

IN THE MATTER OF THE CLAIM	* BEFORE ALECIA FRISBY TROUT,
OF BHARAT SITAPARA,	* 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 OMAR GARDNER,	*
T/A LANDSCAPE THERAPY, LLC,	* OAH No.: LABOR-HIC-02-24-06135
RESPONDENT	* MHIC No.: 24 (75) 119

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On November 9, 2023,¹ Bharat Sitapara (Claimant)² filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)³ Guaranty Fund (Fund) for reimbursement of \$214,954.00 for actual losses allegedly suffered as a result of a home improvement contract with Omar Garnder, trading as Landscape Therapy, LLC (Respondent). Md. Code Ann., Bus.

¹ The Home Improvement Claim Form was signed on November 9, 2023, and is stamped as received on November 15, 2023.

² Both Ms. Sitapara and his wife, Asha Sitapara, are the homeowners of the relevant property. Only Mr. Sitapara's name was included on the Home Improvement Claim Form, so I will refer to him individually as the "Claimant;" however, Ms. Sitapara's name appears on many of the documents. Both the Claimant and Ms. Sitapara participated in the hearing. I will refer to them collectively as the "Homeowners."

³ The MHIC is under the jurisdiction of the Department of Labor (Department).

Reg. §§ 8-401 to -411 (2015 & Supp. 2024).⁴ On March 1, 2024, the MHIC issued a Hearing Order on the Claim. On March 1, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

The OAH first scheduled the case for an in-person hearing at the OAH in Rockville, Maryland to occur on June 20, 2024 at 10:00 a.m. I convened that hearing as scheduled. The Claimant and a representative from the Fund were present. Neither the Respondent nor the Respondent's representative appeared for the hearing. I noted that the Notices mailed to the Respondent had all been returned to the OAH as undeliverable. The Fund had three alternative addresses for the Respondent. I determined that the Respondent had not been properly served and continued the case. I provided the Respondent's updated addresses to the OAH and asked that the case be rescheduled as a remote hearing, and that the notice be sent to the addresses on file for the Respondent, and the updated addresses provided by the Fund. On July 10, 2024, the OAH mailed notices of the rescheduled hearing to the parties.

On September 6, 2024, I held a remote hearing via the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312. The Claimant and Respondent appeared and were each self-represented. Jonathan Phillips, Assistant Attorney General, Department, represented the Fund.

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. 2024); COMAR 09.01.03; COMAR 28.02.01.

⁴ Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

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 Claimants:

- Clmt. Ex. 1 - Home Improvement complaint form, July 26, 2023 and Labor Order, August 7, 2023
- Clmt. Ex. 2 - Letter from Respondent to "Sir/Madam," September 11, 2023
- Clmt. Ex. 3 - Eleven photographs of the deck, April 26, 2023
- Clmt. Ex. 4 - Contract between the Claimant and the Respondent, February 24, 2022
- Clmt. Ex. 5 - Text messages between the Claimant and the Respondent, August 24, 2022
- Clmt. Ex. 6 - Montgomery County Department of Permitting Services, approval, March 15, 2023 and screenshot of Montgomery County Department of Permitting Services database, various dates
- Clmt. Ex. 7 - Email chain titled, "Granby Deck Project Issue Refund Notice," May 11, 2023 through May 20, 2023
- Clmt. Ex. 8 - Email chain titled, "Railing," April 26, 2023
- Clmt. Ex. 9 - Text messages between the Homeowners and the Respondent, March 2023
- Clmt. Ex. 10 - Email titled, "Congratulations!!!!!!!" July 26, 2022
- Clmt. Ex. 11 - Text messages between the Homeowners and the Respondent, April 18, 2023 – April 19, 2023
- Clmt. Ex. 12 - Email chain titled, "FW: Viewrail 419918 – (Claimant) – Exterior Deck Railing w/ LED- Closing File," April 25, 2023
- Clmt. Ex. 13 - Text messages between the Homeowners and the Respondent, April 20, 2023 through April 26, 2023

Clmt. Ex. 14 - Email chain titled, “FW: Viewrail 419918 – (Claimant) – Exterior Deck Railing w/ LED- Closing File,” April 22, 2023

Clmt. Ex. 15 - Text messages between the Homeowners and the Respondent, June 26, 2023

Clmt. Ex. 16 - Montgomery County Department of Permitting Services, Building Permit, July 25, 2022

Clmt. Ex. 17 - Text messages between the Homeowners and the Respondent, February 18, 2023 through August 18, 2023

Clmt. Ex. 18 - Portion of contract between the Claimant and Elite Decks, April 26, 2023

Clmt. Ex. 19 - Viewrail estimate, undated⁵

Clmt. Ex. 20 - Six photographs of deck, April to June, 2023

The Respondent did not offer any exhibits.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, April 1, 2024

Fund Ex. 2 - Hearing Order, March 1, 2024

Fund Ex. 3 - Home Improvement Claim form, November 9, 2023

Fund Ex. 4 - The Respondent’s licensing information, printed June 20, 2024

Testimony

The Claimant presented the testimony of Ms. Sitapara.

