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| IN THE MATTER OF THE CLAIM | * BEFORE PATRICIA DEMAIO, |
| OF KIKELOMO GRAY, | * 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 MARTY MINTON, | * |
| T/A STONE GUYS, LLC, | * OAH No.: LABOR-HIC-02-23-06664 |
| RESPONDENT | * MHIC No.: 23 (75) 38 |
| * * * * * | |

PROPOSED DECISION

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STATEMENT OF THE CASE

On September 26, 2022, Kikelomo Gray (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$78,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Marty Minton, trading as Stone Guys Remodeling (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).²

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 Replacement Volume of the Maryland Annotated Code.

On February 3, 2023, the MHIC issued a Hearing Order on the Claim. On February 14, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 30, 2023, I held a remote hearing initiated from the OAH in Hunt Valley, Maryland, utilizing the Webex videoconferencing platform. Md. Code Ann., Bus. Reg. §§ 8-407(a), 8-312. Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent failed to appear for the hearing.

After waiting over 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 7, 2023, the OAH provided a Notice of Remote Hearing (Notice) to the Respondent by standard and certified United States mail to the Respondent's address on record with the OAH. COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for May 30, 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 certified or standard mail Notice to the OAH.³ The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent did not request a postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

³ The certified mail receipt was returned to the OAH. Although the receipt was not signed by the Respondent, the receipt noted the delivery date as April 28, 2023.

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); 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 an unworkmanlike, inadequate, or incomplete home improvement by the Respondent?
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 - Text messages between the Claimant and the Respondent, October 26, 2021 – December 22, 2021; Payment Receipt, \$20,000.00, February 6, 2021; Payment Receipt, \$10,885.00, February 6, 2021; photograph - loft, July 2, 2022; photograph - master bedroom, July 2, 2022; photograph - bathroom, July 2, 2022
- Clmt. Ex. 2 - MHIC Complaint Form, received July 18, 2022; Bankruptcy Notice, undated; contract between the Respondent and the Claimant, dated April 19, 2021; Receipts, February 26, 2021; Owner Invoice, \$40,000.00, May 25, 2021; Owner Invoice, \$50,000.00, July 7, 2021; photographs⁴, July 2, 2022; basement bathroom rendition, undated; basement bathroom cabinet layout sign off, unsigned, undated; master bathroom cabinet layout signoff, unsigned, undated; master bathroom rendition; kitchen cabinet layout signoff, unsigned, undated; kitchen rendition; Paige's bathroom cabinet layout signoff, unsigned, undated; Paige's bathroom rendition; main level stairs and railing rendition; loft railing and basement laundry room rendition; fireplace rendition; ground floor/first floor demo plan; two photographs depicting the family room and dining room before renovations; Text messages between the Claimant and the Respondent, October 26, 2021 - June 28, 2022; Correspondence from the MHIC to the Complainant, undated; Department I.D. registration printout - Respondent, printed July 20, 2022
- Clmt. Ex. 3 - MHIC Complaint Form, unsigned
- Clmt. Ex. 4 - Cregger Construction Estimate, \$18,189.65, October 14, 2022

⁴ There are ten photographs of various rooms in the Claimant's home that show an incomplete renovation.

Clmt. Ex. 5 - Receipt from Castle Wholesalers, Inc., \$2,734.27, August 6, 2022; Receipt from Castle Wholesalers, Inc., \$980.40, August 6, 2022; Invoice from Elevated Design & Build, LLC, \$800.00, July 11, 2022; Invoice from Elevated Design & Build, LLC, \$4,685.00, July 20, 2022; Invoice from Elevated Design & Build, LLC, \$8,400.00, July 24, 2022

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Remote Hearing, April 7, 2023; Hearing Order, February 3, 2023
- Fund Ex. 2 - Department I.D. registration printout – Respondent, printed April 25, 2023
- Fund Ex. 3 - Letter to the Respondent from Joseph Tunney, Chairman MHIC, with attached Claim, October 5, 2022

The Respondent did not attend the hearing and did not offer any exhibits.

Testimony

The Claimant testified and did not present other witnesses. The Respondent did not attend the hearing and 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 number 01-119854. (Fund Ex. 2).
2. The Claimant's property subject to this matter is a residential property located in Bowie, Maryland (Property).
3. On or about February 6, 2021, the Claimant paid the Respondent \$30,885.00 as a downpayment toward renovating the Property.⁵

⁵ The Claimant paid using a credit card. The Claimant paid the Respondent a \$30,000 downpayment toward the Contract amount and \$885.00 in credit card fees that the Respondent charged the Claimant. The Claimant did not explain why she paid the deposit before the contract was signed.

