

IN THE MATTER OF THE CLAIM	* BEFORE ANGELA C. DIEHL,
OF CAROL BRYANT,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT COMMISSION	*
GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF SARATH	* OAH No.: LABOR-HIC-02-24-01593
PUTHUSSERY,	* MHIC No.: 23(75)389
T/A OLD BAY REMODELING,	
RESPONDENT	

* * * * *

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 April 3, 2023¹, Carol Bryant (Claimant) filed a claim (Claim) with the MHIC² Guaranty Fund (Fund) for reimbursement of \$24,025.00 for actual losses allegedly suffered as a result of a home improvement contract with Sarath Puthussery, trading as Old Bay Remodeling

¹ Ms. Bryant completed the claim form on this date, but it was not received by the Maryland Home Improvement Commission (MHIC) until May 15, 2023.

² The MHIC is under the jurisdiction of the Department of Labor (Department).

(Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).³ On January 16, 2024, the MHIC issued a Hearing Order on the Claim. On January 17, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On April 30, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Catherine Villareale, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented.

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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On February 1, 2024, 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 April 30, 2024, at 9:30 a.m., at OAH in Hunt Valley, Maryland. 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. 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.,

³ Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

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

I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 - Email between Brenden Riggs and the Respondent, June 1, 2022
- Clmt. Ex. 2 - Cellular phone records between the Claimant and the Respondent, January 14, 2022 to March 21, 2022
- Clmt. Ex. 3 - Contract between the Respondent and the Claimant, August 9, 2021
- Clmt. Ex. 4 - Copies of cancelled checks between the Respondent and the Claimant, November 4, 2021, October 31, 2021, October 6, 2021, and August 9, 2021
- Clmt. Ex. 5 - Contract between the Respondent and Home Tailor, unknown date
- Clmt. Ex. 6 - Email between William Banks of the MHIC and the Respondent, December 18, 2022
- Clmt. Ex. 7 - Correspondence from the Respondent to the MHIC, unknown date
- Clmt. Ex. 8 - Six photographs depicting the second floor bathroom after renovation by the Respondent showing mold on the ceiling and disintegrating grout, February 2022
- Clmt. Ex. 9 - MHIC Claim form, unsigned and unknown date
- Clmt. Ex. 10 - Screenshots of text messages between the Respondent and the Claimant, November 2021 through March 2022

The Respondent failed to appear so no exhibits were entered on their behalf.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - MHIC Claim Form, April 3, 2023 and an email between the Claimant and Thomas Marr of the MHIC, October 3, 2023
- Fund Ex. 2 - Hearing Order, January 16, 2024
- Fund Ex. 3 - Notice of Hearing, February 1, 2024
- Fund Ex. 4 - MHIC Registration ID printout, April 29, 2024

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 number 01 119037.
2. On August 9, 2021, the Claimant and the Respondent entered into a contract to discover the leak in the second floor bathroom which entailed demolishing the seat, sill and bottom two rows of the wall tile in the shower; setting aside the shower door for the demolition work and re-installation; and rebuilding the demolished parts of the shower. (Contract).
3. The original agreed-upon Contract price was \$7,300.00.
4. Another \$300.00 was added to the Contract for parts.
5. The Claimant paid the Respondent a total of \$7,600.00: \$1,395.00 on November 4, 2021, \$2,190.00 on October 31, 2021, \$1,825.00 on October 6, 2021, and \$2,190.00 on August 9, 2021.
6. The Claimant started work on the second floor bathroom as described above in October 2021. The work was completed in November 2021.
7. The Claimant noticed issues with the second floor bathroom such as mold on the ceiling and disintegrating grout in January 2022. The Claimant alerted the Respondent of these issues that same month.
8. In March 2022, after the Claimant contacted the Respondent numerous times, the Respondent conducted an inspection of the second floor bathroom. The Claimant was led to

believe that the Respondent would come back and repair the work but the Respondent never returned or responded to the Claimant's telephone calls.