The Respondent testified.

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 01-116436.

⁵ The text on the document is printed in poor quality and date is illegible.

2. The Homeowners own a home on Granby Road in Derwood, Maryland where they also reside (Property).

3. On February 24, 2022, the Claimant and the Respondent entered into a contract (Contract) to remove the existing deck and swim spa at the Property and complete the following:

- A new deck with TrexEnhance composite decking, including a Viewrail cable railing system; four 4' by 4' landings; thirty steps with lights for each riser; vinyl sleeves for posts and beams; poles and pole lights; Tikki torch holders; waterproofing under the deck by Trex Rainescape; motorized screens;
- A white vinyl 18' by 12' pergola with string lights, fan, electric outlet, and French door;
- An outdoor kitchen including sink, pull down faucet, counter, cabinets, gas propane grill, gas stove, pizza oven, outdoor bar refrigerator, stone veneer kitchen ceiling, crown molding, place holder to store water hose, water outlet, table warmer with electric outlet and back splash; gutters and downspouts;
- A terrace on top of the kitchen with swing hooks; recessed lighting; ceiling soffit vinyl, small water heater under sink, bar and kitchen counter outlets, two electric heaters, and exhaust system on hood of top of the grill;
- A 1,800 square foot patio underneath the deck with pavers installed on top of 4 inches of compacted CR-6/Stonedust interlocked with polymeric sand; new Nicolock Stoneridge or Cambridge pavers; includes polymer solidifying brushed between joints and installation of geotextile fabric between dirt and base material; haul subsequent debris and install a swing hook underneath the deck;
- A swim spa;
- A 61' x 4' retaining wall with Nicolock Colonial wall; excavate backyard area adjacent to new deck/patio and install bluestone and CR-6 Wall; includes drainage and gravel installed behind walls; haul all subsequent debris; install lights

4. The original agreed-upon Contract price was \$320,000.00.

5. The Contract stated that work would begin within two weeks of the permit approval, and take no more than ninety days to complete.

6. The Contract specified that the Claimants would pay the Respondent according to the following payment schedule:

- a. First payment of \$119,167.29 when the Contract is signed by the Claimant;
- b. Second payment of \$121,465.36 when the Respondent begins the work;
and
- c. Final payment of \$79,367.35 when the work is completed.

7. On February 24, 2022, the Claimant paid the Respondent the initial deposit of \$105,600.00. On February 20, 2023 the Claimant paid the Respondent \$1,900.00 and on March 4, 2023, the Claimant paid the Respondent \$7,150.00. These two payments were for a land survey and materials. On August 24, 2023, the Claimant paid the Respondent \$107,200.00. As of August 24, 2022, the Claimant had paid the Respondent a total of \$221,850.00.

8. On July 25, 2022, the Montgomery County Department of Permitting Services approved the permit for the Respondent to begin the work under the Contract.

9. On a date not certain in the record, the Respondent started work under the Contract. As of April 26, 2023, the Respondent had completed approximately one-half of the work under the Contract and had not ordered the materials for any of the additional work under the Contract.

10. Between August 2022 and April 2023, the Homeowners communicated with the Respondent numerous times via email and text inquiring about past deadlines, failed inspections and materials that the Respondent assured had been ordered and purchased but the Homeowners learned had not.

11. Montgomery County Department of Permitting Services inspected the Respondent's work at the Property and denied approval on March 23, 2022; April 20, 2022; May 19, 2022; and June 6, 2022.
12. On April 26, 2023, the Claimant terminated the Contract with the Respondent.
13. On May 11, 2023, the Respondent agreed to reimburse the Claimant a total of \$106,400.00 paid in the following installments:
 - \$25,000.00 on June 15, 2023
 - \$25,000.00 on July 14, 2023
 - \$25,000.00 on August 14, 2023
 - \$25,000.00 on September 15, 2023
 - \$6,400.00 on October 13, 2023
14. The Respondent did not reimburse the Claimant per the agreement.
15. On April 26, 2023, the Claimant contracted with Elite Decks to complete the work under the Contract that had been left incomplete by the Respondent, and to repair the work that had been completed by the Respondent, but failed by Montgomery County permitting inspectors. The Contract with Elite Decks included only labor. The Contract did not include materials, electric work or plumbing. The agreed upon price for the contract with Elite Decks was \$125,000.00.
16. On a date not certain in the record, the Claimant paid Elite Decks in full per the contract.
17. Elite Decks completed the work under their contract as of June 15, 2023.