4. On April 19, 2021, the Claimant and the Respondent entered into a contract to renovate the Property (Contract). The scope of work as outlined in the Contract was extensive and included but was not limited to:

- Demolition and renovation of three full bathrooms and one half-bathroom;
- Demolition and renovation of the kitchen;
- Install new light fixtures and dedicated circuit for kitchen appliances and lighting;
- Paint all walls, ceiling and trim;
- Install new flooring and carpet throughout the Property; and
- Design a 3D rendering of the project area.

5. The agreed-upon Contract price was \$102,025.00, which included demolition, bulk trash removal, labor, and materials.

6. The Contract stated that work would begin in May 2021 and conclude approximately four to six weeks later.⁶

7. On a date not specified in the record, the Claimant and Respondent amended the scope of work in the original Contract to include removal and installation of new stairs between the main floor and the upper level at an additional cost of \$17,000.00.

8. On a date not specified in the record, the Claimant and Respondent amended the scope of work in the original Contract to include the removal and installation of a new railing in the loft area of the Property at an additional cost of \$3,000.00.

⁶ The Claimant testified that as a result of the COVID-19 pandemic, the Respondent advised her that it could take longer to complete the renovation.

9. On a date not specified in the record, the Claimant and Respondent amended the scope of work in the original Contract to include refacing the fireplace with stone at an additional cost of \$5,500.00.

10. On or about May 1, 2021, the Respondent began working at the Property.

11. On May 25, 2021, the Claimant paid the Respondent \$40,000.00 toward the Contract price.⁷

12. On July 7, 2021, the Claimant paid the Respondent \$50,000.00 toward the Contract price.⁸

13. Sometime between March 2022 and May 2022, the Respondent stopped working at the Property.

14. The Claimant repeatedly called and text messaged the Respondent to inquire about the Respondent completing the project.

15. The Respondent stopped responding to the Claimant's text messages after June 11, 2022.

16. On June 29, 2022, the Claimant received documents advising her that the Respondent filed bankruptcy.

17. On a date not specified in the record, the Claimant paid Cregger Construction \$18,189.65 to demolish and install new stairs and railings from the main floor to the upper level.

18. On August 6, 2022, the Claimant purchased kitchen cabinets and installation supplies from Castle Wholesaler, Inc., for \$3,714.67.

⁷ The Claimant obtained a loan from Sunlight Financial, Inc. that was paid directly to the Respondent.

⁸ The Claimant obtained a loan from Sunlight Financial, Inc. that was paid directly to the Respondent.

19. On a date not specified in the record, the Claimant paid Elevated Design & Build, LLC \$800.00 to conduct an electrical diagnostic and remodel wiring system test.

20. On a date not specified in the record, the Claimant paid Elevated Design & Build, LLC \$4,685.00 to complete the electrical work on the Property.

21. On a date not specified in the record, the Claimant paid Elevated Design & Build, LLC \$8,400.00 to complete the bathroom renovations at the Property.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. § 8-407(e)(1); Md. Code Ann., 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.” Md. Code Ann., 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.” Md. Code Ann., Bus. Reg. § 8-401.

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. Md. Code Ann., Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022).

The Claimant resides in the home that is the subject of the Claim. *Id.* § 8-405(f)(2) (Supp. 2022). The parties did not enter into a valid agreement to submit their dispute to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022). 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. 2022). Further, the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the Claim. *Id.* § 8-405(d) (Supp. 2022).

The Claimant testified in detail and provided credible evidence that documented the unworkmanlike, inadequate, and incomplete work performed by the Respondent as well as the work necessary to remediate and complete the Property's renovation. The Claimant credibly testified that the Respondent did some work but did not complete the renovation. The Claimant explained that while the Respondent agreed to complete the renovation within four to six weeks of the start date, over a year passed, and the Respondent had not completed the renovation project. The Claimant credibly testified that on more than one occasion, the Respondent used the wrong products and she had to have the Respondent correct his work. The Claimant explained that once the Respondent abandoned the renovation project, she discovered that the electrical, plumbing, and flooring work that the Respondent did was not only incomplete, but it was also inadequate and unworkmanlike thus requiring remediation.

The Claimant asserted that sometime between March 2022 and May 2022, the Respondent stopped performing work toward completing the home improvement project, and subsequently stopped communicating with the Claimant. During her testimony, the Claimant outlined the steps that she took to try to get the Respondent to complete the project.

