

IN THE MATTER OF THE CLAIM	* BEFORE SUSAN A. SINROD,
OF CHRISTINA TRUITT,	* 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 BRIAN MASON,	*
T/A STUDS CONSTRUCTION LLC.	* OAH No.: LABOR-HIC-02-23-27114
RESPONDENT	* MHIC No.: 23 (75) 749
* * * * *	* * * * *

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 17, 2023, Christina Truitt (Claimant)¹ filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)² Guaranty Fund (Fund) for reimbursement of \$10,271.05 for actual losses allegedly suffered as a result of a home improvement contract with Brian Mason, trading as Studs Construction LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).³ On October 13, 2023, the MHIC issued a Hearing

¹The Claimant's husband Erving Truitt also owns the home that is the subject of this hearing; however, Christina Truitt filed the claim in her own name.

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

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

Order on the Claim. On October 13, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 11, 2024, I conducted a hearing at the OAH in Salisbury, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Kris King, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent did not appear for the hearing.

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 13, 2024, the OAH sent 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 March 11, 2024 at 10:00 a.m., at the OAH in Salisbury, 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 returned the Notice sent by certified mail with the notation "Return to Sender, Not Deliverable as Addressed, Unable to Forward." The United States Postal Service did not return the Notice sent by regular mail. The Respondent did not notify the OAH or the MHIC 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., 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:

- Cl. Ex. #1- Contract, signed by the Respondent on October 22, 2021
- Cl. Ex. #2- Fifty-three photographs of the Claimant's home, taken on various dates
- Cl. Ex. #3- Text messages between the Claimant and the Respondent, various dates
- Cl. Ex. #4- Text messages between the Claimant and the Respondent, various dates
- Cl. Ex. #5- Copies of checks from the Claimant to the Respondent, dated October 22, 2021, December 11, 2021, February 28, 2022, and April 19, 2022
- Cl. Ex. #6- Receipt from Shorely Beautiful, dated February 28, 2022; Invoices from Shorely Beautiful, dated February 21 and 22, 2022; Estimate from Shorely Beautiful, dated December 30, 2021
- Cl. Ex. #7- Estimate from Walsh Home Improvement, dated April 26, 2022; Estimate from Walsh Home Remodeling, dated May 3, 2022

The Respondent did not appear or offer any exhibits.

I admitted the following exhibits offered by the Fund:

- Fund Ex. #1- Notice of Hearing, dated February 13, 2024
- Fund Ex #2- OAH Memorandum regarding returned mail, dated January 11, 2024; returned Notice of Hearing and Hearing Order
- Fund Ex. #3- Respondent's licensing history, as of January 23, 2024
- Fund Ex. #4- Home Improvement Claim Form, received April 17, 2023
- Fund Ex. #5- Letter from the MHIC to the Respondent, dated April 27, 2023

Fund Ex. #6- Results for Active Licensed Home Improvement for Walsh Contracting, Inc.; Walsh Home Improvement Company, Walsh Home Remodeling, Walsh's Custom Interiors, and William Joseph Walsh, Jr., run date February 12, 2024

Testimony

The Claimant testified and presented the testimony of her husband, Erving Truitt.

The Respondent did not appear or present any testimony.

The Fund did not present any 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 01-140204 (individual) and 05-143081 (trade).
2. On October 22, 2021, the Claimant and the Respondent entered into a contract wherein the Respondent agreed to remodel the interior and exterior of the Claimant's home in Berlin, Maryland (Contract).
3. The original agreed-upon Contract price was \$51,000.00.
4. On the exterior of the home, the Contract called for the Respondent to build a front porch, install a new entry door, remove and replace siding, re-caulk and seal all windows and doors, install a roof over an existing rear deck, install new hand rails and stair rails on the rear deck, install new deck flooring, remove and dispose of an existing chimney to allow for a gas insert, and install a new rear entry door and storm door.
5. In the interior of the Claimant's home, the Respondent was to remodel the kitchen, living room, hallway, and the master bath.
6. The Respondent performed exterior work on the project between January 29, 2022 and April 22, 2022.

The Respondent initially poured the footers for the front porch, which were approved by the town of Berlin.

8. During the following weeks, the Respondent tore off siding, and began construction of the front porch and the back deck.

9. The Respondent did not replace the siding for several weeks, leaving the house exposed to the elements. He did not install corner posts prior to beginning the siding replacement.

10. The Respondent was supposed to be on the job every day; however, during March and April 2022, he was only there three to four days per week for approximately five hours per day.

11. The Contract called for the Claimant to pay the Respondent in three installments: \$16,830.00 upon acceptance of the Contract; \$16,830.00 upon commencement of the work, and \$17,340.00 upon completion.

12. The Claimant paid the Respondent \$16,830.00 on October 22, 2021; \$23,671.00 on December 11, 2021; \$1,536.05 on February 28, 2022; and \$350.00 on April 19, 2022 for a total of \$42,387.05.

13. The Claimant paid \$6,841.00 more than the required \$16,830.00 for the second payment on December 11, 2021 as an overage due to an increase in the price of materials. The April 19, 2022 payment of \$350.00 was an additional cost for trim.

