

IN THE MATTER OF THE CLAIM	* BEFORE CARLTON A. CURRY,
OF WINONA FRANCIS,	* 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 ROBERT BOSTICK,	*
T/A WIN WIN HOME	* OAH No.: LABOR-HIC-02-23-28286
IMPROVEMENT,	* MHIC No.: 23 (75) 628
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 March 15, 2023, Winona Francis (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$26,751.76 for actual losses allegedly suffered as a result of a home improvement contract with Robert Bostick, trading as Win Win Home Improvement (Respondent), doing business as House Pros. Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).<sup>2</sup> On October 30, 2023,

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<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).  
<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

the MHIC issued a Hearing Order on the Claim. On October 31, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 12, 2024, I held a hearing via the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). The Claimant was self-represented. MacKenzie Read, Assistant Attorney General, Department, represented the Fund.

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 November 15, 2023, the OAH provided a Notice of Hearing (Notice) to the Respondent by 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 January 12, 2024, at 9:30 a.m., via Webex and listed the pertinent information to access 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 (USPS) did not return the Notice to the OAH.<sup>3</sup> The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent made no request for 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 matter. COMAR 28.02.01.05A, C.

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.,

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<sup>3</sup> The green card from the certified mail was signed and returned, acknowledging that the Respondent received the Notice.

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 - Negotiated check number 14228 from Sun West Mortgage Company, Inc. (Sun West) payable to Claimant and Respondent in the amount of \$46,029.84, dated July 28, 2020

Clmt. Ex. 2 - Collection of documents containing the following:

- Photocopy of check number 14228
- 203(k) Funds Transaction Worksheet, last transaction date, July 21, 2020
- Photocopy of negotiated check number 14228
- Section 203(k) Draw Request, dated April 12, 2021
- Correspondence from Sun West to Claimant, dated January 11, 2024

Clmt. Ex. 3 - Collection of documents containing the following:

- Section 203(K) Draw Request, dated June 26, 2020
- Request for Acceptance of Changes in Approved Drawings and Specifications, dated June 29, 2020
- Lien Waiver and Release, dated June 29, 2020
- "509 70<sup>th</sup> Place Draw Request #1" Final Audit Report, dated June 30, 2020

Clmt. Ex. 4 - Collection of documents containing the following:

- Correspondence from Enyinna Anthony, PMP,<sup>4</sup> CCM,<sup>5</sup> to MHIC, dated January 11, 2024
- Change Order Totals, Inspection Date April 2, 2020
- Email from Respondent to Claimant and Mr. Anthony, dated July 3, 2020

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<sup>4</sup> Project Management Professional.

<sup>5</sup> Certified Case Manager

- Email from Respondent to Claimant and Mr. Anthony, dated June 25, 2020
- Email from Respondent to Claimant and Mr. Anthony, dated June 26, 2020

Clmt. Ex. 5 - Claimant's Response to Respondent's MHIC Response, May 2023

Clmt. Ex. 6 - Bank of America screenshots of Zelle electronic payments for Claimant to Respondent:

- \$3,500.00 on March 24, 2020
- \$3,500.00 on March 25, 2020
- \$2,495.11 on March 29, 2020
- \$1,914.83 on April 12, 2020

Clmt. Ex. 7 - Collection of documents containing the following:

- Email from Respondent to Ms. Tenae Thomas, MHIC employee, dated April 6, 2023
- Photocopy of Respondent's MHIC License with an expiration date of October 22, 2024
- Respondent's Certificate of Liability Insurance, dated April 6, 2023
- House Pros home renovation proposal, dated February 12, 2020

Clmt. Ex. 8 - MHIC Home Improvement Claim Form, dated February 15, 2022, with attachments:

- Specification of Repairs, dated February 24, 2020
- HUD<sup>6</sup>-Accepted Consultant/Plan Reviewers Signature and Date, dated June 30, 2020
- Proposal, Blakes Sheet Metal Services, LLC, dated October 2, 2021
- Proposal/Agreement, Hermanstyne Plumbing and Heating, date November 6, 2021
- Invoice, Hermanstyne Plumbing and Heating, date April 26, 2021
- Contract between Claimant and Hermanstyne Plumbing and Heating, March 7, 2022
- Proposal/Agreement, Hermanstyne Plumbing and Heating, date June 28, 2022
- Letter of Explanation, undated

The Respondent did not offer any exhibits for admission into evidence.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, issued November 11, 2023

Fund Ex. 2 - Hearing Order, dated October 30, 2023

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<sup>6</sup> U.S. Department of Housing and Urban Development.

