

IN THE MATTER OF THE CLAIM	* BEFORE CARLTON A. CURRY,
OF THOMAS TRZECIAK, JR.,	* 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 JASON BOBBITT,	*
J. SCOTT DESIGNS, LLC,	* OAH No.: LABOR-HIC-02-24-09123
RESPONDENT	* MHIC No.: 23 (75) 1311

\* \* \* \* \*

**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 October 13, 2023, Thomas Trzeciak, Jr. (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$22,139.19 for actual losses allegedly suffered as a result of a home improvement contract with Jason Bobbitt, J. Scott Designs, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 411 (2015 & Supp. 2024).<sup>2</sup> On April 1, 2024, the MHIC issued a Hearing Order on the Claim. On March 29, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings

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

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

(OAH) for a hearing.

On July 23, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Christopher S. Young, Esquire, represented the Claimant, who was present. Jonathan Phillips, Assistant Attorney General, Department, represented the Fund.

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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On April 15, 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 July 23, 2024, at 9:30 a.m., at the OAH in Hunt Valley, Maryland. 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. 2024); 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 - Contract between the Claimant and the Respondent, dated April 7, 2021

Clmt. Ex. 2 - Check No. 1266 in the amount of \$22,139.19 from the Claimant to the Respondent, dated April 7, 2024

Clmt. Ex. 3 - Text messages between the Claimant and the Respondent, between June 22, 2021 and September 30, 2021

Clmt. Ex. 4 - Email from the Claimant to the Respondent, dated December 3, 2021

Clmt. Ex. 5 - Email from the Claimant to the Respondent, dated January 20, 2022

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, dated April 15, 2024

Fund Ex. 2 - Hearing Order from the MHIC, dated April 1, 2024

Fund Ex. 3 - Home Improvement Claim Form, dated October 10, 2023

Fund Ex. 4 - MHIC License History of the Respondent as of July 22, 2024

The Respondent did not appear or offer any exhibits.

#### **Testimony**

The Claimant testified and did not present other witnesses.

The Fund presented no testimony.

The Respondent did not appear or offer 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 5681446.
2. At all times relevant, the Claimant resided at 943 Fenario Circle in Bel Air, Maryland.
3. On April 7, 2021, the Claimant and the Respondent entered into a contract to build twenty-six feet by fifty feet "one story garage with matching siding, garage doors and roof as the existing home" (Contract). (Clmt. Ex. 1, pg. 1).
4. The Respondent's salesperson, Thomas Gabbert, appeared at the Claimant's home on April 7, 2021, and executed the Contract on behalf of the Respondent.
5. The original agreed-upon Contract price was \$73,797.00.
6. The Contract stated that work would begin ninety days from the date the building permit was obtained and would be completed within 120 days. (Clmt. Ex. 1, pg. 2).
7. On April 7, 2021, the Claimant paid the Respondent \$22,139.19 as a deposit under the Contract.
8. On September 30, 2021, the Respondent informed the Claimant that he was "next on my concrete contractors list to pour the foundation." (Clmt. Ex. 3, pg. 2).
9. The Claimant repeatedly called and emailed the Respondent's business and was not able to receive a response as to why the work would not proceed.
10. No work was performed under the Contract.
11. On October 13, 2023, the Claimant filed a Claim with 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. 2024); *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. 2024). 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. 2024). 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. 2024). 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. 2024).

The Claimant testified he paid a deposit of \$22,139.19 for work under the Contract and that no work was performed. (Clmt. Ex. 2). Consistent with his testimony, the Claimant demonstrated that he contacted the Respondent via email and text messages to obtain status updates and to ultimately request a refund based on no work being performed. (Clmt. Exs. 3, 4, 5). The Claimant made the required deposit under the Contract and was waiting for the work to

start as promised. It has been over three years since April 7, 2021 and the Respondent has failed to return to the home to start any work. The Respondent has also failed to respond to the Claimant's attempts to ascertain the status of the project. The Respondent's failure to perform any work on the Claimant's home after receiving all the requisite payments up to this point under the Contract is an abandonment of the job and the Claimant is eligible for compensation from the Fund. *Id.* § 8-401.

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. 2024); 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 abandoned the Contract without doing any work. Accordingly, the following formula appropriately measures the Claimant's 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 Fund argued that the Claimant met his burden of demonstrating that the Respondent performed was an inadequate or incomplete home improvement, as no work was performed under the Contract. The Fund further argued that the Claimant is entitled to all monies paid to the Respondent.

Upon review of the evidence, I concur with the Claimant and the Fund in that the Claimant is entitled to the amount of the deposit he paid to the Respondent under the terms of the Contract, \$22,139.19.

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>3</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2024); 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 \$22,139.19.

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$22,139.19 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2024); COMAR 09.08.03.03B(3)(a). 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 \$22,139.19; 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>4</sup> and

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<sup>3</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>4</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.

October 18, 2024  
Date Decision Issued

CAC/emh  
#214543

*Carlton A. Curry*  
Carlton A. Curry  
Administrative Law Judge

**PROPOSED ORDER**

***WHEREFORE, this 20<sup>th</sup> day of March, 2025, 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***