

IN THE MATTER OF THE CLAIM	* BEFORE JOHN J. LEIDIG,
OF MARIA JOHN MUTHAIYA,	* 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 SARATH	*
PUTHUSSEY,	* OAH No.: LABOR-HIC-02-24-07713
T/A BALTIMORE DESIGN &	* MHIC No.: 24 (75) 275
REMODELING,	*
RESPONDENT	*

* * * * *

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 or about November 17, 2023, Maria John Muthaiya (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$36,216.00 for actual losses allegedly suffered as a result of a home improvement contract with Sarath Puthussery, trading as Baltimore Design & Remodeling

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

(Respondent).² Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).³ On March 18, 2024, the MHIC issued a Hearing Order on the Claim and forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 27, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Catherine Villareal, 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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On April 5, 2024, the OAH provided 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 June 27, 2024, at 9:30 a.m., at the OAH in Hunt Valley, 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 did not return the Notice to the OAH, and the Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. I determined that the Respondent received proper notice, and I proceeded to conduct the hearing. COMAR 28.02.01.05.

² Respondent sometimes used the trade names "Baltimore Design and Remodel" and "Old Bay Remodeling" in communications with Claimant; however, the only trade name registered with MHIC is "Baltimore Design & Remodeling."

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

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and OAH's Rules of Procedure 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 1 | Contract for Home Addition, February 20, 2023 |
| CLMT 2 | Claimant's Bank Records showing Zelle Transfers and a Wire Transfer to Respondent, February 21 through June 28, 2023 |
| CLMT 3 | Letter from Claimant to Respondent, August 17, 2023 |
| CLMT 4 | Text Messages between Claimant and Respondent, March 13 through June 13, 2023 |
| CLMT 5 | Emails between Claimant and Respondent, March 9-10, March 26-27, and April 25, 2023, with attachments: Plans for Proposed Renovations A-1, A-2, A-3, A-4, and CS-1 |
| CLMT 6 | Color Photographs of the subject Property, undated |
| CLMT 7 | Estimate of the Value of the Work Performed by the Respondent, prepared by Transformation Solutions, November 8, 2023; Estimate of the Cost to Complete the Scope of Work, prepared by Transformation Solutions, November 6, 2023 |

I admitted the following exhibits offered by the Fund:

- | | |
|--------|---|
| FUND 1 | MHIC Home Improvement Claim Form, November 17, 2023 |
| FUND 2 | MHIC Hearing Order, March 18, 2024 |

FUND 3 Notice of Hearing, April 5, 2024

FUND 4 Respondent's MHIC Licensing History, printed Jun 26, 2024

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 01 119037.
2. On February 20, 2023, the Claimant and the Respondent entered into a contract to build a multi-level addition to the Claimant's home (Contract).
3. The original agreed-upon Contract price was \$80,000.00, and there were no amendments to the Contract.
4. Between February 21 and June 28, 2023, Claimant paid Respondent a total of \$46,000.00 by way of Zelle and a wire transfer.
5. The Respondent began work on the Contract approximately fifteen days after the Contract was signed. The Contract specified that the Contract work would be completed within twenty-one days after starting work, "weather, inspections, materials and factors outside Contractors [sic] control permitting." CLMT 1 at p. 3.
6. From March through June, Respondent dug a foundation for the project, poured some concrete, and performed some brickwork.
7. Claimant made repeated attempts to contact the Respondent by telephone, text, and email to keep the project progressing, but the Respondent abandoned the project before the work was completed.

8. On August 17, 2023, Claimant wrote a letter to Respondent explaining Claimant's dissatisfaction with the Respondent's abandonment of the project. The Respondent failed to respond.

9. In November 2023, Claimant contacted Transformation Solutions, an MHIC-licensed contractor, to evaluate the status of the project.

10. Transformation Solutions determined that the value of the work completed by Respondent was \$9,783.80 and that the cost to complete the Contract work was \$99,558.38.

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.

Respondent was a licensed home improvement contractor at the time Respondent entered into the Contract with Claimant.

By statute, certain claimants are excluded from recovering from the Fund altogether. In

this case, there are no such statutory impediments to Claimant's recovery. The claim was timely filed, there is no pending court claim for the same loss, and Claimant did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2023).

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). Claimant is not a relative, employee, officer, or partner of Respondent, and is not related to any employee, officer, or partner of Respondent. *Id.* § 8-405(f)(1) (Supp. 2023).

Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023). In fact, Claimant gave Respondent ample opportunity to finish the Contract work even after progress on the Contract work fell behind schedule. Claimant called and texted Respondent repeatedly from March through June (See CLMT 4), and Claimant was even willing to permit Respondent to propose a plan to finish the Contract work as late as August 17, 2023. However, Respondent failed to respond to Claimant's repeated requests after abandoning the project in late June 2023.

I thus find that Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of Claimant's actual loss and the amount, if any, that 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.

Respondent performed some work under the Contract, and Claimant has solicited 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). Accordingly, Claimant's actual loss is calculated as follows:

\$46,000.00	amount paid to Respondent
+ \$99,558.38	amount paid to The Home Depot
- \$80,000.00	original Contract price
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\$65,558.38	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.⁴ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, Claimant's actual loss of \$65,558.38 exceeds \$30,000.00, and the \$30,000.00 cap is more than Claimant paid to Respondent. Therefore, the Claimant's recovery is limited to \$30,000.00.

⁴ 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 Claimant has sustained an actual and compensable loss of \$30,000.00 as a result of Respondent's acts or omissions. I further conclude that the Claimant is entitled to recover \$30,000.00 from the Fund. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award Claimant \$30,000.00; 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;⁵ and

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

July 12, 2024
Date Decision Issued



John J. Leidig
Administrative Law Judge

JJL/kkc
#212703

⁵ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**IN THE MATTER OF THE CLAIM OF
MARIA JOHN MUTHAIYA
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ACTS OR OMISSIONS OF
SARATH PUTHUSSERY T/A
BALTIMORE DESIGN &
REMODELING**

*** MARYLAND HOME
* IMPROVEMENT COMMISSION
*
* MHIC CASE NO. 24(75)275
* OAH CASE NO. LABOR-HIC-
* 02-24-07713**

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PROPOSED ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on June 27, 2024. Following the evidentiary hearing, the ALJ issued a Proposed Decision on July 12, 2024, concluding that the homeowner, Maria John Muthaiya (“Claimant”) suffered an actual loss as a result of the acts or omissions of Sarath Puthussery t/a Baltimore Design & Remodeling (“Contractor”). In accordance with COMAR 09.01.03.08, a Panel of the MHIC reviewed the ALJ’s Proposed Decision, which is incorporated herein and amended as set forth below.

The Commission finds that the ALJ erroneously identified the Home Depot as the contractor that the Claimant hired to correct and complete the Contractor’s deficient performance rather than Transformation Solutions, LLC.

Having considered the evidence contained in the record and the ALJ’s Proposed Decision, it is this 8th day of November 2024, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AMENDED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AMENDED**;
- D. That the Claimant is awarded \$30,000 from the Home Improvement Guaranty Fund;

- E. 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, plush annual interest of ten percent as set by the Maryland Home Improvement Commission;
- F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- G. Unless, within twenty days of the date of this Proposed Order, any party files with the Commission written exceptions or a request to present argument, then this Proposed Order will become final. By law, the parties then have an additional thirty days to file a petition for judicial review in Circuit Court.

Bruce Quackenbush
Acting Chairperson –Panel B
Maryland Home Improvement
Commission