruz, trading as Gamez Contractors, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411 (2015 & Supp. 2023).² On March 1, 2024, the MHIC issued a Hearing Order

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 the Claim. That same day, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 3, 2024, I held a hearing at the OAH in Rockville, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Ernie Dominguez, Assistant Attorney General, represented the Fund. The Claimant appeared and was self-represented. Neither the Respondent nor anyone authorized to represent the Respondent appeared.

After waiting thirty 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. Code of Maryland Regulations (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 at the Respondent's address of record.³ Bus. Reg. §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for June 3, 2024, at 10:00 a.m., at the OAH, 40 West Drive, Suite 235, Rockville, MD 20850. 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 (USPS) did not return the Notice sent by first-class mail or certified mail. After the Notice was mailed, the Respondent requested an interpreter. The Respondent made no request for postponement prior to the hearing. COMAR 28.02.01.16. The OAH did not receive any communication addressing why the Respondent might not be able to attend the scheduled hearing. I determined that the Respondent received proper notice and proceeded to hear the captioned matter in accordance with COMAR 28.02.01.23A.

³ The full addresses are in the record.

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:

- CL Ex. 1 - Contract between parties dated April 1, 2022
- CL Ex. 2 - Proposal from Rivas Construction Group dated December 4, 2023
- CL Ex. 3 - Refund record in the amount of \$380.00 dated April 24, 2022,
Record of payment sent in the amount of \$1,000.96,
Downpayment in the amount of \$630.00 dated March 21, 2022
- CL Ex. 4a - Photo of garage door strike plate taken in May 2022
- CL Ex. 4b - Photo of closeup of garage floor taken in May 2022
- CL Ex. 4c - Photo of expanded view of garage floor taken in May 2022
- CL Ex. 4d - Photo of view of door lining taken in May 2022
- CL Ex. 4e - Photo of view of door threshold taken in May 2022
- CL Ex. 5 - U-Haul Receipt dated March 31, 2022
- CL Ex. 6 - Certificate of Liability Insurance for the Respondent dated January 17, 2023
- CL Ex. 7 - Maryland Department of Labor License Certification for the Respondent

The Respondent, who did not appear at the hearing, did not submit exhibits for admission into evidence.

I admitted the following exhibits offered by the Fund:

GF Ex. 1 - Notice of Hearing dated March 29, 2024

GF Ex. 2 - Hearing Order dated March 1, 2024

GF Ex. 3 - Claim received December 11, 2023

GF Ex. 4 - Printout from Home Improvement Commission database dated June 3, 2024

Testimony

The Claimant testified and presented no witnesses. The Respondent neither appeared nor testified. 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 under MHIC license number 6151611.⁴
2. At all relevant times, the Claimant owned and resided in a home located in Gaithersburg, Maryland (the Residence).⁵
3. In March 2022, the Claimant and the Respondent first met to discuss the renovation of the garage at the Residence.
4. On March 24, 2022, the Claimant and the Respondent entered into a Contract to renovate the floor of the garage at the Residence (Contract).⁶
5. The Contract price was \$2,100.00, and the Claimant paid a downpayment of \$630.00 on March 24, 2022.⁷

⁴ GF Ex. 4.

⁵ CL Exs. 1 & 2.

⁶ CL Ex. 1.

⁷ CL Exs. 1 & 3.

6. On April 1, 2022, the Claimant and Respondent amended the Contract to include painting of the garage ceiling and walls for an additional \$1,500.00.⁸
7. On April 1, 2022, the Claimant paid the Respondent \$1,000.96 towards the Contract.⁹
8. In April 2022, the Claimant paid the Respondent \$100.00 to powerwash the floor as an Addendum to the Contract.¹⁰
9. In April 2022, the Claimant paid the Respondent \$380.00 to replace a door that was damaged by the Respondent.
10. In April 2022, the Respondent applied epoxy to the garage floor that was sharp and slippery. The work performed was a hazard that caused the Claimant to slip, injure her hand, and tear the pants she was wearing.
11. In April 2022, the Respondent painted the walls inadequately in comparison to painters the Claimant previously used. The Respondent did not use a "sealer"¹¹ and needed to paint several layers. The Respondent described the painted ceiling as "messy."
12. In April 2022, the Respondent damaged the Claimant's garage door and installed the door seal, the door strike, and the door threshold improperly.¹²
13. On April 24, 2022, the Respondent paid Claimant a refund in the amount of \$380.00 for the damaged door.¹³
14. The Claimant attempted to contact the Respondent about repairs, but the Respondent would not respond. When Claimant complained on Nextdoor, a social networking service for neighborhoods, the Respondent attributed the poor work to his laborers.

⁸ CL Ex. 1.

⁹ CL Ex. 3.

¹⁰ CL Ex. 3.

¹¹ I infer the Claimant meant primer.