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. 2024); *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. 2024). 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. 2024). 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. 2024). 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. 2024).

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2024).

The Positions of the Parties

The Claimant asserted that he contracted with the Respondent for a completed deck, the Respondent did not complete the deck, and the Claimant had to hire another contractor to finish the deck. The Claimant argued that this was a traumatic experience because it took a long time to complete the deck.

The Respondent agreed that the work was incomplete and had previously agreed to reimburse the Claimant \$106,400.00. At the hearing, the Respondent stated that it was not his intention to take the Claimant's money and abandon the project. At the outset of the hearing, the Respondent asserted that he was present to represent his business entity, Landscape Therapy, LLC, and that he was not present to represent himself as an individual. The Respondent provided that as an individual, he had filed a Chapter 13 bankruptcy that had been approved, and the Claimant was listed as a creditor in the bankruptcy case. In his closing argument, the Respondent argued that the Claimant would receive funds as a result of the bankruptcy case. The Respondent also asserted numerous times that the Claimant had not paid any money to him as an individual, but only to Landscape Therapy, LLC which was not part of his bankruptcy case.

The Fund argued that the Claimant had a legally sufficient claim. The Fund argued that the Respondent did some work on the deck, but then stopped working without completing the deck, forcing the Claimant to hire another contractor and pay more money to finish it.

Analysis

The evidence shows that the Homeowners paid the Respondent to remove their existing deck and construct a new deck at their home, but the Respondent performed incomplete and unworkmanlike home improvements. The Claimant had no choice but to hire another contractor, at an additional cost, to complete the deck. I found Ms. Sitapara's testimony credible, and it was corroborated by emails and text messages. The Respondent appeared for the hearing, but appeared largely disinterested and provided only one statement during his direct testimony stressing that all of the funds paid by the Claimant was to his business entity rather than to him as an individual. The Respondent started the hearing in a shirt and tie, present on the Webex screen. As the hearing went on, he moved his camera such that he was not visible on the screen, and eventually took off his tie and unbuttoned the top of his shirt. This, coupled with his presentation led me to believe that he had appeared only out of his self-interest to create a record that all of the money paid by the Claimant had been to his business entity, and therefore out of reach of his bankruptcy case. This was in direct contradiction to his other statements that the Claimant should be receiving reimbursement money as a result of the bankruptcy case.

The Respondent admitted to an incomplete home improvement and admitted that he owed the Claimant \$106,400.00. 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. 2024); 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 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).

Applying the formula, the Claimant's actual loss is calculated as follows:

Amount the Claimant paid to the Respondent:	\$221,850.00 ⁶
Plus reasonable amounts the Claimant paid to complete the Contract:	\$125,000.00 ⁷
Less total Contract price:	\$320,000.00
Actual loss:	\$26,850.00

The Claimant presented testimony and evidence that Contract had included labor, materials, electrical and plumbing work, while the contract with Elite Decks to complete the project included only labor. The Claimant had additional expenditures to complete the project.

⁶ \$105,600.00 (first payment) + \$1,900.00 (second payment) + \$7,150.00 (third payment) + \$107,200.00 (fourth payment).

⁷ Amount paid to Elite Decks.

The Respondent testified that he agreed that he owed the Claimant at least \$30,000.00. Based on that additional testimony, I find that the Claimant paid a minimum of \$3,150.00 in additional expenses for materials, plumbing and electric work to complete the work under the Contract.

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.⁸ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2024); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is \$30,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$30,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$30,000.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2024); 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 \$30,000.00; and

⁸ 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").

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;⁹ and

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

December 3, 2024
Date Decision Issued

Alecia Frisby Trout

Alecia Frisby Trout
Administrative Law Judge

AFT/sh
#215337

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

PROPOSED ORDER

WHEREFORE, this 16th day of April, 2025, 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.

Wm. Bruce

Quackenbush

Wm. Bruce Quackenbush

Chairman

Panel B

**MARYLAND HOME IMPROVEMENT
COMMISSION**