

<p>IN THE MATTER OF THE CLAIM</p> <p>OF JOHN SURGUY & LEO RAUPUK,</p> <p>CLAIMANTS</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF JOHN ROMECKI,</p> <p>T/A BLUE LINE CONSTRUCTION,</p> <p>LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE LEIGH WALDER,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-23-28436</p> <p>* MHIC No.: 23 (75) 599</p>
--	---

* * * * *

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 June 12, 2023, John Surguy and Leo Raupuk¹ (Claimants) filed a claim (Claim) with the MHIC² Guaranty Fund (Fund) for reimbursement of \$14,200.00 for actual losses allegedly suffered as a result of a home improvement contract with John Romecki, trading as Blue Line

¹ In the Maryland Home Improvement Commission's (MHIC's) Hearing Order, Mr. Raupuk's last name is spelled as Raupak. When transmitting this matter to the Office of Administrative Hearings (OAH), the MHIC correctly spelled Mr. Raupuk's last name. Therefore, only the MHIC's Hearing Order contains this misspelling. Mr. Raupuk had little to no involvement with the facts of this case. For reasons not relevant to this Proposed Decision, Mr. Raupuk appointed Mr. Surguy to be his representative by means of a General Power of Attorney. Therefore, any reference to "the Claimant" refers, individually, to Mr. Surguy.

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

Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).³ On October 30, 2023, the MHIC issued a Hearing Order on the Claim. Thereafter, the MHIC forwarded the matter to the OAH for a hearing.

On January 31, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. As set out below, the Respondent failed to appear to the hearing.

On November 28, 2023, the OAH mailed a Notice of Hearing (Notice) to the Respondent by United States mail by way of regular first-class mail and certified mail. The Notices were sent to the Respondent's address of record in Baltimore, Maryland. The Notices stated that a hearing was scheduled for January 31, 2024, at 9:30 a.m., at the Office of Administrative Hearings. Code of Maryland Regulations (COMAR) 09.08.03.03A(2). The Notices advised the Respondent that failure to attend the hearing might result in "a decision against you." The Notice sent by certified mail was returned to the OAH as undeliverable with the notation that it was "not deliverable as addressed." The Notice sent by regular mail was not returned as undeliverable.

I waited until 9:45 a.m. to see if either the Respondent or anyone representing the Respondent would appear. Neither did. 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.

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

I determined that the Respondent received proper notice and proceeded in the Respondent's absence. *See* COMAR 28.02.01.05A, C; *see also* Md. Code Ann., Bus. Reg. § 8-309 ("Within 10 days, a licensee shall notify the [MHIC] of a change of control in ownership, management, address, or trade name.").

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 Claimants 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 into evidence:

Clmt. Ex. 1 – Packet of documents, including:

- Statement from the Claimant, undated
- General Power of Attorney, dated January 20, 2021
- Claim, signed April 24, 2023
- Complaint Form, signed October 1, 2022
- Another statement from the Claimant, undated
- Estimate, dated April 24, 2022 (there are duplicates of this exhibit)
- Email, dated May 19, 2022 (there are duplicates of this exhibit)
- Sales Receipts, dated May 2, 15, and 19, 2022 (there are duplicates of this exhibit)
- Checks, dated April 19, May 2 and May 13, 2022
- Text messages between the Claimant's fiancé and the Respondent, various dates
- Inspection Report, dated September 15, 2022
- Contracting Proposal, dated May 15, 2023
- Contract, dated March 23, 2023

Clmt. Ex. 2 – Respondent’s response to the Claim, undated; and insurance documents, dated January 29, 2022

No exhibits were submitted on behalf of the Respondent.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 – Notice, dated November 28, 2023; and Hearing Order, dated October 30, 2023

Fund Ex. 2 – Licensing information, printed January 18, 2024

Fund Ex. 3 – Letter from the MHIC to the Respondent, dated June 12, 2023; Claim, signed April 24, 2023

Testimony

The Claimant testified, as did his fiancé – Janet Talley.

The Respondent was not present to testify or offer any witnesses.

The Fund did not offer any 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 numbers 01-143138 (individual) and 05-146719 (corporate).

2. On April 24, 2022, the Claimant and the Respondent entered into a contract where the Respondent agreed to perform the following work in exchange for \$12,901.41:

- Completely remove existing porch and concrete walkway;
- Rebuild new wood deck and stairs with railings; and
- Install new pavers going to side fence and/or concrete.

3. In total, the Claimant paid the Respondent \$12,882.00 towards the contract, as follows:

- \$4,536.00 via a check dated April 19, 2022
- \$4,173.00 via a check dated May 2, 2022; and
- \$4,173.00 via a check dated May 13, 2022.

4. The Respondent removed the existing porch and concrete walkway, built a wood deck with stairs and railings, and installed new pavers; however, the Respondent's work was faulty, as follows:

- a. The deck's guardrails were loose with insufficient beam supports;
- b. Lag bolts were poorly installed;
- c. There were missing graspable handrails at the front of the steps;
- d. The riser heights were not even; and
- e. The steps were poorly secured to the deck board.