¹² CL Exs. 4a, 4d, 4e.

¹³ CL Ex. 3.

15. Another contractor, Rivas Construction (Rivas), proposed¹⁴ to remove the epoxy flooring, level the ground after the process of removal, apply new epoxy to the floor, and seal the floor for the cost of \$4,575.00.¹⁵

DISCUSSION

STATUTORY PRE-REQUISITES

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 and 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 BURDEN OF PROOF AND THE LEGAL STANDARD

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 . . .

¹⁴ It was unclear from the Claimant's testimony if the repair work was completed by Rivas and if she fully paid for that work.

¹⁵ CL Ex. 2.

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 Performed an Unworkmanlike, Inadequate, and Incomplete Home Improvement

The credible testimony of the Claimant is: the Respondent applied epoxy to the garage floor that was sharp and slippery, and the Respondent painted the walls inadequately and the ceiling appeared “messy.” The Respondent did not appear or contradict the testimony of the Claimant. Based on the evidence presented, I find that the Respondent performed some work under the contract that was inadequate and unworkmanlike.

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023). The Respondent would not take responsibility for the poor work of his laborers. I find the Claimant sustained a loss as a result of the Respondent’s acts and omissions. I thus find that the Claimant is eligible for compensation from the Fund.

The Amount of Actual Loss to the Claimant

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. I find the Claimant is not entitled to a refund for the cost of the U-Haul storage because that cost was not included in the Contract and addendum.

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). I find the Claimant is not entitled to compensation for damage to the door because replacement of the door was consequential damage.

The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. In this case, the Respondent performed some work under the Contract, and the Claimant sought another contractor to complete the 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.

COMAR 09.08.03.03B(3)(c).

The calculation for actual loss is as follows:

Total Amount paid by Claimant to Respondent	\$1,730.96
Add reasonable amount Claimant will be required to pay another contractor to repair poor work and complete work under the Contract with addendum	+\$4,575.00
Subtotal	\$6,305.96
Subtract Contract and Addendum Price	-\$3,700.00
Amount of Actual Loss to the Claimant	\$2,605.96

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.¹⁶ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023);

¹⁶ 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").

COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$2,605.96 exceeds the amount paid to the Respondent. While the Claimant sought to recover for her actual loss, the Claimant's recovery is limited to the amount paid to the Respondent, which is \$1,730.96.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$1,730.96 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 that amount from the Fund. Md. Code Ann., Bus. Reg.

§ 8-405(e)(1), (5) (Supp. 2023); 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 \$1,730.96; 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;¹⁷ and

¹⁷ 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.

June 14, 2024
Date Decision Issued

Gwenlynn D'Souza
Gwenlynn D'Souza
Administrative Law Judge

GWD/kh
212195

PROPOSED ORDER

WHEREFORE, this 12th day of September, 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.

Robert Altieri

Robert Altieri

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

**IN THE MATTER OF THE CLAIM OF * MARYLAND HOME
FRANCIA FRANCK * IMPROVEMENT COMMISSION
AGAINST THE MARYLAND HOME *
IMPROVEMENT GUARANTY FUND * MHIC CASE NO. 23(75)1300
FOR THE ACTS OR OMISSIONS OF * OAH CASE NO. LABOR-HIC-
JOSE GAMEZ CRUZ AND GAMEZ * 02-24-06144
CONTRACTORS, LLC ***

*** * * * ***

FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on June 3, 2024. Following the evidentiary hearing, the ALJ issued a Proposed Decision on June 14, 2024, concluding that the homeowner, Francia Franck (“Claimant”) suffered an actual loss as a result of the acts or omissions of Jose Gamez Cruz and Gamez Contractors, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p. 9. In a Proposed Order dated September 12, 2024, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to grant an award of \$1,730.96 from the Home Improvement Guaranty Fund. The Contractor subsequently filed exceptions to the MHIC Proposed Order.

On November 21, 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 Jonathan Phillips 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 Contractor submitted a request to present new evidence, but failed to serve a copy of the request on the Claimant and failed to demonstrate that the evidence he sought to present was unavailable

at the time of the evidentiary 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 renovation of the garage at the Claimant's home. The Contractor did not attend the evidentiary hearing. The ALJ found that the Contractor's performance under the contract was inadequate and unworkmanlike and that the Claimant did not unreasonably reject a good faith effort by the Contractor to resolve her claim. *ALJ's Proposed Decision* p. 7.

On exception, the Contractor argued that the ALJ erred in finding that the Claimant did not unreasonably reject his good faith effort to resolve the claim because he offered to redo the project at no cost to the Claimant. There is no evidence of the Contractor's offer to the Claimant in the record, so the Commission finds no error by the ALJ.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 3rd day of December 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 \$1,730.96 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.

Michael Shilling
Chairperson –Panel
Maryland Home Improvement
Commission