

IN THE MATTER OF THE CLAIM	* BEFORE KATHLEEN A. CHAPMAN,
OF SHYAMI MURPHY,	* 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	*
PUTHUSSERY,	*
T/A BALTIMORE DESIGN &	*
REMODELING,	* OAH No.: LABOR-HIC-02-24-11805
RESPONDENT	* MHIC No.: 23 (75) 1555

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### 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 September 15, 2023, Shyami Murphy (Claimant)<sup>1</sup> filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>2</sup> Guaranty Fund (Fund) for reimbursement of \$29,427.00 for actual losses allegedly suffered as a result of a home improvement contract

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<sup>1</sup> Ms. Murphy, individually signed and submitted the Claim, but was joined by her husband, Scott Murphy, at the hearing. Together, they will be referred to as the Claimants.

<sup>2</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).

with Sarath Puthussery, trading as Baltimore Design & Remodeling (Respondent).<sup>3,4</sup> 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.<sup>5</sup> The Notice advised the Respondent of the date, time, and location of the hearing regarding this matter.<sup>6</sup> 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. And, 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.<sup>7</sup>

On July 30, 2024, at 9:30 a.m., I held a hearing at the OAH in Hunt Valley, Maryland.<sup>8</sup> Jonathan Phillips, Assistant Attorney General, Department, represented the Fund. The Claimants were 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.<sup>9</sup>

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<sup>3</sup> The Respondent also marketed under the name of “Old Bay Remodeling.”

<sup>4</sup> 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.

<sup>5</sup> “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).

<sup>6</sup> COMAR 09.08.03.03A(2).

<sup>7</sup> COMAR 28.02.01.05.

<sup>8</sup> Bus. Reg. §§ 8-407(a), 8-312.

<sup>9</sup> 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.<sup>10</sup>

### **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 have attached a complete Exhibit List as an Appendix.

#### **Testimony**

Claimant Shyami Murphy 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 Rosemary Lane, West Friendship, Maryland.

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<sup>10</sup> 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 November 23, 2021, the Claimant and the Respondent entered into a contract to build two-story addition, including a major renovation, of the Claimants' home (Contract).<sup>11</sup>

6. The original agreed-upon Contract price was \$173,000.00, with the following payment schedule:

<u>\$17,300.00</u>	payable upon signing (10% deposit)
<u>\$60,295.00</u>	payable upon demolition (also referred to as groundbreaking)
<u>\$28,003.68</u>	payable upon framing completion and passed inspection
<u>\$62,786.46</u>	payable upon completion of the interior
<u>\$ 4,614.78</u>	payable upon completion of the project

7. The Contract indicated that the estimated start date for work to begin was forty-five days from permit approval, and the estimated end date for work to finish was sixty to ninety days from the start date.

8. On November 13, 2021, the Claimants paid the Respondent a deposit in the amount of \$17,300.00, via check no. 5897.

9. On April 2, 2022, the Claimant and the Respondent entered into a change order (Change Order #1) that provided embellishments to the Contract, adding \$76,100.00 to the cost of the project.

10. On April 2, 2022, the Claimants paid the Respondent an additional \$7,610.00, via check no. 5952.

11. The Claimants paid the Respondent a total of \$24,910.00.

12. On October 17, 2022, the Respondent submitted an on-line application for a permit to perform home improvement at the Claimants' home. On a date not specified in the record, a paper submission was subsequently submitted and assigned permit number B22003888.

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<sup>11</sup> The Claimant's husband did not sign the Contract or the first change order.

13. On October 18, 2022, the Claimant visited the office of the Howard County Department of Licensing and Permits (HCDLP) to check on the status of the permit and learned it was incomplete. The HCDLP wrote,

PLEASE UPLOAD THE FOLLOWING:

1. CORRECTLY FORMATTED DESCRIPTION OF WORK CLEARLY DESCRIBING WHAT THE PROPOSED SCOPE OF WORK ENTAILS, INCLUDING DIMENSIONS OF THE ADDITIONS, LISTING OF ROOMS TO BE ADDED, ANY DECKS OR PORCHES TO BE ADDED INCLUDE DIMENSIONS[.]
2. APPLICATION SPECIFIC INFORMATION CALLS OUT PUBLIC WATER AND SEWER. THIS ADDRESS IS OUTSIDE OF THE PLANNED SERVICE AREA. THIS INFORMATION IS PERTINENT TO THE REVIEW. INCORRECTLY ENTERING THIS INFORMATION MAY RESULT IN RESTRICTIONS TO ONLINE PERMITTING ACCESS.
3. PLOT PLAN SHOWING ADDITION WITH DIMENSIONS AND DISTANCES TO THE PROPERTY LINES.<sup>12</sup>

14. On October 28, 2022, the Claimant emailed a representative of the Respondent's company with a copy of the HCDLP's description of the status of the permitting and wrote, in part,

Not sure what is going on with this company, but I would think that one of the basic construction procedures is that they know how to file for a permit correctly. If this is how our project is going, I have to wonder what other issues we are going to be up against.