5. After the Respondent finished building the deck, the Claimant continuously noticed various defects with the Respondent's work and kept asking the Respondent to return to fix these deficiencies. After much beseeching, the Respondent would return, but was unable to repair his work. The Claimant lost trust in the Respondent's ability to properly construct the deck.

6. On or about September 15, 2022, the Claimant became concerned about the Respondent's work product, and hired an inspector, Mark Shaffery with Nextday Inspect, to inspect the deck the Respondent constructed. Mr. Shaffery observed the issues noted in Finding of Fact #4 and informed the Claimant that these deficiencies posed a safety hazard that required correction.

7. The Claimant has reached out to several contractors to repair the Respondent's work. The contractors who have come out to provide an estimate have all told the Claimant that

they are unable to repair the Respondent's work because they all suspect that the footers are incorrectly installed. These contractors refuse to take on the liability of repairing the deck when the footers are incorrectly installed.

8. On March 15, 2023, Absolute Contracting Corporation estimated that it could rebuild the Claimants' deck for \$14,200.00.

9. On March 23, 2023, Beltway Builders, Inc., estimated that it could rebuild the Claimants' deck for \$19,375.00.

DISCUSSION

Applicable Law

The Claimants have the burden of proving the validity of the Claim by a preponderance of the evidence. 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." 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 Claimants have proven eligibility for compensation.

Eligibility for Compensation

The evidence in this case establishes there are no legal impediments barring the Claimants from filing a claim under section 8-405 of the Business Occupations Article.

The Respondent was a licensed home improvement contractor at the time of the contract. 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 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 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).

The Claimant argued, and the Fund agreed, that he suffered an actual loss incurred as a result of the Respondent's acts or omissions, entitling him to compensation from the Fund. Specifically, the Claimant argued that, despite the Respondent constructing a deck, the Respondent's work was unworkmanlike and inadequate. The Claimant kept noticing various flaws with the Respondent's work product and would ask the Respondent to repair these various defects. Although the Respondent would begrudgingly return to the Claimant's property to attempt to repair his work, the Respondent was unable to repair the deck, leading the Claimant to lose trust in the Respondent's ability to properly construct the deck. Eventually, the Claimant became concerned about the viability of the deck and hired Mr. Shaffery to inspect the deck. Mr. Shaffery noticed multiple issues with the Respondent's work product, as noted in Finding of Fact #4, and advised the Claimant to get these deficiencies repaired.

The Claimant submitted Mr. Shaffery's inspection report into evidence, which includes photographs of each deficiency set out in Finding of Fact #4. *See* Clmt. Ex. 1. This inspection report demonstrates that the deck the Respondent built was unworkmanlike and inadequate.

The Claimant's testimony and evidence is unrefuted and is also persuasive to demonstrate that the Respondent performed an unworkmanlike and inadequate home improvement. Therefore, the Claimants established that they suffered an actual loss as a result of an unworkmanlike and inadequate home improvement. Having found eligibility for compensation I must determine the amount of the Claimants' actual loss and the amount, if any, that the Claimants are entitled to recover.

Award

The Claimant seeks the return of the \$12,882.00 he paid the Respondent. The Fund recommended that the Claimants be awarded this sum. The Claimant testified and argued that the contractors he contacted to repair the Respondent's work have all informed him that the deck needs to be rebuilt. The Claimant explained that the contractors who have provided him estimates are concerned that the deck's footers have been improperly installed and will not take the risk of repairing a deck with improperly installed footers, hence why the deck needs to be rebuilt. 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). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

Here, the Respondent performed some work under the contract and the Claimant intends to retain other contractors to complete or remedy that work.

Accordingly, the following formula appropriately measures the Claimants' actual loss:

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)(c). The Claimant submitted proof that he paid the Respondent a total of \$12,882.00 under the contract. *See* Clmt. Ex. 1. This amount is added to any reasonable amount the Claimant will be required to pay another contractor to repair the poor work done by the Respondent and complete the contract. The Claimant produced estimates from two other contractors to repair the work: \$14,200.00 from Absolute Contracting Corporation; and \$19,375.00 from Beltway Builders, Inc. Both contracts encompass a complete rebuild of the deck. As the regulation uses the word "reasonable amount," I will use the lower estimate from Absolute Contracting Corporation (\$14,200.00) in my calculation. COMAR 09.08.03.03B(3)(c). \$12,882.00 added to \$14,200.00 equals \$27,082.00. Subtracting the Respondent's original contract amount (\$12,901.41) from \$27,082.00 equals an actual loss of \$14,180.59.⁴

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

⁴ In its closing, the Fund calculated the Claimant's actual loss as \$14,200.00. This sum was due to rounding.

⁵ 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").

In this case, the Claimants' actual loss of \$14,180.59. exceeds the amount paid to the Respondent. Therefore, the Claimants' recovery is limited to the amount paid to the Respondent, which is \$12,882.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual loss of \$14,180.59 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 Claimants are entitled to recover \$12,882.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a), (e)(5) (Supp. 2023); COMAR 09.08.03.03B(3)(c), (4).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimants \$12,882.00; 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.

April 29, 2024
Date Decision Issued

LW/sh
#211528

Leigh Walder

Leigh Walder
Administrative Law Judge

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

PROPOSED ORDER

WHEREFORE, this 2nd day of July, 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***