

IN THE MATTER OF THE CLAIM	* BEFORE JOHN J. LEIDIG,
OF ALVIN DOCKETT,	* 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 KENNETH BOWEN,	*
T/A KB SERVICES, LLC,	* OAH No.: LABOR-HIC-02-23-31786
RESPONDENT	* MHIC No.: 23 (75) 739
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**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 22, 2023, Alvin Dockett (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$30,739.82 for actual losses allegedly suffered as a result of a home improvement contract with Kevin Bowen, trading as KB Services, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).<sup>2</sup> On November 30, 2023, the MHIC issued a Hearing Order on the

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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.

Claim and forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 12, 2024, I held a hearing using the Webex audiovisual platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Ernie Dominguez, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent was self-represented.

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 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 A Estimate, December 6, 2021; Contract, January 5, 2022
- CLMT B Receipts, January 6, 2022, February 15, 2022, and April 25, 2022
- CLMT C Amendment to Contract, August 21, 2022; Invoice, January 6, 2022; Letter from Shawn D. Bartley and Associates, LLC (Attorney) to Respondent, November 23, 2022
- CLMT D Letter from Attorney to Claimant, December 6, 2022; Letter from Respondent to Attorney, December 3, 2022
- CLMT E Letter from Attorney to Respondent, December 14, 2022
- CLMT F Letter from Attorney to Respondent, March 23, 2023

- CLMT G Email from Claimant to Respondent, July 20, 2022; Email from Respondent to Claimant, July 21, 2022; Email from Claimant to Respondent, July 22, 2022; Email from Claimant to Respondent, August 8, 2022; Emails between Claimant and Respondent, September 20 to October 22, 2022; photos of items and debris left at the Property; Emails between Claimant and Respondent, November 3, 2022 to March 21, 2023
- CLMT H MHIC Claim Form, July 10, 2022; Letter from Claimant to William Banks, Jr., MHIC Investigatory, July 10, 2023
- CLMT I Estimate from Construction Zone Electrical Contracting, July 6, 2023
- CLMT J Sales receipts from The Home Depot, September 19 and December 5, 2022; Merchandise and Service Summary from The Home Depot, December 5, 2022
- CLMT K Photographs of laundry area, exposed drywall, steps, and basement, undated

The Respondent did not offer any exhibits.

I admitted the following exhibits offered by the Fund:

- FUND 1 Notice of Remote Hearing, December 28, 2023
- FUND 2 Hearing Order, November 30, 2023
- FUND 3 MHIC Claim Form, June 19, 2023
- FUND 4 Respondent's MHIC Licensing Record, March 8, 2024

Testimony

The Claimant and his wife, Michelle Dockett, testified.

The Respondent 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 114816.

2. On January 4, 2022, the Claimant and the Respondent entered into a contract to renovate the Claimant's kitchen and finish the basement (Contract) at 1500 Biltmore Court, Huntingtown, Maryland 20639 (Property).
3. The original agreed-upon Contract price was \$68,215.00.
4. The Contract stated that work would be completed by March 20, 2022.
5. The Claimant paid the Respondent a total of \$56,845.82. \$34,107.50 was paid on January 6, 2022; \$11,369.16 on February 15, 2022; and \$11,369.16 on April 25, 2022.
6. Between March 20 and May 10, 2022, there were several failed inspections for electrical and plumbing work performed in the basement by the Respondent.
7. May 10, 2022 was the last date that the Respondent was at the Property.
8. Thereafter, some additional work was done at the Property by the Respondent's crew, but progress was very slow and spotty.
9. On August 21, 2022, the parties agreed to amend the Contract. As part of the amendment, the kitchen renovation was removed from the Contract, and the Respondent agreed to refund \$21,268.00 to the Claimant.
10. The Respondent never refunded any money to the Claimant.
11. The Respondent ultimately abandoned the project.
12. At the time the Respondent abandoned the project, the Respondent left food, debris, and other items in the basement.
13. The Claimant had or will have project work completed by other contractors. The Claimant paid The Home Depot \$23,288.08 to complete work on the kitchen; paid Construction Zone \$14,750.00 to perform electrical work; and anticipates paying \$600.00 to complete work on the laundry room.

## 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). Although the Respondent suggested that the Claimant did not cooperate with efforts to schedule work, I did not find this persuasive. The Claimant's testimony and his numerous emails to the Respondent established that the Claimant cooperated with scheduling the work and that the Claimant was reasonable with respect to making the property available to the Respondent's work crews.

The Respondent conceded that he did not finish the work called for by the Contract. He was apologetic and testified that it was never his intention to leave the project incomplete. He admitted that he ultimately abandoned the project. Because the Respondent abandoned the project before completion, 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 complete or remedy 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).

\$56,845.82	amount paid to Respondent
+ \$23,288.08	amount paid to The Home Depot
+ \$14,750.00	amount paid to Construction Zone
+ \$600.00	amount to be paid to finish kitchen
- \$68,215.00	original Contract price
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\$ 27,268.90	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.<sup>3</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 \$27,268.90.<sup>4</sup>

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

I conclude that the Claimant has sustained an actual and compensable loss of \$27,268.90 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 that amount from the Fund. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(c).

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<sup>3</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").

<sup>4</sup> The Fund argued that the Claimant should recover \$26,668.90, which does not include the \$600.00 that the Claimant expects to pay to complete the kitchen. I find that this amount is compensable and that recovery is consistent with COMAR 09.08.03.03B(3)(c), which provides that the actual loss includes the amount that "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."

**RECOMMENDED ORDER**


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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$27,268.90; 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>5</sup> and

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

April 2, 2024  
Date Decision Issued

  
\_\_\_\_\_  
John J. Leidig  
Administrative Law Judge

JJL/ac  
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<sup>5</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



**PROPOSED ORDER**

***WHEREFORE, this 11<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***