Fund Ex. 3 - Licensing History of Respondent, dated December 28, 2023

Fund Ex. 4 - Letter from Joseph Tunney, Chairman MHIC, to the Respondent, dated March 24, 2023; MHIC Claim Form, dated March 15, 2023

Testimony

The Claimant testified and did not present other witnesses.

The Respondent did not appear, and therefore did not present any testimony or offer any witnesses.

The Fund did not present any testimony or offer 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 89185.
2. The Claimant's property subject to this matter is located in Capitol Heights, Maryland and is the Claimant's residence (the Property).
3. On February 24, 2020, the Claimant and the Respondent entered into a contract to perform a comprehensive home renovation (Contract). The scope of the work under the Contract include: masonry repair; expanding the French drain and install a sump pump; kitchen renovation to include the replacement of gas appliances; adjust and install duct work to optimize heating; and roof repair. (Clmt. Ex. 7; Clmt. Ex. 8, Specification of Repairs).
4. The Contract also required the Respondent to obtain the necessary permits for the scope of work under the Contract.
5. The original agreed-upon Contract price was \$67,298.40. (*Id.*).
6. The Contract stated that work would begin on March 1, 2020, and would take approximately three months to complete. (Clmt. Ex.7).

7. The Claimant was an approved participant in the 203(k) Rehabilitation Mortgage Insurance program administered by the Federal Housing Administration, which provided funds for the renovations in the Contract. Sun West, as the lender, held the renovation funds in escrow.

8. The 203(k) program also required the Claimant to hire an approved consultant for the renovation project. The Claimant contracted with the Anthony Management Group and Mr. Enyinna Anthony as the HUD-approved consultant for the renovations under the Contract.

9. The Claimant made the following electronic payments, totaling \$11,409.94 via Zelle directly to the Respondent towards project materials:

- \$3,500.00 on March 24, 2020;
- \$3,500.00 on March 25, 2020;
- \$2,495.11 on March 29, 2020;
- \$1,914.83 on April 12, 2020.

(Clmt. Ex. 6)

10. On June 25, 2020, the Respondent met the Claimant and Mr. Anthony at the Property to inspect the renovations. Based on the inspection, the Respondent developed a summary of outstanding items to be completed. (Clmt. Ex. 4).

11. On June 30, 2020, a request to draw funds was made to the lender, Sun West. The draw request was signed by the Claimant, the Respondent, and Mr. Anthony. (Clmt. Ex. 3).

12. On July 28, 2020, Sun West issued a check in the amount of \$46,029.84 to the Respondent and the Claimant. The Respondent deposited the check. (Clmt. Ex. 1).

13. The Respondent received payments totaling \$49,933.88 from Sun West related to the Contract. (Clmt. Ex. 2, pg. 12).

14. The Respondent did not return to the Property to complete the outstanding work and ceased communication with the Claimant, Mr. Anthony, and the lender in July 2020.

15. The sump pump installation was not completed, the French drain was not properly installed, and the washing machine discharge drain was not properly installed, causing flooding to the basement of the Property.

16. The Respondent improperly installed a gas line, causing a gas leak at the Property.

17. The Respondent failed to complete the roof installation under the Contract.

18. On February 13, 2021, the Claimant was informed that the Respondent did not obtain the required permits to perform the plumbing, electrical work, or to install a gas line.

19. On October 2, 2021, the Claimant contracted with Blake Sheet Metal Services, LLC to repair and optimize the heating system at a cost of \$1,900.00. (Clmt. Ex. 8).

20. Between November 6, 2021 and June, 2022, the Claimant contracted with Hermanstyne Plumbing and Heating to repair, replace and complete the work performed by the Respondent:

• Repair gas leaks pertaining to newly installed pipe	\$ 2,150.00
• Install sump pump and French drain	\$ 8,195.00
• Roof Repair	\$ 8,626.76
• Install duct pipe/ line to existing dryer	\$ 590.00
TOTAL:	\$19,561.76

(Id.).

21. On March 15, 2023, the Claimant filed a Claim with the MHIC.

### 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 did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023). The Claimant testified credibly that the Respondent ceased communication with her after receipt of payment in July 2020. The record also reflects Mr. Anthony and the lender attempted to contact the Respondent, without success. (Clmt. Ex. 4). The Respondent did not return to the Property after receiving payment by check in July 2020.