14. With the additional costs, the total Contract price was \$58,191.00.

15. On April 22, 2022, the Respondent sent the Claimant a text message informing her that his business was on the verge of bankruptcy due to lack of workers, and because a customer owed him \$60,000.00. He said that he could not finish the project without an early advance of \$6,000.00 from the remainder to be paid upon completion.

16. The Claimant did not feel confident under the circumstances that the Respondent could finish the project. The Respondent had not completed enough of the project to warrant an advance of a portion of the final payment. She declined to pay the additional \$6,000.00 and decided to move forward with another contractor. The Respondent did not return to the Claimant's home after that other than to retrieve tools and other items of his that he left there.

17. The Respondent left the front porch and back deck unfinished. The shingles on the porch roof were installed incorrectly which eventually caused a leak in the Claimant's living room. He failed to install corner posts prior to installation of the siding. He did not install the J channel near the electrical box. The Respondent took some lights down and left hot wires exposed behind the siding. Portions of the house were still without siding. The Respondent failed to install attic ventilation into the siding. The shingles on the porch roof overhang were not cut properly to smoothly combine the porch roof with the roof of the house.

18. The Respondent never started the interior remodel. He left the tile, cabinets and the flooring with the Claimant; the Claimant had already paid for those items.

19. The Claimant paid Walsh Home Improvement (Walsh) to repair and complete the exterior work the Respondent was supposed to complete pursuant to the Contract.

20. To repair the Respondent's work, Walsh had to remove and reinstall the siding to install the corner posts. The shingles over the back porch needed repair where the shed roof tied into the existing roof of the house. Walsh had to cut rafter tails, add fascia boards and add support to the front porch framing. The Respondent did not frame the back porch properly; Walsh had to install a beam to repair the incorrect framing. Walsh installed beams on the front porch to carry the roof, and Walsh dug down to the footers on the front porch to add support for the outside beam.

21. In addition to the repairs, Walsh completed the front porch and back deck, which the Respondent was supposed to do according to the Contract.

22. The Claimant paid \$25,725.00 to Walsh to repair and complete the exterior work the Respondent was supposed to perform under the Contract. Of that amount, \$9,950.00 was for the repair work, and the remainder to complete the project.

DISCUSSION

LEGAL FRAMEWORK

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).

ANALYSIS

The Claimant testified and presented photographs of the exterior of her home taken during the time the Respondent performed work, and others taken at the time the Respondent ceased working on the project. Cl. Ex. #2. The photographs depict that the Respondent left the front porch and back deck unfinished. He failed to install corner posts prior to installation of the siding. He did not install the J channel. He took some lights down and left hot wires exposed behind the siding. Part of the house was still without siding. The Respondent failed to install attic ventilation. He installed the shingles on the porch roof incorrectly which eventually caused a leak in the Claimant's living room. He did not cut the shingles on the porch roof overhang properly so as to combine and blend the two roofs. The Respondent never started the interior remodel.

When the Respondent asked the Claimant for the \$6,000.00 advance from the final payment, he explained that his business was suffering because he could not find help and a customer owed him \$60,000.00. Given the Claimant's dissatisfaction with the progression of the project, which she expressed to the Respondent on multiple occasions, the Claimant did not have confidence that the Respondent could complete the project. It was at that point that she decided not to pay the advance of \$6,000.00, and instead, to move forward with another contractor. I conclude that the Claimant was justified in that determination. Additionally, the Respondent's work was inadequate and needed repair, and he was unable to complete the project. The Claimant established that she suffered an actual loss due to the Respondent's inadequate and incomplete home improvements, and she 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.

The Claimant only sought recovery for the exterior work. The Respondent performed some work under the Contract, and the Claimant has retained another contractor to complete and 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).

The Claimant paid the Respondent \$42,387.05. Cl. Ex. #5. This amount is comprised of the first scheduled payment of \$16,830.00, the second payment of \$23,671.00 which included the scheduled payment of \$16,830.00 plus an overage of \$6,841.00,⁴ \$350.00 extra for trim, and \$1,536.05 for materials for the interior remodel. The Claimant paid Walsh \$25,725.00 to repair and complete the work the Respondent was supposed to perform under the Contract. Thus, the Claimant paid a total of \$68,112.05 to both Respondent and Walsh ($\$42,387.05 + \$25,725.00 = \$68,112.05$). The total Contract price was \$58,191.00, which included the original price of

⁴ I calculated the overage the Claimant paid with the second draw to be \$6,841.00 ($23,671.00 - \$16,830.00 = \$6,841.00$). On the Claim Form, the Claimant listed the overage as \$6,841.00. However, all throughout the hearing, and even in text messages between the Claimant and the Respondent, the parties referred to the overage in the amount of \$6,591.00, a \$249.00 difference. From the evidence before me, on December 11, 2021, the Claimant paid \$6,841.00 more than the scheduled payment of \$16,830.00 and that is the amount I will use in calculating the award from the Fund.

\$51,000.00 plus the overage of \$6,841.00 and the \$350.00 for trim. After subtracting the total Contract price from the total paid by the Claimant (\$68,112.05-\$58,191.00), the Claimant's actual loss is \$9,921.05

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). 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 her actual loss of \$9,921.05.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$9,921.05 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.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$9,921.05; 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.

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").

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.

May 17, 2024
Date Decision Issued

Susan Sinrod

Susan A. Sinrod
Administrative Law Judge

SAS/emh
#211744

⁶ 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***