The issues with filing for the permit coupled with no evidence of the Change Order is leaving us with many concerns. I would pray and hope that Old Bay will get their act together – if not, we would be looking at terminating our contract and demanding all our deposit monies back.<sup>13</sup>

15. On January 14, 2023, the Claimants and the Respondent entered into a change order (Change Order #2), which resulted in the elimination of certain items from the scope of

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<sup>12</sup> CLMT Ex. S (emphasis in the original).

<sup>13</sup> *Id.*

work, to mirror the issues outlined by the HCDLP's review of the application for the building permit. In doing so, the cost of the project was reduced by \$15,000.00.

16. Considering the original Contract price, plus the two change orders, the revised price for the project was \$234,100.00.<sup>14</sup>

17. On February 13, 2023, the Claimant again visited the HCDLP and learned that the building permit approval remained pending because several key documents had not been submitted. The Claimant confronted the Respondent, via email on February 13, 2023 and February 16, 2023, telling him that she was growing tired of his excuses and asking why was their application still incomplete.

18. On February 23, 2023, the Howard County Health Department (HCHD) notified the Respondent in writing that the Claimants needed to obtain an approved percolation certification plan establishing a sewage disposal area on the property. Without that, the building permit may not be approved. Moreover, the HCHD informed the Respondent that it must also certify the parameters of the existing system on the property because, according to their records, the existing septic tank, drywell, and trench are undersized for the proposed use.

19. The Claimants were dismayed by this news because the cost to comply with the HCHD requirements was prohibitive – approximately \$35,000.00 to \$40,000.00. In an email, dated March 28, 2023, the Claimant told the Respondent they were not able to do that.

20. In subsequent emails back and forth between the Claimant and the Respondent, during the timeframe from March 29, 2023 to April 26, 2023, the Claimant suggested multiple times that the Claimants meet with the Respondent and a representative from an unnamed engineering company the Respondent suggested could help with respect to the request by the

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<sup>14</sup> \$173,000.00 + \$76,100.00 - \$15,000.00 = \$234,100.00.

HCHD. The Respondent never replied to the Claimant's request for the name of the engineering company representative, nor did he set up a meeting as requested.

21. In a letter to the Respondent, on May 9, 2023, the Claimants terminated the Contract. In the letter, the Claimants outlined their distrust and disappointment in how the Respondent handled their project up to this point. The Claimants also asked for the return of their deposits (\$24,910.00), minus the cost of the architectural services from Donald Bryant, t/a DRB Drafting.

22. The USPS returned the May 9, 2023 letter to the Claimants as "Return to Sender – No Forwarding."<sup>15</sup>

23. In a letter dated August 9, 2023, sent via certified mail, the Claimants informed the Respondent that they were submitting a claim with the MHIC. Moreover, the Claimants requested an opportunity to participate in arbitration to resolve their outstanding claim for reimbursement of their deposits. The May 9, 2023 letter was also enclosed in the mailing.

24. On August 1, 2023, the Respondent signed the receipt for the August 9, 2023 letter.

25. The Respondent did not respond to either the May 9, 2023 or August 9, 2023 letters. The Claimants took the Respondent's silence as a waiver of arbitration.

26. The Respondent never broke ground on the project.

27. The Respondent never refunded any monies to the Claimants.

28. The Claimants have no pending court cases filed against the Respondent.

29. On or about March 2023, the Claimants sustained a water loss due to a burst pipe in a space identified as the exercise room. The cost to repair is estimated to be \$4,517.00.

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<sup>15</sup> CLMT Ex. I.

## DISCUSSION

The Claimants have the burden of proving the validity of the Claim by a preponderance of the evidence.<sup>16</sup> 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.<sup>17</sup>

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.”<sup>18</sup> “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”<sup>19</sup> For the following reasons, I find that the Claimants have proven eligibility for compensation.<sup>20</sup>

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 performed no work under the Contract but for the drafting of architectural drawings that have no value to the Claimants today. Although the Claimants were willing to offset the value of the architectural drawings from the amount of their Claim, the Respondent never provided the Claimants with a bill. Moreover, in light of the challenges they faced upon learning they needed an approved percolation certification plan establishing a sewage disposal area on the property, among other things, the Claimants discontinued their dream of pursuing this home

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<sup>16</sup> Bus. Reg. § 8-407(e)(1); State Gov’t § 10-217; COMAR 09.08.03.03A(3).

<sup>17</sup> *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

<sup>18</sup> 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.”).

<sup>19</sup> Bus. Reg. § 8-401.

<sup>20</sup> 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).



improvement. As such, the drawings would be of no benefit to a subsequent contractor if asked to resume the project. In fact, the Fund recommended that I disregard the offset.

