

IN THE MATTER OF THE CLAIM	* BEFORE TRACEE ORLOVE FRUMAN,
OF LEKSHMY SEKHAR & MOHAN	* AN ADMINISTRATIVE LAW JUDGE
MENON,	* OF THE MARYLAND OFFICE
CLAIMANT	* OF ADMINISTRATIVE HEARINGS
AGAINST THE MARYLAND HOME	*
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF CARLOS GUZMAN,	*
T/A C&F CONSTRUCTION, LLC,	* OAH No.: LABOR-HIC-02-24-13742
RESPONDENT	* MHIC No.: 24 (75) 289

* * * * *

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 January 5, 2024,¹ Lekshmy Sekhar and Mohan Menon (Claimants²) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)³ Guaranty Fund (Fund) for reimbursement of \$5,452.76 for actual losses allegedly suffered as a result of a home improvement contract with Carlos Guzman, trading as C&F Construction, LLC (Respondent).

¹ The Home Improvement Claim Form was signed on December 31, 2023, and is stamped as received on January 5, 2024. The Hearing Order indicated that the Home Improvement Claim Form was filed on January 12, 2024. The origin of that date is not clear from the record.

² Both Ms. Sekhar and Mr. Menon's names were listed on the Home Improvement Claim Form; however, only Mr. Menon's name appears on many of the documents. Both Ms. Sekhar and Mr. Menon are claimants in this matter.

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

Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2024).⁴ On May 15, 2024, the MHIC issued a Hearing Order on the Claim. On May 16, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On October 16, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Catherine Villareale, Assistant Attorney General, Department, represented the Fund. The Claimants were 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 September 16, 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 October 16, 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 certified mail receipt was signed by an unidentified person⁵ on September 18, 2024. 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 hear the captioned matter.⁶ COMAR 28.02.01.05.

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

⁵ The signature was illegible.

⁶ The hearing was originally scheduled on September 16, 2024. Both the Claimants and the Respondent were present. At that time, the Respondent requested a Spanish interpreter. I postponed the matter in order to schedule a Spanish interpreter, and the parties jointly chose October 16, 2024, at 9:30 a.m., for the rescheduled hearing. The Respondent agreed that he was available on the rescheduled hearing date.

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 Claimants:

- Clmt. Ex. 1 - Contract between the Claimants and the Respondent, dated October 21, 2022
- Clmt. Ex. 2 - Timeline of contract events, undated
- Clmt. Ex. 3 - Photographs of the deck before completion, undated
- Clmt. Ex. 4 - Contract amendment, dated May 3, 2023; TW Perry order receipt 2305-B20641, dated May 4, 2023; TW Perry order receipt 2305-B142EH, dated May 4, 2023; Check number 442 to the Respondent from the Claimants, dated October 21, 2022; Check number 451 to the Respondent from the Claimants, dated March 20, 2023; Check number 453 to the Respondent from the Claimants, dated April 5, 2023; Chase credit card receipt for payment of \$2,000.00 to TW Perry, dated May 4, 2023; Chase credit card receipt for payment of \$5,121.55 to TW Perry, dated May 4, 2023
- Clmt. Ex. 5 - Contract between the Claimants and Thomas Reid Stafford, Sr., t/a Horn Point Construction (Horn Point), dated September 21, 2023; Amazon receipt, dated August 27, 2023; Text messages to various contractors, August 18, 2023 and undated.
- Clmt. Ex. 6 - Photographs of deck after completion, undated
- Clmt. Ex. 7 - Home Improvement Claim Form, dated December 31, 2023; Complaint Form, undated; Annexure and Payment Schedule, undated
- Clmt. Ex. 8 - Text messages between Mr. Mohan and the Respondent, various dates

Clmt. Ex. 9 - Anne Arundel County Department of Inspections & Permits, Building Permit, issue date March 14, 2023; Framing plan, post and beam plan, site plan, undated

Clmt. Ex. 10 - Summary of events leading to financial loss of \$5,452.76, undated

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Home Improvement Claim Fund, dated December 31, 2023

Fund Ex. 2 - Hearing Order, dated May 15, 2024

Fund Ex. 3 - Notice of Hearing, dated June 12, 2024

Fund Ex. 4 - The Respondent's licensing information, printed September 12, 2024

The Respondent failed to appear, and therefore, did not offer any exhibits.

Testimony

The Claimants testified and did not present other witnesses.

The Fund did not present any witnesses.

The Respondent did not appear, and therefore, 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.

2. On October 21, 2022, the Claimants and the Respondent entered into a contract to remove the existing deck and build a new deck with Trex Transcend decking, measuring 1,000 square feet with three steps, including ten lights for each step, six railing sections, gravel under the deck, and a small hole lattice around the deck at their home in Pasadena, Maryland (Contract).

3. The original agreed-upon Contract price was \$37,800.00

4. The Contract stated that work would begin on January 6, 2023 and would be completed by February 6, 2023.

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

- a. First payment of \$3,780.00 when the Contract is signed by the Claimants;
- b. Second payment of \$12,000.00 when the Respondent orders the materials and begins the work;
- c. Third payment of \$15,000.00 when the framing is completed; and
- d. Last payment of \$7,020.00 when the work is completed.

