

IN THE MATTER OF THE CLAIM	* BEFORE JOCELYN L. WILLIAMS,
OF KEVIN MURRAY,	* 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 IZZET TEMEL,	*
T/A SAINT CONSTRUCTION, LLC.,	* OAH No.: LABOR-HIC-02-24-11874
RESPONDENT	* MHIC No.: 23 (75) 1411

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On January 2, 2024, Kevin Murray (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$68,863.00 for actual losses allegedly suffered as a result of a home improvement contract with Izzet Temel, trading as Saint Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2024).² On May 1, 2024, the MHIC issued a Hearing Order on the Claim. On July

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 2024 Volume of the Maryland Annotated Code.

25, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On October 24, 2024, I held a hearing by video, utilizing the Webex videoconferencing platform (Webex). Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Jonathan Phillips, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. 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. COMAR 28.02.01.23A. On August 8, 2024,³ 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 October 24, 2024, at 9:30 a.m., via Webex. 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 Notice was returned to the OAH with the notation not deliverable as addressed. 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.

³ The OAH previously issued a Notice on May 20, 2024, for a hearing to be held on August 2, 2024. That Notice was also returned with the notation attempted unknown. The August 2, 2024 hearing was postponed in advance at the request of the Claimant.

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 MHIC Claim Form, signed December 20, 2023; MHIC Complaint Form, signed April 14, 2023
- Clmt. Ex. 2 Contract between the Claimant and the Respondent, signed April 12, 2022; contract change order between the Claimant and the Respondent, signed July 29, 2022
- Clmt. Ex. 3 Email from the Respondent to the Claimant, dated April 12, 2022; cancelled checks and payment receipts made payable to the Respondent from the Claimant: check #5881 for \$99,634.00 dated April 15, 2020; check #5884 for \$66,422.45 dated June 2, 2022; Bank of America wire transfer for \$66,422.45, dated August 19, 2022; check #5890 for \$4,691.29, dated August 26, 2022; payment receipt #1021 for \$12,408.42, dated November 11, 2022; payment receipt #1022 for \$12,408.42, dated November 11, 2022; check #5896 for \$5,000.00, dated November 8, 2022; check #1084 for \$20,000, dated November 10, 2022
- Clmt. Ex. 4 Photographs taken by the Claimant depicting incomplete work, taken March 1, 2023
- Clmt. Ex. 5 Demand letter to the Respondent from counsel for the Claimant, dated March 8, 2023
- Clmt. Ex. 6 Contract between the Claimant and P-Square Real Estate & Development Group (P-Square), signed September 29, 2023; Project and Draw Schedule, undated; cancelled checks made payable to P-Square from the Claimant: check #1003 for \$25,000.00, dated September 29, 2023; check #1004 for \$30,000.00, dated November 15, 2023; check #1006 for \$28,000.00, dated December 21, 2023; check #6910 for \$23,000.00, dated March 8, 2024; check #1007 for 10,316.46, dated May 2, 2024; check #1009 for \$8,343.28, dated July 9, 2024

The Respondent did not offer any exhibits for admission into evidence.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 Notice of Hearing, issued May 20, 2024, rescheduled Notice of Hearing, issued August 8, 2024
- Fund Ex. 2 Transmittal to OAH, undated; Hearing Order, dated May 1, 2024
- Fund Ex. 3 Licensing History for the Respondent, dated July 22, 2024
- Fund Ex. 4 Letter from the MHIC to the Respondent, dated January 11, 2024; MHIC Claim Form, filed January 2, 2024

Testimony

The Claimant testified and did not present any other witnesses.

The Respondent did not present any testimony or offer any witnesses.

The Fund did not present any testimony 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 01-138860.
2. The Claimant's property subject to this matter is located in Temple Hills, Maryland and is the Claimant's residence (the Property).
3. On April 12, 2022, the Claimant and the Respondent entered into a contract for a complete home renovation of the Property, which called for demolition down to the studs, and replacement or repair of all plumbing, electrical and installation of a new heating and cooling system (Contract). (Clmt. Ex. 3).
4. The original agreed-upon Contract price was \$332,112.27. (*Id.*).
5. On April 14, 2022, the Claimant paid a deposit of \$99,633.68, as described under the Contract. (*Id.*).
6. The Respondent began work on the project April 18, 2022.

