

IN THE MATTER OF THE CLAIM
OF MARK BROWN,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF JOSE MARTINEZ,
T/A JCM GENERAL
CONSTRUCTION. INC.,
RESPONDENT

* BEFORE WILLIS GUNTHER BAKER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-23-24580
* MHIC No.: 23 (75) 258

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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 March 2, 2023, Mark Brown (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$15,350.00 for actual losses allegedly suffered as a result of a home improvement contract with Jose Martinez, trading as JCM General Construction Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).² On September 15, 2023, the MHIC issued a Hearing Order on the Claim and forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

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 November 1, 2023, I held a hearing by video. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Nicholas Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent failed to appear.

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 September 26, 2023, 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 November 1, 2023, 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 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. Mr. Sokolow confirmed that the Respondent is still licensed with MHIC and that the OAH sent the notice to the Respondent's address of record with the MHIC. The OAH Clerk confirmed that there had been no calls or emails from the Respondent that morning. 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. 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

Unless otherwise noted, I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 - Contract between the parties, February 5, 2022
- Clmt. Ex. 2 - Check No. 6909 for \$15,350.00, February 5, 2022
- Clmt. Ex. 3 - Emails between the parties, April 10-11, 2022
- Clmt. Ex. 4 - Emails between the parties, April 10-12, 2022
- Clmt. Ex. 5 - Text message from the Respondent to the Claimant, May 5, 2022
- Clmt. Ex. 6 - Prince George's County Permit, May 2, 2022 (incorrect information)
- Clmt. Ex. 7 - Emails between the parties, May 26-28, 2022
- Clmt. Ex. 8 - Emails between the parties, August 1-12, 2022
- Clmt Ex. 9 - HIC Complaint, August 26, 2022
- Clmt Ex, 10 - Email from PG Community Collaboration Resolution Center, February 9, 2023
- Clmt. Ex. 11 - Not admitted, Claim form already in evidence as Fund Ex. 3
- Clmt Ex. 12 - Email from the MHIC to the Claimant, April 25, 2023
- Clmt. Ex. 13 - The Respondent's Response to the MHIC regarding the Complaint, undated

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Remote Hearing, September 26, 2023
- Fund Ex. 2 - MHIC Hearing Order, September 15, 2023
- Fund Ex. 3 - MHIC Notice to the Respondent of claim, attaching the claim form, June 5, 2023
- Fund Ex. 4 - Certified Licensing Record, October 19, 2023

The Respondent did not appear and did not offer any exhibits.

Testimony

The Claimant testified and did not present other witnesses.

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 numbers 01-11568 and 05-135656.
2. On February 5, 2022, the Claimant and the Respondent entered into a contract to have the Respondent remove a deck and construct a screened porch on the Claimant's property (Contract).
3. The original agreed-upon Contract price was \$ 30,700.00.
4. The Contract stated that work would begin on April 20, 2022 and would be completed by May 31, 2022.
5. On February 5, 2022, the Claimant paid the Respondent \$15,350.00.
6. Sometime in February 2022, the Respondent came to the Claimant's property with an architect, but the Claimant never received blueprints from that architect.
7. In April 2022 the Claimant reached out to the Respondent regarding the status of the project and to ask when he would receive blueprints and the permit to begin construction. The Claimant advised that the Respondent needed to refund the deposit if the Respondent could not provide a timely completion. The Respondent responded that he could send a check, but that things were moving forward.
8. The Respondent provided pictures of blueprints from a second architect by email a few days later. The Claimant agreed on April 12, 2022 to allow the project to proceed but requested an updated timeline.

9. The Respondent never provided actual blueprints to the Claimant or an updated timeline.
10. In early May 2022 the Claimant had not heard from the Respondent, so he reached out again to ask for a refund. The Respondent said a refund would not be possible because the blueprints and permit application were in the county permit process.
11. The permit application that was submitted on May 2, 2022 (Clmt Ex. 6) was not submitted by the Respondent, but by the second architect who put the architect's own phone number as the contact number and listed "Thomas Brown" as the Contractor. No information regarding the Respondent was on the permit application and it was unsigned.
12. The Claimant last heard from the Respondent on May 28, 2022, when the Respondent advised they still had not received the permit.
13. After attempts to contact the Respondent failed, the Claimant filed a claim with the MHIC on or about February 25, 2023. The claim was received by the MHIC on March 2, 2023.
14. The Respondent did not conduct any work as required in the Contract at the Claimant's home.
15. 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. The Claimant resides in the home that is the subject of the claim or does not own more than three dwellings. 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.

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. 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.”). “[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 was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. The parties entered into the Contract in February 2022 with a start date of April 20, 2022 in order to allow time for the drafting of blueprints and building permit application and approval. The Claimant testified that he was aware that the permitting process could take a few months which is why they planned to start construction in April. The Claimant reached out to the Respondent in early April to make sure the timeline was still on track because, as he had explained to the Respondent, he needed to have the project completed by early summer. Although an architect came to the Respondent’s home in February 2022, he never submitted blueprints for review. In late April 2022, the Respondent emailed pictures of blueprints from a second architect to the Claimant, but never provided the actual blueprints. The permit application was not filed until May 2, 2022 and it contained incorrect information and no signature. The permit did not receive approval until August 2022, long after the Respondent stopped communicating with the Claimant.

There is no question that the Respondent did not conduct any construction work at the Claimant’s home and abandoned the project. The Claimant paid a deposit of \$15,350.00 and

received nothing in return. The Fund agreed that the Claimant paid the contractor and no work was performed, so he has suffered an actual loss of the deposit.

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 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 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 Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023). The Respondent did not make any such effort. Despite the lack of communication from the Respondent, the Claimant attempted to engage in mediation through PG Community Collaboration Resolution Center, but he was notified that the mediation could not go forward for an undisclosed reason.

The Respondent performed inadequate and incomplete home improvements, and in fact did not perform any home improvement at all. The Respondent took a deposit of one half the Contract price and produced nothing to show for it. And while the Respondent may or may not have engaged an architect to draft blueprints, the blueprints were not provided in a usable format to the Claimant, so they are of no value to him. The Claimant's property is in the exact same shape as before he contracted with the Respondent, but he has lost \$15,350.00. Therefore, 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. 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.

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). Therefore, I find the actual loss to be the amount of the deposit paid, \$15,350.00.

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.³ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is equal to the amount paid to the Respondent and less than \$30,000.00. The Claimant is entitled to recover his actual loss of \$15,350.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$15,350.00 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 \$15,350.00 from the Fund. Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4).

³ 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").

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$15,350.00; 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;⁴ and

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

January 24, 2024
Date Decision Issued

Willis Gunther Baker

Willis Gunther Baker
Administrative Law Judge

WGB/ckc
#209636

⁴ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 16th day of April, 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.

Joseph Tunney

Joseph Tunney

Chairman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***