

IN THE MATTER OF THE CLAIM	* BEFORE H. DAVID LEIBENSBERGER,
OF APRIL JACKSON-WOODWARD,	* 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 GHASSAN HAMDAN,	*
T/A EMPROVE REMODELING, INC.,	* OAH No.: LABOR-HIC-02-23-29490
RESPONDENT	* MHIC No.: 23 (75) 844

\* \* \* \* \*

**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 28, 2023, April Jackson-Woodward (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$13,329.00 for actual losses allegedly suffered as a result of a home improvement contract with Ghassan Hamdan, t/a Emprove Remodeling, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).<sup>2</sup> On November 15, 2023, the MHIC issued a Hearing

<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor.

<sup>2</sup> 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 November 15, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 14, 2024, I held a remote hearing via the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Jonathan Phillips, Assistant Attorney General, Department of Labor (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<sup>3</sup>:

- Clmt. Ex. 1 - Correspondence from the MHIC to the Claimant and the Respondent, January 27, 2023
- Clmt. Ex. 3 - MHIC Complaint Form, received April 28, 2023
- Clmt. Ex. 5 - Invoice from the Respondent to the Claimant, December 6, 2022
- Clmt. Ex. 6 - American Express Gold Card Account Activity, printed December 20, 2022

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<sup>3</sup> The Claimant's documents that were marked for identification but not admitted into evidence, as well as documents that the Claimant sent to the OAH that were not marked for identification, have been retained with the file of this matter. See COMAR 28.02.01.22.

Clmt. Ex. 7 - Screenshot of Text Message to the Claimant from Darlene, the Respondent's Designer, undated

Clmt. Ex. 11 - MHIC Complaint Form, signed September 22, 2023

Clmt. Ex. 12 - Photograph of the Claimant's Kitchen, printed February 14, 2024

Clmt. Ex. 13 - Photograph of the Claimant's Kitchen, printed February 14, 2024

Clmt. Ex. 16 - Account History, printed February 14, 2023

Clmt. Ex. 17 - Screenshot of Text Messages from the Claimant to the Respondent, printed February 14, 2024

Clmt. Ex. 18 - Screenshot of Text Messages between the Claimant and Darlene, the Respondent's Designer, printed February 14, 2024

Clmt. Ex. 21 - Emails between the Claimant and the Respondent, December 2 to 20, 2022

The Respondent did not offer any exhibits into evidence:

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Remote Hearing, December 19, 2023

Fund Ex. 2 - MHIC Hearing Order, November 15, 2023

Fund Ex. 3 - Home Improvement Claim Form, received April 28, 2023

Fund Ex. 4 - MHIC Licensing History for the Respondent, January 24, 2024

### Testimony

The Claimant testified on her own behalf.

The Respondent testified on his own behalf.

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 01 120631.

2. On a date not contained in the record in late 2022, the Claimant and the Respondent entered into a contract to remodel the Claimant's kitchen in her home located in Bowie, Maryland (Contract).
3. The Contract included demolition of the existing kitchen and tile flooring, installing new LVP<sup>4</sup> flooring, new countertops, new cabinets, and a new sink, and then re-installing her existing appliances, including her refrigerator, stove and range.
4. The original agreed-upon Contract price was \$20,000.00.
5. The Claimant paid the Respondent a total of \$13,329.00. This included a \$2,500.00 payment that was made on November 3, 2022, a \$4,159.00 payment on November 4, 2022, and a \$6,670.00 payment that was made on December 6, 2022.
6. The Respondent began work under the Contract and demolished the existing kitchen and tile floor, and started to install the new LVP flooring.
7. Shortly thereafter, the Respondent stopped work on the project, went out of business, and never completed work under the Contract.
8. The Claimant hired another contractor, VKB Remodeling (VKB) to complete her kitchen remodel (VKB Contract).
9. The VKB Contract price was approximately \$23,100.00.
10. The VKB Contract included items that were not part of the Contract with the Respondent, which included removing the "base floor," repairing the sink and wall, and removing drywall debris. (Testimony, Claimant.)

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<sup>4</sup> Luxury vinyl plank.

## 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.<sup>5</sup> *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).

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<sup>5</sup> The Respondent testified that the Contract contained an arbitration clause, but that he did not intend to invoke it. No one entered a copy of the Contract into evidence. There is insufficient evidence of a valid enforceable arbitration agreement.

The Respondent performed an incomplete home improvement. There was no dispute in this regard. Both parties agreed that the Respondent's company went out of business and, therefore, did not complete work under the Contract. Both parties agreed to the extent of the work done by the Respondent – performing the demolition and beginning the floor installation. I thus 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). The 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 another contractor to 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).

The amount of the Claimant's actual loss is muddled by the fact that no one introduced into evidence the Contract, or the VKB Contract, or testified to the exact scope of work under either agreement. In a case such as this, where the Respondent performed work under the Contract and the Claimant retained another contractor to complete or remedy that work, the

Claimant's actual loss must be based on, "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....*" COMAR 09.08.03.03B(3)(c) (emphasis added). The Claimant testified to some of the work done by VKB, some of the differences in the two agreements, and an approximate amount paid to VKB.<sup>6</sup> However, the Claimant's testimony was not enough for me to determine the exact extent of the work performed by VKB that was to repair or complete work under the original Contract. COMAR 09.08.03.03B(3)(c). There is no itemization of VKB's work that would allow me to precisely determine what amounts paid to VKB were to perform work that was within the scope of the original Contract.

However, it is clear that both contracts pertained only to the remodeling of the Claimant's kitchen. Both parties agreed the original Contract price was \$20,000.00. Both parties agreed the Respondent completed the demolition and had begun installing flooring. The Claimant also agreed there was some work in the VKB Contract that was not in the original Contract. Therefore, a preponderance of the evidence indicates that the VKB Contract price of \$23,000.00, being \$3,000.00 more than the original Contract despite that significant work had already been completed, must have included work beyond the original Contract. So it is clear the Claimant sustained some actual loss, but a precise calculation of that actual loss is not possible.

Counsel for the Fund proposed a solution that I accept as reasonable – that in performing the calculation pursuant to COMAR 09.08.03.03B(3)(c), I estimate the Claimant's cost to complete the original Contract with VKB to be three-fourths of the VKB Contract price.

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<sup>6</sup> Although the Claimant marked for identification a VKB invoice, she did not introduce it into evidence despite multiple opportunities to do so. Regardless, that document does not contain an itemization of the work done by VKB.

Therefore, the amount of the Claimant's actual loss is \$13,329.00<sup>7</sup>(the amount paid to the Respondent) plus \$17,250.00 (three-fourths the VKB Contract price), minus \$20,000.00 (the original Contract price), which equals \$10,579.00.

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>8</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 \$10,579.00.

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$10,579.00 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 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 \$10,579.00; 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

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<sup>7</sup> Both parties agreed this is the amount the Claimant paid to the Respondent. The Respondent alleged that the Claimant filed a dispute with her credit card, and it was "his understanding" she had received a full refund, which the Claimant denied. The Respondent admitted he had no evidence to corroborate that assertion.

<sup>8</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").



under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>9</sup> and

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

May 7, 2024  
Date Decision Issued

*David Leibensperger*  
H. David Leibensperger  
Administrative Law Judge

HDL/dlm  
#211653

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<sup>9</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 2<sup>nd</sup> 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***