

IN THE MATTER OF THE CLAIM	* BEFORE WILLIAM SOMERVILLE,
OF ELOISE STEVENS,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR ACTS OR OMISSIONS	*
ALLEGED AGAINST JOSEPH	*
KRINER,	*
T/A JUST CALL JOE, LLC,	* OAH No.: LABOR-HIC-02-24-15053
RESPONDENT	* MHIC No.: 23 (75) 1537

PROPOSED DECISION

STATEMENT OF THE CASE

¹ The MHIC is a division of the Department of Labor (Department).

Order on the Claim. On June 3, 2024, the MHIC referred the matter to the Office of Administrative Hearings (OAH) for a hearing.

On September 11, 2024, I held a hearing by videoconference. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1). Jonathan P. Phillips, Assistant Attorney General, represented the Fund. The Claimant was self-represented. The Respondent failed to appear.

After waiting at least fifteen minutes for the Respondent or the Respondent's representative to appear, I reviewed the case file, confirmed that notices were sent to the Respondent's correct address, ruled that the Respondent was properly notified, and I proceeded in the Respondent's absence. Code of Maryland Regulations (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. 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 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, contingent upon the Claimant submitting those within forty-eight hours,³ the following exhibits offered by the Claimant:

Clmt. Ex. 1 - Insurance check

Clmt. Ex. 2 - Two contract documents

Clmt. Ex. 3 - Packet of photographs

Clmt. Ex. 4 - Complaint document

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Hearing Notice

Fund Ex. 2 - Hearing Order, 6/3/2024

Fund Ex. 3 - Claim form, 8/25/2023

Fund Ex. 4 - Licensing history document

Testimony

The Claimant testified and did not present other witnesses. No one else testified.

PROPOSED FINDINGS OF FACT

Having considered testimony, demeanor evidence, and other evidence, I find the following facts by a preponderance of the evidence:

1. At all times relevant, the Respondent was licensed by the MHIC as home improvement contractor. He was the licensed contractor for Just Call Joe, LLC (Company).
2. In May 2021, the Claimant's residence suffered storm damage to its roof and gutters. The Claimant had someone put a temporary patch on her roof.

³ The Claimant sent by mail, within twenty-four hours, eighty pages of documents. I dug through the pile and identified those few items that I specifically had allowed her to submit. The rest is not in evidence, of course.

3. On or about October 29, 2021, the Claimant and the Company entered into a contract by which the Claimant would pay \$14,390.00, and the Company would re-roof her residence and install new gutters and down spouts.

4. On December 10, 2021, the Claimant's homeowners' insurance company issued to the Claimant a check for \$14,390.00.

5. Thereafter, the Claimant delivered and endorsed the insurance check to the Company.

6. At no time did the Company perform any work under the home improvement contract dated October 29, 2021.⁴ At no time did the Company refund any money to the Claimant.

7. On September 22, 2023, the Claimant filed a claim against the Fund.

DISCUSSION

Burdens

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; 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).

With regard to the burden of persuasion and the weight of evidence, a trier of fact can properly accept all, some, or none of the evidence offered. *See Sifrit v. State*, 383 Md. 116, 135 (2004); *Edsall v. Huffaker*, 159 Md. App. 337, 341 (2004). Demeanor evidence played an important role in this matter. *Bragunier Masonry Contractors, Inc. v. Maryland Comm'r of*

⁴ At that time, the Respondent also owned or managed a public adjuster company, located at the same address as Just Call Joe, LLC. After being paid the \$14,390.00 by the Claimant, through his public adjuster company, the Respondent demanded more money from the insurance company. The insurance company refused.

Labor and Indus., 111 Md. App. 698, 717, n.7 (1996); *N.L.R.B. v. Dinion Coil Co.*, 201 F.2d 484, 487 (2d Cir. 1952).

Arguments of the Parties

The Claimant argues that she entered into a contract with the Company, and she paid the Company in full, but that the Company did not begin the project. She would like the Fund to award her the amount of money that she paid to the Company.

The Fund argues that the Claimant paid \$14,390.00 to the Company and the Company failed to begin the work. It argues that the Company abandoned the job and absconded with the \$14,390.00.

Analysis

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. 2022); *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.

By statute, certain claimants are excluded from recovering from the Fund and certain other factors disqualify recovery altogether. In this case, no party argues that such a disqualification exists and there is no showing of such statutory impediments to the Claimant’s recovery. Bus. Reg §§ 8-405; 8-408 (2015 & Supp. 2023).

In the instant case, the Respondent was the MHIC license holder for the Company; he was responsible for the Company’s acts and omissions. *See* COMAR 09.08.01.04.

The Claimant demonstrated that the Company violated a statutory-based industry standard when it took her money but did not perform. (Findings of Fact 5 and 6.) Md. Code

Ann., Bus. Reg. § 8-605 (abandonment or failure to perform without justification); COMAR 09.08.03.03B(3)(a) (agency regulations contemplate awards for abandonment.) There was no showing of justification. To the extent that work might have been started, the resulting product was also inadequate and incomplete. Md. Code Ann., Bus. Reg. § 8-401.

Having concluded that the Claimant has shown that an actual loss occurred, I will apply the appropriate regulatory formula to determine the compensable amount of actual loss. 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). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In the instant case, the Company abandoned the project 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). In this case, the Company abandoned the project after the Claimant had already paid \$14,390.00. That amount is the amount of actual loss in this particular case.⁵

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has demonstrated that she sustained an actual and compensable loss of \$14,390.00 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)(a). I further conclude that the Claimant is entitled to recover that amount from the Fund.

⁵ In this case, that amount is not more than the statutory cap and is not more than the amount the Claimant paid. 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 \$14,390.00; 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;⁶ and

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

October 1, 2024
Date Decision Issued



William J.D. Somerville III
Administrative Law Judge

WS/at
#213951

⁶ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 24th day of February, 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.

Chandler Loudon

Chandler Loudon

Panel B

**MARYLAND HOME IMPROVEMENT
COMMISSION**