The Claimant credibly testified that she made repeated attempts to contact the Respondent by calling and texting. The Respondent had a consistent pattern of either not responding or failing to appear, without a credible explanation, after he repeatedly assured the Claimant that he would return to work at the Property.

The Claimant explained that she paid the Respondent the entire Contract price before he completed the renovation because he insisted that he needed more money to complete the project. The Claimant emphasized that she relied on the Respondent's representations and secured two loans, with the Respondent's preferred lender, for a large portion of the Contract amount. The Claimant is currently paying the loans and the Respondent has not returned any of the funds he received.

The Respondent failed to appear for the May 30, 2023 hearing and did not present any witnesses or testimony to rebut the Claimant's case. Thus, the Claimant's evidence is undisputed. Accordingly, after considering the testimony, and after reviewing all exhibits, I find that the Respondent performed an unworkmanlike, inadequate, and incomplete home improvement.

The Claimant has established, by a preponderance of the evidence, the Contract price, the amount paid to the Respondent, and that the Respondent performed a home improvement that was inadequate, unworkmanlike, and incomplete. The Claimant has established that the Respondent abandoned the home improvement project, which caused the Claimant to suffer an actual loss. The Claimant provided evidence of the amount necessary to remediate and complete the home improvement project.

The Fund agreed that the Respondent did not complete the renovation. The Fund argued that the Claimant's credible evidence shows that she sustained a loss from the Respondent's acts or omissions, and it therefore recommended an award to the Claimant from the Fund.⁹ Based on all of the above, 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. Md. Code Ann., Bus. Reg. § 8-405(e)(3) (Supp. 2022); COMAR 09.08.03.03B(1). The MHIC's regulations provide three formulas to measure a claimant's "actual loss," unless a unique measure is necessary. COMAR 09.08.03.03B(3).

The controlling regulation provides, as follows:

(a) 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.

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

(c) 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)(a)-(c).

⁹ The Fund did not recommend an amount that the Claimant should be awarded. Instead, the Fund argued that I should rely on the receipts provided by the Claimant.

The Respondent performed some work under the Contract, and the Claimant retained other contractors to remediate and complete the unworkmanlike, inadequate, and incomplete work done by the Respondent. The Fund argued, and I agree, that the third regulatory formula as outlined in COMAR is appropriate in this case. Therefore, I shall apply COMAR 09.08.03.03B(3)(c) to measure the Claimant's actual loss, using the following calculations:

| | | |
|--------|----------------------|--|
| | \$35,789.32 | Amount the Claimant paid to remediate and complete the home renovation ¹⁰ |
| | + \$120,885.00 | Amount the Claimant paid the Respondent ¹¹ |
| Total | \$156,674.32 | |
| | <u>-\$127,525.00</u> | Less the Original Contract Amount ¹² |
| Equals | \$29,149.32 | 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.¹³ Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); 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 her actual loss of \$29,149.32.¹⁴

¹⁰ The Claimant testified that she spent \$72,027.00 to remediate and complete the home renovation. The documentary evidence provided by the Claimant establishes that the Claimant paid \$35,789.32.

¹¹ The Claimant testified that she paid the Respondent \$150,000.00 for the unworkmanlike, inadequate and incomplete home renovation. The documentary evidence provided by the Claimant establishes that the Claimant paid the Respondent \$120,885.00.

¹² The Claimant testified that the Contract amount was \$150,000.00. The documentary evidence provided by the Claimant establishes that the Contract amount was \$127,525.00. The Claimant did not explain with sufficient detail or provide documents to support a finding that the original Contract amount of \$102,025.00 was amended to \$150,000.00.

¹³ 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").

¹⁴ During the hearing, I repeatedly reminded the Claimant of her burden to prove her claim and I allowed several opportunities for the Claimant to email documents to the OAH. The Respondent's failure to appear does not negate the Claimant's burden to prove eligibility for compensation, the actual loss amount, and the amount, if any, that the Claimant is entitled to recover.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$29,149.32 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3). I further conclude that the Claimant is entitled to recover \$29,149.32 from the Fund. Bus. Reg. § 8-405(e)(1), (5); 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 \$29,149.32; 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;¹⁵ and

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

August 28, 2023
Date Decision Issued

Patricia M. DeMaio

Patricia M. DeMaio
Administrative Law Judge

PMD/sh
#207027

¹⁵ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 25th day of October, 2023, 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***