The Claimant testified that she and her husband are not quick to hire another contractor in light of their experience with the Respondent. The Claimants suffered not only financial losses, but the ordeal was mentally, physically, and emotionally draining. The Claimant also testified that the impetus for the home improvement was to offer an inviting space for her mother-in-law to live with them. Her mother-in-law was ill at the time and has subsequently passed away. Because of that, the Claimant simply wishes to “put this matter to bed, and move forward.”

Based on this record, I find that the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement by abandoning the home improvement project at the Claimants’ property. The Claimants provided a comprehensive package of documents corroborating the Claimant’s testimony that she and her husband contracted for the renovation of their home in November 11, 2023, paid the Respondent a total of \$24,910.00, and thereafter, the Respondent performed no work.

#### Consequential Damages

The Claimants also argued for an additional award in the amount of \$4,517.00 for damages sustained pending the completion of the addition and renovation on their home. They explained that one section of their home that “needed the most renovation ha[d] deteriorated.”<sup>21</sup> Specifically, in their addendum to the Claim, the Claimants wrote, “[o]f major significance is the breaking of a water pipe in March of 2023, and since then, the space has been uninhabitable.”<sup>22</sup> The damage was extensive, as seen in the pictures of a room with exercise equipment.<sup>23</sup> The Claimants attributed the damage to the Respondent’s failure to honor his commitment to perform

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<sup>21</sup> CLMT Ex. C.

<sup>22</sup> *Id.*

<sup>23</sup> CLMT Ex. P.

the terms and conditions of the original contract and change orders, which resulted in the pipe bursting. Stated differently, if the work had been performed the pipe would not have burst.

To support their claim for reimbursement, the Claimants offered into evidence a proposal from Frame House to (1) remove damaged drywall, insulation; (2) kilz the framing; (3) repair broken pipe; (4) replace damaged insulation; and (5) replace drywall, as needed, including tape, mud, prime, and paint.<sup>24</sup>

In response, the Fund took no position on whether an award is proper or not and left the decision to my discretion. According to the statute and regulations, the Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest.<sup>25</sup> Though neither the statute nor the regulation defines the term consequential, it commonly refers to something “indirect.”<sup>26</sup> This is in line with the Black’s Law Dictionary definition which provides that consequential damages are “2. Flowing from a cause; resulting from a particular event or situation <consequential damages>.”<sup>27</sup>

As identified above, the Claimant testified that she and her husband suffered financial losses when a water pipe burst approximately sixteen months after the Respondent was expected to perform a home improvement on their home but failed to do so. According to the architectural floor plans in evidence, the area affected was a preexisting space off the “mud room” on the first floor.<sup>28</sup> According to the plans, the Respondent was expected to transform that area, which also included a preexisting kitchen, into a bathroom and an exercise room. Because these areas were preexisting, for the most part, the Contract allowed for “drywall on all floors, ceilings, and walls of all altered spaces.”<sup>29</sup> Therefore, the evidence does not support a finding that the Respondent’s

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<sup>24</sup> CLMT Ex. O.

<sup>25</sup> Bus. Reg. § 8-405(e)(3) (Supp. 2023); COMAR 09.08.03.03B(1).

<sup>26</sup> *Merriam-Webster’s Collegiate Dictionary* 265 (11th ed. 2020).

<sup>27</sup> *Black’s Law Dictionary* 383 (12th ed. 1996).

<sup>28</sup> See CLMT Ex. J.

<sup>29</sup> CLMT. Ex. K.

failure to perform under the Contract or change order resulted in a pipe bursting and the subsequent water loss from occurring. This aspect of the Claimants' Claim is not compensable.

Fund Compensation and Calculation

Consistent with my findings above and 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. MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.<sup>30</sup>

As mentioned above, 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."<sup>31</sup> Here, the credible evidence shows that the Claimants paid the Respondent a total of \$24,910.00, which represents the full value of the Claimants' actual loss.

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>32</sup> In this case, the Claimant's actual loss is equal to the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover their actual loss of \$24,910.00.

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<sup>30</sup> See COMAR 09.08.03.03B(3)(a)-(c).

<sup>31</sup> COMAR 09.08.03.03B(3)(a).

<sup>32</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"). See also Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4).

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant sustained an actual and compensable loss of \$24,910.00 as a result of the Respondent's acts or omissions.<sup>33</sup> I further conclude that the Claimant is entitled to recover \$24,910.00 from the Fund.<sup>34</sup>

### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$24,910.00; 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;<sup>35</sup> and

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

August 9, 2024  
Date Decision Issued

*Kathleen A. Chapman*  
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Kathleen A. Chapman  
Administrative Law Judge

KAC/ja.  
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<sup>33</sup> Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(a).

<sup>34</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4).

<sup>35</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 23<sup>rd</sup> 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**