7. On July 29, 2022, the Claimant and the Respondent signed a change order which added \$4,691.29 in additional costs for the project and increased the total Contract price to \$336,803.56. (*Id.*)

8. The Claimant made the following additional payments to the Respondent towards the project costs:

- check #5881 for \$99,634.00, dated April 15, 2020;
- check #5884 for \$66,422.45, dated June 2, 2022;
- Bank of America wire transfer for \$66,422.45, dated August 19, 2022;
- check #5890 for \$4,691.29, dated August 26, 2022;
- payment receipt #1021 for \$12,408.42, dated November 11, 2022;
- payment receipt #1022 for \$12,408.42, dated November 11, 2022;
- check #5896 for \$5,000.00, dated November 8, 2022;
- check #1084 for \$20,000.00, dated November 10, 2022.

(Clmt. Ex. 3).

9. The Claimant paid the Respondent a total of \$286,987.03, under the Contract. (*Id.*)

10. The Respondent last performed work at the Property on February 3, 2023. At the time the Respondent abandoned the project there was exposed electrical wiring and plumbing, the drywall and flooring were incomplete, the electrical was incomplete, the heating and cooling system had not been installed, the bathroom tiling was incomplete and there were no toilets, there were no interior doors or fixtures, and kitchen cabinets and countertops were incomplete or missing. (Clmt. Ex. 4).

11. Between February 4, 2023 and March 7, 2023, the Claimant called the Respondent daily and sent numerous text messages, in an attempt to get the Respondent to complete the project.

12. On March 8, 2023, the Claimant, with the assistance of counsel, sent a demand letter to the Respondent, imploring him to honor the Contract and complete the project. (Clmt. Ex. 5).

13. On September 29, 2023, the Claimant entered into a contract with P-Square (Completion Contract) for \$130,508.96 to complete the work left incomplete by the Respondent. (Clmt. Ex. 6).

14. The Completion Contract covered the same scope of work to be performed in the original contract with the Respondent. (*Id.*)

15. The Claimant paid P-Square a total of \$124,659.74. (*Id.*)

16. The project was completed by P-Square.

17. On December 20, 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) (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) (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) (2024). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (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) (2024).

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (2024). The Respondent performed unworkmanlike, inadequate, and incomplete home improvements. The Respondent performed a substantial amount of work under the Contract, however; he abandoned the project with exposed electrical wiring and plumbing, the drywall and flooring were incomplete, the electrical was incomplete, the heating and cooling system had not been installed, the bathroom tiling was incomplete and there were no toilets, there were no interior doors or fixtures, and kitchen cabinets and countertops were incomplete or missing. The Respondent failed to honor the terms of the Contract.

The Claimant provided overwhelming and uncontroverted evidence that the Respondent's work was unworkmanlike, inadequate, and incomplete. The Claimant established, by a preponderance of the evidence, the Contract price, the change order, the money paid to the Respondent, and provided evidence of the cost to complete the work that the Respondent failed to perform under the Contract.

The Fund agreed that the Respondent performed in an inadequate, incomplete and unworkmanlike manner. The Fund argued that the Claimant's credible evidence shows that he sustained a loss from the acts or omissions of the Respondent, and it therefore recommended an award to the Claimant from the Fund. I find that the Claimant is eligible for compensation from the Fund.

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 performed some work under the Contract, and the Claimant retained other contractors to remedy and complete 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.

COMAR 09.08.03.03B(3)(c).

Applying the formula in this case results in the following calculation:

Amount Claimant paid to Respondent	\$286,987.03
Amount paid to P-Square	<u>\$124,659.74</u>
<u>Less the Contract price:</u>	<u>\$336,803.56</u>
Actual Loss	\$74,843.21

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) (2024); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$74,843.21 exceeds \$30,000.00. Therefore, the Claimant's recovery is limited to \$30,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2024); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$30,000.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$30,000.00; 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;⁵ and

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").

⁵ *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2024); COMAR 09.08.01.20.

ORDER that the records and publications of the Maryland Home Improvement

Commission reflect this decision.

January 17, 2025

Date Decision Issued

Jocelyn L. Williams

Jocelyn L. Williams
Administrative Law Judge

JLW/emh
#215649

PROPOSED ORDER

WHEREFORE, this 20th day of May, 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 Thomas

Michael Thomas

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***