6. On a date not clear from the record, a Change Order Request (COR) was executed in the amount of \$2,550.00 to extend the gutter drain pipe and exchange the regular lattice for Trex fascia board.

7. On a date not clear from the record, the Respondent gave the Claimants a \$550.00 discount on the COR. The COR, with the discount, brought the new contract price to \$39,800.00.

8. The Respondent began working on the Claimants' deck in March 2023.

9. The Claimants paid the Respondent on the following dates and installments:

- a. October 21, 2022 - \$3,780.00
- b. March 20, 2023 - \$12,000.00
- c. April 5, 2023 - \$15,000.00

10. On May 3, 2023, the Claimants and the Respondents amended the Contract to reflect that the Claimants would order and pay for the remaining thirty-three treads and twenty-four risers directly from the supplier, TW Perry (Amended Contract). The actual invoice amount was to be deducted from the final payment owed to the Respondent. The Amended Contract also stated that the job would be completed within six working days of receipt of the material.

11. On May 4, 2023, the Claimants paid TW Perry a total of \$7,121.55.

12. After deducting the cost of materials purchased from TW Perry, the adjusted Contract price was \$32,678.45. Of that amount, the Claimants paid the Respondent a total of \$30,780.00.
13. TW Perry delivered the treads and risers to the Claimants on May 5, 2024.
14. After May 24, 2023, the Respondent communicated with the Claimants via text message but did not return to finish the deck.
15. From May 2023 until the end of June 2023, the Respondent periodically texted the Claimants and indicated that he planned to go to their home to work on the deck, but never showed up, and often did not respond to the Claimants' text messages.
16. On May 24, 2023, the deck was missing the north and south railings, handrailing, thirty step lights, fasteners and fastener caps, and skirting on the south end of the deck.
17. Beginning in July 2023, the Claimants began looking for a new contractor to complete the deck.
18. On September 22, 2023, the Claimants contracted with Horn Point to complete the deck at a cost of \$6,550.00.
19. The Claimants purchased step lights from Amazon at a cost of \$301.21, which Horn Point installed.
20. The Claimants also paid \$500 to have their yard cleaned up after the Respondent stopped working on the deck and left construction debris behind.
21. Horn Point completed the deck on October 5, 2023.

DISCUSSION

Legal Framework

The Claimants have 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 Claimants' 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 Claimants reside in the home that is the subject of the claim or do 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 Claimants are not a relative, employee, officer, or partner of the Respondent, and are not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2024).

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

The Fund argued that the Claimants have 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 Claimants to hire another contractor and pay more money to finish it.

Analysis

The evidence shows that the Claimants paid the Respondent to remove their existing deck and construct a new deck at their home, but the Respondent performed incomplete home improvements. The Claimants had no choice but to hire another contractor, at an additional cost, to complete the deck.⁷ I found both the Claimants' testimony credible, and it was corroborated by invoices and receipts. In addition, the Respondent did not appear at the hearing to refute any of the Claimants' assertions.

The Respondent performed incomplete home improvements. Specifically, the Respondent failed to enclose the side of the deck and failed to install step lights on the risers, railings, and fastener plugs. The Respondent did not complete the deck during the agreed upon time frame, and then, for several more months, texted the Claimants and led them to believe he was still going to complete their deck, but ultimately never returned to their home.

⁷ The amount paid to Horn Point was for work included in the scope of the Contract with the Respondent.

(

The Claimants also paid a handyman \$500.00 to clean up the construction debris from their yard, which the Respondent left behind.⁸ Although the Claimants did not provide a receipt for this expenditure, I found Mr. Menon's testimony credible and the amount he paid to the handyman to be reasonable. I thus find that the Claimants are eligible for compensation from the Fund.

Having found eligibility for compensation, I must determine the amount of the Claimants' 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 Claimants retained another contractor to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimants' 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).

⁸ The Contract was silent on debris removal. I conclude that it was reasonable for the Claimants to infer that the Contract included debris removal.

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

Amount the Claimants' paid to the Respondent:	\$30,780.00 ⁹
Plus reasonable amounts the Claimants paid to complete the Contract:	\$6,550.00 ¹⁰ \$301.21 ¹¹ \$500.00 ¹²
Less total Contract price:	\$32,678.45 ¹³
Actual loss:	\$5,452.76

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.¹⁴ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2024); COMAR 09.08.03.03B(4). In this case, the Claimants' actual loss is less than the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimants are entitled to recover their actual loss of \$5,452.76.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of \$5,452.76 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 Claimants are entitled to recover that amount from the Fund.

⁹ \$3,780.00 (first payment) + \$12,000.00 (second payment) + \$15,000.00 (third payment).

¹⁰ Amount paid to Horn Point.

¹¹ Amount paid to Amazon for the step lights.

¹² Amount paid to a handyman for yard clean-up.

¹³ \$37,800.00 (Contract price) + \$2,000.00 (COR) = \$39,800.00 - \$7121.55 (amount paid to TW Perry) = \$32,678.45.

¹⁴ 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").

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,452.76; 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;¹⁵ and

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

November 19, 2024
Date Decision Issued

Tracee Orlove Fruman
Tracee Orlove Fruman
Administrative Law Judge

TOF/sh
#215091

¹⁵ 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***