9. In June 2022, the Claimant contacted Home Tailor to remediate the issues in their second floor bathroom. Home Tailor provided a proposal of \$24,025.00 to remediate the issues in the Claimant's second floor bathroom.

10. Prior to the work done by the Respondent, the Claimant never had any issues with mold on the ceiling of the second floor bathroom or with the tile grout.

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.

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 or 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 contracted the Respondent to repair a water leak in their second floor bathroom. Water would leak from the second floor bathroom into the first floor bathroom that was directly below the second floor bathroom. The Respondent believed that the leak was from a lack of a shower drain. However, after the Respondent completed the work in November of 2021, the Claimant observed mold growing on the ceiling of the second floor bathroom and the new grout installed by the Respondent disintegrating from the tiles. The Claimant contacted the Respondent to repair the issue. The Respondent did come and take photographs of the damage in March 2022. The Claimant believed that the Respondent would come back and repair the damage but the Respondent stopped communicating with the Claimant. The Claimant later learned that the Respondent's license was suspended. Based on the above, I find the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023).

Prior to January 2022, the Claimant never had mold on the ceiling of her second floor bathroom nor did the grout disintegrate. These issues did not arise until after the work the Respondent performed. The Respondent performed unworkmanlike, inadequate, or incomplete home improvements.

I thus 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.

However, none of the following three regulatory formulas is appropriate in this case.

(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). Accordingly, I shall apply a unique formula to measure the Claimant's actual loss.

After it was apparent that the Respondent was not returning to repair the grout and mold in the second floor bathroom, the Claimant contacted Home Tailor to provide an estimate to

repair the issues with the mold and the disintegrating grout. Home Tailor was able to provide an itemized list of work to be performed to remedy the mold and grout:

Scope of Work	Cost
Work area and set up: contain work area by sealing vents; cover existing flooring and remaining fixtures	\$1,000.00
Deconstruction: remove glass shower door	\$225.00
HVAC/Ventilation	\$750.00
Plumbing for bathroom: install new shower drain, install new diverter and trim kit	\$5,400.00
Electrical: install new vent fan	\$3,500.00
Greenboard and Paint: remove existing drywall on ceiling, paint	\$1,250.00
Paint bathroom walls	\$350.00
Greenboard in powder room	\$750.00
Custom stand-up shower: remove existing shower walls, bench, build shower pan, level floor	\$6,000.00
Custom shower enclosure	\$2,400.00
Other project costs: haul away fee and building permits	\$2,400.00
Fixtures – new bathroom fixtures	\$600.00
Fixtures – tile	\$400.00
Total	\$24,025.00

The items highlighted above describe work that is beyond the scope to repair the Respondent's work and therefore, I find those items to be ineligible for compensation by the Fund. Prior to the Respondent's work, the Claimant testified that there was no ventilation fan in the second floor bathroom. Therefore, the cost for a new fan and installation will not be considered. The cost for the custom shower enclosure and new fixtures have also been excluded.

These costs that I find ineligible for compensation by the Fund total \$7,250.00. The remaining estimate from Home Tailor that is compensable is \$16,775.00.

While the Claimant may solicit contracts to repair work inadequately done, the Fund does not provide for compensation greater than cost of the original Contract. In this case, the eligible costs from the Home Tailor proposal are \$16,775.00 which exceeds the total cost of the original Contract. Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). The Claimant is only entitled to the cost of the Contract which is \$7600.00.

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.⁴ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). Therefore, the Claimant is entitled to recover their actual loss of \$7,600.00.

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 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(C). I further conclude that the Claimant is entitled to recover \$7,600.00 from the Fund. 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 \$7,600.00; 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").

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

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

May 9, 2024
Date Decision Issued

Angela C. Diehl

Angela C. Diehl
Administrative Law Judge

ACD/ja
#211648

⁵ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 14th day of August, 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.

Michael Shilling

Michael Shilling

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***