

IN THE MATTER OF THE CLAIM	* BEFORE TYRONE CROSBY,
OF SCOTT RODMAN,	* 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 JAMES BALLAN,	*
MJ DESIGN BUILD & REMODEL,	* OAH No.: LABOR-HIC-02-24-13710
INC.,	* MHIC No.: 24 (75) 151
RESPONDENT	*

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On October 2, 2023, Scott Rodman (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$16,000.00 for actual losses allegedly suffered as a result of a home improvement contract with James Ballan, trading as MJ Design Build and Remodel, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2024).² On May 15, 2024, the MHIC issued a Hearing Order on the

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).

² Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

Claim. On May 16, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On October 3, 2024, at 9:30 a.m., I held a hearing by video using the Webex videoconferencing platform (Webex). Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Kris King, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented.

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. COMAR 28.02.01.23A. On June 17, 2024, the OAH provided a Notice of Remote 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 October 3, 2024, at 9:30 a.m., via Webex. 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 Notice was returned to the OAH with the notation undeliverable. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent's address is the same listed with the Maryland Motor Vehicle Administration and Maryland Real Property Search. The Fund emailed the Respondent a copy of the Notice on September 17, 2024. The Respondent used the same email address to correspond with the Claimant from October 2022 through November 2023. 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. 2024); 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. Ex. 1 - MHIC Claim form, dated October 2, 2023
- Clmt. Ex. 2 - Contract, dated October 11, 2022
- Clmt. Ex. 3 - Payment Receipts
 - Check, dated December 20, 2022
 - Wire transfer receipt, dated February 17, 2023
- Clmt. Ex. 4 - Correspondence between Claimant and Respondent, various dates

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Hearing Notification Documents:
 - Undeliverable mail letter, dated July 26, 2024
 - Notice of Remote Hearing, dated June 17, 2024
 - Hearing Order, dated May 15, 2024
- Fund Ex. 2 - Contractor License Information
- Fund Ex. 3 - Affidavit of David Finneran, MHIC Executive Director, dated September 11, 2024
- Fund Ex. 4 - MD DAT Real Property Ownership Information, 407 Samanthas Ct., Reisterstown, MD 21136
- Fund Ex. 5 - MHIC Claim form, dated October 2, 2023
- Fund Ex. 6 - MHIC Letter re: receipt of claim, dated October 25, 2023

The Respondent was not present and did not offer any exhibits.

Testimony

The Claimant testified and did not present other 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 05-154132.
2. On October 11, 2022, the Claimant and the Respondent entered into a contract to renovate a bathroom and repair a patio door. (Contract). The Respondent was to perform:
 - a. Demolition of existing bathroom shower, vanity, medicine cabinet, toilet, lights, fan, and fixtures
 - b. Reframe new cabinet
 - c. Point up and paint walls and ceiling.
 - d. Block shower for grab bar
 - e. Update plumbing lines to vanity, shower, and toilet.
 - f. Furnish and install all plumbing fixtures, new vanity top, undermount sink, ceramic tile floor with related trim, a new waterproofing system for the shower walls, ceramic tiles for shower ceiling, new shower door, and new shower pan and drain.
 - g. Open right side of Patio door, remove and replace drywall and rotted wood as needed.
3. The original agreed-upon Contract price was \$21,572.22. The Claimant was to pay the Respondent in three equal installments. The first payment was a downpayment. The second third to be paid at the start of construction. The final payment to be paid at completion of the construction.
4. The Contract stated that work would be completed in approximately two and a half weeks.
5. On December 15, 2022, the Claimant paid the Respondent \$8,000.00. On February 17, 2023, the Claimant paid the Respondent \$8,000.00.
6. The Respondent only worked on the project for a maximum of two hours with no noticeable work completed.

7. On June 16, 2023, the Respondent stated he would return the payments to the Claimant.

8. On November 1, 2023, the Respondent refunded the Claimant \$7,500.00.

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) (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.

The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. In October 2022, the Claimant and the Respondent entered into a contract to repair a patio door and bathroom renovation. The Claimant paid \$16,000.00 for the project to begin. The Respondent only worked on the project for a maximum of two hours with no noticeable work completed. On June 22, 2023, the Respondent informed the Claimant that he would refund the money in two payments. In November 2023, the Respondent refunded \$7,500.00. As the Respondent did not perform the work as set for in the Contract, 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) (2024); 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 abandoned the Contract without doing any noticeable work. Accordingly, the following formula appropriately measures the Claimant's actual loss: "If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract." COMAR 09.08.03.03B(3)(a). The Respondent acknowledged that no work was performed and agreed to refund the amount paid. However, he only refunded \$7,500.00 of the \$16,000.00 paid. Therefore, the Claimant is entitled to the \$8,500.00 remaining balance.

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.³ Bus. Reg. § 8-405(e)(1), (5) (2024); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is equal to the amount paid to the Respondent (less \$7,500.00 already refunded) and less than \$30,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$8,500.00.

³ 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").

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$8,500.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2024); COMAR 09.08.03.03B(3)(a). I further conclude that the Claimant is entitled to recover that amount from the Fund. COMAR 09.08.03.03B(3)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$8,500.00; 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;⁴ and

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

December 31, 2024
Date Decision Issued



Tyrone Crosby
Administrative Law Judge

TC/at
#214344

⁴ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 20th day of May, 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.

Michael Thomas

Michael Thomas

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***