The Respondent performed unworkmanlike, inadequate and incomplete home improvements. The Claimant testified clearly, and her undisputed testimony was supported by documentary evidence. The Respondent performed some work under the Contract. After the



June 25, 2020 inspection, the Respondent sent emails on June 25, 2020 and July 3, 2020, acknowledging outstanding work to be performed under the Contract. (Clmt. Ex. 4). The Respondent did not return to the Property, abandoning the project.

The Claimant provided overwhelming and uncontroverted evidence that the Respondent's work was unworkmanlike, inadequate, and incomplete. The Claimant established, by a preponderance of the evidence, the Contract price, the money paid to the Respondent, and provided evidence of the cost to repair and replace the unworkmanlike and inadequate portions of the work performed by the Respondent, as well as the cost to complete the work that the Respondent failed to perform under the Contract.

The Fund agreed that the Respondent performed in an inadequate, incomplete and unworkmanlike manner. The Fund argued that the Claimant's credible evidence shows that she sustained a loss from the acts or omissions of the Respondent, and it therefore recommended an award to the Claimant from the Fund. 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). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Respondent performed some work under the Contract, and the Claimant retained other contractors to remedy and complete that work. Accordingly, the following formula appropriately measures the Claimant's 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).

Applying the above formula in this case results in the following calculation:

Total Amount Claimant paid to Respondent, plus	\$61,343.82
Total Amount paid to correct and complete Respondent's work	\$21,461.76
Amount paid to all Contractors	<u>\$82,805.58</u>
<u>Less the Contract price:</u>	<u>\$67,298.40</u>
Amount of Actual Loss	\$15,507.18

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>7</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); 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 their actual loss of \$15,507.18.

#### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$15,507.18 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405

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<sup>7</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").

(2015 & Supp. 2023); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a); COMAR 09.08.03.03B(2).

**RECOMMENDED ORDER**

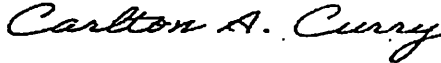
I **RECOMMEND** that the Maryland Home Improvement Commission:

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$15,507.18; 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>8</sup> and

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

April 11, 2024  
Date Decision Issued

  
\_\_\_\_\_  
Carlton A. Curry  
Administrative Law Judge

CAC/emh  
#211180

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

**PROPOSED ORDER**

***WHEREFORE, this 18<sup>th</sup> day of June, 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***

**IN THE MATTER OF THE CLAIM OF \* MARYLAND HOME  
WINONA FRANCIS \* IMPROVEMENT COMMISSION  
AGAINST THE MARYLAND HOME \*  
IMPROVEMENT GUARANTY FUND \* MHIC CASE NO. 23(75)628  
FOR THE ACTS OR OMISSIONS OF \* OAH CASE NO. LABOR-HIC-  
ROBERT BOSTICK T/A WIN WIN \* 02-23-28286  
HOME IMPROVEMENT \***

\* \* \* \* \*

**FINAL ORDER**

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on January 12, 2024. Following the evidentiary hearing, the ALJ issued a Proposed Decision on April 11, 2024, concluding that the homeowner, Winona Francis (“Claimant”) suffered an actual loss as a result of the acts or omissions of Robert Bostick t/a Win Win Home Improvement (“Contractor”). *ALJ Proposed Decision* p. 10. In a Proposed Order dated June 18, 2024, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to grant an award of \$15,507.18 from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On September 19, 2024, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant participated without counsel. The Contractor did not participate. Assistant Attorney General Hope Sachs appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Claimant’s exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. Therefore, the Panel’s review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, and the exhibits offered as

evidence at the OAH hearing. COMAR 09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for the renovation of the Claimant's home. The ALJ found that the Contractor's performance under the contract was unworkmanlike, inadequate, and incomplete. *ALJ's Proposed Decision* pp. 8-9.

On exception, the Claimant argued that the ALJ erred in calculating her actual loss because the ALJ failed to include \$5,300 she paid have her basement cleaned after the Contractor's unworkmanlike installation of a French drain and washing machine discharge drain caused a flood.

The Commission finds no error. First, the Claimant did not present evidence such as an invoice or estimate of the cost to clean her basement. Second, flood damage caused by the Contractor's unworkmanlike installation of the drains constitutes consequential damages, which are not compensable by the Guaranty Fund under Md. Code Ann., Bus. Reg. § 8-405(e)(3).

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 20<sup>th</sup> day of September 2024, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AFFIRMED**;
- D. That the Claimant is awarded \$15,507.18 from the Maryland Home Improvement Guaranty Fund;
- E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, *Md Code Ann.*, Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a);

- F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- G. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

*Robert Altieri*  
**Chairperson –Panel**  
**Maryland Home Improvement**  
**Commission**