

On September 15, 2023, the MHIC issued a Hearing Order on the claim and, on September 14, 2023, forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 5, 2024, I held a hearing at the OAH in Rockville, Maryland. *Id.* §§ 8-407(a), 8-312. Ernie Domingo, Assistant Attorney General, Department, represented the Fund. Luke Griffin, Esquire, represented the Claimants, who were present. The Respondent participated without representation.

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); Code of Maryland Regulations (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

The Claimants filed thirteen documents marked as "Plaintiff's" exhibits but did not offer all of them as evidence. I shall refer to them as Claimants' exhibits, and their status is as follows:

- Cl. Ex. 1. Not offered.
- Cl. Ex. 2. Not offered.
- Cl. Ex. 3. Not offered.
- Cl. Ex. 4. Contract between the Claimants and the Respondent, September 14, 2021. Admitted into evidence.

- Cl. Ex. 5. Copy of a check to the Respondent, December 14, 2021.
Admitted into evidence.
- Cl. Ex. 6. Copy of a check to the Respondent, March 5, 2022.
Admitted into evidence.
- Cl. Ex. 7. Not offered.
- Cl. Ex. 8. Three photographs, undated.
Admitted into evidence.
- Cl. Ex. 9. Email from the Claimants to the Respondent, August 13, 2022.
Admitted into evidence.
- Cl. Ex. 10. Not offered.
- Cl. Ex. 11. Letter from Mr. Griffin to the Respondent, September 21, 2022.
Admitted into evidence.
- Cl. Ex. 12. Proposal from M&D Paving and Sealcoating LLC, undated.
Admitted into evidence.
- Cl. Ex. 13. Two photographs, undated.
Admitted into evidence.

The Claimants' exhibits that were not admitted into evidence remain in the file as part of the administrative record but have not been considered as evidence.

The Respondent did not offer any exhibits.

I admitted into evidence the following exhibits offered by the Fund:

- Fund Ex. 1. Notice of Hearing, December 19, 2023.
- Fund Ex. 2. Affidavit of David Finneran, November 7, 2023; the Respondent's driving record, November 7, 2023.
- Fund Ex. 3. Hearing Order, September 15, 2023.
- Fund Ex. 4. The Respondent's licensing history with the MHIC, November 7, 2023.
- Fund Ex. 5. Letter from the MHIC to the Respondent, March 14, 2023; Home Improvement Claim Form, received March 6, 2023.

Testimony

The Claimants both testified.

The Respondent testified.

The Fund presented no 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 number 01-142686.
2. On September 14, 2021, the Claimants and the Respondent entered into a contract whereby the Respondent agreed to build a paved asphalt driveway at the Claimants' house under construction in Brinklow, Maryland.
3. The original agreed-upon contract price was \$17,000.00.
4. The Claimants paid the Respondent \$14,000.00 under the contract.
5. The Claimants' contact person for the contract was named Angelo.
6. The Respondent staked the driveway and laid and compacted two courses of gravel.
7. After April 2022, the Respondent did little or no work on the driveway.
8. The Claimants repeatedly tried to contact the Respondent to schedule the work, but the Respondent's telephone numbers were out of service.
9. The Claimants were eventually able to speak with Angelo in July 2022. Angelo promised that the driveway would be finished by the end of August 2022.
10. The Respondent never returned to the job site to finish the driveway, which remained uncompleted in September 2022, one year after the contract was signed.

11. In September 2022, the Claimants contracted with M&D Paving and Sealcoating LLC (M&D) to complete the driveway for \$18,000.00.

12. The Claimants paid M&D \$18,000.00, and M&D finished the driveway in September 2022.

13. On September 21, 2022, the Claimants' attorney, Mr. Griffin, sent a letter to the Respondent demanding the return of \$12,000.00 of the Claimants' payments, calculating that the value of the gravel the Respondent supplied was \$2,000.00.

14. The Respondent did not reply to Mr. Griffin's letter or refund any money to the Claimants.

DISCUSSION

The Claimants have the burden of proving the validity of their 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. 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). For the following reasons, I find that the Claimants have proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimants. 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. Bus. Reg. § 8-405(f), (g) (Supp. 2023). The Respondent made no good faith efforts to resolve the dispute with the Claimants. *Id.* § 8-405(d) (Supp. 2023).

The evidence establishes beyond doubt that the Respondent performed an incomplete home improvement. The Claimants engaged the Respondent in September 2021 to build the driveway to their new home. The contract does not mention a deposit or a draw schedule, but the Claimants testified that the Respondent requested a \$5,000.00 deposit when the contract was executed, then demanded two more payments totaling \$9,000.00 on the two occasions when Angelo came to the site to spread and compact the gravel underlayment. The Claimants paid those sums but never received a driveway that was anywhere near completion. Eventually, they contracted with M&D and essentially had to start the driveway project over and pay the full price of \$18,000.00.

Testifying at the hearing, the Respondent agreed with the Claimants' narrative and conceded that "communication could have been better." He acknowledged that he did not complete the driveway or refund any of the Claimants' payments.

I thus find that the Claimants are eligible for compensation from the Fund. I must determine the amount of the Claimants' actual loss and the amount, if any, that the Claimants are entitled to recover. The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work, the third of which applies in this case.

The Respondent performed some work under the contract, and the Claimants have retained another contractor 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). Calculation of the Claimants' actual loss is as follows:

\$14,000.00 paid to the Respondent, plus:
+18,000.00 paid to complete the contract, equals:
\$32,000.00 minus the contract price:
-17,000.00 equals:
\$15,000.00 actual loss.

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. Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$15,000.00 exceeds the amount paid to the Respondent. Therefore, the Claimant's recovery is limited to \$14,000.00, the amount paid to the Respondent.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of \$14,000.00 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)(c).

I further conclude that the Claimants are entitled to recover \$14,000.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a) (Supp. 2023).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$14,000.00; 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;³ and

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

April 30, 2024
Date Decision Issued

Richard O'Connor

Richard O'Connor
Administrative Law Judge

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#211455

³ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 2nd 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.

J Jean White

I Jean White

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***